
Appeal Decision

Site visit made on 21 December 2021

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 07 February 2022

Appeal Ref: APP/M4510/C/21/3283798

30 Thirlington Close, Newcastle upon Tyne, Tyne and Wear NE5 4BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Dean Taylor against an enforcement notice issued by Newcastle-upon-Tyne City Council.
 - The enforcement notice is dated 25 August 2021.
 - The breach of planning control as alleged in the notice is: Development not in accordance with the approved plans of planning permission reference 2017/1792/01/DET. Without planning permission, the construction of a dormer extension and two storey flat roof extension to rear.
 - The requirements of the notice are: (i) Remove the dormer extension and reinstate the pitched roof to rear with materials to match existing; and (ii) Remove the first floor of the two storey flat roof rear extension shown marked in blue on Appendix 1 of the enforcement notice OR (iii) Implement outstanding elements of planning permission reference 2017/1792/01/DET namely:
 - i. Reduce size of dormer extension in accordance with that shown on plan reference 19C as shown at Appendix 2 of the enforcement notice.
 - ii. Alter roof above first floor rear bathroom from flat roof to that of a pitched roof as shown on plan reference 19C as shown at Appendix 2 of the enforcement notice.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. The appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Background

2. No 30 is a detached two storey dwelling in an area of similar residential properties. In 2017, the Council investigated a complaint that development carried out at No 30 was not in accordance with the approved plans of either planning permissions ref: 2014/0830/01/DET or ref: 2015/0415/01/DET. In response, the appellant submitted a further planning application ref: 2017/1792/01/DET (the 2017 scheme), which was approved in June 2019.
3. This permitted the raising of the ridge and eaves heights, a double hip to gable extension and a flat roof dormer extension to the rear roof slope, along with single and two storey extensions to the rear. Other alterations to the front of the building were allowed, but these are not in contention in this appeal.

The appeal on ground (c)

4. The appeal on ground (c) is that the alleged matters, if they occurred, do not constitute a breach of planning control. Under this ground, the onus of proof is on the appellant.
5. As constructed, the rear box dormer spans the whole width of the building, incorporating a glazed door opening onto a flat roof. The appellant's case is that this box dormer extension falls within permitted development rights, and so planning permission is not required.
6. Crucially, however, the construction of the box dormer appears to have been part and parcel of the building operation comprising the development of the rear extensions, the increase in roof height, and the works to the front of the house. For the appellant's argument to succeed, it would be necessary to establish that all the development carried out was permitted under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). There is no evidence that this is the case, and so the whole development falls to be considered against the relevant development plan policies.
7. The appellant argues that the two storey extension was constructed with full planning permission. Whilst the 2017 scheme permits a two storey extension, it is not of the same form as that constructed. The difference in design is such that the 2017 scheme cannot be said to have been implemented in accordance with the approved plans. There is no evidence that the two storey extension as built has planning permission and so I am satisfied that it constitutes a breach of planning control.
8. The appeal on ground (c) therefore fails.

The appeal on ground (d)

9. The appeal on ground (d) is that, at the date when the enforcement notice was issued, it was too late to take enforcement action. Again, the onus of proof under this ground is on the appellant.
10. Section 171B(1) of the Act indicates that for operational development, no action may be taken four years after the date of the substantial completion of the development. As the enforcement notice was issued on 25 August 2021, the development needs to have been substantially completed by 25 August 2017 in order to be immune from enforcement action.
11. The appellant refers to photographic evidence showing that the construction of the roof and dormer were well progressed in March 2017, but this photographic evidence has not been made available within the appeal submissions. He states that this type of development would normally take around 6-8 weeks to complete, and he asserts that the work was complete well before August 2017.
12. Conversely, the Council have provided photographs from a site visit carried out on 4 September 2017, at their Appendix 1. These show that the roof still sloped down at the back, with no visible sign of the structure of the unauthorised box dormer in place. The appellant does not dispute this evidence.

13. However, he goes on to refer to council tax records which, he says, show that he was living in the property at the time. He asserts that council tax would have been suspended had the work been ongoing at this time, on the grounds that the property would have been uninhabitable. However, no evidence has been submitted to demonstrate that that was the case.
14. The Council also provide a screenshot of inspection notes taken by a building control inspector, at their Appendix 4. This document shows that it is not until 30 July 2018 that the works are described as 'almost complete'. A final inspection is requested in February 2019.
15. In summation, the appellant produces insufficient tangible evidence to support his statements, whereas the Council's evidence points to a date of substantial completion some time after the material date of 25 August 2017.
16. The appeal on ground (d) therefore fails.

The appeal on ground (a) and the deemed planning application

Main Issue

17. The main issue is the effect of the development on the character and appearance of the appeal building and the surrounding area.

Reasons

18. The Council's document entitled 'Householder Design Guide – Extending Your Home - A Design Guide Series' (HDG), sets out that 'any dormer on the rear elevation should be designed in proportion to the overall size of the roof slope so as to reduce the visual impact and the potential for overlooking neighbouring properties. The dormer window should also be set back into the roof slope (from eaves level) and the ridge height should be dropped below the ridge of the original roof so that it appears subservient'.
19. In this case, there is a small set down from the altered ridge height to the box dormer roof. However, there is no set back from the eaves or the sides of the house. As a result, the dormer extension occupies almost all of the roof plane, adding considerable bulk at the upper level. As such, it is of a disproportionate size and scale, and is an overly dominant feature in relation to the modest dimensions of the house. It is an unsympathetic addition to the property and materially harms the character and appearance of the area.
20. The Council clarify that the principle of a two storey extension spanning the width of the house is acceptable in this particular instance. The 2017 scheme proposed a two storey extension with a section of flat roof underneath the new dormer window. This would have spanned about half the width of the rear elevation, and the other half of the extension would have had a pitched roof.
21. The HDG advises that two storey flat roofed extensions will not normally be allowed. As permitted, the pitched roof would have given some visual interest to the two storey element, reflecting the form of the main roof whilst remaining subservient in scale. As built, the flat roof provides a form that is not characteristic of the appeal site or the nearby dwellings. It introduces a large, visually unrelieved horizontal element that is at odds with the design of No 30. It dominates the rear elevation and is out of keeping with the style of the main house and those in the vicinity.

22. On my visit, I saw that the rear roof slopes of the neighbouring properties are largely intact. There were no upper level developments comparable to that at No 30, and so plain, unaltered roof slopes remain the dominant built form in the immediate area.
23. Taking these factors in combination, I conclude that the box dormer extension and the two storey rear extension are unacceptably harmful to the character and appearance of the appeal site, and of the surrounding area. These elements of the development are therefore contrary to DM20 of the Newcastle upon Tyne Development and Allocations Plan 2015-2030 and Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne 2010-30, which jointly require high quality and sustainable design, and to the principles of development set out in the HDG.
24. I accept that, due to the position of the development in an elevation facing the A1 motorway, it is not readily visible from the public realm in wider views. However, the top of the two storey extension and the box dormer are visible in private views from the back gardens of the neighbouring properties on either side. The relevant policies apply to all development, including those that are not readily visible from public places.
25. The appellant points out that Thirlington Close is built on an incline so that the lines of the properties drop along the length of the street. However, this factor does not mitigate the harmful visual impact of the development in question.

The appeal on ground (f)

26. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive.
27. The purpose of the notice is to remedy the breach. Two options are given in the notice, which are to remove the unauthorised structures from the building, or to complete the development in accordance with the permitted 2017 scheme. With regard to the two storey rear extension, the appellant confirms that he is willing to install the pitched roof as permitted.
28. With regard to the dormer extension, the appellant indicates that he is willing to consider an alternative scheme as a lesser step and has submitted a number of photographs of extensions on other properties that may be options at No 30. However, there is no agreed detailed scheme before me for any of these options that could be substituted as a requirement of the enforcement notice.
29. I am therefore satisfied that the requirements of the notice would remedy the breach, and that no lesser steps are available that would be sufficient to achieve the purpose of the notice within the scope of this appeal. The appellant is of course free to discuss any alternative schemes with the Council independently of this process.
30. The appeal on ground (f) therefore fails.

Conclusion

31. For the reasons above, the appeal is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray INSPECTOR