

Appeal Decision

Site visit made on 23 March 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 4 April 2022

Appeal ref: APP/C5690/C/21/3284740
51 Torridon Road, London SE6 1RQ

- The appeal is made by Starworth Properties Ltd under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Lewisham Council.
- The notice was issued on 16 September 2021; reference No. ENF/20/00066.
- The breach of planning control was: Without planning permission, the erection of a hip-to-gable roof extension to the side elevation.
- The requirements of the notice are:
 1. Remove the hip-to-gable roof extension on the side elevation.
 2. Restore the roof to the previous profile, pitch and appearance before the unauthorised development was carried out by reinstating tiles to the side roof slope of the main building to match the tiles on the front roof slope as shown in Photograph A in the Appendix to the notice.
 3. Remove all materials, debris, and waste resulting from compliance with other requirements of this notice from the property and its premises.
- The period for compliance with the requirements is six (6) months.
- The appeal was made on grounds (a), (b), (c), (e), (f) and (g) as set out in amended Act. As an appeal was brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. The fee for the deemed application to be considered was paid.

Summary of decision: The enforcement notice is upheld

Appeal property

1. No. 51 Torridon Road, London SE6 1RQ is a 2 storey end of terrace house at the end of a row of similar houses. A large dormer extension has been built onto the end hip slope of the roof.

The appeal on ground (e)

2. The appeal on ground (e) alleges that copies of the enforcement notice were not served as required by section s.172 of the Act.
3. The Appellants said the enforcement notice had not been properly served. The notices were sent to the appeal property address. But it was tenanted;. The notice was not handed on to the owner. A copy was sent to Jason Endzweig to rear of 123 Clapton Common. That was the registered address for several

companies, including more than one person with the family name Endzweig. As the owner had submitted 3 planning applications for 51 Torridon Road, the Council had his name and address. Yet it was only by chance he was notified.

4. The Council said 2 packs of the enforcement notice were hand delivered at the appeal property, addressed to both the owner and to the occupier. It was also served by recorded delivery outside the Borough to the freeholder's address. The Land Registry stated that the title absolute belonged to Starworth Properties of 50 Craven Park Road, London. As such they were the legal owners of the property and appellants for the appeal. As said in the Appellants' own statement, the notice was indeed served on Starworth Properties at 50 Craven Park Road, London. Also, the Appellants stated that the notice was served to persons where there is more than one person with the surname Endzweig. As well as Starworth Properties, the 'owner', and the 'occupier', the notice was also served to Jason Endzweig by recorded delivery. That was because Jason was the sole director of Starworth Properties following the resignation of Elizabeth Endzweig as a director.
5. It is clear that the Council made all reasonable efforts to discover those with an interest in the appeal property at No. 51 Torridon Road. There do not appear to have been any deficiencies in serving the enforcement notice on parties following the Council investigation with the Land Registry. Starworth Properties Ltd appealed against the notice, submitting several grounds of appeal. Appeal statements followed. No evidence was brought to show that any injustice had been caused to any person or party by any possible failure to serve the enforcement notice correctly. The appeal on ground (e) fails.

The appeal on ground (b)

6. An appeal on ground (b) asserts that those matters set out in the enforcement notice have not in fact occurred. But that is not what the Appellants contended. Instead, they said the description of the alleged breach of planning control was wrong. It was not "the erection of a hip-to-gable roof extension to the side elevation.". They said the development was a rear Dormer/Roof Extension built on the full width of the property.
7. Where the allegation in an enforcement notice is wholly wrong, the appeal should succeed on ground (b) and the notice should be quashed, unless it can be corrected without causing injustice. If an enforcement notice requires correction, and it can be done, the test is whether it would cause injustice, *R v SSE & Tower Hamlets LBC ex parte Ahern (London) Ltd* [1989] JPL 757. However, in the present instance, that is not necessary. I consider the description of the alleged breach of planning control to be suitably accurate. The front hip ridge remains, but the hipped roof to the end gable wall has been effectively lost. The Appellants' suggested alternative description is not helpful. The alleged breach of planning control is evident to both parties. The appeal on ground (b) fails.

The appeal on ground (c)

8. An appeal on ground (c) asserts that those matters (if they occurred) did not constitute a breach of planning control.
9. A letter from the Planning Inspectorate dated 5 November 2021 to the Appellants' agent Mr Moses Motzen, confirmed the grounds of appeal to be

considered. They included ground (c). But there was no reference to ground (c) in the Appellants' statements. In an appeal on a legal ground such as the ground (c) appeal, the burden lies with an appellant to show, on the balance of probabilities, that the appeal should succeed. The case of *Nelsovil v MHLG* [1962] 1 WLR 404 is authority for that position. That was not done here.

10. In my view, the construction of the appeal dormer on the hipped end roof of No. 51 Torridon Road amounted to operational development as defined by s.55(1A)(c) of the Act and not permitted by any of the concessions in the Town and Country Planning (General Permitted Development) (England) Order 2015.
11. The appeal on ground (c) fails.

The appeal on ground (a)

12. The appeal on ground (a) here says, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
13. The Council referred to a number of policies that contain guidance as to the need for the application of good design in new developments. They said the appeal dormer was contrary to CS Policy 15, DM Policy 31 and the Alterations and Extensions SPD (2019). It also conflicted with the aims and objectives of the NPPF; Policies HC1 & D3 Delivering the London Plan 2021; Policy 15 of the London Borough of Lewisham Core Strategy 2011; and Policies DM30 and DM31 of the Lewisham Development Management Local Plan 2014 and the Alterations and Extensions SPD (2019).
14. I agree with the Council's concern that the appeal dormer extension on the side hip roof of No. 51 is a boxy and ungainly structure. The front hip roof ridge remains. But the original slope to the roof has been lost to the excessively large and dominating bulk of the dormer extension. It is higher than the roof ridge. Its design and finishes entirely fail to blend in or sympathise with those of the house and the adjoining terrace. It is a harsh and unattractive utilitarian addition to the house. It has no softening set back from the edge of the eaves, party wall or the hip edge. The effect is that the dormer unhappily and unacceptably dominates this part of the street scene. It fails to comply with policy drawn up to provide guidance on harmonious design.
15. The Appellants noted that Lewisham Supplementary Guidance under Alterations and Extensions SPD (April 2019) said in Section 5.9 that side dormers were generally only acceptable where necessary to accommodate a staircase or provide small windows to non-primary accommodation. In fact, they said the extension had been designed with the side element to accommodate the staircase. The staircase on the first-floor level ran in the middle of the house and the idea was to continue the run of the staircase to the loft in the same run. It was necessary to the side element so the staircase would have the full head height. However, even if a side dormer can be acceptable under the circumstances set out in the Supplementary Guidance, that goes on to say a side roof extension should be sited well clear of the roof edges and set back from the eaves and set down from the ridge line. They must ensure that the sense of symmetry and original character and appearance is not damaged. None of those reasonable objectives are met by the appeal dormer extension. I consider that the extension as built does not comply with those objectives. I conclude that planning permission should not be granted to retain the dormer

extension on the side roof of the house at No. 51 Torridon Road. The appeal on ground (a) fails.

The appeal on ground (f)

16. Section 173(4) of the Act sets out the purposes of an enforcement notice:

those purposes are —

- a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - b) remedying any injury to amenity which has been caused by the breach.
17. The Appellants attempted to address the ground (f) appeal, (together with that on ground (a)), relying on references to 2 historic applications for certificates of lawful development. In so far as I found their points relevant, they were almost incomprehensible.
18. As the Council pointed out, there is no extant planning permission for the appeal dormer side extension. There is no 'fallback' scheme, nor was any lesser requirement suggested that would remedy the breach of planning control or lessen the harm caused to the street scene by the unhappy appearance of the dormer extension. The steps do not exceed what is necessary to remedy the breach; *Wyatt Bros(Oxford) Ltd v SSETR and Oxfordshire CC [2001] CoA*. The appeal on ground (f) fails.

The appeal on ground (g)

19. An appeal on ground (g) says that the period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
20. The Appellants said the house was in use as a house in multiple occupation. The roof units were tenanted. Six months was too short a period to allow for eviction, the rehousing of tenants and to dismantle the loft. The Council said 6 months was not an unreasonable length of time to comply with the notice.
21. I consider that 6 months is a adequate period in which to carry out the requirements of the notice. Only the top floor accommodation would be affected by remedial works. There would only need to be a small reduction in the number of occupants of No. 51. I think it unlikely the Council would act immediately if there was a genuine reason for any delay in complying with the 6 months compliance period. The appeal on ground (g) fails.

FORMAL DECISION

22. The enforcement notice is upheld. Planning permission is not granted on the application deemed to have been made for the erection of a hip-to-gable roof extension to the side elevation of the property at No. 51 Torridon Road, London SE6 1RQ.

John Whalley

INSPECTOR