



Appeal Decision

Site visit made on 18 January 2022

By E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 19th April 2022

Appeal Ref: APP/T5150/C/21/3272926

22 Homefield Road, Wembley HA0 2NJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Samithamby Hariraman against an enforcement notice issued by London Borough of Brent.
 - The enforcement notice was issued on 11 March 2021.
 - The breach of planning control as alleged in the notice is :Without planning permission, the erection of the side and rear dormer windows to the premises.
 - The requirements of the notice are to
 - 1.Demolish the side and rear dormer from the premises.
 - 2.Remove all items, materials and debris arising from the demolition, from the premises and restore the roof back to its condition before the unauthorised development took place
 - The period for compliance with the requirement is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a),(c) and (d) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the side and rear dormer at 22 Homefield Road, Wembley HA0 2NJ as shown on the plan attached to the notice.

Procedural Matter

2. The Council adopted the Brent Local Plan 2019-41 (the Brent Local Plan 2022) on the 24 February 2022 which supersedes the London Borough of Brent Development Management Policies Document 2016. However, Policy DMP1 of the Brent Local Plan 2022 which replaces Policy DMP1 of the London Management Policies Document 2016 was referred to by the Council in its evidence and has been included in my decision.

An appeal under ground (c)

3. An appeal under ground (c) is that there has not been a breach of planning control and the onus is on the appellant to make out the case that there has not been a breach. The development consists of the erection of side and rear dormer windows to the premises. A breach of planning control comprises the carrying out of development without the required planning permission. The appellant is not disputing that planning permission is required. Planning

permission can either be in the form of express planning permission or subject to falling within the relevant criteria and limitations, permitted development rights can apply pursuant to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO).

4. Under ground (c) the appellant believes that he should have been granted a Lawful Development Certificate (LDC) as the development is similar to the dormer arrangement of the adjoining semi-detached dwelling at No 24 which he understands has the benefit of an LDC. In comparison, he states that his side dormer is half the size of No 24 and does not go up as high to the ridge and the front element above the front roof is a little lower than No 24. However, during the course of the appeal, the Council has confirmed that there is no LDC in force for No 24. It therefore appears likely that the Council is now unable to take action against the development at No 24 due to the passage of time. An application for an LDC by the appellant to establish that the development fell within permitted development rights was refused by the Council on the 17 May 2021.
5. There is no evidence from the appellant to indicate why the assessment of the GPDO by the Council is inaccurate. It remains the case that the lack of obscure glazing to a side window that opens below 1.7 metres and the side dormer extending beyond the front roof slope means that the development does not fall within the conditions and limitations set out in Schedule 2, Part 1, Class B of the GPDO which relates to the enlargement of a dwellinghouse by the addition or alteration to a roof. As the development does not have permitted development rights or express planning permission, a breach of planning control has occurred. The ground (c) appeal therefore fails.

An appeal under ground (d)

6. This ground alleges that at the time of the issue of the enforcement notice, no enforcement action could be taken in respect of any breach of planning control. With this ground, the onus is on the appellant to make out their case.
7. Section 171B of the Act states that no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The development would therefore need to have been substantially completed on or before the 11 March 2017 for the relevant 4 year period prior to the issue of the notice on the 11 March 2021 for immunity to apply.
8. The appellant states that he started the loft conversion in February 2017 and completed it by the first week in March 2017. However, the only evidence submitted by the appellant to support these dates is an invoice dated the 21 February 2017 which refers to site inspections for building control works which are to be paid upon commencement of the works and the invoice is marked as paid on 9 November 2017. The invoice provides no details of when the development began or when it was substantially completed.
9. The Council has provided a series of google images dating back to October 2016. Significantly, an aerial view shows the original roof without the development on 8 April 2017 which contrasts with a similar aerial view dated May 2018 when the development can be clearly seen. Had the development works been substantially completed on or before 11 March 2017, roof changes would have been visible in the image of 8 April 2017. Whilst the Council has

produced dated images, the appellant's evidence is limited to the building control invoice which provides no clear evidence as to when the development was substantially constructed.

10. The appellant has therefore not established, on a balance of probabilities that the development has accrued the required four year time limit for immunity from enforcement action. The ground (d) appeal therefore fails.

An appeal under ground (a) and the deemed planning application (DPA)

Main Issue

11. The main issue is therefore the effect of the development on the character and appearance of the appeal dwelling and the street scene.

Reasons

12. The appeal dwelling forms one half of a pair of largely matching semi – detached dwellings in a residential street with both dwellings having projecting front elements with bay windows with a feature triangular section above the roof. Although Homefield Road is made up a mix of detached and semi-detached dwellings, the styles of dwellings is varied. Whilst there are pairs of similar style of semi-detached properties next to No 24, to the other side of the appeal dwelling, No 20 is a more recently built detached dwelling of a different style.
13. The development consists of a side and rear dormer elements. The Council considers that the development has led to a roof form that is unduly dominant and not in harmony with the roofscape of the area, being visible from neighbouring properties and from the street. With regard to the streetscene, in views looking at the front of the appeal dwelling, a modest corner of the top of the side dormer is visible to the side of the triangular section of roof. In comparison, the adjoining semi-detached dwelling at No 24 has a chimney in the equivalent location. As viewed from the front, there is very little difference between the appeal dwelling and No 24 when the element of dormer visible behind the front section of the roof is modest and the eye is drawn to the triangular section of roof rather than the modest section of side dormer which is directly behind it.
14. The side dormer element has two windows and is most visible when walking towards No 24. However, as No 24 also has a side and rear dormer extension, there is also a partial view of the side dormer at No 24 when approaching the appeal dwelling from the opposite direction. The side dormer at No 24 is longer than the appeal side dormer at No 24 and has no windows. Nevertheless, there is some symmetry in views from the road in terms of the dormer arrangements of the appeal dwelling and its matching pair.
15. Whilst the Council has indicated that the dormer arrangement at No 24 does not have the benefit of an LDC, in assessing the character and appearance of the development, the presence of dormer features at both the side and rear of the adjoining semi-detached dwelling are relevant when the Council states that the development is inharmonious and dominant with the roofscape of the area when the dormer arrangement next door is part of the roofscape of the area.

16. The aerial images provided by the Council show that in October 2016, the dwelling next door at No 20 was modest bungalow. However, later images show that the bungalow has been replaced with a two storey detached dwelling which is slightly lower than the appeal dwelling. Whilst there are views of part of the side dormer from the road but those views do not result in significant harm as the side dormer is partially hidden due to the height of the roof of No 20.
17. To the rear of the appeal dwelling, the length of the garden, and the absence of any built development beyond the rear garden means that views of the development from the rear by occupiers other than No 24 which has its own dormer arrangement are limited. No 24 also has a dormer on the main rear roof as well as a side dormer and the rear dormer on the main roof of the appeal dwelling appears to be slightly shorter in height than the dormer on No 24 when viewed from the appeal garden. The design and extent of the section of the dormer which is closest to No 20 is however different in style to No 24. However, given the proportions of the appeal dwelling and the visual relationship with the adjoining semi-detached property, I do not consider that the rear dormer elements of the appeal dwelling create significant harm to the appeal dwelling.
18. The Supplementary Planning Document 2 (SPD2) 2018 refers to dormers not compromising the character of the building or wider street scene and also refers to dormers being set down from the ridge by at least 0.3 metres and set up from the eaves line by at least 0.5 metres. However, whilst those guidance measurements have not been met, the development does not in my view compromise the character of the building itself or the wider street scene for the reasons given.
19. I do not therefore consider that the development does materially harm the character and appearance of the appeal dwelling and the streetscene. It is therefore not in conflict with the aims of Policy DMP1 of the adopted London Borough of Brent Development Management Policies, which refers to development being sympathetic to and complementing local character. I do not find the development to be contrary to SPD2 as it refers, amongst other things, to dormers not compromising the building's or the street's character. The appeal under ground (a) succeeds.

Other matters

20. The reasons for issuing the notice do not allege harm to living conditions with regard to outlook or overlooking. However, the Council's evidence refers to the development causing significant impact on the living conditions of neighbouring properties particularly No 20 by limiting outlook, privacy and causing overshadowing across the roof lights. However, the view from the bathroom side window of the development is of the lower roof of No 20 with two rooflights with no internal views of No 20 which is unlikely to cause privacy issues. With regard to overshadowing and outlook, given the position of the side dormer in relation to No 20, I do not consider that there is significant impact due to overshadowing and outlook. There are no third party comments of either objections or support for the development.

Conditions

Whilst I note that the smaller side window would have been obscure glazed and be permanently fixed shut if permitted development rights had applied, I do not consider that it is necessary to impose any conditions relating to this matters in view of the location of the side dormer in relation to No 20. No conditions have been suggested and I do not consider any conditions to be necessary.

Conclusion

21. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development described in the notice.

E Griffin

INSPECTOR