



Appeal Decision

Site visit made on 5 April 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal Ref: APP/Y5420/C/20/3264902

The land and building(s) known as 23A New Road, London N22 5ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Hasan Sahin against an enforcement notice issued by London Borough of Haringey.
 - The notice, numbered DEP/2020/00307, was issued on 30 November 2020.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a rear dormer roof extension.
 - The requirements of the notice are to: 1. Demolish the dormer in its entirety and remove from the land any resultant debris; or 2. Reduce the size of the dormer such that it accords with the plans approved under the planning application HGY/2020/2287¹.
 - The period for compliance with the requirements is: Four months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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 dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

2. Since the enforcement notice was issued, the London Plan 2021 has been published. The council has acknowledged this in its appeal statement and has confirmed the status of the policies of the former London Plan 2016, which are referred to on the notice, as being 'no longer adopted'. A copy of the council's statement will have been provided to the appellant and the appellant will have had the opportunity to comment at the final comments stage. I am satisfied therefore that the published version of the new Plan does not raise any new or additional material issues in relation to the appeal. I will refer to the policies of the 2021 London Plan, which have been cited by the council, where relevant, in this decision.

The appeal on ground (c)

3. This legal ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. The onus of proof in ground (c) is upon the appellants, and the test of the evidence is on the balance of probability.

¹ HGY/2020/2287 – 'Part retrospective conversion of the dwelling house into 2 self-contained flats. Comprising of 1 x 3-bedroom and 1 x 2-bedrooms with double storey infill front extension, single-storey rear extension and loft conversion with rear dormer and front skylights'. Granted 3 November 2020.

4. The appellant argues that the dormer roof extension has been constructed in accordance with the terms of planning permission HGY/2018/3770². This application sought planning permission for 'Conversion of the dwelling house into 2 self-contained flats comprising of 1 x 3-bedroom and 1 x 2-bedroom together with internal alterations' (the 2018 permission).
5. The plans that formed part of the application showed 3 self-contained flats with a floor plan for a self-contained flat within the roof space facilitated by a large dormer extension on the rear roof slope. There was also a roof plan for the property which showed the flat roof of the proposed dormer. These plans were numbered 1726/13 and 1726/14 and dated October 2017. There was no reference to external alterations to the building in the application and no 'proposed' elevational plans.
6. The design and access statement states at paragraph 6.16 'It is proposed raising of the roof of the property ensured that the main ridge of the property does not exceed the height of the ridge of neighbouring properties. The erection of a rear dormer roof extension is considered to be acceptable in principle as it will not be visible from New Road'. However, at paragraph 6.17 'The proposal would not involve any external alterations to the subject building, thus raising no design issues.' The application was approved on 29 January 2019.
7. The general rule is that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself. In this case the permission expressly incorporates the application. If there is an ambiguity in the wording of the permission, it is permissible to look at extrinsic material to resolve that ambiguity. Extrinsic evidence may be documentary, but it is not confined to documentary evidence. A holistic view should be taken, but if an interpretation flies in the face of the planning purpose or intention of the permission then common sense may well indicate that that interpretation is not correct.
8. In this case there is obvious ambiguity since the 3 self-contained flats scheme shown on some of the plans clearly does not accord with the description of development or the application fee. Hence it is permissible to look to extraneous material to resolve the ambiguity and correctly interpret the permission.
9. The appellant noticed that the plans he had submitted with the application were incorrect, and an amended set of plans was forwarded to the council, with an accompanying email dated 7 December 2018. This was three days after submission of the application. The email explains the appellant's wish to substitute the full set of plans with identical plans except for plans numbered 1726/13 and 1726/14.
10. However, the instructions carried within the email were not actioned by the council and the decision notice refers to the complete set of plans originally, and incorrectly, submitted with the planning application, which shows the property converted into 3 self-contained flats with a dormer roof extension. This is clearly not what was intended by the appellant. Moreover, detailed specifications/drawings for such a construction had not been included with the application documents to enable the council to have made a decision on

² Date of application 4 December 2018

development affecting the external appearance of the building. Although plans numbered 1726/13 and 1726/14 were submitted with the application and are referred to in the conditions, this was a clear error and cannot have the effect of allowing development that was different in substance from the description of the development. The appellant's interpretation flies in the face of the clear planning purpose and intention of the permission.

11. It is my view that the permission construed as a whole and having regard to the timely submission of what were obviously the correct plans, should not be interpreted as permitting any alteration to the roof of the property. I find, therefore, on the balance of probabilities, that the 2018 permission does not grant planning permission for the works that are the subject of the enforcement notice.
12. I conclude therefore that a breach of planning control has occurred and the appeal on ground (c) does not succeed.

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

Main Issues

13. These are the effect of the development on i.) the character and appearance of the host dwelling and ii.) the living conditions of occupants of neighbouring properties with regard to light and outlook.

Reasons

Character and appearance of host dwelling

14. The appeal property is a two storey mid terrace dwelling on the northern side of New Road, a predominantly residential road. It has a long and narrow garden to the rear which adjoins residential properties on Norman Avenue. The house is sub-divided into 2 self-contained flats over the three floors, with a 3 bed unit on the ground floor and a 2 bed unit on the upper 2 floors. The property has been extended outwards to the rear and as a consequence, the property is deeper than its neighbours. This has resulted in the rear roof slope being raised above the roof slopes on either side. The ridgeline remains at the same level as the properties either side.
15. The dormer extension occupies almost the entire rear roof slope. Windows and French doors with a Juliet balcony match fenestration in the remaining property. It is set in on either side by a narrow margin. The wall plate of the dormer is set back from the eaves of the existing dwellinghouse, and its flat roof sits just below the ridge height of the original roof. However, because the property has been extended outwards over two floors to the rear, the dormer roof extension extends beyond the rear elevation of the neighbouring properties either side and others in the terrace.
16. While there are views of the development from the street, these are relatively localised. However, wider views towards the rear of the property are achieved from the public realm within New Road Park and from surrounding neighbouring properties. The development draws the eye because of its scale, design and white coloured render. It lacks architectural subtlety with its considerable bulk and projection. It is not subordinate to the main roof slope but is a visually dominant addition to the rear façade of the host dwelling.

17. The dormer in this form is an inappropriate form of development. It has the appearance of a third storey, and this is incompatible with and diminishes the character and appearance of the host property in an unacceptable manner. The appellant suggests that the dormer could be finished with hanging tiles that match the existing roof tiles to be more sympathetic to the surrounding roofs. Although this is considered a preferable option for the finishing materials, it would not diminish the actual scale of the development and the harm I have identified.
18. In this respect, the appeal development conflicts with Policy SP11 of Haringey's Local Plan Strategic Policies 2013-2026 (LPSP) and Policy DM1 of the Haringey Development Management Development Plan Document 2017 (DMDPD) which require all new development to enhance and enrich Haringey's built environment and create places and buildings that are of the highest standard of design, relating positively to their locality, having regard to, amongst other things: building heights; form, scale & massing prevailing around the site; distinctive local architectural styles, detailing and materials. The requirement for high standards of design is carried through in Policies GG4, D3, D4, D5 and D6 of the London Plan 2021 (LP) which the council refer to in its statement following the adoption of the LP in March 2021. Policy D1 of the LP refers to the requirement to define an area's character to understand its capacity for growth and direction for growth requirements in the preparation of Development Plans. In this respect, this policy is not relevant to the appeal development.

Living conditions of occupants of neighbouring properties

19. The Council has expressed concern that although the dormer/roof extension has been set back from the eaves, it protrudes past the rear elevation of both adjoining properties. By reason of its excessive height and depth in this context, this results in a detrimental impact on the amenity of neighbouring residents by virtue of loss of light and outlook, especially when viewed from the adjoining first floor rear window at 25 New Road. Although I did not view the development from No 25, I have taken into account the submissions from the occupant and have carefully considered the relationship between the appeal property and both its neighbours.
20. While the experience for occupants of the neighbouring properties will be altered by virtue of the scale of the development, I am satisfied that it would remain in the periphery of the outlook from the rear windows of these properties. Furthermore, although the dormer extends beyond the rear elevation of the properties either side, I am not persuaded that any additional impact from the projection of the dormer would be so significant as to result in the contended loss of light. In this respect the appeal development complies with Policy DM1 of the DMDPD and Policy SP11 of the LPSP which promote a high standard of amenity for the development's users and neighbours and Policy D3 of the LP which requires development to deliver appropriate outlook, privacy and amenity.

Other Matters

21. There are other dormer extensions in the locality, apparently erected as permitted development where their planning merits were not considered. The presence of such development nearby does not provide justification for the harm that I have identified and should not be considered a precedent for such development.

22. The pre-application advice provided by the council considered the development of a roof dormer to be acceptable in principle. However, pre-application advice is given without prejudice to a formal decision on a planning application. Furthermore, without plans showing the proposed external elevations of the proposal, the council would only have been able to advise on the principle of such a development and not the design.

Conclusion on ground (a) and the DPA

23. Although I have found that the effect of the development on the living conditions of the occupants of neighbouring properties would not be detrimentally harmed, I have identified considerable harm to the character and appearance of the host dwelling. There are no material considerations that indicate the DPA should be determined other than in accordance with the Development Plan. For the reasons given, the appeal on ground (a) should not succeed, and I shall refuse to grant planning permission on the DPA.

S A Hanson

INSPECTOR