



Appeal Decisions

Site visit made on 19 July 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 July 2022

Appeal A: Ref: APP/E5330/C/21/3272619

71 Earlshall Road, London SE9 1PP

- 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 Mrs Sharon French against an enforcement notice issued by Royal Borough of Greenwich Council.
 - The enforcement notice was issued on 22 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission the unauthorised construction of a rear dormer extension ("the Development").
 - The requirements of the notice are:
 1. Remove the unauthorised zinc cladding
 2. Replace the cladding with materials of a similar appearance to those used in the construction of the exterior of the dwelling house.
 3. Remove from the land all debris and spoil generated as a result of the above requirements
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended. 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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Appeal B Ref: APP/E5330/X/21/3278345

71 Earlshall Road, London SE9 1PP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Sharon French against the decision of Royal Borough of Greenwich Council.
 - The application Ref 21/0947/CE, dated 16 March 2021, was refused by notice dated 16 June 2021.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is for the construction of a rear dormer roof extension with Juliette balcony and grey zinc cladding and the installation of two roof lights to front roof slope.
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Decisions

1. **Appeal A:** 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 1990 Act as amended for the development already

carried out, namely the construction of a rear dormer extension on land at 71 Earlshall Road, London SE9 1PP.

2. **Appeal B:** The appeal is dismissed.

Appeal A on ground (c) and Appeal B

Main issue

3. For Appeal A, the ground (c) appeal is that the development enforced against did not constitute a breach of planning control. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability.
4. The issue on Appeal B is whether the Council's refusal of an LDC was well founded. However, this will turn on the same considerations as ground (c) above.
5. For the ground (c) appeal and Appeal B, it is necessary to consider whether the dormer loft extension and front rooflights are granted planning permission by Article 3, Schedule 2, Part 1, Classes B and C of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

6. Subject to limitations and conditions, Class B of Schedule 2, Part 1 of the GPDO permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof, and Class C of Schedule 2, Part 1 of the GPDO permits other alterations to the roof of a dwellinghouse. The appellant seeks to establish that the dormer loft extension, including the front rooflights, are granted permission by virtue of Class B and C. Paragraph B.1 and B.2, and C.1 and C.2 sets out the limitations and conditions which proposals must adhere to benefit from permitted development rights.
7. Amongst the conditions is B.2.(a), which states that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. The expression "similar appearance" requires a fact and degree judgement taking account the appearance of the existing materials of the dwellinghouse. The Order interprets existing as meaning existing immediately before the carrying out, in relation to that building, of development described in the Order.
8. The Council determined that the dormer loft extension, finished in zinc cladding, is not similar to the existing roof material, and therefore, fails to meet part B.2 (a) of Schedule 2, Part 1, Class B of GPDO. The appellant considers that the zinc cladding is similar in appearance to those which already exist on the property, and as such complies with condition B.2 (a) above. The burden of proof in this matter lies with the appellant.
9. The Government's Technical Guidance (TG)¹ provides a useful guide to interpretation of the GPDO. The TG gives an explanation of the rules on permitted development for householders, what these mean and how they

¹ The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

should be applied in particular sets of circumstances. In the guidance for condition B.2(a) it states:

"This condition is intended to ensure that any addition or alteration to a roof for a loft conversion, results in an appearance that minimises visual impact and is sympathetic to the existing house. This means that the materials used should be of similar visual appearance to those in the existing house but does not mean that they need to be the same materials or match exactly. The visual impacts of the materials used will be the most important consideration. For example:...

- *the face and sides of a dormer window should be finished using materials that give a similar visual appearance to existing house. So the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level."*

10. This explains the intended purpose of the condition and clearly describes the situation as proposed here, in so far as it indicates that the materials used for a dormer should appear to be of a similar colour and design to the materials used in the main roof.
11. The appellant states that the zinc material matches the windows and materials on the rear elevation of the property, with regard to the existing fenestration together with the fascia board, guttering and downpipes. The appellant also states that *"the roof tiles were replaced with a colour to match as close as possible the dormer"*. However, the appellant does not provide any clear evidence to demonstrate what the roof materials were before the loft extension works were carried out. It is therefore unclear from the evidence submitted what the pre-existing roof materials were. From my own observations during the site visit, it appears that the original roof material in the appeal terrace and surrounding Victorian streets comprise reddish/brown tiles, and there is no evidence before me to demonstrate that this was not the case for the appeal site.
12. To my mind, the colour and patina of these red/brown tiles are different to the darker zinc cladding of the rear dormer. Furthermore, zinc has a smoother finish than the red/brown tiles. Therefore, the Council is correct to say that the zinc finish is not of a similar appearance in colour and design to the reddish/brown tiled roof. I note that the TG is guidance rather than statute, but it has been expressly prepared to give an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances.
13. Whilst the appellant has referred to another Council decision² in support of their view that the zinc cladding complies with condition B.2 (a), the TG offers guidance that is of direct relevance to this case. It is intended as an aid to interpretation and application of Part 1 of Schedule 2 to the GPDO. Where the TG clearly covers the issue at hand, as here, it should be followed unless it has either been overturned by the Courts, or it can be demonstrated that it does not apply to the particular facts of the case. Furthermore, the other Council

² Council ref: 15/3761/CP: Approved Certificate of lawful development (Proposed) - 4th February 2016.

decision referred to pre-dates the current TG, and therefore it is unclear whether that decision had regard to the latest government TG outlined above.

14. On the balance of probability and based on all the evidence before me, the development fails to comply with condition B.2 (a) of Schedule 2, Part 1, Class B of the GPDO. Therefore, planning permission is required for the development, and there is none in place. There has therefore been a breach of planning control and the appellant has not discharged the onus on her to demonstrate otherwise.
15. For appeal B, the Council's decision notice also states that insufficient evidence has been submitted to demonstrate that the dormer and front rooflights complies with conditions B.2(b) of Class B, and condition C.1 (b) of Class C, Part 1, Schedule 2 of the GPDO. However, given that I have already found above that the dormer is not development permitted by the GPDO, I needn't consider whether the development complies with these additional conditions.

Conclusions on Appeal A on ground (c) and Appeal B

16. For Appeal A, and ground (c) the development is not one that complies with all of the conditions of Article 3, Schedule 2, Part 1, Class B respectively of the GPDO, and hence is not lawful. Accordingly, the appeal on ground (c) must fail.
17. For Appeal B, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a rear dormer roof extension with Juliet balcony and grey zinc cladding and the installation of two roof lights to front roof slope was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal A on ground (a), the deemed planning application (DPA)

Main Issue

18. The main issue is the effect of the development on the character and appearance of the host building and the area.

Reasons

19. The appeal property is a two-storey mid terrace property, which has recently been extended with a single storey flat roof rear extension and a rear dormer roof extension (the subject of this appeal). The rear dormer is visible from public vantage points on Grangehill Road.
20. The Royal Borough of Greenwich Residential Extensions, Conversions and Basements Supplementary Planning Document, 2018 states that roof extensions should be proportionate to the size of the original house, and any proposals that change the roof form should seek to preserve or enhance the existing appearance in terms of height, scale, and visual interest.
21. The requirement of the notice requires only that the zinc cladding is removed and replaced with a material of a similar appearance to the dwellinghouse. Under reasons for taking enforcement action, the notice also states that the zinc cladding, fails to protect and enhance the character of the host building and street scene due to the alien and incongruous materials used. This leads me to

conclude that the overall size, scale, and bulk of the roof extension is considered acceptable in principle, and the only objection raised by the Council relates solely to the zinc material.

22. The zinc cladding closely follows the design ethos of the rear elevation of the appeal site, in so far as it matches the bi-folding doors and windows at ground and first floor level, as well as the fascia boards and guttering, giving an integrated appearance with the appeal dwelling.
23. During my site visit I observed that there were a number of rear dormer roof extensions in the vicinity of the site, similar in size and scale to the appeal development. These roof extensions were predominantly clad in a grey/black slate material, with a smaller number clad in red/brown tiles. Whilst the zinc cladding has a more contemporary finish, it compliments the existing building and does not detract from the character and appearance of the terrace and surrounding area.
24. I therefore conclude that the development does not have a harmful impact upon the character and appearance of the host building and area. In this respect the development complies with Policy DH1 of The Royal Borough of Greenwich Adopted Core Strategy with Detailed Policies (2014) and Policy D3 of The London Plan (2021). Amongst other things these state that all developments are required to be of a high quality of design, with architecture that pays attention to detail. Finally, the development complies with aims of part 12 of the National Planning Policy Framework (2021), which requires development to be sympathetic to local character and history.

Conclusion on Appeal A on Ground (a) and the DPA

25. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. Neither party has suggested any planning conditions, and as the development appears to be completed, none are necessary in my view.

Conclusions

26. **Appeal A:** For the reasons given above I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development described in the enforcement notice. The enforcement notice will be quashed, and it follows that Appeal A on ground (g) do not fall to be considered.
27. **Appeal B:** For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of construction of a rear dormer roof extension with Juliette balcony and grey zinc cladding and the installation of two roof lights to front roof slope was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Satheesan

INSPECTOR