
Appeal Decisions

Site visit made on 20 June 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 2ND AUGUST 2022

Appeal A Ref: APP/N5090/C/21/3269804

Appeal B Ref: APP/N5090/C/21/3269805

Land at 27 Hollyfield Avenue London N11 3BY

- 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 P Gjokli (Appeal A) and Ms A Imeraj (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 22 January 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the construction of a rear dormer roof extension.
- The requirements of the notice are: 1 Restore the roof to its original state prior to the current breach in planning control by removing the rear dormer and gable extensions and restoring the roof to its original specification with tiles to match the existing. This roof restoration should be in accordance with plans number, 002 (Revision A) and 003 (Revision A) of planning application, 20/4577/RCU; and 2 Permanently remove from the property of all constituent materials resulting from the works in 1. above.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (Appeal A only), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeals are allowed and the enforcement notice is quashed.

The appeal on ground (c)

1. The appeal on this ground is that the matters alleged do not constitute a breach of planning control.
2. The matter at issue is whether the development alleged represents permitted development (PD) pursuant to Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). Article 3 grants planning permission for development described as PD in Schedule 2 to the GPDO. Part 1 of Schedule 2 relates to development within the curtilage of a dwellinghouse and Class B of Part 1 covers enlargements consisting of additions or alterations to the roof. The Council's view is that the development alleged does not represent PD on the basis that it does not comply with conditions contained within Class B.
3. The appeal property comprises a mid-terrace house. It includes an original two storey rear outrigger with a roof set at a lower level to the main roof of the house. The appeal development has entailed the construction of an L shaped dormer. One arm of the L extends across the main rear roof slope with the

other arm extending along the outrigger. The appeal development therefore joins the main roof to the roof of the outrigger.

4. The first point at issue as regards Class B compliance is in respect of condition 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 tiles used to clad the dormer windows do not match those used in the main roof of the house. However, they are very similar in appearance to those used on the roof of a side return, which is visible in the context of the dormer window development.
5. The materials used in exterior work of the appeal development are therefore of a very similar appearance to those used in the exterior of this part of the dwellinghouse. Further, given that from ground level the main roof is not readily visible in the context of the dormer development, it is logical that the exterior materials in the dormer window development are compared against exterior materials which are visible in the context of the appeal development.
6. The second matter in dispute as regards compliance with Class B is whether the condition B.2(b) set out below applies to the appeal development. This turns on whether the exception in bold italics below applies:

B.2(b)(i): '*the enlargement must be constructed so that— (i) **other than in the case of a hip-to-gable enlargement or an enlargement which joins the original roof to the roof of a rear or side extension**— (aa) the eaves of the original roof are maintained or reinstated; and (bb) the edge of the enlargement closest to the eaves of the original roof is, so far as practicable, not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves; and (ii) **other than in the case of an enlargement which joins the original roof to the roof of a rear or side extension**, no part of the enlargement extends beyond the outside face of any external wall of the original dwellinghouse...*'

7. In my view, the exception in bold italics clearly applies in the present case. The enlargement – in this case the L shaped dormer - joins the original roof of No 27 to the roof of a rear extension, being the original rear outrigger. As such, the stipulations in relation to the eaves of the original roof contained in B.2(b)(i) are not applicable.
8. There is no suggestion that the appeal development otherwise does not comply with Class B, and I have no reason to take a different view on the evidence before me. Guidance contained within the Council's Residential Design Guidance (2016) is not relevant to the determination of whether the appeal development is PD. I therefore find for the reasons stated that the matters alleged represent PD under the GPDO and do not represent a breach of planning control. The appeal on ground (c) succeeds.

Conclusion

9. For the reasons given above, I conclude that the appeals should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeals on grounds (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

10. The appeals are allowed and the enforcement notice is quashed.

V Bond
INSPECTOR