
Appeal Decision

Site visit made on 28 June 2022

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

an Inspector appointed by the Secretary of State

Decision date: 2ND AUGUST 2022

Appeal Ref: APP/N5090/C/21/3270013

Land at 25 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 Miss Stephanie Radley against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 20 January 2021.
- The breach of planning control as alleged in the notice is Without planning permission the construction of a rear dormer window.
- 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 roof extension and restoring the roof to its original specification with tiles to match the existing. This roof restoration should be in accordance with plans number, 3029 - 004 (Revision A) and 3029 - 005 (Revision A) of planning application, 20/2716/RCU. 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), (f) and (g) 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.

The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant introduced at final comments stage new evidence in the form of documentation related to an application for a lawful development certificate¹. The Council was given an opportunity to comment on this, with a final comment offered to the appellant.
2. The Council's statement correctly identifies the appeal property and contains the correct reference for the enforcement notice. However, the allegation is detailed incorrectly on the front page of the statement, and the date of the notice, along with the allegation, are given incorrectly in paragraph 2 of the Council's statement. It would appear that these references are made in error rather than that the Council has submitted an appeal statement in respect of the wrong appeal since the content of the statement addresses the issues in the present appeal.

Alternative scheme

3. The appeal on ground (a) is that planning permission should be granted in respect of the breach of planning control in the notice. As such, the deemed

¹ Ref: 21/2022/192

planning application (DPA) derives its terms directly from the alleged breach. Pursuant to s177(1)(a) of the 1990 Act², I can thus grant planning permission in respect of the matters stated as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates.

4. The appellant submitted with their final comments an alternative scheme for a dormer window development. This scheme was submitted to the Council by the appellant seeking to obtain a lawful development certificate (LDC) on the basis that the proposal represented permitted development under Article 3 and Schedule 2, Part 1 Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
5. The application for a LDC was refused by the Council on the basis that: it would contravene the requirements of the enforcement notice which is the subject of this appeal; and that as the proposal has been 'partially built', it is therefore 'not eligible' for proposed PD rights. The Council effectively thus confirmed that in all other respects, the alternative scheme would represent PD i.e. it would accord with the conditions and limitations contained within Class B.
6. In my view, this alternative scheme would involve substantial building works in order to reduce the size of the dormer window development so as to bring it within the size limitations for PD in Class B. The dormer as built is some 40% larger in volume than would be permitted under Class B PD rights. As such, the works would entail a very substantial reduction in volume. Consequently, if the modifications and reconstruction proposed in the alternative scheme were to be carried out, this would result in a very different form of development to that which is alleged. It follows that the alternative scheme does not comprise part of the matters stated in the notice and whether planning permission should be granted for that scheme cannot be considered in the context of the ground (a) appeal.

The appeal on ground (a) and the DPA

Main Issues

7. The main issue is the effect on the character and appearance of the host property and area.

Reasons

8. The appeal property is a mid-terrace dwelling with an original two storey rear outrigger. The appeal development is an 'L' shaped rear dormer, covering both the main roof of the house and the outrigger.
9. In a recent appeal decision³ in respect of the same development, a colleague Inspector found that the overall massing of the dormer was out of scale with the existing house and represented a discordant and incongruous feature which is visible from surrounding properties. I share the view of my colleague Inspector in these respects and noted from my site visit that the appeal development can also be seen from Hillside Avenue. I find for these reasons that the development harms the character and appearance of the host property and area.

² Being the Town and Country Planning Act 1990 as amended

³ APP/N5090/D/20/3262559

10. I am mindful that, following reinstatement of the appeal building, the appellant would have a fallback position in terms of exercising PD rights to construct an 'L' shaped dormer which complies with Class B (either in the form set out in the alternative scheme referenced above, or some other Class B compliant form). However, as noted by the Inspector in the previous appeal, the Class B PD right would allow for an enlargement with a maximum volume of 40 cubic metres. The appeal development is some 56 cubic metres in volume. It is therefore presently around 40% larger in volume than a fallback PD scheme. For this reason, the fallback position lends very little weight in favour of the appeal development.⁴
11. The appellant has produced detailed evidence in relation to other roof level development in the immediately surrounding area. I do not consider though that the prevailing character comprises of roof level development which is so significantly in excess of the PD volume limits referred to above. As such, the surrounding roof level development referenced also does not justify the appeal development.
12. I acknowledge the practical reasons for the appeal development being built as it is, along with the sustainability arguments seeking to demonstrate that it should be allowed to remain, along with the personal benefits to the appellant's family from the enhanced accommodation. These matters do not though in my view, even cumulatively, outweigh the harm found.
13. Thus, I find that the appeal development has a materially harmful effect on the character and appearance of the host property and area. It conflicts in this way with Policy DM01 of the Council's Development Management Policies (2012) and with Policy CS5 of the Core Strategy (2012) which stipulate amongst other things that new development should preserve local character and respect the mass of surrounding buildings. It would also run counter to the Council's Residential Design Guidance (2016) which advises that position, scale and proportion should be taken into account in the assessment of dormer roof extensions.

The appeal on ground (f)

14. This ground of appeal is that the requirements of the notice exceed what is necessary
15. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires removal of the dormer development and restoration of the roof suggests that its purpose is to remedy the breach of planning control.
16. I found above that the alternative scheme submitted by the appellant would not represent part of the matters. As such, it was not appropriate to consider this under ground (a). No other lesser step is put forward which would remedy

⁴ Incidentally, paragraph 3.39 of the Council's statement refers to the volume of the dormer extension as being in accordance with PD rights in Class B but this would appear to be an erroneous statement since the appellant accepts that the volume is not in accordance with the Class B volume stipulation. There also appears to be a dispute as to whether the main ridge has been raised. I have only limited evidence on the previous position but since it is accepted that the appeal development is not otherwise PD in any event, the situation as regards the raising of the main ridge does not alter my overall conclusion.

the breach of planning control. However, I am mindful that the alternative scheme put forward would appear to comply with the limitations and conditions contained in Class B⁵. As such, if the appellant were to demolish the appeal development and restore the land, the alternative scheme⁶ could then be constructed as PD; the appellant has made it plain that a Class B compliant 'L-shaped' dormer scheme is fully intended to be constructed if the development as built is not permitted.

17. Bearing in mind that the enforcement regime is intended to be remedial and not punitive, it seems fair and appropriate to extend the period for compliance with the notice under ground (g) in order to enable the appellant to urgently make an application for planning permission in respect of an alternative Class B compliant scheme. In the event of planning permission being granted, section 180 of the 1990 Act provides that the notice shall cease to have effect so far as inconsistent with that permission.

The appeal on ground (g)

18. The appeal on ground (g) is that the period for compliance with the notice (4 months) falls short of what is reasonable. The appellant had requested a period of no less than 6 months.
19. I have outlined above that I consider it appropriate in this case to extend the compliance period to allow time for an alternative scheme to be submitted and formally considered. The appellant's request for a 6 month period would strike the right balance in allowing sufficient time for an alternative scheme to be considered, whilst not unduly prolonging the visual harm resulting from the appeal development. The appeal on ground (g) therefore succeeds.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

21. It is directed that the enforcement notice is varied by in paragraph 6 deletion of the wording '4 months' and substituting '6 months'.
22. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

V Bond

INSPECTOR

⁵ Albeit that it would presently not be PD on the basis that: (a) it would contravene the requirements of an enforcement notice in force (being the notice that is the subject of this appeal); and (b) pursuant to Article 3(5) of the GPDO building operations involved in the construction of the building (i.e. the part of the building comprising the appeal development) are unlawful

⁶ Or indeed a different Class B compliant scheme