



Appeal Decisions

Site visit made on 9 June 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8TH SEPTEMBER 2022

Appeal A Ref: APP/C5690/C/20/3261321

Land at 16 Manor Avenue, London SE4 1PD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Melanie Elspeth Mason against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice, numbered ENF/17/00476, was issued on 5 September 2020.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the increase of the ridge height of the roof and addition of 3 non-conservation rooflights on the front elevation.
 - The requirements of the notice are:
Option A
 1. Carry out the following works to the roof of the premises to accord with the drawing number 7468-11 and 7468-08 under planning application reference DC/15/090896
 - a. Reduce the height of the roof ridge to its former height
 - b. Remove the three roof lights from the front roof slope
 - c. Reinstall the front roof slope to its former pitch
 - d. Installed two low profile conservation roof lights in the front roof slope
 2. Remove all materials, debris and waste resulting from compliance with the other requirements of this notice from the Land

Or

Option B

 1. Carry out the following works to the roof of the premises:
 - a. Lower the roof ridge to its former height
 - b. Remove the three roof lights from the front roof slope
 - c. Reinstall the front roof slope to its former pitch and appearance
 2. Remove all materials, debris and waste resulting from compliance with the other requirements of this notice from the land
 - The period for compliance with the requirements is six months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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/C5690/W/20/3260440

Land at 16 Manor Avenue, London SE4 1PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mason against the decision of the Council of the London Borough of Lewisham.
 - The application Ref DC/20/115966, dated 2 March 2020, was refused by notice dated 13 August 2020.
 - The development proposed is described in the application form as: Extension of existing pitched roof to raise the ridge line by 150mm to accommodate a new layer of insulation, and installation of new low profile conservation rooflights.
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Summary Decision: Appeal A succeeds in part, planning permission is granted for part of the development and the enforcement notice is upheld in the terms set out below in the Formal Decision. Appeal B succeeds in part in the terms set out below in the Formal Decision.

Preliminary Matters

1. I had intended to undertake my appeal site visit as an accompanied visit, where I would have been accompanied by a representative from each party. Unfortunately, the letters notifying the parties of 9 June site visit arrangements were not sent out. I arrived in the area on 9 June, not knowing this. Having discovered that the parties were not expecting me on site, I undertook an unaccompanied site visit, and inspected the property and the surrounding area from the public highway.
2. The main parties were subsequently advised of the above and were given the opportunity to make any comments on the site visit and how it was undertaken. Having considered the comments received in response, the evidence submitted, the main considerations in this case, and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeals on the basis of the unaccompanied site visit I have undertaken.
3. Since the submission of evidence in respect of these appeals, the London Plan March 2021 (LP) has been published. This replaces the former version of the London Plan. As such, I have not had regard to the policies of the former London Plan referred to in evidence, including those mentioned in both the enforcement notice and the decision notice. The comments of the parties were sought with regard to the effect of the change to the development plan. I have had regard to any comments received, including the policies of the LP drawn to my attention, in reaching my decision.
4. Although the name of the appellant for Appeal B is simply given as 'Mason', rather than Ms Melanie Elspeth Mason, I have determined the appeals as though they were made by the same appellant.
5. Finally, the description of the development subject of Appeal B includes 'installation of a new low profile conservation rooflight'. The plans submitted with the application subject of Appeal B shows three proposed low profile conservation roof lights. I have, therefore, made a slight amendment to the description of the development in the header above; this is in the interests of clarity and precision. In doing so I am satisfied that no injustice would be caused by such a minor change that more accurately describes the development subject of that appeal.

The ground (a) appeal, the deemed application for planning permission and the appeal against the refusal of planning permission

The development subject of each appeal

6. The appeal on ground (a) for Appeal A is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. These matters comprise the increase of the ridge height of the roof and the addition of 3 non-conservation rooflights on the front elevation.

7. With regard to Appeal B, I note that the application subject of this appeal follows others that were submitted for the site, including application reference DC/15/90895 for the construction of a glazed roof extension in the rear roof slope and the installation of 2 roof lights in the front roof slope. However, the Appeal B application seeks permission for a scheme of development that differs from that permitted by DC/15/90895. The scheme includes the increase of the ridge height of the roof and the replacement of the three existing non-conservation roof lights with low profile conservation roof lights, as set out in the description of the development.
8. Although not included in the description of the development, the plans also show a rear dormer extension. This is broadly in the same location as that permitted by DC/15/90895, but is shown to have a greater depth. Although this dormer extension is shown on both the existing and proposed plans, so has the increase in ridge height. Furthermore, there is nothing before me to suggest that permission has already been granted for this rear dormer extension. Accordingly, I am satisfied that this forms part of the scheme that is the subject of the Appeal B planning application, and I have considered it as such. In doing so I am satisfied that no injustice would be caused. I note that there is no dispute that this element of the scheme has already been carried out in accordance with the submitted plans.

The main issue

9. The Council's reason for refusal of the planning application and the substantive reasons for issuing the enforcement notice are broadly similar. From these I have identified a single main issue that is relevant to all of the development listed above, which is the subject of both the deemed planning application and Appeal B. This is the effect of the development on the character and appearance of the site and surrounding area, with particular regard to the site's location within the Brockley Conservation Area (BCA).
10. As for how I will consider each element of the development subject of these appeals, I note that Appeal B seeks permission in part for development already carried out, namely the increase of the ridge height of the roof. This is also the first matter stated in the enforcement notice and subject of the deemed planning application under Appeal A. As such, I am able to consider these matters together.
11. The remainder of the development subject of Appeal B, namely the roof extension in the rear roof slope (already carried out) and the three conservation roof lights in the front roof slope (proposed) will be considered separately. Similarly, Appeal A also seeks permission for the second matter stated in the enforcement notice (i.e. the addition of 3 non-conservation rooflights on the front elevation). This does not form part of the scheme subject of Appeal B and will, therefore, also be considered separately.

Reasons

The appeals site and the surrounding area

12. The appeals site includes a four storey Victorian town house type property, including a basement, set within a terrace row of four. The roof has a steep pitch with a wide flat ridge. This is enclosed on either side with a prominent

parapet detail. There is also a substantial chimney stack shared with the adjoining end terrace property.

13. The property is within the BCA, which is a designated heritage asset. The Brockley conservation area character appraisal (BCACA) identifies the BCA as a large Victorian suburb. It places the appeals site within a character area where there are a number of types of houses, but where all display similar ornamentation. The appeals site is within a short terrace of 4, described in the BCACA as being typically 'four stories built in stock brick with restrained Italianate decoration, treating the terrace as one whole palatial frontage'. It notes that 'the detailing of each terrace varies so that they are not all the same'.
14. The BCACA also informs that 'the houses are topped with two sets of large chimney stacks each serving two of the houses with 16 terracotta chimney pots to each stack'. The appraisal goes on to say that 'the four houses make up a symmetrical composition where each individual house is defined by the placement of its windows, front door and fire wall rising above the roofline. The main floor is given importance in the decorative treatment of the windows and door cases'.
15. With particular regard to roofs, the BCACA informs that 'houses in the conservation area are finished with slate or clay tile roofs topped with substantial chimney stacks and terracotta pots. Dormers only appear on rear roof slopes as seen above and roof lights are not a historic feature of front roof slopes'.
16. Having viewed the appeals site and its context, I find the BCACA provides a good description of the special character of the BCA in the vicinity of the appeals site. The appeals site and the terrace row of 4 within which it sits have the design, character, architectural detail and materials that are typical of other properties in the BCA and are described in the BCACA. Accordingly, the appeals site clearly makes a positive contribution to the special character and, therefore, the significance of the conservation area.

Relevant policy and legislation

17. The relevant statutory duty in this case is imposed by section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended. This requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area, when exercising planning functions.
18. The National Planning Policy Framework (the Framework) advises at paragraph 199 that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Part 16 of the Framework directs how development that would lead to substantial harm or less than substantial harm to a designated heritage asset should be considered. It requires clear and convincing justification for any harm to the significance of a designated heritage asset.
19. The development plan for the area includes the Lewisham Local Development Framework Core Strategy Development Plan Document Adopted June 2011 (LCS), the Lewisham Local Development Framework Development Management Local Plan Adopted 26 November 2014 (LLP) and the LP.

20. Policy 16 (Conservation areas, heritage assets and the historic environment) of the LCS, DM Policy 36 of the LLP, and Policy HC1 (Heritage conservation and growth) of the LP all relate to development that effect heritage assets. They reinforce the duty imposed under the above-mentioned Act, as well as the guidance provided in the Framework. The Policies inform, amongst other matters, that permission will not be granted for development that is incompatible with the special characteristics of a conservation area, and that development should conserve the significance of heritage assets by being sympathetic to the assets' significance and appreciation within their surroundings.
21. The above Policies are supported by the more general development management policies of the development plan, including Policy D3 (Optimising site capacity through the design-led approach) of the LP; Policy 15 (High quality design for Lewisham) of the LCS; and DM Policy 30 (Urban design and local character) and DM Policy 31 (Alterations and extensions to existing buildings including residential extensions) of the LLP. These Policies require, amongst other matters, that development conserves and enhances the borough's heritage assets, and utilises the heritage assets and architectural features that contribute towards the local character. With regard to alterations to existing buildings, Policy 31 requires development to be of a site specific and sensitive design quality that respects and/or complements the form, setting, period, architectural characteristics and detailing of existing buildings.
22. Guidance is provided in the BCACA, referred to above, as well as the Brockley Conservation Area Supplementary Planning Document (BCSPD) and the Alterations and Extensions Supplementary Planning Document adopted April 2019 (AESPD).
23. My attention has been drawn to Policy D1 (London's form, character and capacity for growth) and Policy D2 (Infrastructure requirements for sustainable densities) of the LP. No particular part of these Policies has been drawn to my attention and their requirements do not appear to relate to the main issue in this case. Similarly, the 'Residential Standards SPD' is mentioned in the policies section of the officer's reports relevant to both Appeal A and Appeal B. I have not, however, been provided with a copy of this document and no particular part of it has been referred to in evidence. Accordingly, I have not had regard to these Policies or guidance in reaching my decision.

Increase in ridge height – Appeal A and Appeal B

24. As noted above, the appeals property and others within the terrace row have a pitched roof with a wide central flat section forming the ridge of the roof. The enforcement notice alleges that this ridge has been increased in height and the plans subject of Appeal B suggest that the increase is some 150mm. Having viewed the roof of the appeals site from the highway, I was able to observe a difference in the ridge height, albeit marginal, when compared to the adjoining properties. I was also able to discern a small increase in the pitch of the front roof slope; the height of the parapet appeared to marginally decrease towards the ridge of the roof. Although not specifically referred to in the enforcement notice, the increase in the pitch of the roof would be a natural consequence, and therefore part and parcel, of the increase in the ridge height.
25. Having regard to the above, I do not consider the works to increase the pitch of the front roof slope or increase the ridge height to be conspicuous when the

roof of the appeals site is compared with the adjoining properties. I could see that the roof still retained a steep front roof slope and prominent parapet detail, typical of other properties in Manor Avenue. Furthermore, the difference in the pitch of the front roof slope when compared to the adjoining properties was not obvious, partly due to the separation between each front roof slope provided by the parapet wall.

26. The prominent upright ridge detail at the appeals site was also comparable to other properties in the terrace row and within the wider Manor Avenue. Indeed, there were variations in the prominence of this ridge detail on other properties, with some properties having a far taller ridge detail than others.
27. I acknowledge that the AESPD advises that it will generally not be acceptable to raise the ridge height of a property or to change the angle of the pitch of a front roof slope. However, the changes to the roof form in this case are marginal and do not adversely affect the character or the appearance of the roof scape of this property or the terrace row, unlike other roof alterations described in the BCACA¹. The roof retains the prominent features that are characteristic of properties in this conservation area. As such, the works to the roof form have not affected the contribution this building and the terrace row make towards the special character and significance of the BCA.
28. For the reasons given above, I find that the works to increase the ridge height, which include the increase to the pitch of the front roof slope, have had an acceptable effect on the character and appearance of the site and surrounding area. For this reason, and having regard to my findings above, the development preserves the character and appearance of the BCA. The development is not, therefore, in conflict with the relevant development plan policies, including Policy 16 and Policy 15 of the LCS; DM Policy 36, DM Policy 30 and DM Policy 31 of the LLP; and Policy HC1 and Policy D3 of the LP. Neither does it conflict with the guidance provided in the Framework, or in the local supplementary planning documents.

Roof lights

29. As noted above, the roof scape of the appeals site and surrounding area is an important element of the character of this part of the BCA. Although properties along Manor Avenue are tall, the roof form and roof features are nonetheless visible from street level. At the site visit I observed very few roof lights in the front roof slope of properties within the close vicinity of the appeals site. Although present in other parts of the BCA, they are not a feature that is characteristic of buildings in this part of the BCA.
30. Notwithstanding this, I note that neither the BCSPD nor the AESPD prohibit the installation of conservation style roof lights on front roof slopes of properties within a conservation area. This is, however, provided that the roof lights are fitted flush with the roof slope, are located on the middle third of the roof slope, and are aligned with the windows in the front elevation of the property.
31. I am also mindful that permission² was granted for the addition of two conservation roof lights at the appeals site.

¹ Page 46 of the BCACA – Elements damaging or threatening to the character of the conservation area.

² Planning permission reference DC/15/090895

- Non-conservation roof lights – Appeal A

32. The development subject of the deemed planning application for Appeal A includes the addition of 3 non-conservation rooflights on the front roof slope. The aerial photographs provided by the Council show that these are located close to the ridge of the roof and that these vary in their size. From street level I could see the frame of the roof light protrude above the roof slope, making each a prominent and utilitarian feature on the otherwise smooth slate roof plane. The roof lights are, therefore, conspicuous within their setting and are an addition to the roof slope that do not respect or complement the architectural characteristics and detailing of buildings in this part of the BCA.
33. In addition to the above, I also note that the position of the roof lights on the roof slope does not accord with the AESPD guidance as they are neither located on the middle third of the roof slope, nor are they aligned with the windows in the front elevation of the property. Indeed, the existing fenestration on the front elevation is a prominent detail and a principal characteristic of this Victorian property. It demonstrates a strong vertical emphasis and a particular symmetry at the first and second floor.
34. The addition of three, rather than two roof lights, in the location proposed, would be at odds with the uniformity created by the pairs of first and second floor windows. As I have noted above, the roof scape of the appeals site and nearby properties is an important and visible element of buildings in this part of the BCA, despite the height of the properties. The number of roof lights and location on the roof slope adds to my finding that the roof lights are an unsympathetic alteration to the appeals property and cause harm to the contribution this property makes to the significance of the BCA heritage asset.
35. Having regard to the above, I find the works to add 3 non-conservation rooflights on the front elevation of the property have an unacceptable effect on the character and appearance of the site and surrounding area. These works also fail to conserve or enhance the character and appearance of the BCA. This amounts to less than substantial harm, as identified in paragraph 202 of the Framework.

- Proposed low profile conservation roof lights – Appeal B

36. Unlike the existing roof lights subject of Appeal A, the proposed roof lights would be located within the middle third of the roof, they would be uniform in their size and their frame would be flush with the smooth plain of the roof.
37. Notwithstanding this, the position of the roof lights would not align with the windows in the front elevation of the appeals property. Again, I find the addition of three, rather than two roof lights, in the location proposed, would be at odds with the existing fenestration in the front elevation of the property, particularly that at first and second floor. This would cause harm to the character of the appeals property and the contribution it makes to the significance of the BCA. The proposed roof lights would neither conserve nor enhance the character and appearance of the BCA, amounting to less than substantial harm within the context of paragraph 202 of the Framework.

– Less than substantial harm balance

38. In finding less than substantial harm with regard to both the existing and proposed roof lights, the Framework requires me to balance against the harm the public benefit of the development.
39. In this regard, I note the appellant's reasons for the development. These include the need to create extra accommodation within the roof space, and the reasons for installing a warm roof, which I can see would be of benefit to the appellant. Whilst I deal later in this decision with whether or not these are benefits that result from the existing roof lights, or would be a consequence of the proposed roof lights, they do not in my judgement amount to a **public** benefit in this case, as required by paragraph 202 of the Framework. I am unable to identify any public benefits brought about by the roof lights, either the existing or the proposed, that would tip the balance in favour of them.
40. I find the roof lights subject of both Appeal A and Appeal B in conflict with the relevant development plan policies, including Policy 16 and Policy 15 of the LCS; DM Policy 36, DM Policy 30 and DM Policy 31 of the LLP; and Policy HC1 and Policy D3 of the LP. I also find conflict with the guidance provided in the local supplementary planning documents.

Rear dormer

41. As noted earlier, the development subject of Appeal B includes a dormer extension on the rear roof slope of the property. I note from the Council's evidence that it does not object to this element of the scheme. Having considered the plans submitted, I have no reason to disagree. Having regard to the design of the extension, the materials used and its location on the roof slope, I find the rear dormer acceptable with regard to its effect on the character and appearance of the site and surrounding area. I also find that it preserves the character and appearance of the BCA. The development is not, therefore, in conflict with the relevant development plan policies or guidance documents already referred to above.

Other Matters

42. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be in accordance with the plan unless material considerations indicate otherwise.
43. With regard to the roof lights subject of Appeal A and Appeal B, I have noted above the benefits highlighted by the appellant, which include the extra accommodation provided within the roof space and the warm roof. Notwithstanding that these are private benefits that carry limited weight in the overall planning balance, they do not provide a sufficient justification for the roof lights that are the subject of either of the appeals. If the roof lights were removed in the case of Appeal A, or refused permission in the case of Appeal B, I can find no reason to conclude that the benefits derived from the extra accommodation and warm roof would not continue.
44. I have had regard to other properties within the BCA where roof lights have been installed or permitted. Notwithstanding that rooflights are not characteristic of properties within the close vicinity of the appeals site, the

prevalence of roof lights elsewhere in the BCA does not in itself justify those subject of the appeals before me.

45. As for the raised ridge height and the rear dormer extension, I have been unable to identify any material considerations that indicate that planning permission ought not to be granted for these developments.

Conditions

46. I have considered whether conditions would overcome the harm caused by the rooflights, but conclude that they would not.
47. As for the raised ridge height and the rear dormer extension, I have found these elements of development to be acceptable and cannot identify any conditions that might be necessary in concluding that permission ought to be granted for them. In particular, I do not consider a plans condition to be necessary as there is reference to the plans submitted with the application reference DC/20/115966, so far as relevant to the part of the development I will permit, in the Formal Decision below.

Planning Balance and Conclusion

Appeal A

48. With regard to the first part of the allegation in the notice, I have not found any conflict with the development plan and no other reason to conclude that planning permission ought not to be granted for the increase of the ridge height of the roof.
49. I have, however, identified harm with regard to the roof lights subject of Appeal A and find that these works conflict with the development plan when read as a whole. I have no reason to conclude that my determination of the deemed planning application as it relates to the roof lights should be made otherwise than in accordance with the development plan.
50. For the reasons given above, I conclude that the ground (a) appeal should succeed in part, insofar as it relates to the first part of the allegation in the notice. As the increase of the ridge height of the roof forms part of the allegation in this case, it is open to me to grant planning permission for this element alone, in accordance with section 177(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act). However, the notice must be upheld so that it continues to target the matter of the addition of 3 non-conservation roof lights on the front elevation. For this reason the notice will not be quashed.
51. Despite my ground (a) conclusions with regard to the increase of the ridge height, I will still include reference to this matter in the notice. However, in accordance with section 180(1) of the 1990 Act, the appellant can rely on the notice ceasing to have effect insofar as it will be inconsistent with the planning permission I will grant.

Appeal B

52. I have concluded that the works to increase the ridge height and the rear dormer extension shown on the plans that are the subject of Appeal B are acceptable and do not conflict with the development plan. I have not,

however, concluded the same with regard to the proposed roof lights in the front roof slope.

53. Although the subject of the same scheme, I am satisfied that the development consisting of the proposed roof lights is clearly severable from the works to increase the ridge height and construct the rear dormer extension. Indeed, I have been able to consider the effect of the proposed roof lights separately from the remaining elements of the Appeal B scheme. Accordingly, and for the reasons given above, I can conclude that the appeal should be allowed in part and dismissed in part.

Formal Decision - Appeal A

54. The appeal is allowed in part and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the increase of the ridge height of the roof at 16 Manor Avenue, London SE4 1PD.
55. The appeal is otherwise dismissed, the enforcement notice is upheld and planning permission is refused for the addition of 3 non-conservation rooflights on the front elevation on the application deemed to have been made under section 177(5) of the 1990 Act.

Formal Decision - Appeal B

56. The appeal is dismissed in part and planning permission is refused for the installation of 3 new low profile conservation rooflights on the front roof slope. The appeal is otherwise allowed and planning permission is granted for the extension of the existing pitched roof to raise the ridge line by 150mm to accommodate a new layer of insulation at 16 Manor Avenue, London SE4 1PD in accordance with the terms of the application, reference DC/20/115966, dated 2 March 2020, and the plans submitted with it, so far as relevant to that part of the development hereby permitted.

J Moss

INSPECTOR