
Appeal Decision

Site visit made on 20 September 2022

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2022

Appeal Ref: APP/U2370/C/22/3291152

10 The Close, Queens Walk, Thornton Cleveleys FY5 1JX

- 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 David Frank Howe against an enforcement notice issued by Wyre Borough Council (the LPA).
- The enforcement notice, reference PLG/6, was issued on 10 December 2021.
- The breach of planning control as alleged in the notice is as follows:
The erection on the roof of the residential dwelling that forms part of the land a front facing dormer extension (south-east elevation), a side facing dormer extension (north-east elevation) and a rear facing dormer extension (north-west elevation).
- The requirements of the notice are as follows:
 - (i) Remove the front dormer extension (south-east elevation) in its entirety from the roof of the residential dwelling that forms part of the land.
 - (ii) Remove the side dormer extension (north-east elevation) in its entirety from the roof of the residential dwelling that forms part of the land.
 - (iii) Remove the rear dormer extension (north-west elevation) in its entirety from the roof of the residential dwelling that forms part of the land.
 - (iv) Restore the roof to the aforementioned residential dwelling to the state it was in prior to commencement of the construction of the aforementioned three dormers.
 - (v) Remove from the land all building materials and debris resulting with compliance with the works described at (i), (ii), (iii) and (iv) of this paragraph 5.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on grounds (a) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal succeeds to a limited degree on ground (f) only. Otherwise the appeal is dismissed. See formal decision below.

Background information

2. The appeal site is located on the northern side of The Close, off Queens Walk, and is at the head of this typical cul-de-sac of bungalows. The dwelling is a semi-detached bungalow within this predominantly residential area of Cleveleys which is characterised by many similarly designed single storey dwellings. There are two other bungalows in The Close which have flat-roofed front dormers. These are both set within the existing roof slopes and do not have any dormers to their sides.

3. Planning permission (reference number 20/01111/FUL), subject to conditions, was granted on 11 February 2021 for a proposed front dormer to No 10. The submitted drawings indicated that it would be 2.5m wide and 1.2m in height and

that it would be set within the existing roofscape of the dwelling. The approved drawings also indicated a rear dormer which was stated to be permitted development. However, neither the front dormer nor that to the rear were constructed in accordance with the approved drawings. Instead, and in addition, a side dormer has been constructed resulting in a single front, side and rear flat-roofed 'wrap-around' dormer. The LPA, considered it expedient to issue the enforcement notice and the alleged breach is set out above.

Relevant Policy

4. The Development Plan for the area consists of the Wyre Borough Local Plan, 2011–2031, (WBLP). The most relevant policies in this appeal are policies CDMP1 (Environmental Protection) and CDMP3 (Design). Policy CDMP2, (Flood Risk and Water Management), which would normally be applicable for new development, is not relevant at this stage.

5. The National Planning Policy Framework 20 July 2021 (NPPF) is also a major material consideration. It sets out the planning policies for England and how these should be applied in the determination of planning applications and the preparation of development plans. The NPPF sets out a presumption in favour of sustainable development and that good design is a key aspect of sustainable development. The most relevant section of the NPPF is section 12 (Achieving good design).

The appeal on ground (a)

The gist of the case for the Appellant

6. It is stressed that the dormers are all below the roof ridge line and that the site is in a residential area. The Planning Officer's report accepts that there is no harm caused to the neighbours from the front dormer and it is contended that it would be possible to condition the window in the side dormer to be obscurely glazed and that distances involved to the rear ensure that no harm is caused.

7. With regard to matching materials it is indicated that the tiles from the original roof have been reused to face all sides of the dormers. It is argued, therefore, that the condition on the February 2021 permission has been complied with for the whole of the development. It is stressed that the three combined dormers provide much needed extra roof space to accommodate the family and that without them there would be less headroom and hence less usable space.

8. It is contended that the shape and context of the dormers reflects the general nature of development in the wider area, whereby properties can be developed to meet existing needs. It is argued that under permitted development rights much of the work could be undertaken. This 'Fall-back' position is referred to and specifically that dormers in roofs are permissible where certain conditions are satisfied. It is also indicated that in this case permitted development rights have not been removed and there is no Article 4 Direction in place.

9. The permitted development rules for dormers or conversions within roofs are set out in detail (Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) and Schedule 2, Part 1, Class C). It is considered that these should be applied in coming to a conclusion on the appeal dormers and that under permitted development rights there is no control over what something may look like. Rather, what is limited is the size of the development and its location on the host property. In this case the appeal dormers are considered to comply with all the permitted development rules.

10. It is contended that all of the limitations set out in the GPDO are complied with including the materials being matching; the volume as added (not exceeding 50³); the dormers not extending the height of existing roof; not extending beyond the roof slope on the principal elevation and not including verandas, balconies, raised platform or replacement of chimneys etc. It is indicated that the side facing windows could be made obscure and could therefore comply and the eaves of the building have been maintained with the dormers set back at least 20cm from the eaves and do not overhang the face of any wall of the house. Finally the land is not Article 2(3) designated land.

11. It is also argued that, as the provision of dormer windows can be permitted development, it is the case that a hip to gable extension would also be permitted development. Thus if that solution had been adopted here then the neighbour would have a hipped end and the appeal property would have a gable end which, whilst lawful and not requiring planning permission, would present a less appealing solution than the one adopted in this case.

12. The proposal is considered to comply with Policy CDMP1 (Environmental Protection) of the WLP. It is argued that the dormers are compatible with adjacent existing uses and have not led to any significant adverse effects on health, amenity, safety and the operation of surrounding uses and for occupants or users of the development itself, with reference to noise, vibration, odour, light, dust, other pollution or nuisance. Other parts of the policy are not applicable.

13. With regard to Policy CDMP2 (Flood Risk and Surface Water Management) it is stressed that the whole policy is either irrelevant or if relevant has to be assessed in light of the flood report which was approved by the Council when granting planning permission in February 2021.

14. In terms of the design of the dormers as installed it is contended that they comply with Policy CDMP3 (Design) of the WLP. It is stressed that design is a subjective matter and that what works for one commentator, or expert, may not for another. It is argued that the issue of design for residential properties should be about the workability of the structure to ensure it is sustainable. It is also stated that less importance should be given to subjective opinions on design, particularly where not in a conservation area. In this case the attachments (side and rear) to the front dormer, although changing the appearance of the dwelling, are not considered to mean that they should not be allowed.

15. It is argued that the dormers respect the character of the area and that the part of the policy which requires development to *'create or make a positive contribution to an attractive and coherent townscape both within the development itself and by reference to its integration with the wider built environment'* is intended to be directed towards larger developments as opposed to small dormer extensions such as in this case.

16. It is not considered that the dormers have had any adverse impact on the amenity of occupants and users of surrounding or nearby properties and that they provide a good standard of amenity for the appellant and family. Other parts of the policy for example relating to minimising crime and vehicular access are not relevant in this case.

17. In summary when assessing the local plan policies with this development of the dormer windows it is contended that they comply with the policies and as a consequence the appeal on ground (a) should be allowed.

18. With regard to the LPA's supplementary planning guidance (Extending your home supplementary planning document adopted November 2007), this was made prior to the adoption of the WLP; prior to the changes to permitted development rules for dormers and use of roof space. Since then there have also been 3 versions of the NPPF. It is considered therefore that little or no weight should be attached to this 15 year old set of supplementary local guidance.

19. However, having regard to Design Note 1, it is argued that the dormers have been constructed to reflect the original bungalow and the allowed front dormer; that dormer windows are widely seen in the area; that these are not out of character; that there is no impact regarding loss of daylight or sunlight and that there are no adverse effects due to overlooking or loss of privacy. It is concluded, therefore, that the dormers accord with this design guidance.

20. Turning to Design Note 6 (Dormers and Roof Extensions) it is also stressed that the dormers are all contained within the body of the roof; that the restriction regarding 35% of the area allows flexibility in the word 'normally' and that all of the criteria (a) to (e) in section (i), as well as (a) to (c) in section (ii) are all acceptable.

21. Detailed references are made to the NPPF starting with reference to the purpose of the planning system being to contribute to the achievement of sustainable development. In this case it is contended that the dormers accord with the policy, as well as the 17 Global Goals for sustainable development, in that they meet the needs of the present without compromising the ability of future generations to meet their own needs.

22. With reference to the three overarching objectives (economic, social and environmental) of the NPPF, it is stressed that the development created employment; that to remove what is there would be an economic and environmental cost; that the dormers provide much needed accommodation for the family and that the development has made appropriate and effective use of developed land and there is no harm to any ecology.

23. It is further indicated that LPAs should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decision-makers at every level should seek to approve applications for sustainable development where possible.

24. It is stressed that the appointed Architect and the Appellant did try to speak with the Planning Officer to overcome some of the concerns raised but unfortunately found the LPA to be unwilling to consider any other points of view and the Council would not withdraw or delay the issue of the enforcement notice to allow a planning application to be submitted.

25. With regard to Section 12 of the NPPF it is indicated, amongst other things, that this is an unremarkable street where dormers within it and in the locality are normal; that much of this section relates to larger schemes and not to the dormer appeal now presented; that the LPA's design guidance is 15 years old; that in any case the dormers comply with the guidance and, that other parts are not relevant to this case. It is also indicated that the LPA simply issued the enforcement notice rather than requesting that a planning application be submitted.

The gist of the case for the Council

26. The Council indicates that the appeal property is a simply designed, semi-detached, single storey bungalow. It stresses that the front, side and rear dormers are the full width of the three roof slopes and that, linked together, they are seen as one large mass, significantly altering the shape and appearance of the roof. The size of the dormers and their overall massing are considered to significantly alter the appearance of the bungalow within this cul-de-sac of similar simply designed dwellings. It is also argued that they visually unbalance this particular pair of semi-detached bungalows.

27. The dormers are, therefore, considered to appear incongruous, having a harmful impact upon the dwelling and its pair, and creating an inappropriate visual intrusion in the skyline and street scene. It is further stressed that the three dormers do not appear subordinate to the original property and form an overly visually dominant feature in the street-scene.

28. It is indicated that the dormers are not *'well within the body of the roof'* as recommended within the Council's *'Extending Your Home'* Supplementary Planning Document which expands on the design principles set out in Policy CDMP3 of the adopted WBLP and also the provisions of Section 12 of the NPPF which seeks to achieve well-designed places.

29. Section 12 of the NPPF is referred to in that it requires *'good design'*. It is indicated and that this accords with the WBLP policy CDMP3 *'Design'*, as well as with the Supplementary Planning Document *'Extending your Home'*. Design Note 1 (General Principles) is also referred to in that it requires proposals to *'complement the architecture of the original property, to appear subordinate to the original property and not form an overly dominant feature in the street'*.

30. The Council concludes that the dormers have resulted in a significant detrimental visual impact on the character and appearance of the appeal property host property, the pair of semi-detached dwellings and the wider locality contrary to policy CDMP3 of the WBLP and Section 12 of the NPPF (2021). It is considered, therefore, that the appeal should be dismissed, and that planning permission should not be granted under ground (a) and the deemed application.

My assessment

31. Having seen the *'wrap-around'* dormers as constructed, I share the Council's concerns regarding the visual effect on the character and appearance of this part of Cleveleys. When viewed from both near and distant viewpoints I consider that the development appears as an out-of-scale and obtrusive addition to this simply designed bungalow in a cul-de-sac of similarly designed dwellings. During my visit I had noted many other dormer developments in this part of Cleveleys, but none had resulted in such a large *'wrap-around'* flat-roofed area within the roof space.

32. Because the front, side and rear dormers have been built across the full width of each roof slope, as indicated by the Council, they are perceived as one large mass which completely alters the shape and appearance of the original roof and visually unbalances the pair of semi-detached bungalows. In my view the overall result is of a very poor design which is out of scale, inappropriate and significantly visually harmful to the streetscape. Unlike the approved dormer scheme, the *'as-built'* structure does not result in being seen as a balanced and subordinate addition to the property.

33. I do not accept the arguments put forward on behalf of the appellant that the dormers '*have been constructed to reflect the original bungalow and the allowed front dormer*' and that '*that these are not out of character*' in an area where there are many dormer windows. In fact, I consider the opposite to be the case. Nor do I accept that '*the dormers are all contained within the body of the roof*' as recommended within the Council's '*Extending Your Home*' Supplementary Planning Document (EYH SPD). As a matter of fact and degree the whole structure is clearly perceived as protruding out from the original body of the roof.

34. Whilst acknowledging that the EYHSPD was made prior to the adoption of the WLP and the changes to permitted development rules for dormers and use of roof space, it still accords with the main design principles set out in the current and all previous versions of the NPPF.

35. I have noted all of the appellant's other references to the aims of the NPPF in seeking to achieve sustainable development. However, section 12 clearly indicates that '*the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.*'

36. The wrap-around' dormers constitute very poor design. They cannot, in my view, be described as being '*sustainable*' in terms of their design and nor can they be acceptable development within this part of Cleveleys. The NPPF is clear that development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design.

37. I acknowledge that there is no harm caused by the front dormer regarding overlooking or loss of privacy for neighbours. It is also the case that the side dormer has already been provided with obscure glazing. However, these changes, in my view, cannot make what is a fundamentally, three-dimensional unacceptable development, acceptable in design terms.

38. With regard to the arguments that the dormers all constitute permitted development (PD) and the references to the 'fall-back' position, I question the conclusions reached on behalf of the appellant. The three separate dormers could only have constituted PD if separate dormers, set within each of the roofscapes and complying with all of the conditions and restrictions as set out in the GPDO, had been constructed. However, when built as one single large flat-roofed extension covering all three roof slopes, they do not constitute PD.

39. In summary, therefore, I agree with the Council that the dormers have resulted in a significant detrimental visual impact on the character and appearance of the appeal property, the pair of semi-detached dwellings and the wider locality contrary to Policy CDMP3 of the WBLP and Section 12 of the NPPF (2021). It follows that the appeal must fail on ground (a) and planning permission will not be granted for the wrap-around dormers as constructed.

The appeal on ground (f)

The gist of the case for the appellant

40. Reference is made to the Officer's Report in respect of the approved front dormer (planning permission reference 20/02222/FUL). It is argued therefore that a development that accords with the implementation of that permission should remain. It is contended that if the appeal fails on ground (a) then, on ground (f),

those parts which comply with that permission should be allowed to remain, rather than the whole structure being removed.

The gist of the case for the Council

41. The Council also refers to the approved planning permission 20/01111/FUL granted, subject to conditions on the 12/02/2021. It is confirmed that the development approved was described as a front flat roofed dormer with a width of 2.5m and a height of 1.2m and set within the front roof slope finished in tiles. Reference is then made to the front facing dormer as built which covers the entire front roof slope and is materially larger than that approved.

42. The Council, therefore, contends that the planning permission 20/01111/FUL has not been implemented and, therefore, no part of the front facing dormer has planning permission. On that basis it is argued that the appeal on ground (f) should fail. The Council has not commented in any further detail on the appellant's ground (f) case.

My assessment

43. Having considered all of the submissions and the previous approved scheme for the front dormer it appears that this also included the rear dormer since this was permitted development. The Council has not indicated that this was not the case and granted permission on the basis of the drawings submitted.

44. Overall, therefore, despite the fact that the front dormer as built does not constitute implementation of the permission granted, I consider that if the approved proposals were carried out fully and precisely in accordance with the approved drawings, then this would amount to reasonable and acceptable lesser steps in the appeal on ground (f).

45. If carried out in accordance with the approved drawings I consider that the approved planning permission would be implemented and that this would not constitute a mere amendment to the unauthorized 'wrap-around' works. In effect what would be provided would be an approved front dormer and a rear dormer which complied with the GPDO and the side dormer would be removed.

46. I shall, therefore, vary the requirements of the notice by setting out an alternative to require compliance with the approved scheme. In doing so I do not consider that any injustice would be caused. The Council have already approved the development granted approval and the appellant would end up with what was applied for in the first instance.

Other Matters

47. I sympathise with the predicament in which the appellant now finds himself. However, if allowed to remain as constructed this example could lead to more similar applications being made in the locality and which would be difficult for the LPA to resist. This would further erode the character and appearance of this part of Cleveleys and its surrounding streetscapes.

48. In reaching my conclusions I have taken into account all of the other points raised by the Council and on behalf of the appellant. These include all references to local and national planning policies; to the GPDO; to the EYHSPD; the full planning history; the detailed appeal statements and all other submissions. However, none of these carries sufficient weight to alter my conclusions on each ground of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decision

49. The appeal succeeds to a limited degree on ground (f) only. I direct that the enforcement notice be varied in Section 5 (WHAT YOU ARE REQUIRED TO DO) by adding the following after Requirement 5(v):

`OR,

Remove the side dormer in its entirety and reconstruct the front and rear dormers so that the roof structure is fully in accordance with the drawings approved under planning permission 20/02222/FUL. Remove all excess materials resulting from the removal of the side dormer and the altered front and rear dormers from the site.

49. Otherwise the appeal is dismissed, the enforcement notice is upheld as varied and planning permission is refused on the application deemed to have been made under Section 177(5) of the Act.

Anthony J Wharton

Inspector