



Appeal Decision

Site visit made on 27 July 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 September 2022

Appeal Ref: APP/N5090/C/21/3282356

Land at Flat B, 22 St Marys Road, London NW11 9UG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Ben Grunfeld against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice, numbered ENF/0043/21, was issued on 10 August 2021.
- The breach of planning control as alleged in the notice is without Planning Permission, the construction of a hip to gable and rear dormer roof extension.
- The requirements of the notice are to:
 - 1) Restore the roof to its original state prior to the current breach of 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 plan number, 002 of planning application 19/6688/FUL.
 - 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) 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:
 - 1) the addition of the word 'Either' prior to step 1 of section 5 of the notice;
 - 2) the addition of the word 'Or' after step 2 of section 5 of the notice;
 - 3) The addition of a step 3 in section 5 of the notice as follows:

'3. Implement the rear dormer window and gable extensions in accordance with extant planning permission reference 19/6688/FUL and specifically plan number 003 Rev 1 of that permission'; and
 - 4) The deletion of '4 months' and its substitution with '12 months' as the period for compliance at section 6 of the notice.

Subject to these variations 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.

Preliminary Matters

2. Both parties refer in their appeal submissions to two recent planning applications at the appeal property when setting out their descriptions of its planning history. Planning permission¹ was granted in 2020 for development including a hip-to-gable roof extension and a rear dormer window (hereafter 'the 2020 permission') whilst permission was later refused² for development of the same description, albeit retrospectively, which sought to regularise the development 'as built' (hereafter 'the 2021 application'). I have been provided with the plans and elevations submitted in respect of each and I have taken them into consideration in reaching a decision in the matter before me.
3. The notice requires that the rear dormer and gable extension are removed, and the roof restored to its original state prior to the breach, in accordance with the 'existing plans and elevations' (plan number 002) submitted as part of the 2020 permission scheme. The purpose of the notice is therefore to remedy the breach of planning control.
4. However, that requirement ignores the alterations approved by the 2020 permission for a hip-to-gable extension and a rear dormer window, which both parties agree remain extant and capable of implementation and thereby provide the appellant with a fall-back position. It is also noted that the Council have no objection to the hip-to-gable element of the works, stating that it was included within the notice (and subject to the notice's requirements) in the interests of 'completeness'.
5. Section 173(3) of the Act states that an enforcement notice shall specify the steps to be taken in order to achieve, wholly or partly, any of the purposes set out in section 173(4) of the Act. These include remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land.
6. The appellant has not appealed on ground (f); that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control. Although the reasons for issuing the notice cite the effect of the works on the character and appearance of the appeal property and the surrounding area, the purpose of the notice in seeking removal of the works carried out is to remedy the breach, not any injury to amenity.
7. Nevertheless, as planning permission has previously been granted, and remains extant, for the works as described in the notice, albeit in a different form, I am satisfied that the 2020 permission would provide a satisfactory alternative to the development alleged in the notice, albeit that this was not directly advocated by the appellant.
8. The enforcement regime is however intended to be remedial rather than punitive. As such, an alternative set of required steps to the complete removal of the as-built dormer, such as the removal of the alleged works and implementation of what is an agreed fallback position would accord with the purposes of the notice. I am satisfied that such a variation can be made without resulting in prejudice to the parties.

¹ LPA Ref No: 19/6688/FUL

² LPA Ref No: 21/0986/RCU

9. The appellant also initially indicated an intention, albeit not yet fulfilled, to appeal the refusal of planning permission for the 2021 application under section 78 of the Act. That scheme sought to retain the hip-to-gable and dormer window extension as built, albeit with the dormer cheek clad with hanging tiles. The appellant has requested in the appeal submission that the scheme proposed by the 2021 application be considered within the scope of this appeal as an alternative to what has been built and what was previously granted permission. In order to give proper consideration to this alternative I will deal with it within ground (a).

Appeal on ground (a)

Main Issue

10. The main issue is the effect of the development upon the character and appearance of the appeal property and the surrounding area.

Reasons

11. The ground (a) appeal is that planning permission should be granted. The appeal site is a two storey, end-of-terraced property within a residential setting. The property has previously been converted to flats, with the appeal property being the upper floor flat. In this respect, I suspect, it is not unusual. Nor is the presence of a dormer window at the rear of the property unusual. Indeed, I saw a number of dormer windows of varying sizes and designs at the rear of the residential block comprised of properties on St Mary's Road, The Drive and Woodville Road.
12. The dormer window extension as built does not accord with the provisions and guidance regarding such roof extensions as set out within the Council's '*Supplementary Planning Document: Residential Design Guidance*' (2016) (SPD). By virtue of the very limited extent of visible roof tiles at eaves level, limited set down from ridge level and absent inset from the gable roof verge, the dormer window is incongruously large and has an appearance tantamount to an additional full floor, rather than a well-proportioned dormer sensitively and subserviently inset within the existing roof structure. Even having regard to other dormer window extensions within the surrounding rear block of properties, some of which are large, the dormer window at the appeal property is excessively scaled in relation to the scale and proportions of the host building and is harmful to the character of what is otherwise a modest end-of-terrace property.
13. However, that is not to say that there are no mitigating factors in this instance. The building has a two-storey outrigger which extends across the middle portion of the building's rear elevation, the roof of which intersects the tile-hung face of the dormer. Whilst it does not do so entirely, the outrigger provides an element of visual distraction to what has been built and partly disguises the bulk, massing and positioning of the dormer within the building's roof.
14. I noted, too, that there are other examples of larger rear dormer window additions within the surrounding residential block. Some are located in mid-terrace locations not widely visible in views from public vantage points whilst others, like the appeal property, are located in end-of-terrace locations where glimpsed views from the public realm are possible between buildings. Although

I cannot be certain of the planning status of the examples to which my attention has been drawn, dormer window additions of varying sizes are part and parcel of the character and appearance of not just St Mary's Road, but also of the surrounding streets.

15. Nevertheless, the factors identified above do not adequately or sufficiently mitigate the harm that arises from the excessively and incongruously large dormer window. The dormer as built, and as targeted by the notice, dominates the roof level of the appeal property and cannot be considered to be appropriately reflective of, or subservient or subordinate to, the scale or proportions of the existing house. That the extension is only glimpsed between buildings in public views from street level does not diminish the harm that arises to the character and appearance of the surrounding area. Nor should its location at the rear of the property, and visible from the rears of other properties on St Mary's Road and adjacent streets distract from or otherwise mitigate the harm that arises to character and appearance from its presence.
16. For these reasons, I conclude that the dormer extension as built fails to provide high quality design reflective of local character and respectful of appearance, scale and mass of its host. As such, it is contrary to the aims and provisions of policy DM01 of 'Barnet's Local Plan: Development Management Policies Development Plan Document' (2012)(DMP), policies CS1 and CS5 of 'Barnet's Local Plan: Core Strategy Development Plan Document (2012)(CS) and policies D1 and D4 of the London Plan (2021)(LP), and as guided by the SPD.

The 2021 application

17. The (as yet) un-appealed 2021 application proposal sought to retain the as-built dormer window in terms of its proportions, scale and position on the roof. Where it differed however, was in terms of the treatment of the dormer cheek facing towards the rears of properties on Woodville Road. Instead of the present arrangement, where the white painted render finish of the gable elevation continues into the dormer cheek, the cheek would instead be finished with hanging tiles to match those of the property's main roof.
18. I agree that this would create a clear demarcation between the dormer and the main gable elevation of the house. However, it would do very little, if indeed anything, to reduce the scale, bulk or dominance of the dormer window within the rear roof structure or render it otherwise subservient or subordinate to it or to the appeal property as a whole. It would, as a consequence, also be harmful to the character and appearance of both the appeal property and the surrounding area.
19. As such, I am not persuaded that the proposal as set out by the 2021 application would accord with the provisions of DMP policy DM01, CS policies CS1 and CS5 and LP policies D1 or D4. Nor would it align with the provisions and guidance set out within the SPD with regard to dormer window extensions.

Other Matters

20. I have some sympathy with the appellant in his frustration at the advice given by the builder which set in motion the chain of events that have resulted in this appeal. That these events coincided with the implications of the Covid-19 pandemic are especially unfortunate. I can also understand the desire to

provide additional living accommodation within the appeal property as an alternative to moving to another property.

21. Whether or not the works carried out would have been permitted development had the property been a dwelling is not before me as it is agreed that the appeal property is indeed a flat, for which permitted development rights do not exist. It is also noted that the Council's investigation of this matter initially arose from a complaint in respect of the extension's effect on the living conditions of an occupier of a neighbouring property. However, that matter was not a reason for issuing the notice and is not therefore a matter before me in this instance.
22. Whilst these are all matters to which I have given careful consideration, they are not sufficient to overcome my conclusion in respect of the deemed application or the alternative 2021 application proposal.

Appeal on ground (g)

23. I accept that the need to move out of the property and find alternative accommodation would be likely to add further disruption and potential for delay, over and above the period of the actual building works required by the notice. Whilst the appellant accepts that the actual works required would not be so extensive that they could not be carried out within the 4-month period, the resulting disruption to family life would justify an extended time period for compliance. In this respect, I have also considered the appellant's convention rights under Article 8 of the European Convention on Human Rights³ as the notice's requirements amount to interference with those rights.
24. The Council's response to the appeal on ground (g) is somewhat non-committal but does indicate an acceptance to defer to judgement with regard to a period longer than 4 months. Taking all these factors into account, it seems to me that a period of 4 months within which to make such arrangements, in addition to undertaking the works themselves, would be a rather condensed time period and falls short of what should reasonably be allowed.
25. Instead, the extended period of 12 months sought by the appellant would adequately allow appropriate logistical and construction arrangements to be made to ensure implementation of, and compliance with, the requirements of the notice. I am satisfied that the variations I have set out with respect to the notice would not materially change this position, or the appellant's subsequent arguments in seeking a longer time period. The appeal on ground (g) therefore succeeds to that extent and I shall vary the notice accordingly.

Conclusion

26. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with the variations set out in my formal decision and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

G Robbie

INSPECTOR

³ As set out within the Human Rights Act 1998