



Appeal Decisions

Site visit made on 6 October 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 8 November 2022

Appeal A: Ref APP/U5930/C/21/3289893

42 Clarendon Road, Walthamstow, London E17 9AZ

- 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 Kevin Hoare against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice, numbered 522435, was issued on 9 December 2021.
 - The breach of planning control as alleged in the notice is without planning permission:
 1. The construction of rear dormer roof extension – as shown in Appendix A attached to the notice for identification purposes.
 2. The use of the roof extension as an independent 2 bedroomed self-contained flat known as Flat 6.
 - The requirements of the notice are to:
 - 1) Cease the use of the two bedroomed self-contained flat located in the roof known as "Flat 6".
 - 2) Carry out the necessary amendments to the rear dormer so that it accords with the drawing number 985-01 (dated June 2015) as outlined in the approved planning permission 152194 (dated 13th August 2015) – as attached to the notice.
 - 3) Remove the kitchen in its entirety from the roof extension including but not limited to the kitchen cupboards, sinks, fridges, freezer, cooking facilities, fittings and fixtures, worktops.
 - 4) Carry out the necessary internal amendments to the roof space in accordance with the configuration floor plan shown in drawing number 985-01 (dated June 2015) as outlined in the approved planning permission 152194 (dated 13th August 2015) – as attached to the notice.
 - 5) Remove and clear all resulting materials, rubble and general detritus from the Land following compliance with steps 1 – 4 above.
- Or**
- 6) Cease the use of the unauthorised "Flat 6" as a separate self-contained unit.
 - 7) Demolish and remove the unauthorised hip to gable side extension and rear dormer roof extension in its entirety.
 - 8) Remove all resulting materials, rubble and general detritus from the Land following compliance with steps 6 – 7 above.
- The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: Ref APP/U5930/W/21/3282870

Flat 6, 42 Clarendon Road, Walthamstow, London E17 9AZ

- 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 Mr Kevin Hoare against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 211376, dated 5 May 2021, was refused by notice dated 13 August 2021.
 - The development is 2 bed flat in the converted loft space.
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Decisions

1. Appeal A is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Appeal B is dismissed.

Procedural Matters

3. Both appeals concern largely the same development, save that what has been built (and therefore the subject of Appeal A) differs from the plans submitted in respect of the Appeal B proposal, namely:
 - The dormer is larger, extending further towards the outrigger roof (as shown in the aerial photograph and compared with the drawings in page 6 of the Delegated Report, and as seen on my site visit);
 - There are 2 skylights in the outrigger roof (as shown in the aerial photograph, and as partly seen on my site visit); and
 - Obscured glass has not been installed to the gabled end windows to the flank elevations (as seen on my site visit). Further, one such window serves the office/store and not the bedroom (as seen on my site visit).

Appeal A Ground (a) and the deemed planning application (DPA); Appeal B

Main Issues

4. The main issues in respect of both appeals are the effect of the development on:
 - the character and appearance of 42 Clarendon Road, as regards the rear dormer;
 - the living conditions of current and future occupiers of the roof extension flat (Flat 6), particularly as regards internal space standards, ventilation, outlook, and the availability of usable and secure private amenity space;
 - the living conditions of current and future occupiers due to disturbance caused through the intensified use of 42 Clarendon Road (by the creation of an additional flat) and the level of waste created through such intensification; and
 - the demand for parking.

Reasons

Character and appearance

5. The appeal dormer (whether under Appeal A or B) is significantly larger and wider than previously approved¹, and as a result sits significantly closer to the ridge of the building and occupies a substantial amount of the rear roof slope. Due to these factors, the dormer readily appears to the observer (albeit in rear views) to be a disproportionate and over-dominant addition to the dwelling.

¹ Ref: 152194; 'Loft conversion with rear dormer window and 4 rooflights at front. Formation from 1 x1 bed self-contained into 1 x 2 bed self-contained flat' (Flat 4, 42 Clarendon Road); Approved 13 August 2015.

6. The planning harm is amplified by further aspects of the dormer design which cause it to appear discordant with the host building. In particular, contrary to previously approved, the fenestration serving the dormer is not in alignment with that of the floors below. The triangular pediment which had been a feature of the previous approval has not been retained, which removes the degree of visual harmony that it had created with the triangulation of the adjacent pitched roof serving the gabled outrigger projecting to the rear. The overall result of the poor design of the dormer is significant harm to the character and appearance of 42 Clarendon Road. This harm to the host building is not mitigated by the large dormers at 38 and 40 Clarendon Road – their presence does not mean that low quality design at the appeal site should be acceptable.
7. For these reasons, the development (Appeals A and B) is in conflict with Policy CS15 of the Waltham Forest Local Plan Core Strategy (2012) (CS) and Policies DM4 and DM29 of the Waltham Forest Development Management Policies Local Plan (2013) (DMP), as supported by the Council's Supplementary Planning Document 'Residential Extensions and Alterations' (2010), which seek to ensure well-designed developments.

Living conditions – occupiers of Flat 6

8. The main parties agree that the new dwelling created by the development provides a gross internal area (GIA) exceeding the minimum space standards² supported by policy. However, a proportion of the habitable rooms are affected by ceiling heights that reduce in line with the roof slope. Policy D6 of the London Plan (2021) (LP) says that the minimum floor to ceiling height must be 2.5m for at least 75% of the GIA of the dwelling.
9. While the Delegated Report is silent on the proportion of the flat that has restricted height, placing the onus on the appellant to produce figures, the appellant's Planning/Design and Access Statement (PDAS) states that the GIA is 80sq.m with a restricted height component of 17sq.m. However, it appears from an annotation made on Drawing No 1800 P01 Rev A that the appellant has used 1.8m as the benchmark for an unrestricted height. This is considerably lower than the standard of 2.5m and accordingly I place very limited weight on the appellant's assessment. Further, I found on my site visit that the sloping ceilings created an oppressive atmosphere within the dwelling particularly within the largest habitable room of the flat (containing the kitchen) and front bedroom due to the height restriction running the entire width of those spaces. The result is a cramped dwelling which would negatively impinge on the normal range of residential functions. Further, the psychological effect of containment is heightened by the fact that the only fenestration serving each of these habitable rooms as built (Appeal A) are skylights with upwardly orientated and, therefore, limited outlook³. The plans in respect to Appeal B show an obscurely glazed window on the flank wall of the front bedroom, which would not serve to improve outlook.
10. I have nothing before me to lead me to conclude that the fenestration arrangements are not openable and would not provide sufficient ventilation to the dwelling.

² *Technical housing standards – nationally described space standard* (March 2015); Department for Communities and Local Government.

³ 5.9.1 of the Council's Urban Design Supplementary Planning Document (2010) says that 'The use of skylights as the only windows to a habitable room will not be acceptable...'

11. The external amenity space provided, within the rear garden, is of sufficient size (24sq.m) for a 2-bedroom dwelling and unlike the Council I do not consider that 30m is too far away for it to be regarded as inappropriately located.
12. For the above reasons, I conclude in respect to both appeals that significant harm is caused/would be caused to the living conditions of current and future occupiers of the roof extension flat (Flat 6), due to insufficient and cramped internal space and poor outlook. Accordingly, the development (Appeals A and B) is in conflict with Policy D6 of the LP, Policies CS13 and CS15 of the CS and Policies DM7, DM29 and DM32 of the DMP, as supported by the Council's Urban Design Supplementary Planning Document (2010), which seek to ensure that developments are well-designed and protect the living conditions of occupiers.

Disturbance; Waste

13. An additional flat in a property which already contains five existing flats⁴ (a relatively modest building for the number of homes that have been created) represents in my view a significant intensification in the residential use of the building overall. It can reasonably be assumed that the addition of another dwelling above the existing dwellings increases trips to and from the property (by the new household and their visitors) and these must be made past the front doors of the existing occupiers and up the communal internal stairway. This is likely in my view to give rise to some harm, albeit moderate in scale, to the living conditions of the building's occupiers through increased noise and disturbance in the relatively densely occupied context.
14. Further, the intensification of residential use will result in increased levels of waste and recycling due to the added household. In the absence of more detailed plans from the appellant, I am not persuaded that there is sufficient space for the associated storage receptacles for a total of 6 households in an appropriate location(s).
15. Consequently, the development is in conflict with Policies CS6 and CS15 of the CS and Policy DM32 of the DMP which seeks to ensure that developments are well-designed and manage impact on neighbours as well as waste and recycling.

Parking

16. The Council says that the expectation is for a car-free development, as the site is within a controlled parking zone, and that there has been no completed legal agreement restricting future occupiers from applying for residents parking permits. It is on this basis that the Council concludes that the development is in breach of Policy DM16 of the DMP.
17. However, the Council says little more than this throughout the appeal papers and the stated policy says that car-free and car-capped developments will be encouraged in locations that are highly accessible by public transport, are accessible to opportunities and services and/or have high levels of parking stress. Given that the Council has not shown in its submissions how these criteria have been applied to the appeal development, I do not find conflict with Policy DM16 or conclude that the development (Appeals A and B) would cause harm as regards parking.

⁴ It is not for me in the determination of these appeals to determine the lawfulness of any of the existing flats.

Other Matters

18. The appeal development (Appeals A and B) provides an additional home, but this benefit does not outweigh the harm I have identified above.

Conclusion on Appeal A ground (a) and the DPA; Appeal B

19. The development (Appeals A and B) does not accord with the development plan as a whole, and there are no other considerations which outweigh this finding. There are no conditions which could make the development acceptable. Accordingly, I will not grant planning permission in respect to either appeal (Ground (a) fails in respect to Appeal A).

Appeal A Ground (f)

20. For an appeal to succeed under this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
21. The appellant argues that the notice should require compliance by allowing alteration of the building to what was approved in 2015 (Ref: 152194). However, the notice does in fact do what the appellant is suggesting by putting that option as a route to compliance. Therefore, this nullifies the stated argument that the notice is excessive.
22. I do not otherwise find the notice to be excessive, and the ground (f) appeal fails.

Appeal A Ground (g)

23. For success under this ground, I must be satisfied that the compliance period given in the notice falls short of what is reasonable.
24. The appellant says that 6 months is too short a time to comply and requests 6-12 months. He says that a slightly longer period to comply "is mostly to do with Covid, difficulty finding builders and market demand for builders because of increased costs relating to Brexit & Covid". However, since the appeal was made there has been a significant change in Covid restrictions and the context of the pandemic and I do not think that the appellant's stated reasons for requiring more time are currently sound. I am satisfied that 6 months is a reasonable time in which to complete all requirements.
25. Accordingly, ground (g) does not succeed.

Conclusions

26. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.
27. For the reasons given above I conclude that the appeal B should be dismissed.

Andrew Walker

INSPECTOR