
Appeal Decision

Site visit made on 11 January 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 January 2023

Appeal ref: APP/B5480/C/21/3287889

Land at 26 King Edwards Avenue, Rainham RM13 9RJ

- 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 Sean Thornton against an enforcement notice issued by the London Borough of Havering.
 - The notice was issued on 27 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of rear and side dormer windows.
 - The requirements of the notice are:
 1. demolish the rear and side dormer windows; or
 2. clad all sides of the rear and side dormers with tiles matching the tiles of the roof of the host dwelling; and
 3. remove all building materials and debris from the site as a result of taking step 1, or 2 above.
 - The period for compliance with the requirements is within three months after the date this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
-

Decision

1. The appeal is allowed, and the enforcement notice is quashed.

The appeal on ground (c)

2. To succeed on this ground, the appellant must prove on the balance of probability that the side and rear dormer windows on the land did not constitute a breach of planning control.
3. In this case, the appellant claims that the side and rear dormer extensions are permitted development (PD) under Class B, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). In essence, they say that planning permission is not required for the works and hence no breach of planning control has occurred.
4. There is also no dispute between the parties about the side and rear dormers according with any other part of Class B other than condition B.2(a) of the GPDO. This requires that the development's exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. There is no requirement in this class of the GPDO for the materials to match.
5. The Technical Guidance on Permitted development rights for householders explains in relation to condition B.2(a) that the face and sides of a dormer

window should be finished using materials that give a similar visual appearance to the existing house. It goes on to say that the materials used for facing a dormer should appear to be of similar colour and design to the materials used in the main roof of the house when viewed from ground level.

6. The Technical Guidance expands on the application and interpretation of the GPDO, and specifically condition B.2(a). The use of the word 'should' in the Technical Guidance is not an absolute requirement, but the most important consideration is the visual impact of the materials used. It is therefore a matter of judgement, considering all of the exterior materials.
7. Each ground floor elevation of the appeal property is rendered. The front, side and rear roof slopes are tiled. The face and sides of the side and rear dormer extensions are rendered with the same colour and finish as the ground floor elevations. This means that there is a contrast to the tiled roof slopes of the dwelling. However, the contrast is not stark and the appearance of the dormer windows are visually similar in terms of their colour when viewed from the road.
8. Although the materials used for the dormer do not have the same texture as the roof tiles, they are, in my judgement, of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Accordingly, the development was PD under Class B, Part 1 of Schedule 2 of the GPDO in force when the enforcement notice was served. The appeal on ground (c) succeeds.

Other matters

9. As the appeal on ground (c) has succeeded, it is not necessary for me to go on and consider ground (a). However, if I were to do so, the appeal property's context comprises of residential properties with a mixed scale, style and finish, with numerous examples of dormer windows in the front, side and rear roof planes. In this context, the side and rear dormers, which are set behind the main body of the roof, and the property's forward projection, are not incongruous or intrusive features and have been finished in complementary materials to the property and neighbouring properties in the road. The side and rear dormers simply reflect the varied architecture found in the road. Hence, ground (a) would have also succeeded, regardless of points made by both parties about the side and rear dormer windows at 28 King Edwards Avenue.
10. Furthermore, owing to the distance to properties to the rear on Fairview Avenue, the dormer windows do not give rise to unacceptable overlooking that would adversely affect the occupiers' living conditions.

Conclusion

11. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act does not fall to be considered, but I have set out a view nonetheless for completeness.

Formal decision

12. The allowed and the enforcement notice is quashed.

Andrew McGlone

INSPECTOR