



Appeal Decision

Site visit made on 8 February 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 February 2023

Appeal Ref: APP/J1535/C/22/3296348

18 Deer Park Way, Waltham Abbey EN9 3YL

- 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 Mohamed Anas Albezra against an enforcement notice issued by Epping Forest District Council.
 - The enforcement notice was issued on 23 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission: the erection of a gable end roof and dormers to the front roof and rear slopes.
 - The requirements of the notice are:
 1. Remove the gable end roof and the front and rear dormers.
 2. Remove all resulting debris
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) 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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Decision

1. The appeal is allowed insofar as it relates to the erection of a gable end roof and dormer to the rear slopes and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the gable end roof and dormer to the rear slopes at 18 Deer Park Way, Waltham Abbey EN9 3YL.
2. The appeal is dismissed, and the enforcement notice is upheld insofar as it relates to the dormers to the front roof slopes and planning permission is refused in respect of the dormers to the front roof slopes at 18 Deer Park Way, Waltham Abbey EN9 3YL, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matters

3. The notice refers to the Epping Forest District Local Plan Submission Version 2017 (LPSV). The LPSV has not yet been adopted by the Council as part of their development plan. However, the LPSV has been through the examination process and the Council advise that the emerging Local Plan has reached an advanced stage. Therefore, I have attached significant weight to these emerging policies but not the full weight of an adopted Local Plan.

The appeal on Ground (b)

4. The appellant considers that the situation with the pre-existing two front dormer windows is relevant to ground (b). To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact. This has not been demonstrated. On the contrary, the appellant's statement states that "upon completion of the development at the appeal site, the two front dormers to which the enforcement notice relates were subsequently removed from the dwelling on 25th January 2022". Therefore, on the balance of probabilities I consider that the matters as alleged by the notice have occurred as a matter of fact.
5. Notwithstanding that this part of the unauthorised development had been removed when the notice was served, given the wording of the Act, 'that those matters alleged have not occurred,' not that the matters are not occurring, the appeal on ground (b) must fail.

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

Main Issue

6. The main issue is the effect of the development on the character and appearance of the host building and the area.

Reasons

Preliminary

7. The appellant states that the pre-existing front dormer windows have been subsequently removed and replaced with two front rooflights. However, under s174(2)(a) the allegation forms the description of development for which planning permission is sought. The DPA relates to the allegation as corrected, but the allegation cannot be corrected in order to change the DPA, and there is no power to grant planning permission for something completely different to that being enforced against. I have already found above that the allegation has occurred as a matter of fact. Therefore, I have determined the ground (a) appeal on the basis of the allegation stated in the notice.

Gable end roof extension and dormer to the rear slopes

8. The appeal property is a two-storey detached dwelling, situated in a residential estate. The development includes a hip to gable roof extension and a rear dormer roof extension over the main house. The rear dormer is set in from the eaves and sits below the ridge line. The dormer is also constructed from materials which are sympathetic to the main roof.
9. During my site visit I observed that there are a variety of roof forms in the area, many of which contain gable end roofs similar to the appeal development. Furthermore, a number of properties in the estate, have also been extended with rear dormers of various sizes, all visible from the public realm. Whilst I appreciate many of these would have been built under permitted development legislation and therefore their planning merits would not have been assessed against the Council's development plan policies, these developments nevertheless form part of the existing character and appearance of the area.

Therefore, in this context, the hip to gable roof extension and the rear dormer does not harm the character and appearance of the building or area.

Two front dormers

10. In recognition that the front dormer windows resulted in harm to the character and appearance to the host building and area, the two front dormer windows have been removed (in compliance with the notice) and replaced with two flush fitting modest rooflights. Indeed, it was clear from my site visit that prominent front dormer windows are not characteristic feature of this residential estate, where most extensions to the roof have occurred to the rear of the property.
11. In this respect, given its location and prominence, the addition of two front dormer windows forms an obtrusive and incongruous feature in the street scene which is at odds with the prevailing character. Therefore, this particular aspect of the development results in harm to the character and appearance of the host building and the area generally.

Conclusion on character and appearance

12. Therefore, whilst I find no harm in relation to the gable end roof extensions and dormer to rear of the property, the two front dormer windows results in harm to the character and appearance of the host building and area in conflict with Policy DBE10 of the Epping Forest District Local Plans Alterations, 2006. Amongst other things this states that a residential extension will be required to compliment and where appropriate enhance the appearance of the streetscene; existing building.
13. The two front dormer windows also fail to comply with Policy DM 9 of the LPSV which states that all new development must achieve a high specification of design and contribute to the distinctive character and amenity of the local area.

Other matters

14. Whilst not specifically referred to within the enforcement notice, the Council's appeal statement also raises additional concerns that the development causes "a clear adverse visual impact to neighbours' amenities, by way of an incongruous impact." This appears to relate to the living conditions of neighbouring occupier, which has not been referenced in the Council's reasons for serving the notice. However, given that the rear dormer is set below the main ridge line and set in from both the side boundaries, and does not project beyond the rear main wall of the property, I am satisfied that the development does not result in any harm to the living conditions of neighbours in terms of loss of light or outlook.
15. Similarly owing to the presence of existing windows at the front and rear of the property on upper floor levels on this and neighbouring properties in the street, the development does not result in any loss of privacy to neighbouring occupiers.
16. Comments made by third parties have been taken into account but do not alter the conclusions reached in this decision. An objection has been raised that the development has already occurred, prior to the grant of any planning permission. However, undertaking development without planning permission is not a valid reason to withhold permission, and I have considered the appeal on its own merits.

17. The site is located within the Metropolitan Green Belt. However, the Council have raised no objection to the development on grounds of harm to the Green Belt, by way of loss of openness or inappropriate development. I find no reason to disagree with the Council's assessment on this matter.
18. No conditions have been suggested by the Council and as the development appears to be completed, there is no need for any.

Conclusion on the ground (a) appeal and the Deemed Planning Application

19. For all the above reasons, I conclude that the gable end roof extensions and dormer to rear of the property does not harm the character and appearance of the building and area and does not harm the living conditions of neighbouring occupiers.
20. On the other hand, I find that that the two front dormer windows harm the character and appearance of the host building and area.
21. Following on from these conclusions, I intended to allow the ground (a) appeal and the deemed planning application in so far as it relates to the erection of a gable end roof and dormer to the rear (roof) slopes only.

Split decision - the effect of Section 180 of the 1990 Act

22. S180 provides that where after the service of a notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as it is inconsistent with that permission. In this case, the appeal on ground (a) will be allowed in part. If the requirements of the notice were varied to exclude that part of the development for which planning permission is being granted, then this could give rise to two inconsistent permissions, one being granted under S173(11) of the 1990 Act as a variation of cutting down the requirements. To avoid this possibility the requirements of the notice will not be varied in this way and reliance will be placed on S180 to mitigate the effect of the notice in so far as it is inconsistent with the permission.

Overall conclusions

23. For the reasons given above, I will grant planning permission for the erection of a gable end roof and dormer to the rear, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the dormers to the front. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.
24. The appeal on grounds (f) and (g) do not therefore fall to be considered.

R Satheesan

INSPECTOR