
Appeal Decision

Site visit made on 19 January 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/T5150/C/22/3300916

36 Woodgrange Avenue Harrow HA3 0XD

- 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 Mohammad Daoud Tayebzad against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/20/0676, was issued on 4 May 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the alterations to the roof (including the erection of a rear dormer window, installation of roof lights, and the gabbling (sic) of the roof form) AND Without planning permission, the erection of an extension onto the existing single-storey rear extension at the premises.*
- The requirements of the notice are to (1) demolish and remove the unauthorised roof alterations, including the rear dormer window, installation of rooflights, and the gabbling of the roof form, and restore the premises to that which existed prior to the unauthorised works being carried out, as shown in Dwg No. 490/02 attached to the notice; (2) demolish the single storey extension to the rear of the premises; (3) reinstate the premises to that which existed prior to the unauthorised works being carried out, as shown in Dwg No. 490/02 attached to the notice; and (4) remove all debris and items arising from compliance with steps (1) – (3) and remove all materials associated with the unauthorised development from the premises .
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations.

Preliminary Matters

1. Several permissions have been granted in relation to the premises, including in 2018 one for a 'Gable end roof extension, rear dormer window, 3 front rooflights and insertion of window to new gable end to convert loft into habitable rooms to dwellinghouse'. I was informed by the appellant that work in relation to that permission was completed (albeit with departures) in 2020. The Council however contended that that permission was expired.
2. I wrote to the parties seeking their views, in the light of the broad similarity between the description of what is now enforced against (in relation to the roof) and the description of the works permitted in 2018. That permission was granted subject to a 'plans' condition, among others. Thus I sought views on whether development under that permission had in fact commenced, or if the permission had expired; consequently whether the Council's allegation of development without planning permission pursuant to section 171A(1)(a), rather than without complying with a condition pursuant to section 171A(1)(b),

was correct; and whether there were any implications for the ground (f) appeal, in view of the aim of the notice to remedy the breach of planning control and expressly referring only to section 173(4)(a) in this regard.

3. Whilst the Council did not agree that the development amounts to a breach of the 'plans' condition of that permission, they did not object, and did not contend for any prejudice or injustice. The appellant expressed the view that the changes amounted to a 'minor deviation' from the permission.
4. As a result of that correspondence and for the reasons explained below I have come to the view that the allegation in respect of the roof works is incorrect, because the works have not been carried out without planning permission. Instead I find that there has been a departure from the plans approved under the 2018 permission, thus constituting a failure to comply with the relevant condition.
5. Therefore the notice will be corrected to refer to the relevant additional paragraph of section 171A(1) and to restate the relevant allegation. Because of the grounds of appeal that are raised, requiring me to consider both the planning merits of the development and whether the notice's requirements are unreasonably excessive, I am satisfied that these changes can be made without prejudicing the interests of any party. I am also mindful of the 'fallback' position of the extant planning permission, allowing a different dormer window, when considering the merits of the works that have been done.

Main Issues

6. The Council's notice is directed at two discrete elements of operational development that have taken place: roof alterations to provide a rear dormer window, and a rear extension at the ground floor. These raise different issues of concern to the Council. In respect of the roof works, the main issue is the effect of the development on the character and appearance of the area. In respect of the rear extension, the main issue is whether it results in living conditions acceptable to those living next door.

Reasons

The roof: the appeals on grounds (a) and (f)

7. The appeal side consists of a two-storey semi-detached dwellinghouse, formerly with a hipped roof but extended to the side and to provide a gable loft conversion with a rear dormer window. I saw that this dormer takes up much of the available roof space, extending to the full width of the original roof plane. It does however retain a small strip of sloped roof below, to the eaves, and lies just below the principal ridgeline. It contains near-full height windows across much of its width, set in by around a foot from each side.
8. Permission has previously been granted for a similar development but the dormer departs from that in some ways. In particular it now connects with the roof of the rear outrigger which the former scheme avoided, and is of a greater height by not being set very far up from the eaves.
9. The Council's specific reason for objecting to the roof works are that what has resulted is bulky and incongruous, by virtue of its size and connection into the first floor outrigger, conflicting, in the Council's view, with policy DMP1 of the Brent Local Plan of 2022, with the National Planning Policy Framework's

objectives, and with the advice set out in the Council's Supplementary Planning Document ('SPD') of January 2018 relating to Residential Extensions and Alterations.

10. Policy DMP1 is an overarching general development policy containing several broad criteria applicable to all developments. They include that development should be of a design that provides high levels of internal and external amenity and complements the locality.
11. Although pre-dating the Local Plan, there is no dispute between the parties of the continued application of the SPD. It advises that roof alterations should be designed to complement the home. Rear dormers can be the full width of the original roof plane, should be set down from the ridge by at least 0.3m and must be set up from the eaves line by at least 0.5m. Dormers projecting onto a rear outrigger will not normally be permitted.
12. Although the appellant draws to my attention other rear dormer windows in the street of broadly commensurate design, I am not told whether these were permitted under the present development plan for the area. The strictures of the SPD to avoid linking dormers to rear outriggers and to require a meaningful set up from the eaves line are there to help achieve well-designed developments that are not over-sized in relation to the house. Because this advice has not been followed, I find that the Council's concerns here are justified. The dormer is of such a size that it overwhelms the house, and its junction into the roof of the rear outrigger is awkward and unsympathetic. Notwithstanding the other rear dormer developments in the street, which do not involve additional two-storey side extensions, and also in view of accepting the 2018 permission as the appellant's 'fallback' position that could realistically be built in the absence of the existing development, I cannot find that the development as constructed complements the locality or therefore that it complies with the development plan for the area. Therefore the appeal on ground (a) will fail on this aspect.
13. The notice as presently drafted alleges that the roof works have taken place without the benefit of planning permission and, commensurately with that allegation, requires the complete removal of the roof alterations and the restoration of the property to its former condition. Plans of the property's former condition are attached to the notice, and I understand these to be the 'as existing' plans submitted with the 2018 application, reference 18/0476.
14. What has been built, although departing from the plans approved under that application, complies with the description of the permission and I accept that some development pursuant to the permission has been carried out. For this reason I consider that the reasoning in *Hussain* applies (the case having been raised with the parties in correspondence) and what has occurred is in breach of the 'plans' condition attached to that permission, rather than amounting to development altogether without planning permission.
15. Therefore, as advocated by the appellant, the ground (f) appeal succeeds to the extent that I shall impose the alternative requirement that the development be altered so as to comply with the terms and conditions of that 2018 planning permission. I shall also, as identified above, correct the allegation to refer to section 171A(1)(b) of the 1990 Act and to identify the relevant matter constituting the breach of planning control to amount to

carrying out development without complying with the 'plans' condition attached to that permission.

The rear extension: the appeal on grounds (a) and (f)

16. The house has previously been extended to the rear to a depth of 3.6m across its width. The additional extension the subject of the notice has increased this depth by around a further 2.5m to a little over 6m. It has previously been the subject of a planning application and unsuccessful appeal.
17. The SPD advises that additional single storey extensions can be acceptable if well designed to integrate with the pre-existing extension. The maximum depth normally permitted is 3m from the rear wall of the house. Extensions of up to 6m in depth may be acceptable, although projections beyond 3m should be set in from the boundary commensurately with the depth of the projection.
18. As the former Inspector pointed out, the extension clearly exceeds the guidelines contained within the SPD by extending adjacent to the common boundary with No 34, adversely affecting the living conditions of those neighbours.
19. The semi-detached property is attached to the adjoining dwelling at No 34 but the extension is built out to the full width of the plot, thus directly adjoining the properties at both Nos 34 and 38. The SPD advice about setting in extensions beyond 3m applies to property boundaries, without express reference to whether the neighbouring dwellinghouse directly adjoins that boundary. In the case of a detached house, which potentially has some relevance to the relationship with No 38 here, the maximum depth normally permitted would be 4m, with any further depth potentially acceptable providing that for each additional metre the extension is again commensurately set in from the boundary.
20. Adhering to this advice would, if any extension beyond 3m (or perhaps 4m on the No 38 side) were acceptable, omit almost all of the additional extension that has been constructed. The requirement to set in any additional depth of an extension from the site boundaries to each side might result in a short central section maintained to slightly less than the current depth but would result in an extension appearing very different from what has been constructed.
21. As the former Inspector opined, the accumulation of the rear extensions here produces a long enclosure immediately adjoining the property boundary, projecting well above the height of the fence and producing the kind of harmful overbearing and visually intrusive impact sought to be avoided by the SPD. I have no reason to disagree with the former Inspector's assessment and hence the appeal on ground (a) will fail on this aspect too.
22. The appellant has proposed alternative schemes for consideration, respectively removing 1m and 2m of the width of the extension as it presently adjoins No 34, contending that either scheme would avoid any overbearing impact or harmful sense of enclosure to the occupants of No 34.
23. The Council contends that the appellant's suggestions are not 'lesser steps' that might properly fall for consideration under ground (f) but are alternatives to the existing unauthorised works which in practice would require extensive remedial works to take place. Whilst accepting that the appellant's schemes would amount to 'lesser steps', by requiring the demolition of only part of the

extension rather than all of it (albeit some rebuilding works would also be required) I do not consider that either alternative proposal successfully overcomes the harm resulting from the development. In either case, the resulting development would not be compliant with the SPD advice, by failing to achieve the advised set-in from the boundaries and by retaining an excessive depth. The advice serves the purpose of achieving well-designed developments that are conducive to acceptable living conditions to those nearby. On either alternative scheme, the extension would remain readily visible from the properties on either side and the visual intrusion it causes would not be successfully ameliorated because it would still be excessively deep, and perceptibly so to the neighbours.

24. For these reasons the appeal on ground (f) in relation to the single-storey rear extension does not succeed.

The appeal on ground (g)

25. The appellant seeks a period of 12 months to comply with the notice rather than the six stipulated by the Council. In support of this it is said that family members occupying the loft space would potentially need to find alternative accommodation whilst the remedial works are being carried out. Additionally, time will be required to raise funds and appoint contractors.
26. Having given the option to alter the roof development to bring it into line with the permission previously granted, the scope of the works is potentially much reduced from the Council's original notice which required the omission of the dormer altogether. I am not satisfied that alternative accommodation cannot be found and the works commissioned within six months: on the contrary, it appears to me a reasonably generous time scale. No evidence is put forward of the scarcity of contractors or of alternative accommodation. Therefore the appeal on ground (g) does not succeed.

Conclusion

27. For the reasons given, I conclude that the allegation in the notice in respect of the roof works is incorrect, in that it specifies development having been carried out without planning permission rather than by constituting a failure to comply with the 'plans' condition attached to the permission granted under reference 18/0476 on 27 July 2018. I am satisfied that no injustice will be caused by correcting this, and I will therefore correct the notice in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act as amended. The appeal on ground (a) fails, however, and planning permission will be refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
28. For the reasons also given, I conclude that the requirements of the notice are excessive, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) will succeed to that extent. The appeal under ground (g) will fail.

Formal Decision

29. It is directed that the enforcement notice be corrected, by:

- (i) Adding, to the opening paragraph, after "section 171A(1)(a)", "and section 171A(1)(b)";

- (ii) Omitting the first part of the Alleged Breach of Planning Control in Schedule 2 and replacing it with "Carrying out alterations to the roof (including the erection of a rear dormer window, installation of roof lights, and the gabling of the roof form) without complying with condition no. 2 of planning permission reference 18/0476 granted on 27 July 2018"

30. It is further directed that the enforcement notice be varied, by:

- (i) Inserting, after STEP 1,
"OR
STEP 1A
Make alterations to the premises so as to comply with the terms (including conditions and limitations) of planning permission granted under reference 18/0476 on 27 July 2018"
- (ii) Inserting, at STEP 3, prior to the existing text,
"Save as otherwise provided by STEP 1A above"

31. Subject to those corrections and variations, the appeal is dismissed and 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.

Laura Renaudon

INSPECTOR