



Appeal Decision

Site visit made on 28 March 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 May 2023

Appeal Ref: APP/U5930/C/21/3287752

Land at First Floor Flat, 12 Ashville Road, London E11 4DT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Usman Ismail against an enforcement notice issued by the London Borough of Waltham Forest Council.
- The notice was issued on 8 November 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a rear L-shaped dormer roof extension.
- The requirements of the notice are: 1) Demolish and remove the rear L-shaped dormer extension (as shown in attached Photograph A); 2) Following the removal of the dormer extension, make good any damage caused by its installation and/or removal, and restore the property to its former condition in materials and detailing to match the property prior to the unauthorised works occurring; 3) Following compliance with Steps (1)-(2), remove from the Land all resulting waste materials, rubble and general detritus.
- The period for compliance with the requirements is: Within four (4) months after this notice takes effect.
- 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. 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 in the terms set out below in the Formal Decision.

Preliminary Matter

1. The appellant has presented what they have referred to as 'a lesser scheme', which does not include part of the dormer extension on the rear roof slope or the extent of the dormer extension over the rear outrigger. This is shown in proposed side and rear elevation plans¹. I shall refer to this as the 'proposed alternative scheme'.
2. Section 177(1)(a) of the Act provides that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. Caselaw² directs that, so long as there is an appeal under ground (a), I must consider whether the proposed alternative scheme would be 'part of the matters' stated in the enforcement notice as constituting a breach of planning control and whether it should be permitted. Whether or not the proposed alternative scheme amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker³.

¹ Drawing numbers: PL-007 and PL-008

² Ahmed v SSCLG & Hackney LBC [2014] EWCA Civ 566

³ R (oao Banghard) v Bedford BC [2017] EWHC 2391 (Admin)

3. Substantial parts of the existing L-shaped dormer would need to be demolished to complete the proposed alternative scheme. Wholly new rear and north-east side elevations to the rear roof slope dormer would need to be constructed. The proposed rear elevation would have a different fenestration layout compared to the existing L-shaped dormer. It is also possible that a new roof and new south-west side elevation to the proposed alternative scheme may need to be constructed on account of the extent of demolition works necessary. It appears unlikely that those elements could be retained, and evidence has not been provided to suggest otherwise.
4. The proposed alternative scheme would comprise a new form of development, very different to the L-shaped dormer which currently exists. Those parts of the L-shaped dormer which would need to be removed to facilitate the proposed alternative scheme are integral parts of the breach of planning control and are not severable from that development.
5. Caselaw⁴ has recognised that virtually any alternative scheme is likely to involve at least some element of new work. However, in this case, the extent of new building work needed to implement the proposed alternative scheme would be substantial. I therefore find the proposed alternative scheme is not within the scope of the matters stated in the enforcement notice and I have no power to grant planning permission for that development under the ground (a) and/or (f) appeals and the deemed application for planning permission.

Ground (a) and the deemed application for planning permission

Background and Main Issues

6. I have been provided with a copy of another Inspector's appeal decision⁵ which relates to the L-shaped dormer roof extension at the appeal site. In that case, planning permission was sought for the development retrospectively and the appeal was dismissed. This was because that Inspector found the L-shaped dormer harms the character and appearance of the area and the living conditions of occupiers of 14 Ashville Road, with particular regard to overbearing and overshadowing impacts. The enforcement notice does not refer to any overshadowing impacts, but it refers to the effect of the development on the privacy of occupiers of neighbouring dwellings.
7. Although the L-shaped dormer extension was found to be unacceptable by another Inspector shortly before the service of the enforcement notice, a ground (a) appeal has been submitted, where the deemed application for planning permission relates to the L-shaped dormer as it currently exists. I must therefore consider the development afresh, with regard given to the previous Inspector's findings.
8. Taking the above into account, the main issues are:
 - the effect of the development on the character and appearance of the area; and
 - the effect of the development on the living conditions of occupiers of neighbouring residential dwellings, with particular regard to privacy and outlook.

⁴ Bhandal v SSHCLG & Bromsgrove DC [2020] EWHC 2724 (Admin)

⁵ Appeal Ref: APP/U5930/W/21/3269214

Reasons

Character and Appearance

9. The appeal site comprises a flat set over first and second floor levels within a terraced building with a 2-storey rear outrigger. The L-shaped dormer extension the subject of the enforcement notice has been constructed across the width of the rear roof slope and the depth of the rear outrigger. The surrounding area is made up of terraced houses of similar styles as the appeal building, some of which have dormer roof extensions.
10. In the previous appeal, the Inspector noted that although there are some large dormer roof extensions locally, they do not form a significant part of the local character. From my site visit, I could not see the L-shaped dormer extensions further along Ashville Road which the appellant has referred to.
11. I have been referred to Lawful Development Certificates⁶ issued by the Council, where L-shaped dormer roof extensions have been confirmed as being lawful on Ashville Road. Such development can be lawful under the provisions of the GPDO⁷, and that development can influence the character and appearance of an area. However, based on everything presented and what I saw during my site visit, I do not consider the existing character and appearance of the area surrounding the appeal site is heavily influenced by such development.
12. I do not accept the appellant's argument that development which may be authorised by the GPDO in other circumstances would necessarily be acceptable development which does not detrimentally impact upon the character and appearance of an area or a host dwelling. Indeed, many forms of development permitted under the provisions of the GPDO can be capable of causing significant harm to the character and appearance of an area.
13. I concur with the reasoning of the previous Inspector, where the inclusion of the extension over the rear outrigger was described as creating 'an awkwardly designed, bulky flat roofed second floor that is unsympathetic to the finer form and character of the property'. I also find that although the L-shaped dormer extension is not visible from Ashville Road, it is visible from the rear of a number of neighbouring properties and has a significant visual presence. In the context of its surroundings, as concluded by the previous Inspector, the L-shaped dormer is unduly harmful to the character and appearance of the appeal building and the local area.
14. The L-shaped dormer extension is therefore contrary to Policy D3 of the London Plan (2021) (LP), Policies CS2 and CS15 of the Council's Local Plan Core Strategy (2012) (CS), and Policies DM4 and DM29 of the Council's Development Management Policies Local Plan (2013) (DMP). These require, amongst other things, development to comprise high quality design which relates to the host building, responds to its context, and reinforces and/or enhances local character.

Living Conditions

15. The previous Inspector found the L-shaped dormer has an unacceptable harmful impact on the living conditions of the occupiers of 14 Ashville Road due

⁶ The Council's refs: 180625, 173131, and 203558 at 73, 54, and 98 Ashville Road respectively

⁷ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

to the overbearing impacts of the extension over the rear outrigger, with regard to a first floor rear window at that neighbouring property. This has not been disputed by the appellant and I see no reason to conclude otherwise, based on the previous Inspector's clear reasoning which aligns with what I saw during my site visit.

16. In addition to the above, the Council has alleged that the L-shaped dormer extension results in a loss of privacy on account of a side facing window in the part of the extension over the rear outrigger. This window faces towards 14 Ashville Road and the appellant has advised that it serves a bathroom and could be obscure glazed. I did not inspect that room or views from that window, but on account of its height and orientation in relation to its surroundings, I am unclear as to how there would be any unacceptable levels of overlooking of any neighbouring habitable rooms or private amenity space.
17. It appears possible that people looking out of that window would be able to achieve restricted views of neighbouring private amenity space, but only if standing immediately in front of the window and looking at acute angles. Similarly, due to the height differences and short distances between the side facing window and neighbouring windows, I consider it unlikely that unacceptable levels of overlooking into any neighbouring habitable rooms would be possible.
18. Although the L-shaped dormer does not have an unacceptable impact on the privacy of any occupiers of neighbouring properties, it harms the living conditions of occupiers of 14 Ashville Road due to its impact on outlook from a first floor rear facing window. It therefore conflicts with Policy CS13 of the CS, and Policies DM4, DM29 and DM32 of the DMP. These require, amongst other things, development to ensure outlook is maintained for neighbours in their homes and to protect the occupiers of existing properties nearby from suffering any excessive loss of residential amenity.
19. The Council has referred to Policy D6 of the LP as relevant to the development. This relates to housing quality and standards other than the outlook of occupiers of neighbouring properties of new residential development. I do not therefore find any conflict with this policy.

Other Matters

20. The development provides increased internal space, but it has not been demonstrated why this is 'much needed' or why I should consider assigning any significant weight to the benefits associated with increased internal space, even if work from home space is in demand. It has been claimed that the development makes the best use of land, but I have found that this has not followed a design-led approach. I therefore assign minimal weight to those benefits.
21. It has been claimed that if the appeal property formed a single dwellinghouse, a dormer extension could be constructed without the need for express planning permission under the provisions of the GPDO. Be that as it may, the appeal property is not a single dwellinghouse and there does not appear to be any prospect of it being converted into a single dwellinghouse to benefit from the provisions of the GPDO. In any case, it has not been demonstrated that the L-shaped dormer could otherwise be constructed without requiring express

planning permission. I do not therefore assign any significant weight to these claims in favour of the development.

22. A resident of 14 Ashville Road has written a letter to confirm that they have no objection to the building work carried out at the appeal dwelling, and that they consider the rear loft conversion does not affect their property. I appreciate that the current resident of that property does not object to the L-shaped dormer extension, but I have found that it causes unacceptable harm to the character and appearance of the area. I have also found that it causes harm to the outlook of residents of 14 Ashville Road, which is long-lasting and would also affect future residents of 14 Ashville Road. I therefore attach little weight to the neighbour's apparent support for the development.

Conclusion on Ground (a) and the deemed application for planning permission

23. The L-shaped dormer extension causes unacceptable harm to the character and appearance of the area and the living conditions of occupiers of 14 Ashville Road. The development the subject of the enforcement notice therefore conflicts with the development plan taken as a whole and there are no material considerations that indicate my decision under ground (a) and on the deemed planning application should be made other than in accordance with the development plan. For the reasons given, I conclude that the appeal under ground (a) should not succeed, and the deemed application for planning permission should be refused.

Ground (f)

24. To be successful under this ground, the appellant would need to demonstrate that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breach of planning control referred to by the notice, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
25. The reasons for serving the enforcement notice and its requirements make it clear that the purpose of the enforcement notice is to remedy the breach of planning control, rather than to remedy any injury to amenity. No lesser steps, including the proposed alternative scheme, would therefore achieve the purpose of the enforcement notice.
26. The appeal under ground (f) must therefore fail.

Ground (g)

27. To succeed under this ground, the appellant would need to demonstrate that the period specified in the enforcement notice for its requirements to be complied with falls short of what should reasonably be allowed.
28. The enforcement notice specifies a period of 4 months for its requirements to be complied with. The appellant has suggested this should be varied to at least 6 months, but preferably 12 months to account for any lockdowns due to COVID-19. It is claimed that 4 months would not be sufficient to secure builders and undertake the necessary works. There is no evidence to support these claims or otherwise suggest that a period of 4 months would be insufficient to allow the enforcement notice to be complied with.

29. It is possible that pandemic related lockdowns may be imposed again in the future, but the possibility of that happening within 4 months from the date of this decision appears to be very unlikely at present. I have not been provided with detailed explanations as to why a period of 4 months falls short of what should reasonably be allowed for the enforcement notice to be complied with.

30. The appeal under ground (g) must therefore fail.

Conclusion

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

Formal Decision

32. 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.

L Douglas

INSPECTOR