



Appeal Decisions

Site visit made on 28 March 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Appeal Refs: APP/G5750/C/22/3292249 & APP/G5750/C/22/3292250 41 Sidney Road, London E7 0ED

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Robert Benjamin Pryce and Ms Jordan Allanah Webb against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 31 January 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a roof extension.
 - The requirements of the notice are to EITHER:
 1. Demolish the roof extension and return the roof of the property to its form prior to the unauthorised works.
 2. On completion of step 1, remove all materials and debris from the site.OR:
 1. Alter the roof of the property so that it is built in full accordance with either planning consent re. 20/02670/HH (Construction of a rear and side dormer extension including 3 roof lights to the front, replacement of front sash windows, replacement of existing side return and reinstating brickwork to bay window), or subsequent non-material amendment ref. 21/00653/NONMAT (Non-material amendment to planning permission 20/02670/HH dated 18.01.2021 to remove, relocate, and alter dimensions of previously approved windows, roof lights and door).
 2. On completion of step 1, remove all materials and debris from the site.
 - The period for compliance is five months from the date this notice takes effect.
 - The lead appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. The other appeal is subject only to ground (c). Since an appeal has been brought on ground (a), and the requisite fee paid, an application for planning permission is deemed to have been made under Section 177(5) of the Act as amended, and falls to be considered.
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Formal decision

1. It is directed that the enforcement notice be corrected by deleting all references to planning permission ref 20/02670/HH in section 5 of the notice as the right of reversion can relate only to the non-material amendment approved under ref 21/00653/NONMAT. Subject to this correction the appeal is allowed, the enforcement notice is quashed, 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 development already carried out, namely the erection of a roof extension on land at 41 Sidney Road, Forest Gate, London E7 0ED referred to in the notice.

Matters concerning the enforcement notice

2. Firstly, Section 5 of the enforcement notice, whereby its requirements are set out, is flawed. The original planning permission ref 20/02670/HH which approved the erection of a rear and side dormer extension was amended by way of a successful application for a non-material amendment under s96A of the 1990 Act (as amended). Accordingly, the modified design permitted under ref 21/00653/NONMAT now represents the approved scheme, and reversion to the unamended scheme as shown on the drawings approved under the earlier permission would not be lawful as this has been superseded.
3. Nonetheless, as I am allowing the appeal and granting planning permission, it is not necessary that I provide an actual re-write of the enforcement notice's alternative requirement.

The Appeals on ground (c)

4. An appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The onus of proof on matters of fact is on the appellant, and is on the balance of probabilities.
5. Ground (c) assumes the fact of the original development as it occurred at the time of the enforcement notice's issue, so it can only succeed on this basis if that original development does not now amount to a breach of planning control due to a change in the planning control situation.
6. The appellant's argument is that the development as built, altered from that approved under ref 21/00653/NONMAT, is only to a marginally different construction. However, setting aside the 225mm increase in the height of the dormer, the pitch to the front roof plane has seemingly been altered and the ridgeline of the dwelling's main roof has been raised, albeit slightly.
7. The resultant development therefore conflicts with Class B of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended and express planning permission is thereby required for its lawful retention.
8. Given the extent of the changes, and as these require planning permission, they cannot reasonably be termed de minimis and, accordingly, the appeal on ground (c) must fail.

The Appeal on ground (a); the deemed planning application (DPA)

Main Issue

9. I note that the enforcement notice terms the development as un-neighbourly but, with reference to the Council's case report, upon which the enforcement action undertaken was authorised, a matrix is included which discusses a number of factors. These are concerned with any resultant loss of outlook, privacy or daylight to neighbouring properties, and also whether the development causes overshadowing or is overbearing. The assessment indicates that the dormer extension is not unacceptable on any of these matters. The case report does, though comment that the concerns with the development lie with the altering of the roof pitch.
10. In the circumstances, and from the Council's representations, the main issue in this appeal is the effect on the character and appearance of both the host

dwelling and the surrounding area.

Reasons

11. The dwelling is an attractive mid-terrace Edwardian dwelling. As mentioned, the main roof's ridgeline has been heightened and its front slope's pitch has been altered. The parapet divides remain. Neither change was proposed as part of the approved scheme. These alterations are, though, marginal and, when viewed from Sidney Road itself, they are not so perceptible as to be unduly significant. Indeed, in the contextual setting the ridge height of No 39 is slightly less than no 41, but is seen to be higher than no 43. Further, on the opposite side of the road, a similar rear dormer development exists at no 28 which has resulted in its ridge height being raised, and its front roof slope pitch altered likewise relative to its immediate neighbour, no 30. Following my site visit I was able to view this significantly prominent development to the rear roof slope from surrounding common land.
12. As regard the dormer extension itself, this is also a very prominent form of development which protrudes from both the rear roof slope and represents also a substantially bulky addition to the roof of the dwelling's original tunnel-back feature. As such, I consider it an obtrusive development which is readily visible by local occupiers from their rear gardens along both Sidney Road and Knighton Road. Moreover, I consider its design to be out of character with the distinctive architectural features of this period age dwelling.
13. However, importantly, I have to be mindful that the Council had previously granted planning permission in 2021 for what was a very similar form of development, and then again, later that year, with minor modifications. I note that a different architect was employed for the latter and it seems to me likely that what was originally proposed could not be feasibly built, and as the technical difficulties may not have been solved by the amendments, this ultimately caused practicable problems for the builders during construction.
14. In the event, the ridge height had to be raised slightly to ensure that the rear dormer extension was not visible from Sidney Road, but this only reflects the situation at no 28, on the opposite side of the street. I do not, though, have any details before me as to this property's planning history so am unable to comment further as a comparative form of development. I have also, though, had due regard to the many representations and comments from nearby residents, largely showing sympathy for the appellants. Moreover, virtually all say that they have no problem with the development built and I have borne this general support in mind. I have also taken into account the objector's points and whilst I appreciate the concerns raised these have not affected my conclusions.
15. Despite the above factors I am of the view that had the development as built been proposed at the outset the Council would likely have refused permission, and the enforcement notice is testament to this. However, I feel I must take an equitable stance in this instance due to the various considerations I have outlined.
16. Accordingly, whilst I find the roof extension detracts from the dwelling's character and appearance, and I agree with the Council that the development does not generally satisfy the aims and requirements of the policies cited in the notice, nor the advice set out within the Newham Local Plan's Supplementary

Planning Document 'Altering and Extending Your Home', I am satisfied that this is a case where other material considerations should override the policy objection.

17. This is a finely balanced decision, one I have come to as I consider that a pragmatic approach is required given the particular circumstances involved. As such, it should in no way be seen as justification for inappropriate design at odds with the particular contextual setting, and the Council's design based policies are not in any way compromised as a result.
18. I noted at my site visit that the development has been completed and there is therefore no need for any conditions to be imposed.
19. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Timothy C King

INSPECTOR