
Appeal Decision

Site visit made on 24 May 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Appeal Ref: APP/N5090/C/22/3300082
189 Booth Road, London NW9 5JX

- 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 Abdolrahim Kadkhodamohammadi against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/1520/21, was issued on 29 April 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the raising of the roof in order to erect a roof extension, including a rear dormer window and side gable extension.*
- The requirements of the notice are to (1) demolish the rear dormer extension and side gable extension and lower the main roof back to the original ridgeline, in line with the adjoining property at number 191 Booth Road; and (2) permanently remove all constituent material resulting from the necessary works carried out in point 1.
- The period for compliance with the requirements is four 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 variations.

Main Issues

1. The Council issued the notice for the single reason that the roof extensions were considered detrimental to the character and appearance of the host property and surrounding area. Thus the effect of the development on the character and appearance of the host property and surrounding area is the main issue in the appeal.
2. If other grounds of appeal beyond the deemed planning application are to be considered, then other issues raised concern whether the steps required by the notice exceed what is necessary to achieve its purposes; and whether the time stipulated for compliance with the notice's requirements falls short of what should reasonably be allowed.

Reasons

The appeal on ground (a): effects on character and appearance

3. The development plan for the area consists of a suite of documents comprising the Barnet Local Plan of 2012 and the London Plan of 2021. Relevant policies are cited in the Council's notice. Policy CS5 of the Local Plan Core Strategy DPD refers to protecting and enhancing Barnet's character to create high quality places. Development in the borough is to respect local context and distinctive local character, creating places and buildings of high quality design.

4. Policy CS5 provides that supplementary planning guidance will be provided through a Residential Design Guidance SPD. This was adopted in 2016, and requires that domestic extensions should normally be subordinate to the original house, respect the original building and not be overly dominant. Page 50 of the Guidance sets out specific guidance in relation to dormer roof extensions, including that they be subordinate features on the roof.
5. The related Development Management Policies document specifically refers at policy DM01 to protecting the borough's character and amenity. All development should represent high quality design, and development proposals should be based on an understanding of local characteristic. Proposals should preserve or enhance local character and respect surrounding buildings and spaces.
6. Policy D3 of the London Plan has similar aspirations, requiring a design-led approach to optimise site capacity and requiring high quality developments that respond to existing character.
7. The Council also refer to draft policy CDH01, which expects developments to respond sensitively to the distinctive local character and design, building form, patterns of development, scale, massing, roof form and height of the existing context. I understand that the policy is presently the subject of consultation, not (yet) forming part of the development plan for the area.
8. Although a lawful development certificate concerning roof works was previously applied for, the appellant acknowledges that the works carried out have exceeded the scope of that prior consideration, apparently due to issues with the contractor. Whilst acknowledging that the works cannot constitute permitted development, essentially because the ridge line has been raised, the appellant nonetheless points out the context that the Government is supportive of upwards extensions by virtue of introducing what are known as Class AA rights.
9. The appellant points out that the site does not lie within a conservation area or any area of special policy, and asserts that the site has the ability to absorb modest changes without causing harm. It is said that the materials will weather and become assimilated, and the final form of the development is not incongruous. These points are given additional force by the existence of a lawful development certificate which, whilst not authorising the current works, does confirm that substantial changes may be made to the property that would anyway result in an 'unbalanced' appearance with its attached neighbour.
10. The appeal property is one of a semi-detached pair, and amongst other works the ridge height has been raised considerably to achieve additional living space in the roof. The appellant points out that some separation is achieved by the chimney separating the two attached houses, and asserts that the difference in height is mitigated by this feature. Examples of other differing ridge lines in semi-detached pairs are brought to my attention, including on the same road as the appeal property and at the nearby Braemar Gardens, lying opposite the appeal property. Other mismatching pairs appear nearby, with the pattern of fenestration being varied. Consequently, says the appellant, the streetscene is a mixed one, and able to absorb modest change.
11. Whilst accepting that there are other pairs of mismatched roof heights of some semi-detached dwellings in the area (and I am not informed as to the planning

status of these) the works at the appeal property appear considerably more extensive than any of those other nearby examples. The appeal property's roof has been raised, and a gable extension to the full extended ridge height has been carried out. The dormer extension to the rear is not set in from the side of the house but a flank side wall results. The other examples I saw on Booth Road each had inset dormers with roofs slightly below the ridge lines of their host properties. The examples opposite at Braemar Gardens do not appear to raise the ridge line to the same degree as at the appeal property. The only example of works appearing commensurate with those at the appeal property was some distance away on Montrose Avenue, which was not sufficiently close to the appeal site to have a bearing on the site's surrounding character.

12. Referring to the lawful development certificate, the appellant asks me to compare what has been built not with what was there before, but with the LDC approval which represents a realistic fallback position.
13. I have some doubt as to whether the LDC drawings do represent a likely fallback position because, from observing the other properties in the immediate vicinity, I did not identify any other examples of roof dormers having been provided without an accompanying rise to the ridge height. However, those plans have been certified as development that would be lawful, and hence for these purposes I accept that building out to those plans is a realistic proposition. Accepting that the LDC drawings present such a fallback position, assessing the differences I find in the round that the works that have been carried out are nonetheless harmful to the character and appearance of the area, because the totality of what has been carried out has resulted in an oversized and dominant flank wall to the property. Notwithstanding the limited mitigation provided to the differing ridge heights by the separation of the chimney, the works as a whole are not subordinate to the host property and appear to dwarf the neighbouring dwelling and achieve a considerably greater imbalance than would result from the application of permitted development rights. Applying the Council's residential design guide, the roof extensions cannot be described as subordinate to the original house.
14. Therefore I conclude, in relation to the deemed planning application, that permission should not be granted because the development as carried out fails to comply with the provisions of the development plan for the area.

The appeal on ground (f)

15. The appellant refers to the case of Tapecrow and asserts that the notice should be varied so as to allow for the alteration of the extension to accord with the plans attached to the LDC.
16. Because the development as constructed does not accord with the lawful development certificate plans it follows that it is unauthorised in its entirety. The Council's notice seeks to remedy the breach of planning control, and it is the Council's case that the breach can only be remedied by requiring the demolition of the extension and the restoration of the roof form to its former condition. However where, as here, a set of application plans have been certified as lawful development by the local planning authority, this appears to me an 'obvious alternative' to which I should have regard when determining whether the notice's requirements are excessively onerous.

17. Here if the existing development were to be removed and the roof restored, there appears no reason why the certificate could not be relied upon. As enforcement action is remedial rather than punitive, I consider it reasonable to vary the notice so as to allow reliance on the lawful development certificate plans.
18. I shall therefore allow the ground (f) appeal to the extent of varying the notice to require, as an alternative to complete demolition and restoration, the development to be altered so as to comply with the plans approved under the lawful development certificate.

The appeal on ground (g)

19. The appellant seeks a period of six months to achieve compliance with the notice's requirements, rather than the four months stipulated in the notice. In the absence of any opposing comments from the Council, I shall accede to this request. I understand from the appeal documentation that the appellant will need to source a fresh building contractor to carry out the requirements of the notice, and reference is made to difficulties sourcing both materials and contractors in present market conditions. Hence a period of six months would be reasonable.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed except on grounds (f) and (g). I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Formal Decision

21. It is directed that the enforcement notice be varied by:

(i) Adding, after paragraph 5(1),

OR

1A Make alterations to the property so as to achieve compliance with the plans and drawings accompanying lawful development certificate application number 20/2851/192 namely Proposed 01, Proposed 02, Existing 01, Existing 02 and Site location plan;

(ii) Adding, after 'point 1' in paragraph 5(2), 'or 1A'; and

(iii) From paragraph 6, deleting '4' and inserting '6'.

22. Subject to these 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