



Appeal Decisions

Site visit made on 20 June 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 June 2023

Appeal A Ref: APP/D3830/C/22/3294201

Appeal B Ref: APP/D3830/C/22/3294202

80 Woodbury Avenue, East Grinstead RH19 3UX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - Appeal A is made by Mr Luke Mardle and Appeal B is made by Ms Katy Howard against an enforcement notice issued by Mid Sussex District Council.
 - The notice was issued on 9 February 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the construction and installation of two dormer windows to the front roof slope of the dwellinghouse on the land as considered under application DM/20/3014 and shown on the Plan and drawing 20804 - 204 - 02A attached to this Notice ("the Unauthorised Development").
 - The requirements of the notice are to:
 - i) dismantle and remove the two dormer windows on the front roof slope.
 - The period for compliance with the requirement is 3 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (f), (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.
 - Appeal B is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by:
 - Adding ', or' to the end of requirement i)
 - After requirement i) adding 'ii) Make the development comply with the terms (including conditions and limitations) of planning permission DM/20/0337 in relation to the approved front dormer, and remove the additional front dormer and all surplus materials from the site'.
 - Delete '3' and replace with '4' in the period for compliance with the requirements.
2. Subject to the variations, Appeal A 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.
3. Subject to the same variations, Appeal B is dismissed.

Preliminary Matters

4. Planning permission¹ was granted for a side and rear extension to the property and a front dormer. The Council has advised that the side and rear extension has been constructed and the permission is therefore extant. A further planning application² was refused for a second front dormer window. The application was refused following the provision of drawings that indicated the two front dormer windows as built. Although I have not been provided with the approved drawings for DM/20/0337, the evidence indicates that an alternative front dormer window and an additional front dormer window have been built. I have dealt with the appeals on this basis.

Appeal A ground (a) and the deemed planning application

5. Having regard to the reasons for issuing the enforcement notice, the main issue is the effect of the development on the character and appearance of the site and surrounding area.

Reasons

6. The appeal site is a relatively small semi-detached house linked by a garage to the adjacent house. It is on a large modern housing estate, with a wide variety of house types. The houses are generally set back behind small open front gardens which gives them a degree of uniformity despite the range in styles. Some of the house types have a catslide roof to the front with a dormer window at first floor level. Others have a small gable feature over a first floor window. However, generally there are no dormers or gables at second floor level in the main roof slope in the immediate vicinity of the site. I noted however that there are dormer windows at second floor level in the wider area, including those identified by the appellant on Mindelheim Avenue and Woodbury Avenue. San Feliu Court on the opposite side of the road includes three storey town houses as well as two storey properties in a cul-de-sac. Due to the open frontages and the local topography, No. 80 is clearly visible in the street scene and from San Feliu Court.
7. The two dormers appear overly large in the relatively narrow front roof slope and are close together. As a result they have a top heavy appearance that dominates the roof. This is accentuated by their width and window design, which gives them a horizontal emphasis, appearing overly bulky and out of scale with the neater and more vertical form of the existing windows on the front elevation. In this location, the dormer windows appear as prominent and discordant features on the front roof slope, which are at odds with the distinctive character of this part of Woodbury Avenue.
8. The appellant has drawn my attention to the other dormer windows in the locality. The two dormer windows in the front roof slope of the garage at 8 Woodbury Avenue are less dominant as they are set at a lower level on the garage rather than on the main roof slope at second floor level, and are not therefore comparable. The front and rear dormers at 42 Mindelheim Avenue appear to be of similar proportions to the appeal development, but they are seen within the context of a larger area of roof and therefore do not appear overly large and dominant. Front dormer windows elsewhere in the area, including large dormers on front facing catslide roofs, are generally at first floor

¹ Ref DM/20/0337

² Ref DM/20/3014

rather than at second floor level and are therefore less prominent than the appeal development.

9. I noted several large 'box' dormers on rear elevations in the wider area. These extensions dominate the rear roof slope and do not respect the proportions of the host dwellings. It is possible that they have been built using permitted development rights, but in any event they do not provide examples that should be followed, due to the harm that is likely to result to the character and appearance of the area. None of the examples to which my attention has been drawn as well as others that I observed in the vicinity of the site therefore indicate that the appeal on ground (a) should be allowed.
10. The development is therefore harmful to the character and appearance of the site and surrounding area. It is in conflict with Policy DP26 of the Mid Sussex District Plan Adopted March 2018 and Policy EG3 of the East Grinstead Neighbourhood Plan made November 2016, insofar they seek to promote good design and require that new development reflects the distinctive character of the town.
11. I acknowledge that some of the local residents are in support of the retention of the dormers, and that a petition and representations have been submitted to the Council. I also note that the initial discussions with the Council's Officer were favourable and that the appellant has concerns about how the application was considered by the Council. I have sympathy with the appellant's concerns regarding the financial implications and the effect on their physical and mental health and their need to accommodate their growing family. These matters do not outweigh the harm that I have found.
12. The appellant has suggested that the height of the dormer windows could be reduced by 300mm. It is possible that the resulting dormer window could potentially be 'the whole or part of the matters' that constitute the breach of planning control, but the extent of the work that would be involved is not clear as drawings have not been provided. Nor is it clear what the resulting appearance of the dormer windows would be. I have insufficient information to conclude that the resulting appearance and proportions of the dormer windows would overcome the harm that I have identified to the character and appearance of the site and surrounding area. Therefore, the suggested decrease in height of the dormer windows would not overcome the planning harm. The appeal on ground (a) therefore fails.

The appeals on ground (f)

13. The ground of appeal is that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters, or to remedy any injury to amenity which has been caused by any such breach. The starting point is to identify the purposes of the notice. As compliance with the notice would remove the dormer windows in their entirety, the purpose of the notice is to remedy the breach.
14. As the notice does no more than to remedy the breach, it is not excessive. The appellants have suggested that the height of the dormer windows could be reduced by 300mm, but I have concluded that the reduction would not be acceptable in planning terms in relation to the ground (a) appeal. It does not therefore represent an alternative to the removal of the dormer windows.

15. Planning permission has been approved for a single front dormer under reference DM/20/0337 and I have no reason to disagree with the Council's view that the permission is extant. Rather than removing the single front dormer in its entirety, the appellants could alter it so that it complies with the approved drawings and details. This represents an obvious alternative to the removal of the previously approved dormer in its entirety, at less cost and disruption to the appellants. I am satisfied that no injustice would be caused if I vary the notice so that the purpose of remedying the breach can be achieved by making the development comply with the terms (including conditions and limitations) of the planning permission reference DM/20/0337. To this limited extent, the appeals on ground (f) succeed.

The appeals on ground (g)

16. The ground of appeal is that the period for compliance with the requirements of the notice is too short. The period for compliance is three months and the appellants have requested additional time but have not specified a period. Nonetheless, in view of the nature of the works that are likely to be involved, I consider that it would be reasonable to extend the period for compliance to four months. To this extent, the appeals on ground (g) succeed and I shall vary the notice accordingly.

Conclusion

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

N Thomas

INSPECTOR