The Planning Inspectorate

Appeal Decisions

Site visit made on 25 April 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2023

Appeal A Ref: APP/B5480/C/22/3294836
64 Berwick Road, Rainham RM13 9QL

- 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 Vidmantas Jokubauskas against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 9 March 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, alterations to the main roof including the construction of two dormer windows, one on each flank roof elevation.
- The requirements of the notice are to:
  1. Demolish the two dormer windows one on each flank roof elevation and make good the resulting openings in the roof to match the profile of the original roof line. All materials to match the original roof in colour, texture and size of tiles; OR
  2. Demolish or amend the two dormer windows one on each flank roof elevation, so that the resulting roof design accords exactly with the approved plans, granted under planning permission ref P0984.13, attached as LBH1 & LBH2. All materials to match the original roof in colour, texture and size of tiles; AND
  3. Remove all building materials and debris from the site as a result of taking step 1 or 2 above.
- The period for compliance is 4 months after the date when this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/B5480/W/22/3296332
64 Berwick Road, Rainham RM13 9QL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Vidmantas Jokubaukas against the decision of the Council of the London Borough of Havering.
- The application Ref P2390.21, dated 16 December 2021 was refused by notice dated 11 February 2022.
- The development proposed is described as *'the extension of the existing roof dormers'.*

Formal decisions

Appeal A

1. It is directed that the enforcement notice be corrected by the deletion of the words in section 3 "alterations to the main roof including the construction of two dormer windows one on each flank roof elevation" and their substitution with the words "The enlargement of the dwellinghouse comprising additions

and alterations to its roof, involving the erection of flat-roofed dormer-type extensions to its north and south facing roof planes". It is also directed that the enforcement notice be corrected by deletion of Requirement no 1 ie the requirement that both dormer extensions shall be removed in their entirety. The notice is also varied by extending the period of compliance from four to ten months. Subject to these corrections and variation the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is allowed and planning permission is granted for the enlargement of the dwellinghouse comprising additions and alterations to its roof, involving the erection of flat-roofed dormer-type extensions to its north and south facing roof planes at 64 Berwick Road, subject to the following condition:

   1) If not already, within three months of the date of this decision, the three windows installed in the south facing dormer extension shall be obscurely glazed and also non-opening, unless the parts of the windows which can be opened are more than 1.7m above the floor of the rooms in which they are installed. These windows shall be maintained, accordingly, and, if replaced, the new windows installed shall be subject to the same restrictions.

Preliminary Matter

3. Given that the development, the subject of the s78 appeal is identical to that enforced against I have changed the description of the development from that set out on the application form to that which I have used in the enforcement notice, as now corrected. This better focusses on the development involved.

Background

4. In 2014, Planning permission (ref P0984.13) was granted for a ground floor infill addition along with a roof extension to raise the roof, allowing for a loft conversion facilitated by rear dormers and gable ends. This allowed for roof-space accommodation proving additional bedroom and bathroom space. The approved development was subsequently implemented.

5. More recently, further alterations were undertaken for which a retrospective application for planning permission was submitted and then refused. This decision, along with the Council's subsequent decision to issue an enforcement notice against the works carried out, are the basis of the current appeals.

Matters concerning the enforcement notice

6. The appeal under ground (b) is concerned with the allegation, as worded in the enforcement notice. The essence of the appellant's case is that the allegation in the enforcement notice refers to the construction of two dormer windows (one on each flank elevation) rather than the extension of existing roof dormers.

7. The term 'dormer window' is widely used to encompass roof extensions which project out from the roof slopes of dwellinghouses. It can, though, be a somewhat misleading description and to this end I agree with the appellant. However, the appellant's preferred description, that being 'the extension of existing roof dormers' is poorly phrased and does not address the actual development involved.

8. As I see it, with the approved development P0984.13) having been built out, and, more recently, the permitted roof alterations having changed further by reason of additional development carried out, the alleged breach should best be termed:

   'The enlargement of the dwellinghouse consisting of additions and alterations to its roof, involving the erection of flat-roofed dormer-type extensions to its north and south facing roof planes'.

9. This covers the works carried out, and adequately represents the development which had been carried out at the time the enforcement notice was issued. Given that this merely gives a more cogent picture of the development – it does not suggest a materially different form of development to that attacked by the notice – and this does not cause injustice to either of the two main parties, I shall delete the allegation as currently worded and substitute it with the above wording.

Appeal A

The Appeal on ground (b)

10. The appeal on ground (b) is that the breach alleged has not occurred as a matter of fact.

11. With reference to paragraphs 5-8 above I must conclude that the said works constitute development and have not been undertaken with the benefit of planning permission. As such, I am satisfied that at 9 March 2022, the date the enforcement notice was issued, the development had occurred as a matter of fact.

12. Accordingly, the appeal on ground (b) cannot succeed.

The Appeal on ground (c)

13. An appeal under ground (c) is that no planning permission is required for the works carried out on the basis that either planning permission had already been granted for the same or that those works fall within the parameters of The Town and Country Planning (General Permitted Development)(England) Order 2015, as amended (GPDO).

14. Class B, paragraph B.1(d) of the GPDO says that development is not permitted by Class B if the cubic content of the original roof space is exceeded by more than 50 cubic metres in the case of a detached house, such as the dwelling the subject of the current appeal.

15. The onus of proof is on the appellant to demonstrate that this is the case. However, I have not seen any figures substantiated by illustrative dimensions in his appeal papers to show the actual increase in volume that has taken place since the 2014 planning permission was implemented. I have, though, noted that the application form relating to Appeal B says that the works carried out to the roof, which commenced in July 2021, added some 9sqm gross internal floor area to the dwelling.

16. Firstly, and fundamentally, the appellant wrongly refers to square metres when, in fact, volume is expressed in terms of cubic metres. Next, in paragraph 9 of his Written Statement, the appellant erroneously indicates that the Council's estimation, that the 50 cubic metres threshold has been breached

due to an increase of 51.23 sqm, is incorrect as the Council has included the increased floorspace permitted and created under the said planning permission.

17. Obviously, as the relevant factor is the cubic content increase on the *'original'* roof space – that is taking into account any previous enlargement to the original roof space – the volume increase arising from the 2014 planning permission has to form part of the calculation.

18. The above is unequivocal in that planning permission is either required as the threshold has been exceeded or it isn't, as the increase falls below. Given this, notwithstanding the appellant's incorrect reference to 51.23 sqm, the assertion that this could be considered as de minimis is not something that can be taken into account here, as that would be concerned with planning merit; something to be taken into account in Appeal B.

19. Therefore, even if the volume increase from the original roof space is actually 51.23 cubic metres – and the appellant has not demonstrated otherwise – the appellant's argument here is a red herring. Given the failure to meet proviso (d) it is not necessary for me to explore the allowances under Class B further.

20. Given the above points it is unlikely that the appellant is aware as to the actual increase in roof space volume that has occurred since the 2014 planning permission was implemented. A calculation to this effect would have given a firm indication as to the degree of modification required to bring the volume within the 50 cubic metres threshold, and this could have been the subject of a s192 application requesting a lawful development certificate (LDC) for alterations to the roof not exceeding 50 cubic metres.

21. In the circumstances the only estimation available, arrived at by the Council, is the figure mentioned. When comparing the scope of the two developments it is likely that the appellant's figure – be it 9 sqm or 9 cubic metres – is incorrect.

22. In instances where an enforcement notice is in force it is important to bear in mind that this cannot be interpreted so as to deprive the owner of lawful development rights, such as to carry out development permitted by the GPDO. Nonetheless, the appellant chose not to explore this course of action.

23. Instead, the appellant makes reference to written advice provided by the Council's 'Duty Planner', and I have seen a copy of this dated 27 August 2021. Clearly, the advice given as to the suggestion that "the extension of the existing dormers can be done under permitted development rights" is incorrect although, that said, the works by this time had already commenced and, notwithstanding the advice, the appellant subsequently correctly reasoned that retrospective planning permission was required and submitted for such in December 2021.

24. I can understand the appellant's grievance that the advice given brought about confusion but, that said, the Council is not bound by that opinion given and, ultimately, it is the appellant's responsibility to reach a conclusion on the matter. Also, procedural matters do not form part of my remit which, here, is concerned only with evidential fact and relevant legislation.

25. Accordingly, the ground (c) appeal must fail.

The appeal on ground (f)

26. An appeal on ground (f) is the consideration that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f) it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by requiring that the dormer windows (or rather the resultant roof extension structures), be removed or, alternatively, they be modified to reflect the development approved under planning permission ref P0984.13.

27. The Council considers that conditions cannot be imposed to ameliorate the harm caused by the development at issue and, as such, planning permission should not be granted to allow for their lawful retention. However, as mentioned, the stated requirements in the enforcement notice would allow for the dwelling's modification as per the approved development previously implemented.

28. Given my findings on the ground (c) appeal I do not consider that the appellant's point that the guidance within the Council's Supplementary Planning Document 'Residential Extensions and Alterations' (SPD) is necessarily met. Further, it is not a 'one size fits all' policy and should best be applied with discretion. Also, it must be borne in mind that an appeal made under ground (f) does not allow for planning permission to be granted; that, instead, can only be achieved through either a deemed planning application consequent upon a ground (a) appeal or, as in this case, a related s78 appeal.

29. However, given that the 2014 planning permission, by approving roof alterations to the bungalow, enabled the dwelling to create upper floor accommodation, it would be both unnecessary and unreasonable to now require for removal of the roof extensions in their entirety as this would involve a significant reduction in the dwelling's internal floorspace necessitating a reconfiguration of the internal layout. I consider this draconian given the substantial disruption that would occur from the resultant limitations.

30. Although the appellant has not properly listed any lesser steps which might realistically lessen any degree of harm caused by the unauthorised development I conclude that Requirement 1 should be struck out.

31. The appeal on ground (f) therefore succeeds in part.

The appeal on ground (g)

32. The appeal on ground (g) is that the stated time period for compliance in the enforcement notice falls short of what is reasonable in the circumstances. The appellant feels that the specified period of four months to carry out the specified modifications and make good the consequent roof openings is insufficient and has requested that it should be extended to twelve months.

33. I find that a period of four months to make arrangements for the disruption caused, then carry out the said works and finally have all building materials and debris removed from the site, is likely too short a period. Further, as I have mentioned, the appellant might still decide to explore the extent of the permitted development entitlement, and this would properly necessitate

negotiations with the Council with a view to an agreement being arrived at between the parties.

34. Having therefore weighed up the planning position relative to the circumstances involved I consider that a period of ten months would be more appropriate and I shall vary the notice, accordingly.

35. The appeal therefore succeeds to this extent.

Appeal B

36. This appeal is concerned with the Council's decision to refuse planning permission for the development the subject of the enforcement notice.

Main Issues

37. The main issues are:

    1) the effect on the character and appearance of the surrounding area; and

    2) the effect on the living conditions at no 62 Berwick Road, with particular regard to any overlooking or lack of privacy.

Reasons

Character and appearance

38. Policy 26 of the Havering Local Plan (LP) is concerned with high quality design. It says that new development should respect and complement the character of the locality. More specifically, the Council's SPD advises that dormers should be contained well within the body of the roof, both by being set well back from the eaves and by setting the sides well in from any gables or party walls, which these roof extensions are. Further, the windows within the north facing roof extension – that visible from Abbey Wood Lane - reasonably match those below in terms of profile, size and positioning.

39. Admittedly, other guidance for roof extensions within the SPD, such that the width of dormer extensions should be no greater than 1.2 metres have clearly not been adhered to. However, in taking enforcement action, I am not convinced that the Council has properly assessed the actual character of the immediate locality as roof extensions and associated alterations are evident in abundance. The appellant has listed particular examples and, following my site visit, I viewed these developments insofar as they were evident from the street.

40. The neighbouring dwelling, no 62 Berwick Road is a case in point with a substantial front dormer structure emplaced in its front roof slope. I note the Council's point that the majority of the dormers cited pre-date the SPD's publication, and also that one was considered to be permitted development. However, in this context, and the fact that no 64's front and side gable features have broken up the general massing so that the north facing dormer is not visible when looking directly towards the front elevation, it would be inequitable and unreasonable not to take into account other such local features which readily contribute towards the local character. Accordingly, I am

satisfied that the development accords with the general objectives of LP policy 26.

41. The near cheek of the south facing dormer, although set in from the edge of the roof-slope, is clearly visible from Berwick Road, but this is not objectionable in itself and I shall discuss this particular extension in the second main issue below.

Living conditions

42. No 64's south facing dormer's three windows face directly onto the blank gable end of no 62 and, although this dormer extension itself extends close to the roof's end, the three, evenly-spaced windows within stop significantly short of this point. As such there is no direct overlooking of no 62, which itself has both front and rear facing dormer extensions. The condition imposed regarding both obscured glazing and restrictions on opening will provide additional safeguards in this respect.

43. An objection has also been raised as to the south facing dormer extension causing overshadowing. This is less than likely and, if at all, will not be to any significant degree as the extension sits north of the narrow divide to no 62's flank wall. Indeed, on this point I note that the Council has only alleged "overlooking and loss of privacy".

44. On this issue I am therefore satisfied that the development does not materially conflict with the objectives of LP policy 7 nor policy 26 thereto.

Other Considerations

45. As mentioned, the extent of any fallback is uncertain, although the Council's estimation would suggest that the permitted development entitlement under Class B has only marginally be exceeded. If this is the case then the degree of modification required to bring the roof alterations within the parameters of Class B would be minimal. In such circumstances the disruption caused by the alterations would not be proportionate to the degree of harm that can reasonably be considered to have resulted from the unauthorised development.

Conclusion and Condition

46. For the above reasons, and having had regard to all other matters raised I have concluded that the development does not run contrary to the policies within the LP as a whole and, when considering the other material considerations to be taken into account, it strongly suggests that the appeal should be allowed and planning permission granted.

47. My decision reflects this and imposes a condition regarding the windows on the south facing dormer extension, as discussed. The wording is in accordance with the GPDO's Class B conditions.

Overall Conclusions for both Appeals

48. Regarding Appeal A, the enforcement notice is corrected and varied but is not quashed as no appeal under ground (a), which would have triggered the determination of a deemed planning application, was lodged.

49. However, when considering the planning merits and impacts of the development in relation to Appeal B it is considered that there are insufficient grounds to withhold planning permission.

50. The appellant can therefore choose whether to modify the roof alterations to accord with the 2014 planning permission within the ten month timescale or, alternatively, retain the roof extensions as now exist. Given the circumstances I should imagine that it is more than likely that the appellant will choose the latter option, but that remains his choice. For the Council's part, it will retain control of the development insofar as the requirements of the condition imposed are adhered to.

Timothy C King

INSPECTOR