



Appeal Decision

Site visit made on 8 August 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st September 2023

Appeal Ref: APP/N5090/C/22/3303284

Land at 4 Glebe Road, London N3 2AX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Tagbo Umenyilora against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice, numbered ENF/0358/22, was issued on 27 June 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of an L-shaped rear dormer roof extension.
 - The requirements of the notice are to:
 1. Demolish the L-shaped rear dormer roof extension.
 2. Restore the roof to the form shown in plan 19583/04 from application reference 21/1673/192.
 3. Permanently remove all constituent materials resulting from the works in 1. above from the property
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e) and (f) 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.
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Decision

1. 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 construction of an L-shaped rear dormer roof extension at 4 Glebe Road, London N3 2AX as shown on the plan attached to the notice.

Ground (e)

2. An appeal under ground (e) is made on the basis that copies of the enforcement notice were not served as required by section 172 of the Act. Section 172 provides that a copy of the enforcement notice shall be served on the owner and occupier of the land to which it relates, and any other person having an interest in the land, including mortgagees.
3. The main thrust of the appellant's case is that the enforcement notice should have been served at his home address, not the site address, as was the case here. The Council state that the appellant was served a copy of the enforcement notice at his home address, which was obtained from an official Land Registry search. The Council has also provided a certificate of service, which certifies that enforcement notices were served on the appellant at the appeal site as well as an address identified on Land Registry.
4. In a legal ground of appeal, the burden of proof is on the appellant, on the balance of probabilities. I note the address given for the appellant on the

appeal form is different to that identified on the enforcement notice and Certificate of Service. However, the address is consistent with the address identified on the Land Registry. A land registry address is proper service if a local planning authority has not been given another. From the evidence provided, I consider it likely that the enforcement notice was served as required by section 172 of the Act.

5. Moreover, section 176(5) provides that where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve them. The appellant has made a valid appeal and so even if I had found they were not properly served, they were not substantially prejudiced.
6. Thus, for the reasons given above, the appeal under ground (e) must fail.

Ground (b)

7. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting a breach of planning control have not occurred. The appellant states that, because the loft space is lawful, there has been no breach of any law. However, whether the loft space would be lawful is a matter which should be considered under ground (c).
8. The appellant does not dispute that the dormer has been constructed and, during my site visit I was able to see it is *in situ*. The construction of an L-shaped dormer has therefore occurred as a matter of fact and the appeal under ground (b) must fail.

Ground (c)

9. An appeal under ground (c) is made on the basis that the matters stated in the notice as constituting a breach of planning control, if they occurred, do not constitute a breach of planning control. As confirmed by the Inspector in APP/N5090/C/18/3216371, the burden of proof in a legal ground of appeal lies with the appellant, on the balance of probabilities. The main thrust of the appellant's case under this ground is that the dormer is permitted development.
10. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) grants planning permission for certain types of development. Schedule 2, Part 1, Class B permits additions etc to the roof of a dwellinghouse. B.1. states that development is not permitted by Class B if (d) the cubic content of the resulting roof space would exceed the cubic content of the original roof space by more than 40 cubic metres in the case of a terrace house.
11. The appellant suggests that the 40 cubic metres should be measured internally and they have built the appeal scheme on that basis. However, for the purposes of paragraph B.1(d)(ii) "roof space" does not mean the void which was covered by the roof which was not used as a room in the house, but the roof itself and any addition or extension to that roof as it originally stood. It follows that the measurements should be taken externally.

12. The Council has estimated the total volume for the dormer as 52.92 cubic metres and have used drawings, submitted by the appellant, to calculate the estimate. In support of their appeal, the appellant has provided hand drawn diagrams, which are stated to show that the additional roof space would be 38.26 cubic metres.
13. During my site visit, the appellant requested that a series of measurements were taken. For health and safety reasons, the Council officer and I did not use the scaffolding and were therefore unable to access the exterior of the roof. The appellant used a laser measure, the results of which both the Council officer and I were able to observe. Both internal and external measurements were taken and, I have no reason to doubt the accuracy of the device used.
14. The measurements taken during the site visit appeared broadly consistent with the measurements provided by the appellant on their hand drawn diagrams. The measurements provided by the Council, although similar, in my view are likely to overestimate the cubic content of the resulting roof space provided by the appeal scheme.
15. However, I have concerns about the accuracy of the calculation provided by the appellant, in particular, the calculation of the pre-existing outrigger roof. The appellant has used a length of 6.375m for the pre-existing outrigger roof and a width of 3.26m, whereas they have used a length of 6.2m for the outrigger dormer and a width of 2.93m. In my view they should have used the same width and length to calculate the area of pre-existing outrigger roof.
16. From the measurements provided on site and the measurements provided in writing by the appellant, I consider it likely that the dormer measures more than 40 cubic metres. While the difference is likely to be far more limited than the volume calculated by the Council, the size of development is expressed precisely in the GPDO. There cannot be a 'de minimis' infringement.
17. Thus, for the reasons given above, the appellant has not shown, on the balance of probabilities that the appeal scheme is development which is granted by the GPDO and the appeal under ground (c) must fail.

Ground (a)

Main Issue

18. The main issue of the appeal is the effect of the appeal scheme on the character and appearance of the area.

Reasons

19. The appeal site comprises a terraced property which fronts onto Glebe Road and is located between a similarly designed terraced property on one side and flats on the other. An L-shaped dormer has been erected to the rear of the property, which extends from the main roof and above the roof of a rear outrigger. Views of the dormer are limited from the public domain, though it can clearly be seen from the private car park to the rear of the adjacent flats.
20. Policy CS5 of the Barnet Local Plan Core Strategy Development Plan Document (2012)(the CS) and policy D01 of the Barnet Local Plan Development Management Policies (DMP)(2012) both seek to protect Barnet's character and ensure that development respects local context. Policy D3 of the London Plan

(2021) also seeks to ensure that development responds to the existing character of a place.

21. The Residential Design Guide SPD (2016)(the SPD) advises that dormer roof extensions should not overlap or wrap around the hips or rise above the ridge. The SPD goes on to advise that the dormer roof extension should not normally be wider than the window below it and the dormer cheeks kept as narrow as possible.
22. The dormer which has been erected does not accord with the advice contained in the SPD, occupying most of the rear main roof slope and rising above the ridge of the outrigger. As a result, it appears an odd feature set against the hipped roof of the adjacent flats. Although modest dormers are a design feature of the adjacent flats, rear dormers are not typical features of the terraced dwellings along Glebe Road and so the dormer fails to respect the local context.
23. The Council advise that a certificate of lawfulness was granted under reference 21/1673/192 for a rear dormer which projected across part of the outrigger. The dormer which has been constructed extends further rearward. Neither party has provided me with full details of that scheme. Nevertheless, from my own assessment of the appeal site, although I have found that the dormer which has been constructed is not permitted development, the exceedances are relatively limited.
24. While the appeal scheme does not comply with the guidance contained within the SPD, given its position to the rear of the property and the limited views from the public domain, I consider a dormer which falls within permitted development rights is unlikely to have a perceptibly different effect on the character and appearance of the area compared with the appeal scheme.
25. The appellant suggests lowering the roof of the outrigger dormer to comply with the permitted volumes of space. Were I to uphold the notice, once the notice has been complied with, I consider the appellant is likely to seek to erect a further dormer under permitted development rights. In light of the above, the fallback position is a matter to which I afford significant weight.
26. Given that a similar dormer window could be constructed under permitted development rights and having regard to the limited visibility of the dormer from the public domain, I consider the appeal scheme does not harm the character and appearance of the area and there is no conflict with policy CS5 of the CS, policy D01 of the DMP or policy D3 of the LP, the requirements of which are set out above.

Conclusion

27. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the construction of an L-shaped rear dormer roof extension as described in the notice. The appeal on ground (f) does not therefore fall to be considered.

M Savage

INSPECTOR