



Appeal Decisions

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 A Ref: APP/N5090/C/22/3313012

Land at 44 Mays Lane, Barnet EN5 2EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by ARKD Group Ltd against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice, numbered ENF/1152/22, was issued on 2 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission the construction of the rear dormer roof extension.
 - The requirements of the notice are to:
 1. Demolish the rear dormer roof extension
 2. Restore the roof of the building to the state in which it was prior to the breach of planning control, as shown in plan numbers E251 P1, E252 P1 and E210 P1 in application ref: 22/3601/FUL
 3. Permanently remove all constituent materials resulting from the works in 1. and 2. above from the property
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) 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 Ref: APP/N5090/W/22/3312949

44 Mays Lane, Underhill, Barnet EN5 2EE

- 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 Davood Kiani of ARKD Group against the decision of the Council of the London Borough of Barnet.
 - The application Ref 22/3601/FUL, dated 11 July 2022, was refused by notice dated 6 September 2022.
 - The development proposed is single storey rear extension and roof extension involving rear dormer window.
-

Decision: Appeal A

1. Appeal A 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 the rear dormer roof extension at land at 44 Mays Lane, Barnet EN5 2EE as shown on the plan attached to the notice.

Decision: Appeal B

2. Appeal B is allowed and planning permission is granted for single storey rear extension and roof extension involving rear dormer window at 44 Mays Lane, Underhill, Barnet EN5 2EE in accordance with the terms of the application, Ref 22/3601/FUL, dated 11 July 2022, and the plans submitted with it, subject to the conditions set out in Appendix 1 attached to this decision letter.

Procedural Matters

3. On the application form for Appeal B, the appellant described the proposed development as 'extension and alterations (including dormer)'. In its decision notice, the Council described the development as 'single storey rear extension. Roof extension involving rear dormer window (retrospective)'. The appellant also uses this description in their appeal form. Since the description used by the Council more clearly describes the different elements of development being applied for, I shall use the Council's description¹ in the banner heading above and in the decision.

Appeal A: Grounds (b) and (c)

4. The appellant has advanced their case under grounds (b) and (c). 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 dormer has been constructed and was *in situ* at the time of my visit. I therefore find that the breach has occurred as a matter of fact and the appeal under ground (b) must fail.
5. 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. Planning permission has been granted, reference 22/5774/FUL for a roof extension involving replacement rear dormer window and 1no. rear facing roof light.
6. The rear dormer is stated to have been constructed with lightweight materials, capable of being dismantled, primarily in order to assess the visual impact, but in part capable of being adapted to provide the dormer itself. It is stated that this position is analogous to appeals APP/D1590/C/21/3278326 and APP/D1590/C/21/3278327.
7. In that case, the appellant had secured planning permission for an extension, which the appellant had apparently deviated from. The appellant's case was that they had not completed the development and sought to make the structure watertight. The Inspector found that the Council should have waited until the development was substantially complete before deciding that enforcement action was necessary.
8. However, the dormer which has been constructed is substantially larger than the dormer approved by planning permission 22/5774/FUL and is not, in my view, authorised by the above planning permission. This is not a case where the appellant has constructed a temporary feature part way through development. What has been constructed is as a matter of fact and degree, is a different development.
9. Permitted development rights have been restricted at the site by condition 14 attached to planning permission 20/5392/FUL and there is no suggestion that the dormer would be permitted under the Town and Country Planning (General Permitted Development) Order 2015 (as amended). Planning permission has not been granted for the dormer which has been erected and so the appeal under ground (c) must fail.

¹ Not including the word 'retrospective'.

Ground (a) (Appeal A) and S78 (Appeal B)

10. With regards to Appeal B, the Council refused the planning application for two reasons, firstly due to the effect on the character and appearance of the area and secondly, due to the effect of the single storey rear extension on adjacent trees.
11. Additional information has been submitted in support of the appeal, which includes a tree protection plan and arboricultural method statement. A single storey rear extension of similar dimensions has also since been granted planning approval under reference 22/5551/FUL. As a consequence, the Council advises it wishes to remove its objection to the appeal scheme on these grounds. Given the above, I consider the main issue of Appeal B is the effect of the proposed rear dormer on the character and appearance of the area and I shall consider Appeal B on this basis.
12. The appeal under ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice. The appellant is effectively seeking planning permission for what has already been built. The appeal scheme under consideration under Appeal B, the S78 appeal, is also for a rear box dormer. While the schemes under Appeal A and Appeal B are not identical, given the similarities between the issues relating to the box dormers, I shall consider them together.

Main Issues

13. The main issues of the appeals are the effect of the rear dormers on the character and appearance of the area.

Reasons

14. The appeal site comprises a detached house which fronts onto Mays Lane. A number of properties along Elton Avenue back onto Mays Lane within the vicinity of the site, which have rear box dormers which extend across much of the width of their respective rear roof slopes. These are particularly prominent and draw the eye when travelling along Mays Lane. I saw that there are numerous other examples of similar rear dormers in the vicinity of the site, such that they are a common feature of the area².
15. Policies 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. The Residential Design Guide SPD (2016) advises that dormer roof extensions should normally be subordinate features on the roof and should not occupy more than half the width or half the depth of the roof slope.
16. The dormer which has been constructed at the appeal site (Appeal A) comprises a box dormer which extends across the majority of the rear roof. This is contrary to the guidance contained in the SPD. The cheeks of the dormer can be glimpsed when travelling along Mays Lane, however, due to its

² The appellant's Statement of Case identifies examples of rear dormers along Mays Lane, Vale Drive, Elton Avenue, Woodfall Avenue, Milton Avenue and Bedford Avenue, many of which I was able to see during my site visit.

location to the rear, the extent of the dormer which can be seen from the public domain is limited.

17. The proposed dormer (Appeal B) would extend across around two thirds of the rear roof slope and would therefore also be contrary to the guidance contained within the SPD. I consider views from the public domain are likely to be more limited compared with the dormer which has been constructed. Although it is likely to be possible to glimpse the cheek of the dormer when travelling from the east, I consider it is unlikely the dormer would be particularly visible when travelling from the west.
18. I note that a number of other dormers in the area are likely to have been constructed under permitted development rights, which have been restricted at the appeal site. Nonetheless, given the significant number of properties in the area which have been extended in this way, rear box dormers do not appear out of character for the area. Moreover, there are limited public views of the dormer.
19. I acknowledge that the appeal schemes do not comply with the guidance contained within the SPD, however, since the dormer as built respects the local context, I find that there is no harm to the character and appearance of the area and no conflict with policies CS5 of the CS, policy D01 of the DMP. Since the dormer proposed under Appeal B would occupy a smaller section of the rear roof slope, it follows that there would be no harm and no conflict with the above policies from its erection either.

Other Matters

20. An interested party has raised concern regarding the effect of the dormer on their privacy, as the rear dormer overlooks their rear garden and others along Elton Avenue. I saw that there is a degree of overlooking within the area already. A photograph provided by the interested party shows that there is mature vegetation which interrupts views between the two properties. Given the substantial distance between the appeal property and the properties along Elton Avenue and the intervening vegetation, I consider any loss of privacy is unlikely to be harmful.

Conditions

Appeal A

21. Since the rear dormer has been constructed, I consider there is no need to attach conditions to the grant of planning permission.

Appeal B

22. The Council has suggested a number of conditions. I consider a plans condition is necessary in the interests of certainty and proper planning and to ensure that the development is carried out in accordance with the Arboricultural Method Statement (AMS), to ensure there is no harm to trees. I consider that condition 5 suggested by the Council is unnecessary as it seeks compliance with plans and repeats certain requirements of the AMS, which would be secured by condition 1. The Council has also suggested the inclusion of existing plans in the plans condition, along with the supporting statement. However, I do not consider it necessary to include these and shall delete them from the condition.

23. Although a rear box dormer is already *in situ*, were the appellant to construct the dormer proposed under Appeal B, I consider it is necessary to include a materials condition to ensure that it is finished using materials which match those used in construction of the existing building, in the interests of preserving the character and appearance of the area.
24. The Council has requested a commencement condition. However, the application is retrospective and so there is no need to include a condition requiring that it is begun within 3 years.
25. The Council has suggested the inclusion of a condition to ensure that the roof of the single storey extension is not used for sitting out. Since an individual using the roof could peer into the neighbouring garden, I consider the inclusion of such a condition is reasonable to prevent harm to the living conditions of neighbouring occupants.

Conclusion: Appeal A

26. For the reasons given above, I conclude that the appeal scheme does not harm the character and appearance of the area and accords with the development plan as a whole. The appeal therefore succeeds on ground (a) and I shall grant planning permission for the development as described in the notice.

Conclusion: Appeal B

27. For the reasons given above, I conclude that the appeal scheme would not harm the character and appearance of the area and accords with the development plan as a whole. Consequently, Appeal B should be allowed.

M Savage

INSPECTOR

Appendix 1: Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans and documents: Proposed Front Elevation P350 Rev P1, Proposed rear elevation, Proposed Side Elevations P352 Rev P1, Proposed Plans P310 Rev P1, Proposed Ground Floor Plan on Site P305 Rev P1 - Proposed Roof Plan P310 rev P1, Proposed Section P325 Rev P1, Location Plan E100 rev P1, Design and access Statement, Arboricultural Method Statement, Arbtech AIA 01, Arbtech TPP 01 - Tree Protection Plan.
2. The materials to be used in the external surfaces of the building shall match those used in the existing building.
3. The roof of the single storey rear extension hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting out area.

End of Appendix