



Appeal Decision

Site visit made on 11 December 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 January 2024

Appeal Ref: APP/Z0116/C/23/3324087

23 Wathen Road, Bristol BS6 5BY

- 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 Sergio Garcia-Huidobro Ugarte against an enforcement notice issued by Bristol City Council.
- The notice was issued on 16 May 2023.
- The breach of planning control as alleged in the notice is, without the grant of planning permission, the erection of a dormer extension to the rear roof.
- The requirements of the notice are to: Demolish in its entirety and remove from the land the unauthorised rear roof dormer extension and reinstate the pre-existing tiled roof plane with eaves.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Act. 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.

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 erection of a dormer extension to the rear roof, at 23 Wathen Road, Bristol BS6 5BY, subject to the following condition:
 - 1) The dormer extension to the rear roof hereby permitted shall be demolished in its entirety and all materials resulting from the demolition shall be removed and the pre-existing tiled roof plane with eaves shall be reinstated, within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 1 month of the date of this decision a scheme for the removal of the wooden cladding from the dormer and its replacement with hanging tiles and implementation of eaves detailing shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 3 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary matters

2. An application (ref 23/01247/CE) for a certificate of lawful development (LDC) for the dormer as built was submitted and registered on 27 March 2023. It was refused on 22 May 2023, shortly after the enforcement notice was served. This appeal is against the notice and not against the refusal to grant an LDC.

The appeal on ground (a) and the deemed planning application

3. The appeal on ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation. Hence, the development for which planning permission is sought, is the erection of a dormer extension to the rear roof.

Main issue

4. The main issue is the effect of the dormer on the character and appearance of the host dwelling and the surrounding area.

Reasons

5. The site is a two storey mid terrace dwelling in a residential area, located towards the end of a cul-de-sac. To the rear of the site there is a lane and then garages and tennis courts. The lane continues around the end of the cul-de-sac along the rear of dwellings on Williamson Road. In the immediate vicinity of the site, along Wathen Road and Williamson Road, as well as Sefton Park Road on the far side of the tennis courts, there are a wide variety of rear dormer extensions. They vary greatly in terms of size, design and surfacing. There are several large box dormers as well as more modest box dormers and gabled dormers. Some are surfaced in hanging tiles while others are rendered or finished in what appears to be horizontal UPVC cladding.
6. I do not have details of the planning history of most of the other dormers in the area and some may comply with the requirements of permitted development. However, it is evident that many span the full width of the roof slope and several have very little set back from the eaves. Whatever the planning history might be, it is evident that rear dormers are a common feature of the roofscape in the area and are highly visible from the lane, but not the street. This is the context within which the appeal dormer is viewed.
7. The appeal dormer has a flat roof to the height of the main ridge, spans the width of the roof and is not set back from the eaves. While it is undoubtedly a large dormer, the general scale, proportions and location are not out of keeping with the surrounding context. The dormer is visible from the lane to the rear, along with all of the other dormers, but is not visible from the street so has no impact on the streetscene.

8. The walls of the dormer are clad in vertical panels of dark wood. This cladding has a rustic appearance more typical of an outbuilding than a roof extension and does not reflect other dormer surfacing in the area. The main roof of the dwelling is tiled, the original rear elevation is rendered, a single storey extension is constructed in brick and this extension and the dormer contain modern grey windows. The colour, texture and quality of the wood cladding is at odds with all of these finishes. The wood cladding is also quite thick which results in it overhanging the wall below. The choice of cladding material, combined with the overhang, results in an already large dormer appearing incongruous and overly dominant. Therefore, while the general scale, proportions and location of the dormer are in keeping with the character and appearance of the dwelling and the area, the wooden cladding is not.
9. The appellant has proposed to retain the dormer but replace the cladding and reinstate the eaves. I am satisfied that the proposed alternative scheme forms part of the matters covered by the notice, so it is appropriate for me to consider it. The alternative was proposed under the ground (f) appeal but I considered it more appropriate to be dealt with as part of planning merits under the appeal on ground (a).
10. As set out above, I find dormer to be acceptable, but the wood unacceptable. An alternative surfacing, such as thin hanging tiles would help the dormer blend in to the surrounding roofscape as well as remove or significantly reduce the overhang. Reinstatement of some form of eaves feature would create a sense of visual separation between the dormer and the wall below which would be in keeping with the area.
11. Plans for a proposed alternative scheme have been submitted by the appellant. However, the deemed planning application is made in respect of the development as alleged and built, so there is no mechanism for incorporating revised plans into any planning permission granted or via the imposition of a 'plans' condition. In addition, the plans do not make clear how the reinstatement of the eaves will be achieved and do not provide detail of the proposed tiles. Therefore, a condition is required to secure the submission and approval of such details prior to implementation. Consequently, the proposed alternative scheme, subject to approval of suitable details secured by condition, could overcome the planning difficulties at less cost and disruption than total removal of the dormer.

Conditions

12. To make the dormer acceptable in planning terms, it is necessary to impose a condition to ensure that the required details are submitted, approved and implemented. The form of wording, the strict timetable for compliance, and the consequences for non-compliance are all necessary because permission is being granted retrospectively. Consequently, it is not possible to use a negatively worded condition to secure the approval and implementation of the details before the development takes place. The condition will ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved scheme.

13. In their ground (g) appeal, the appellant requested that the time for compliance be extended from 2 months to 12 months to allow sufficient time to source materials and labour. While I consider 12 month to be excessive, 2 months would be tight. Therefore, the timescales for compliance set out in the condition allow for a more realistic timescale, without unduly extending the period that the unacceptable cladding can remain in place.

Conclusion on ground (a) and the deemed planning application

14. I conclude that, subject to a condition, the dormer does not cause unacceptable harm to the character and appearance of the host dwelling and the surrounding area. The development therefore complies with Policy BCS21 of the Bristol Development Framework Core Strategy 2011 and Policy DM30 of the Bristol Local Plan: Site Allocations and Development Management Policies 2014, which together seek to secure high quality design which respects the siting, scale, form, proportions and materials of the host building and the broader street scene. Consequently, the appeal on ground (a) succeeds.

The appeal on grounds (f) and (g)

15. The appeal on ground (f) is that the steps required by the notice exceed what is necessary. The appeal on ground (g) is that any time period specified in the notice falls short of what should reasonably be allowed. As the appeal on ground (a) succeeds and I shall grant planning permission for the development described in the notice, grounds (f) and (g) therefore do not fall to be considered. Notwithstanding this, as set out above, relevant elements of the appeal on grounds (f) and (g) have been considered as part of the planning merits and condition timescales.

Other matters

16. I note the appellant's reference to permitted development rights for a rear dormer and their claim that this should be considered as a fallback. As I have found the dormer to be acceptable, with changes secured by condition, I have not considered the validity of any claimed fallback. However, it should be noted that permitted development rights cannot be claimed retrospectively. As the dormer is already in place, the roof would need to be restored to its original condition first before permitted development rights could again be considered.
17. The appellant has made reference to other appeals for dormer extensions, full details of which are not before me. From the details available to me, it is evident that the developments and their context are different to this appeal. I have judged this appeal on its own merits.

Conclusion

18. The appeal on ground (a) succeeds and planning permission is granted, subject to a condition, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, as set out in the decision.

H Davies

INSPECTOR