
Appeal Decision

Site visit made on 23 January 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2024

Appeal Ref: APP/F5540/C/22/3309920

1A The Drive, Feltham TW14 0AQ

- 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 Rajinder Singh Birk against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The enforcement notice was issued on 6 October 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of two side roof dormers and an increase in roof height and an increase in roof pitch to the dwellinghouse.
 - The requirements of the notice are:
 - i. Demolish the side roof dormers from the dwellinghouse
 - ii. Restore the roof of the dwellinghouse to its condition prior to the breach taking place.
 - iii. Restore the roof height and roof pitch of the dwellinghouse to its condition prior to the breach taking place
 - iv. Remove all resultant debris from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (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.
-

Decision

1. It is directed that the enforcement notice be:
 - Varied by deleting the words "6 months" within section 5 (what you are required to do) and its replacement with "12 months".
2. Subject to this variation, the appeal is dismissed, and 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.

Preliminary Matters

3. The Appeal has been lodged under grounds (a), (f) and (g). However, it is clear from the substance of their appeal submissions that the appellant is also seeking to appeal under grounds (b) and (c), in so far as the appellant considers that the rebuilt roof pitch and its height are as similar as possible to the pre-existing roof, and that the side dormers constitute permitted development. As the Council have provided comments on the appellant's statement, I am satisfied that neither party would be prejudiced by the inclusion of this. I have therefore determined the appeal on this basis.

4. The appellant also states that the notice is fundamentally flawed since requirements 2 and 3 require the restoration of the roof pitch and ridge to its condition before the breach took place, but there is no information attached to the notice about the pre-existing roof. A notice should be drafted so as to tell the recipient fairly, what he or she has done wrong and what he or she must do to remedy it. The requirements of the notice require the restoration of the roof to the condition before the breach took place. In this instance, it is clear what they need to do to remedy the breach, and the existing plans and elevations from the previous lawful development certificate application and photographs of the pre-existing roof, submitted as part of this appeal, could also be used to work out the previous layout and configuration. The notice is therefore valid.

The Appeal on ground (b)

5. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
6. This has not been demonstrated. On the contrary, the appellant submitted a further planning application for the "retention of roof extensions." Furthermore, photographs have been provided within the Council's Officer's Report (paragraph 5.7) for this retrospective application, and by a third party which clearly shows that the unauthorised development includes a noticeable increase in ridge height and increased pitch of the roof over and above the pre-existing former roof and both side dormers. These works are further confirmed by own site inspection. Therefore, the matters as alleged by the notice have occurred as a matter of fact.
7. Accordingly, the appeal on ground (b) must fail.

The Appeal on ground (c)

8. Ground (c) arises where an appellant seeks to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. As with ground (b) the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
9. As outlined above, the appellant contends that the side dormer constitutes permitted development by virtue of Article 3, Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, Article 3, Schedule 2, Part 1, B.1 (b) of the GPDO states that development is not permitted by Class B if "any part of the dwellinghouse would, as a result of the works, exceed the height of the highest part of the existing roof". As outlined above, based on the photographs and existing drawings submitted under this appeal, and from my own observations during the site visit, the height of the extended roof, including both side dormers, exceeds the height of the highest part of the pre-existing roof.
10. Therefore, on the balance of probability and based on all the evidence before me, the development does not fall within Article 3, Schedule 2, Part 1, B.1 (b) of the GPDO 2015, for there to be deemed planning permission for the development as built. Therefore, planning permission is required for the development, and there is none in place. There has therefore been a breach of planning control and the appellant has not discharged the onus on him to demonstrate otherwise.

11. Accordingly, the appeal fails on ground (c).

The Appeal on Ground (a) and the Deemed Planning Application (DPA)

Main Issue

12. The main issue is the effect of the development upon the character and appearance of the host building and area.

Reasons

13. Prior to the current unauthorised development, the appeal property comprised a two-storey detached dwelling, located in a residential area characterised by detached and semi-detached properties, with front gables. Indeed, the property directly opposite, at 2A the Drive is also a detached two storey property and was similar in size and scale to the appeal site, prior to the unauthorised works. The unauthorised development, the subject of this appeal, comprises the erection of two side dormer windows, an increase in roof height and an increase in roof pitch of the dwelling.
14. The Council's Residential Extension Guidelines SPD, 2017 (SPD) states that dormer windows on a side elevation would need to be clearly subservient to the scale of the roof slope, set in from all sides of the roof. In addition, the SPD also states that on larger detached houses these set-ins (from the ridge level, eaves and sides of the roof) should be at least one metre. Contrary to the above guidance the side dormer windows has not been set in 1m from ridge level, eaves and sides and occupies disproportionate area of both side roof slopes.
15. Despite the use of materials which match the main house, the size, scale, and bulk of the roof extensions, in combination with its overall increase height, introduces an overly dominant and visually discordant feature which is clearly visible from the surrounding public vantage points. Indeed, substantial roof extensions containing large side dormer windows are not characteristic feature of the area. In this respect, given its location and prominence, the increase in roof height and the addition of two large side dormer windows forms an obtrusive and incongruous feature in the street scene which is at odds with the prevailing character. Therefore, the unauthorised development results in harm to the character and appearance of the host building and the area generally.
16. I note that a Lawful Development Certificate (LDC) was previously approved for an alternative roof extension at the appeal site. Be that as it may, the development has not been carried out in accordance with that LDC approval, which has led to the issue of the Notice. Furthermore, the roof of the property has been raised well above that of the approved scheme, and therefore that previous approved LDC scheme would not be as substantial as the scheme before me. Therefore, I give the permitted development fall-back argument little weight.
17. I appreciate that there are other roof extensions in the area. Nevertheless, there are no other examples that are directly comparable to the appeal development before me, with two large side dormers and an increase in ridge height and roof pitch. As such, the existence of other roof forms in the wider area does not justify the harm I have identified above. In any event I have considered the appeal development on its own merits.

18. I therefore conclude that the development has a harmful effect upon the character and appearance of the host building and area. The development is therefore contrary to Policies CC1, CC2 and SC7 of the London Borough of Hounslow Local Plan (2015). Amongst other things, these seek to support high quality urban design and architecture and state that the Council will recognise the context and varied character of the borough's places and seek to ensure that all new development conserves and takes opportunity to enhance their special qualities and will support the extension and improvements of residential properties provided all extension and alterations maintain the character of the area.

Conclusion on Ground (a) and the DPA

19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The development harms the character and appearance of the building and area in conflict with the development plan taken as a whole. None of the other matters raised by the appellant, including the benefits of providing improved living accommodation for the appellant, and the lack of harm in relation to parking and amenity space provision outweighs this harm identified. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
20. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the DPA should be refused.

The Appeal on Ground (f)

21. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
22. The enforcement notice requires the demolition of the unauthorised development and the restoration of the roof to its previous condition, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
23. The appellant has suggested modifying and setting the side dormers back by approximately 1m to overcome the council's objection and that any other issues could be addressed by an appropriate planning condition. However, no revised drawings have been submitted, and therefore I am unable to determine what the proposed roof would look like. Indeed, it is open to the appellant to submit a planning application to the Council for this revised scheme if they so wish.
24. The appellant also suggest that the rebuilt roof pitch and height is similar to the pre-existing roof. However, I have already found, under the grounds (b) and (c) appeal that that is not the case, and that there has been a noticeable increase in the overall roof height and pitch.
25. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps

drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.

26. On this basis, the Ground (f) appeal fails.

The Appeal on Ground (g)

27. This ground of appeal is that the time given to comply with the notice is too short. The period for compliance stated in the Enforcement Notice is 6 months. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my opinion, the 12 months suggested by the appellant would strike a more reasonable and proportionate balance. This would provide the appellant with additional time to find alternative accommodation, carry out the necessary remedial works as well as seek planning permission for a revised scheme if they so wish.

28. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

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

R. Satheesan

INSPECTOR