



Appeal Decision

Site visit made on 8 April 2024

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2024

Appeal Ref: APP/N5660/C/23/3314010

53E Guildersfield Road, London SW16 5LS

- 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 Samuel Ludmir of Quartet Investments Ltd, against an enforcement notice issued by London Borough of Lambeth.
 - The notice was issued on 22 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a hip to gable roof extension and rear dormer roof extension ('the unauthorised roof extension').
 - The requirements of the notice are to:
 - a) Remove the unauthorised roof extension and reinstate the hipped roof as existed prior to the breach of planning control; and
 - b) Remove all resultant associated waste and debris from the premises.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) 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.
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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 Act, for the development already carried out, namely the erection of a hip to gable roof extension and rear dormer roof extension at 53E Guildersfield Road, London SW16 5LS.

The appeal on ground (c)

2. An appeal on ground (c) is that the matters alleged, if they occurred, do not constitute a breach of planning control. The burden of proof is on the appellant. The matter alleged is the unauthorised erection of a hip to gable roof extension and rear dormer roof extension. The appellant argues that the dormer benefits from permitted development rights, so is not a breach of planning control. The Council argue that permitted development rights were removed under the original planning permission for the dwelling so they do not apply.
3. Schedule 2, Part 1, Class B of The Town and Country Planning (General Permitted Development) Order 1995 allowed for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. This was revoked and re-enacted under Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), with some changes to the criteria and conditions.

4. Permission was granted under application reference 98/01972/FUL (the 98 permission) for 'Erection of a terrace consisting of 2 x 3 bedroom and 3 x 4 bedroom 2 storey houses and associated car parking' on the land known as 'Site Of St Andrew's Church, Guildersfield Road'. This 98 permission included a condition which removed permitted development rights for buildings, extension or alterations, including under Class B. However, a permission had also been granted under a previous application reference 95/3447/23686 (the 95 permission) for 'Redevelopment to provide a two storey 4-bedroom vicarage and five two-storey 3-bed houses together with associated amenity space and off street parking' on the land known as 'Site of St Andrew's Church, Guildersfield Road'. Under the 95 permission, permitted development rights had not been removed. The appellant argues that the appeal site was built under the 95 permission and not the 98 permission, so retains permitted development rights. The Council argue to the contrary.
5. In support of their position, the appellant states that a condition of the 1995 permission was discharged in 1997 but that there is no record of conditions from the 1998 permission having been discharged. They also note that an application (ref 09/03945/LDCP) for a certificate of lawful development for a rear dormer at 53B Guildersfield Road (one of the other dwellings in the same terrace as the appeal site) was granted in February 2010. The report stated that the dormer complied with the requirements of Schedule 2, Part 1, Class B and so was permitted development. Only the 95 permission under which permitted development rights were not removed was referenced.
6. However, a subsequent application (ref 10/00761/LDCP) for a certificate of lawful development for a single storey rear extension at No 53B was refused in April 2010. This time the report referenced both the 95 and 98 permissions and concluded that "it appears that it was the latter scheme (98/01972/FUL) that was implemented" (ie the 98 permission under which permitted development rights were removed). The Council state that granting a certificate of lawful development for the dormer at No 53B was a mistake, and subsequent decisions reflect permitted development rights having been removed.
7. The Council has not provided any detail to back up its conclusion that the terrace, containing Nos 53A to 53E, was built under the 98 permission rather than the 95 permission. Neither party has provided me with plans from either of the permissions to enable me to make my own assessment.
8. I note the information given on the land charges search, but this only provides an overview. I acknowledge that a 'new vicarage' has been built next to the terrace, which was part of the 95 permission but not the 98 permission. These matters raise questions and in the interest of future clarity, the Council should address this. However, these matters do not provide clear evidence to demonstrate that the terrace was implemented under the 95 permission.
9. Notwithstanding the lack of plans or justification from the Council, the burden of proof is on the appellant, to demonstrate that what has been built is permitted development. I have not been presented with substantive evidence which would allow me to conclude that 53E Guildersfield Road was built under the 95 permission and hence can benefit from permitted development rights. In addition, the dormer may meet the relevant criteria and conditions set out in the GPDO, but I have not been presented with substantive evidence to demonstrate this, such as accurate scale plans of the development as built.

10. Condition 3 of the 98 permission, which removed permitted development rights, was imposed for the stated reason of safeguarding the character and amenities of the premises and adjoining properties. The permission related to re-development of a previously developed site and was a relatively dense infill development between existing dwellings. Therefore, I consider the condition to be valid and able to meet the 6 tests set out in national policy and guidance.
11. On the evidence before me, the development does not benefit from permitted development rights set out under Schedule 2, Part 1, Class B of the GPDO. It has not been granted planning permission. Consequently, I conclude that on the balance of probability, those matters alleged in the notice constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

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

12. 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 set out in the notice, as corrected. Hence, planning permission is sought for a hip to gable roof extension and rear dormer roof extension.

Main Issues

13. The main issue is the effect of the proposed development on the character and appearance of the site and the surrounding area.

Reasons – Character and Appearance

14. The appeal site contains a two-storey dwelling at the end of a 5 dwelling terrace, located in a predominantly residential area. The dwelling originally had a hipped roof which mirrored the roof at the other end of the terrace.
15. The 5 dwelling terrace includes a clear step in the frontage and roof form, 2 dwellings with small gables and 3 without, and 3 dwellings with individual gabled porches and 2 with a combined pitched roof porch. These elements mean the terrace frontage was not uniform, even before the development subject to this appeal.
16. The surrounding dwellings along Guildersfield Road are a mixture of designs and detailing, with varied roof forms. To one side of the terrace, closest to the appeal site, is a pair of semi-detached dwellings. These have hipped main roofs, along with two storey side elements with flat roofs, one of which has a small sloping tiled edge. To the other side of the terrace is a modern detached dwelling with hipped and gabled roofs, then a large traditional building with a mix of gabled roof forms. Opposite the terrace the dwellings have hipped roofs.
17. Tankerville Road, the start of which is opposite the terrace, features hipped roof semi-detached dwellings on one side of the road and gable fronted semi-detached dwellings on the other. Nearby Ellison Road features semi-detached dwellings and short terraces many of which include hipped roofs at one end and gabled at the other. I am not aware of the planning status of any changes from hip to gable roofs in the surrounding area, but there are multiple examples and they form the context within which the appeal site is considered. Arragon Gardens to the rear of the appeal site contains traditional dwellings, again with a mix of designs, finishes and roof forms.

18. The immediate and wider area is therefore characterised by a lack of uniformity and a variety of design, detailing and roof forms. Given this context, the appeal development does not look out of place within the streetscene and does not detrimentally unbalance the terrace.
19. Despite the hip to gable extension, the gap between the side elevations of the appeal dwelling and the neighbouring dwelling remains substantial, allowing views through to mature vegetation. The gap is greater than the gap at the other end of the terrace and commensurate with the gaps between built form which characterise the area. As such, the development does not result in the loss of a sense of spaciousness in the area.
20. Although it is not readily visible from the street, the rear dormer fills much of the rear roof slope and is a substantial addition to the dwelling. However, it is set in from the side elevation and finished in hanging tiles, resulting in a dormer which does not unacceptably dominate the rear elevation. In addition, there are many large rear dormers in the immediate vicinity, including elsewhere in the terrace, meaning they are a common feature of the area.
21. I conclude that the development does not cause unacceptable harm to the character and appearance of the site and the surrounding area. As such, the development complies with The London Plan Policy D4, The Lambeth Local Plan (adopted 2021) Policies Q5, Q8 and Q11 and the guidance in the Lambeth Supplementary Planning Document, Building Alterations and Extensions (2015). Together, these seek to ensure that development is high quality, designed in a way that responds to positive aspects of the local character and that roof extensions do not unacceptably dominate the host building or harm the design integrity of the building or group.

Other Matters Relating to Ground (a)

22. A previously refused dormer was of a different design to the dormer subject to this appeal and the refusal was not appealed against.
23. Any disturbance which may have been created during the build process is not a matter to be considered under this appeal.

Conclusion on ground (a) and the deemed planning application

24. The appeal on ground (a) succeeds and planning permission is granted.

The appeal on ground (g)

25. 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, ground (g) does not fall to be considered.

Conclusion

26. For the reasons given above, I conclude that the appeal on ground (a) is allowed. I shall quash the enforcement notice and grant planning permission on the application deemed to have been made under section 177(5) of the Act.

H Davies

INSPECTOR