

Appeal Decisions

Site visit made on 26 June 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2024

Appeal A Ref: APP/W1905/C/23/3321870

Land at 18 Gibbs Close, Cheshunt, Hertfordshire EN8 9RX

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended (the 1990 Act). The appeal is made by Mr Mario Moscaritolo against an enforcement notice issued by Broxbourne Borough Council.
 - The notice was issued on 26 April 2023.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a dormer window on the rear elevation of 18 Gibbs Close, Cheshunt, Hertfordshire, EN8 9RX.
 - The requirements of the notice are to:
 - (i) Remove, in its entirety, the dormer and reinstate the pre-existing roof line OR
 - (ii) Remove, in its entirety, the balcony including the protruding rails, glass panels and platform AND
 - (iii) Install a Juliet balcony OR replace doors with windows
 - (iv) Remove any resultant debris from the land
 - The periods for compliance with the requirements are three months for requirements (i), (ii) and (iii) and four months for requirement (iv).
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the 1990 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 1990 Act.
-

Appeal B Ref: APP/W1905/W/23/3321568

18 Gibbs Close, Cheshunt, Hertfordshire EN8 9RX

- The appeal is made under section 78 of the 1990 Act against a refusal to grant planning permission.
 - The appeal is made by Mr Mario Moscaritolo against the decision of Broxbourne Borough Council.
 - The application Ref is 07/23/0048/HF.
 - The development proposed is balcony to a rear loft conversion (retrospective).
-

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected and varied by:

- Deleting the matters which appear to constitute the breach of planning control in section 3 and substituting with 'Without planning permission, the erection of a rear dormer extension and balcony'.
 - Adding the words 'and remove any resultant debris from the land' after the word 'line' in requirement (i) in section 5.
 - Deleting Steps (i) to (iv) in section 6 and substituting with 'Seven (7) months for Requirement (i) and four (4) months for Requirements (ii), (iii) and (iv), as applicable.'
2. Subject to the corrections and variation, the appeal is dismissed, 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.

Appeal B

3. The appeal is dismissed.

Preliminary Matters

Appeals A and B

4. Since the appeals were submitted, a revised version of the National Planning Policy Framework has been published (December 2023) and this is a material consideration which should be taken into account from the date of its publication. As the amendments do not bear directly on this appeal, I have not reverted to the parties for comment.

Appeal B

5. I have taken the description of development from the appeal form as it is more concise and omits the commentary given in the application form description.

Appeal A – The Enforcement Notice

6. The breach of planning control as alleged in the notice is the erection of a dormer window on the rear elevation of 18 Gibbs Close, Cheshunt, Hertfordshire, EN8 9RX. That description is imprecise and ambiguous given the reasons for issuing enforcement notice clarify that 'The development consists of a retrospective loft conversion at the rear of the dwelling, which includes a rear dormer and balcony'.
7. Therefore, to provide clarity and to tally with the requirements, which include the option to remove either the dormer or the balcony, the allegation should be corrected to the erection of a rear dormer extension and balcony. There is no need to repeat the address in the allegation, as that is already set out in section 2 of the notice.
8. I am able to make those corrections, which do not alter the substance of the notice, under the powers transferred to me by s176(1)(a) of the 1990 Act, without injustice to any party.

Appeal A on ground (a) and Appeal B

Main Issues

9. Although the corrected allegation includes both the dormer and balcony, the reasons for issuing the enforcement notice identify harm only in respect of the balcony. That is reflected in the requirements which, as noted, provide the option for the dormer to be retained, without the balcony. The description of development for the retrospective planning application reads as being specific to the balcony only.
10. Therefore, the main issues arising from the reasons for issuing the enforcement notice and refusing the planning application are essentially the same. As such, my reasoning below relates to Appeals A and B, unless otherwise stated.
11. The main issues are the effect of the balcony on:
 - the living conditions of neighbouring occupiers with regards to privacy; and
 - the character and appearance of the area.

Reasons

Living conditions

12. The dormer and balcony have been erected on the rear pitch of the appeal property, which is an extended, two-storey dwellinghouse in a suburban setting.
13. From standing on the roof level balcony, I was able to see that users would have clear and uninterrupted views into the rear gardens of the neighbouring properties, particularly that of the adjoining property at No 17 Gibbs Close. The resultant overlooking from such a close and elevated position results in a significant loss of privacy, both in actual and perceived terms.
14. The more sustained and obvious overlooking is significantly greater than that which could reasonably be expected from any mutual overlooking typically found in such a suburban location, which is largely limited to transient views from rear upper floor windows.
15. In an attempt to resolve the privacy issues, the appellant has stated his willingness to install glazed screens to the side elevations of the balcony, if I consider such measures necessary. However, even if views were focused forwards, the orientation of the neighbouring properties and the position of the balcony close to the boundary with No 17 is such that acceptable mitigation would not be achieved. Moreover, given its limited depth, users of the balcony are more likely to stand and lean on the front railing, thus negating any benefit or protection from side screens.
16. I note the noise concerns raised by a neighbouring resident but given the limited size of the balcony, it is unlikely to accommodate more than one or two persons at any one time and there appears to be insufficient space for table and chairs. It is therefore unlikely that the balcony generates an intensity of use that results in material harm through noise.

17. Nevertheless, I find that the balcony results in significant and unacceptable harm to the living conditions of neighbouring residents through loss of privacy.
18. The Council's reason for refusing the planning application (Appeal B) does not cite conflict with any development plan policy, although it does refer to a 'violation of the Council's SPG guidelines'. The reasons for issuing the enforcement notice also refer to the SPG but do not cite conflict with it. In any case, the extract provided primarily relates to privacy between habitable room windows, so has limited relevance to a balcony.
19. I do however, find conflict with Policy EQ1 of the Local Plan (2018-2033) (LP), which is referred to in the Council's delegated report. That states, amongst other things, that development must avoid detrimental impacts on the amenities enjoyed by the occupiers of neighbouring properties, in terms of daylight, sunlight, outlook and overlooking.

Character and appearance

20. The Council refers to the balcony as being inappropriate in the wider street scene, but given its position on the rear roof pitch, views from the public realm are not readily achieved. Nevertheless, being at roof level, the balcony can clearly be seen from the rear of neighbouring properties. However, despite its use of contemporary materials, it does not appear particularly out of place given the other alterations and extensions which have already been made to the appeal dwelling.
21. Moreover, it is not uncommon for balconies to have an 'off-set' position and given its limited size, it does not appear odd or act to materially unbalance the appearance of the dwelling.
22. Consequently, I do not find unacceptable harm to the character and appearance of the area.
23. As noted, no policies are referenced in the reasons for refusing the planning application. The Council does cite conflict with LP Policy DSC1 in its reason for issuing the enforcement notice but whilst referencing LP Policy DSC2, it does not cite conflict with it. In any case, for the reasons explained, I do not find conflict with either LP Policy DSC1 or DSC2. Those policies expect, amongst other things, a high standard of design for all development.

Conclusion on Appeal A on ground (a)

24. As a result of the harm arising to the living conditions of neighbouring occupants, I conclude that the ground (a) appeal should not succeed and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Conclusion on Appeal B

25. For the same reasons, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Appeal A on Ground (g)

26. A ground (g) appeal is that the time given to comply with the notice is too short.
27. The appellant has requested a period of nine months to allow sufficient time to raise finance for the works, to appoint an agent and obtain approval under the Building Regulations, to identify and appoint a contractor and for the works to be carried out.
28. Although no financial evidence is provided, I recognise that the costs involved in the removal of the dormer and reinstating the pre-existing roof would not be insignificant. Combined with the other factors raised, I agree that a period of three months is too short to carry out those works, regardless of how unlikely it is that the appellant will pursue that option in favour of just removing the balcony (and installing either a Juliet balcony or replacing the doors with windows).
29. To remove the dormer, a period of six months (rather than nine) would strike a reasonable and proportionate balance between any difficulties the appellant may encounter and the public interest in this case. Requirement (i) should also be corrected to include the removal of any resultant debris before the option to pursue requirement (ii), and as per the original drafting, a further month should be given for the same.
30. However, the three months given is sufficient to pursue the more likely option of removing the balcony and installing either a Juliet balcony or replacing the doors with windows. That option would be much less costly and easier and quicker to deliver.
31. Nevertheless, I shall simplify the times for compliance to reflect the above correction and variation.
32. The ground (g) appeal succeeds to the extent explained.

Richard S Jones

INSPECTOR