

Appeal Decision

Site visit made on 18 September 2024

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

an Inspector appointed by the Secretary of State

Decision date: 9TH OCTOBER 2024

Appeal Ref: APP/N5090/C/23/3319939

Land at 32 Colenso Drive, London, NW7 2EB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Rachel Dalton against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 27 February 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a rear dormer window.
 - The requirements of the notice are to:
 1. Either,
 - a) Demolish the rear dormer window and return the roof slope to its original specifications with tiles to match existing.
 - or,
 - b) Reduce the size of the rear dormer as built; to be in accordance with approved plan no. D08 REV 1 of approved planning application reference, 22/5380/HSE.
 2. Permanently remove from the property all constituent materials resulting from the works in 1 above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Application for costs

2. An application for costs was made by Mrs Rachel Dalton against the Council of the London Borough of Barnet. That application is the subject of a separate decision.

Preliminary Matters

3. The appellant's statement includes a section on planning policy and refers to a purported lack of harm to the living conditions of neighbouring occupants and to the character and appearance of the area. The appellant has also referred to other developments granted planning permission in Colenso Drive and to other decisions (including appeal decisions) which she argues to be precedent schemes highlighting the extreme approach taken by the Council in taking

enforcement action. The Council also raises its own precedent concerns, development standards and reasons why enforcement action has been taken.

4. However, I am unable to consider such matters, insofar as they relate to the planning merits, because the appellant has not made an application for planning permission through a ground (a) appeal, which requires payment of a fee.
5. The appellant also raises concern over the manner in which the Council has conducted the enforcement action and has sought to highlight the personal and emotional toll it has taken on her family. However, such matters are beyond the scope of an appeal made solely on grounds (b) and (c), as are discussions over whether the appellant was willing or not to reduce the size of the dormer.

The Appeal on Ground (b)

6. A ground (b) appeal is that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact. The onus lies with the appellant to make her case on the balance of probabilities.
7. The appeal relates to a two storey, end of link dwelling. Planning permission was granted on 12 December 2022 under reference 22/5380/HSE for a roof extension involving rear dormer windows and three front facing rooflights.
8. The appellant's case under ground (b) is that the as-built dormer is materially the same as that approved. However, the alleged breach of planning control is not that the development has not been built in accordance with the approved plans (in breach of condition). Rather, the development which is alleged to have taken place is the construction of a rear dormer window, which is accepted as having occurred prior to issuing the enforcement notice. Whether or not the dormer has planning permission is a matter for ground (c).
9. The ground (b) appeal therefore fails.

The Appeal on Ground (c)

10. The appellant refers to the requirements of the notice being either that the dormer is removed or that it is altered to accord with the approved plans. On that basis it is argued that the main ground (c) issue is whether the as built dormer results in unacceptable harm to the character and appearance of the area, relative to the fallback position of what was approved. However, that is incorrect, and would be a matter for a ground (a) appeal, which, as noted, has not been made.
11. To succeed on ground (c), the onus lies with the appellant to demonstrate, again on the balance of probabilities, that the matters alleged in the notice do not constitute a breach of planning control.
12. S171A(1) of the 1990 Act explains that the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted, constitutes a breach of planning control.
13. Condition 1 of the planning permission granted, stipulates that the development be carried out in accordance with the approved plans, including

drawing number D08 REV1 (proposed elevations). That shows the dormer centrally positioned in the roof pitch and annotated as being half the depth and half the width of the roof pitch. Those are therefore the details/parameters of what has been approved.

14. The Council argues that the dormer is too big and has exceeded its planning permission, resulting in materially greater impacts to the external appearance of the appeal property, street scene and local area. The Council also asserts that the alterations amount to a material amendment to the original permission which would necessitate the further notification of neighbouring residents.
15. Against that, the appellant's view is that the as-built dormer is materially the same as what was approved - being half the height and width of the roof, and that the differences are de minimis.
16. The appellant has provided a photograph of the roof with annotated dimensions which show the as built dormer as measuring 267cm in width and 221cm in height on a roof which is 550cm wide and 433cm high. The appellant explains that the image containing those measurements was sent to the Council, along with a video to authenticate the measurements taken.
17. Following a review of the same, the Council judged the dormer to be 70cm too high and wide. However, it is not explained how it arrived at that judgement and no dimensions have been submitted other than those provided by the appellant. Indeed, I have no evidence from the Council which shows the measurements taken by the appellant to be wrong.
18. Reference is made to internal measurements taken by the Council's Enforcement Officers, but they haven't been provided either. In any case, it appears they were rejected by the Council's Principal Manager.
19. Therefore, on the basis of the evidence before me, the dormer is 4.5cm greater than half the height of the roof, and 8cm narrower than half its width. The appellant argues that by including the height of the fascia board it is 4cm shorter than that permitted. However, the approved plan's measurement line clearly stops short of including the fascia board, which is not part of the roof pitch in any case.
20. It could therefore be argued that there has been a technical breach of planning control arising from the failure to comply with Condition 1, as the development has not been carried out in accordance with the approved plans. However, the differences highlighted are very small and are unlikely to be discernible or materially affect the appearance of the dormer and how it is perceived in relation to the appeal dwelling and street scene.
21. The Council seeks to draw my attention to a comparison of the approved drawing plan D08 REV 1 and a photograph taken by its officers, which it argues as demonstrating that the dormer as built is far more prominent on the rear roof slope than depicted. However, it is not a like for like comparison. The drawing shows the rear of the property in elevation whereas the photograph is taken to the side at ground level. The photographs, which appear to have been taken by a drone are more helpful and show that the dormer is centrally positioned within the roof, as approved.

22. I therefore find, on the basis of the evidence before me, that the differences between the as built dormer and that approved, are de minimis and fall within the scope of planning permission reference 22/5380/HSE. It follows that the matters alleged in the notice do not constitute a breach of planning control.

23. The appeal on ground (c) succeeds.

Conclusion

24. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.

Richard S Jones

INSPECTOR