



Appeal Decisions

Site visit made on 20 November 2024

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2024

Appeal A: APP/N5660/C/23/3316743

10 Madeira Road, London, SW16 2DF

- 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 Adam Douglas against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 22 December 2022.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the erection of a mansard-style dormer roof extension on the rear roof slopes of the premises (the unauthorised rear dormer roof extension).'
 - The requirements of the notice are:
 1. Remove the unauthorised rear dormer roof extension and reinstate the rear roof slopes of the premises as existed prior to the breach of planning control; and
 2. Remove all associated waste and debris resulting from compliance with the above step from the premises.
 - The period for compliance with the requirements is four months after this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/N5660/W/23/3316742

10 Madeira Road, London SW16 2DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Adam Douglas against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 22/03294/FUL, dated 14 September 2022, was refused by notice dated 6 December 2022.
 - The application is described as '*Dormer conversion of a rear roof extension on a first floor maisonette flat. Approx 20 sqm in footprint. Includes movement of an existing skylight window over adjacent stairwell, replacement of a damaged soil pipe and repairs to damaged brickwork on connected wall and chimney.*'
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Formal Decisions

Appeal A

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 mansard-style dormer roof extension on the rear roof slopes of the premises at 10 Madeira Road, London SW16 2DF, subject to condition 1 in the attached Schedule.

Appeal B

2. The appeal is allowed and planning permission is granted for the erection of a rear roof extension, including moving the skylight window at 10 Madeira Road, London SW16 2DF, subject to conditions 1 and 2 in the attached Schedule.

Preliminary Matters

3. I carried out my site visit on an 'access required' basis given that the Council representative, who had arrived promptly at the time specified, had later departed. The appellant's agent, who turned up later, explained he had been delayed. I was then given access to, and viewed, the property both externally and internally.
4. It appears that the development, as built is not entirely consistent with the submitted drawings (refs 10M-1.2 'Internal Plan – Existing and Proposed', 10M-1.2 'Roof Plan – Existing and Proposed', 10M-1.3 'Elevations – Existing' and 10M – 1.4 'Elevations – Proposed' which referred to the moving of a skylight window and an additional soil pipe connection. An interested party, in his representations, also indicates that the dormer extension built is larger than that proposed on Appeal B. This might be the case, but it would only be marginal. Besides, in determining Appeal A, my remit is concerned with the development in situ.
5. I have taken the description of the development proposed on Appeal B from the Council's decision notice as it better focusses on the development involved.

Background

6. It is understood that the roof extension, which requires the benefit of planning permission, was erected without authorisation in 2022. No 10 Madeira Road is a former dwellinghouse, now in use as two self-contained residential flats. Erected for the benefit of the first floor flat, although the occupier of the ground floor flat was approached prior to the works commencing, he claims that he was misled in being told that works to the roof were to be carried out for necessary repairs rather than the intention to build a roof extension.
7. A retrospective application was submitted in an attempt to regularise the planning position in September 2022, but was subsequently refused. As a result, some two weeks later, the Council saw it expedient to issue the enforcement notice now at appeal.

Appeal A on ground (a); the deemed planning application (DPA) and Appeal B

Main Issues

8. The main issues are:
 - 1) The development's effect on the character and appearance of both the host building and the surrounding area; and
 - 2) The effect on the living conditions of the occupiers of the occupiers of no 8 Madeira Road and the ground floor flat at no 10, immediately below.

Reasons

Character and appearance

9. Having weighed up the development's planning merits and impacts I find this main issue to be the primary determinative matter.
10. The dwelling is an attractive mid-terrace period age dwelling. When moving along Madeira Road itself, the roof alterations are not visible. However, distant glimpses of the rear elevations of Madeira Road properties are possible from nearby Gleneldon Road when looking westwards from a vantage point before the railway bridge. This line of vision, though, is somewhat shielded by trees. The said roof extension is thereby mainly viewed by neighbouring occupiers from their rear gardens.
11. I acknowledge that the dormer extension is a rather prominent form of development which protrudes from the roof slope of the property's original two-storey tunnel-back feature. It represents an addition to the roof of some bulk.
12. I am mindful of the roof extensions with similar appearance built at nos 16 and 18 Madeira Road. However, neither of these properties have been converted into flats and, unlike no 10, they are able to take advantage of the permitted development entitlement under Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 which, amongst other things, permit roof extensions up to a maximum additional volume of 50 cubic metres for semi-detached dwellinghouses.
13. Turning to the local policies and guidance cited by the Council, in both refusing planning permission and issuing the enforcement notice against the development, policy Q5 of the Lambeth Local Plan (LP) seeks design quality and architectural detailing and LP policy Q8 goes further in mentioning that new development should show consistency with locally distinctive development patterns and highlights the desirability of visual attractiveness. The standard requirement that extensions should show subordination to the main dwelling is also indicated within LP policy Q11.
14. Although I consider the roof addition as a somewhat obtrusive development, readily visible to the immediate occupiers from their rear gardens, I must take an equitable approach. Given the circumstances, it is necessary to assess the visual objections to the roof extension having regard to its size, appearance and contextual setting and appearance, along with the improvement to the upper floor flat from the increased floorspace and, importantly, also take into account what would reasonably be achieved by dismantling and removing the roof extension.
15. First, I can understand the objections from interested parties. In particular, the occupier of the ground floor flat at no 10 feels he was misled by the appellant as to the purpose of the then intended works to the roof. It would seem that he already felt that the roof extensions built at nos 16 and 18 were out of scale and poorly designed. Nonetheless, in viewing the extension, the subject of the current appeal, whilst one half of the roof of the tunnel-back serving nos 10 and 12 has been altered, creating an obvious imbalance, the roof extension itself is set in from both the eaves and the building's rear

- elevation. It has a chamfered rear end and its two side-facing dormer windows are separate and individual entities, but are identical in profile.
16. As a result, the roof extension is not monolithic in form and, with its massing and bulk broken up, I consider it of an articulated design. Coupled with the cladding material used, whose charcoal grey colour is not jarring, the extension's visual appearance pleasantly contrasts with that of the tunnel-back due to the fact that half this feature – that serving no 12 – has been rendered in a cream colour, rather than the bare brickwork at no 10. I find that this actually helps the development blend in, otherwise the contrast could be rather stark. The extension also shows a reasonable degree of subordination.
 17. The point has been made that the roof extension was erected without authorisation. The appellant, in response, says that having had regard to the developments at nos 16 and 18, he was not aware that planning permission would be required. In this connection, having examined the submitted plans and looked at the roof extension built, it is clear to me that the additional volume created is significantly less than 50 cubic metres. Whilst Class B householder permitted development rights do not apply to residential flats, the size of the dormer is still a pointer as to scale.
 18. I acknowledge that the planning application was made retrospectively, but although this should not serve as an advantage to the appellant, neither should it be a disadvantage. A considerably lesser factor in planning merit is that the additional floorspace created will improve the first floor flat; site capacity being mentioned in London Plan policy D3.
 19. Although I accept that the development does not fully satisfy the requirements of the local policies cited or the Council's Supplementary Planning Document 'Altering and Extending Your Home', due to it being mainly inconsistent with local character, I have concluded that the roof extension's design and appearance is to a high quality and, as such, the development does not unacceptably detract from the host property nor its immediate surroundings, given the context.
 20. Accordingly, whilst there might be apparent objections due to the way the policies are worded, these are not compelling in this particular instance and, in the circumstances, to require for the removal of the development on this main issue is draconian and unwarranted, and would amount to significant inconvenience and disruption.
 21. I therefore conclude that the development, whilst it is out of character with the original building is, in terms of appearance, not unduly harmful given it is well designed, sits easily within the roof slope and is not dissimilar in form to the nearby roof extensions at nos 16 and 18. Neither is it significantly at odds with the aims and objectives of the planning policies and guidance referred to.

Living conditions

22. Representations received from interested parties refer to the side facing dormer windows overlooking the neighbouring property, no 8 and also the ground floor flat and its immediate surroundings. Even if this was not the case there would still be a perceived sense of being overlooked due to the positioning of the windows. In the circumstances, as a safeguard, I shall

impose a condition requiring that the windows be obscurely glazed and non-opening up to a certain height from the floor level.

23. This will ameliorate any such problem and be consistent with LP policy Q2 which seeks to protect the amenities or living conditions of neighbouring occupiers. Moreover, the condition is worded so that failure to comply with its requirement within a particular time period will mean that the planning permissions will lapse and the enforcement notice's requirements will come into effect.
24. Finally, a neighbour mentions that no Party Wall Agreement has been entered into. However, this is a matter dealt with under the Building Regulations.

Conclusions on Appeals A and B, and conditions

25. This is a finely balanced decision, one I have come to as I consider that a pragmatic approach is required given the particular factors involved. As such, it should in no way be seen as justification for inappropriate design at odds with contextual setting. Each case is determined with due regard to its own merits and/or impacts. Accordingly, despite my decision to allow these appeals, the Council's design based policies are not in any way compromised as a result. Besides, I conclude that the development is in accordance with the development plan and its objectives as a whole.
26. I am satisfied that both of the developments are, on balance, acceptable, but subject to a condition, as suggested by the Council, requiring that the glazing of the side-facing dormer windows facing towards no 8 be partly obscured glazed and non-opening. Accordingly, I have altered the Council's wording to one worded retrospectively with a 'fall away' penalty. Should its requirements be breached then the planning permission will lapse and, in this event, remedial measures may then be employed by the Council.
27. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted, but subject to a single condition relating to the glazing of the dormer windows, hereby approved. I am allowing a period of four months for such, which I consider is reasonable in the circumstances, and is consistent with the compliance period stipulated in the enforcement notice. The appeals on grounds (f) and (g) do not therefore need to be determined.
28. Similarly, Appeal B is allowed subject to the same condition, along with an additional condition requiring that the development be carried out in accordance with the submitted plans. The appellant thereby has a choice whether to modify the development as per the said plans, hereby approved, or retain the roof extension as built.

Timothy C King

INSPECTOR

Schedule of Conditions

- 1) The roof extension, hereby permitted, shall be demolished and the resulting debris removed from the land within four months of the date of failure to meet the following criteria:
 - (i) Within three months of the date of this decision, the two windows installed within the roof extension's side/east facing elevation shall be obscurely glazed and non-opening unless those parts of the window are more than 1.7m above the room's floor level. The windows shall remain fixed shut and non-opening thereafter, and shall be maintained accordingly.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing nos 10M-1.2 'Internal Plan – Existing and Proposed', 10M-1.2 'Roof Plan – Existing and Proposed', 10M-1.3 'Elevations – Existing' and 10M – 1.4 'Elevations – Proposed'.