



Appeal Decision

Site visit made on 28 November 2017

by **Paul Freer BA (Hons) LLM PhD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 25 January 2018

Appeal Ref: APP/Q1445/C/17/3174796

Land at 23 Rugby Place, Brighton BN2 5JB

- 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 John Stevenson against an enforcement notice issued by Brighton & Hove City Council.
 - The enforcement notice was issued on 23 March 2017.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of a dormer extension to the maisonette at the Land.
 - The requirements of the notice are:
 - i. Completely remove the rear dormer and return/reinstate the rear roof slope to match the properties either side at Nos 21 and 25 Ruby Place.
 - ii. Reinstate the soil vent pipe in accordance with plan approved on appeal (APP/Q1445/A/08/2083968 and BH2008/01394) and referenced Proposed Rear Elevation and Section AA dated 19.02.2008, and as attached to the notice.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld as varied

Procedural Matters

1. The appellant suggests that the dormer now subject to the enforcement notice was constructed when the property was still a dwellinghouse and therefore constitutes permitted development. In the alternative, it is suggested that the dormer extension was expressly granted planning permission as part of the conversion of the dwelling into one one-bedroom flat and one three bed maisonette granted on appeal in January 2009 (APP/Q1445/A/08/2083968). In my view, both of these arguments constitute an appeal on ground (c): namely, that in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control.
2. In submitting the appeal, the appellant did not make an appeal on ground (c). Nevertheless, it seems to me that the above arguments should both properly be considered under that ground of appeal. In that context, whilst not specifically addressing an appeal on ground (c), the Council has nonetheless commented on the arguments advanced by the appellant. The Council has also provided all the necessary background documents with of the completed Questionnaire. I shall therefore consider the arguments advanced by the appellant as if there were submitted in the context of an appeal on ground (c). I am satisfied that no party would be caused injustice by doing so.

3. The requirement at paragraph 5(ii) of the notice is to reinstate the soil vent pipe in accordance with plan approved on appeal (APP/Q1445/A/08/2083968 and BH2008/01394) and referenced Proposed Rear Elevation and Section AA dated 19.02.2008. However, the re-positioning of the soil vent pipe is not identified or included in the breach of planning control alleged at paragraph 3 of the notice. It is important that an enforcement notice is internally consistent, and the inclusion of a requirement to remove the soil pipe is not consistent with the breach of planning control alleged in the notice. I therefore consider that the requirement at paragraph 5(ii) of the notice should be deleted. I am satisfied that no injustice would be caused by varying the notice in this way.

The appeal on ground (c)

4. The appellant's grounds of appeal suggest that the dormer extension now subject to the enforcement notice was constructed as permitted development before the property was converted into flats. I understand that the conversion of the property into flats took place in or around 2013, albeit preparation work on the construction of the dormer may have commenced as early as 2005 or 2006.
5. In 2013, the version of the General Permitted Development Order then in force was the Town and Country Planning (General Permitted Development) Order 1995 (as amended) ('1995 GPDO'). Under that Order, the enlargement of a dwellinghouse consisting of an addition or alteration to its roof is permitted by Article 3, Schedule 2, Part 1, Class B subject to the condition at Class B.2(a) that the materials used in any exterior work shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
6. I noted during my site visit that the external surface of the dormer extension is finished in white-coloured uPVC boarding that contrasts markedly with the exterior of the existing dwellinghouse, including the materials used in the construction of the remainder of the roof. The materials used in the any exterior work to the dormer extension are therefore not of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse, such that the dormer extension does not accord with the condition at Class B.2(a). For this reason alone, the dormer extension cannot constitute permitted development under the 1995 GPDO.
7. The appellant also advances the argument that the dormer extension was expressly granted planning permission as part of the conversion of the dwelling into one one-bedroom flat and one three bed maisonette granted by the above appeal (APP/Q1445/A/08/2083968). In this respect, I note that both the 'existing' and 'proposed' plans submitted with the appeal show a dormer extension in situ.
8. However, this does not necessarily mean that the appeal granted planning permission for that dormer. To begin with, the dormer shown on those plans is clearly not that now existing and subject to the enforcement notice: in particular, I note that disposition of the windows is different and there is no Juliet balcony shown. Moreover, this is not assisted by a discrepancy within the application drawings between the floor plans and the elevation, in which the positioning of the window openings is shown differently. On that basis, the permission granted on appeal could not have granted planning permission for the dormer as now existing.

9. Furthermore, I am not entirely convinced that the terms on which planning permission was granted on appeal encompass the dormer extension. The description of development set out in the banner heading to the Decision, usually taken from description of development on the planning application form, is clearly defined as 'the conversion of the dwelling into one one-bedroom flat and one three bed maisonette'. This is repeated at paragraph 1 of the Decision, which sets out the development for which planning permission is granted. There is no mention in the banner heading or the description of development of operational development in the form of the construction of the dormer extension.
10. The next question to ask, then, is whether any conditions imposed upon the planning permission required or permitted the construction of the dormer extension now subject to the enforcement notice. There were three conditions imposed upon the planning permission: 1) the standard time period for commencement condition; 2) a condition requiring refuse, recycling and cycle parking to be provided and; 3) a condition requiring the submission of a waste management statement. None of these conditions may reasonably be read or inferred to require the construction of the dormer extension shown on the application drawings.
11. The basic principle is that a planning permission should stand by itself and that the meaning should be clear within the four corners of the document. In this case, the description of development is clear but does not include the dormer extension. The application plans are less clear but, for the reasons stated above, they cannot in any event reasonably be interpreted to show the dormer extension as now constructed. None of the conditions imposed on the permission requires or permits the construction of the dormer extension. I therefore consider that there is nothing in the planning permission granted on appeal that expressly grants planning permission for the dormer extension as now constructed.
12. In summary, for the reasons set out above the dormer extension as constructed cannot constitute permitted development and I am not convinced that the dormer extension was granted planning permission by the appeal ref: APP/Q1445/A/08/2083968. The appellant has not discharged the burden of proof that falls upon him on this ground of appeal and, on the balance of probability, I conclude that the construction of the dormer extension alleged in the enforcement notice does constitute a breach of planning control.
13. Accordingly, the appeal on ground (c) fails.

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

14. The ground of appeal 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 Council has stated two substantive reasons for issuing the enforcement notice, from which the following main issues are raised:
 - the effect of the dormer extension on the scale, character and detailing of the existing property, and
 - the effect of the dormer extension on the living conditions of the occupiers of neighbouring residents, specifically in relation to privacy.

Scale, character and detailing of the existing property

15. In considering this issue, it is firstly important to note that the reason for issuing the notice is quite specific and narrowly defined. The reason refers solely to the effect of the dormer extension on the scale, character and detailing of the *existing property* (my emphasis). It does not refer to the effect of the dormer extension on the character or appearance of the surrounding area. The corollary is that my consideration must focus solely on the effect of the dormer extension on the scale, character and detailing of the existing property. It further follows that the effect of the dormer extension on the character and appearance of the wider area, including references to dormer extensions to other properties in that surrounding area, cannot form part of my consideration of this main issue.
16. The appeal property forms part of lengthy terrace of houses on the west side of Rugby Terrace. When viewed from Rugby Place, the original design of these houses may be described as being two-storey with basement. However, from the rear, the properties appear as a full three storeys. Nevertheless, primarily as a result of their relatively narrow width, these terraced houses are modest in scale.
17. The dormer extension subject to the enforcement notice occupies practically the full width of the roof slope, is full height and extends practically to the eaves. The substantial overhang contributes to the overall impression of bulk. The dormer extension therefore appears as a bulky addition to the original form of the building and gives the appearance of an extra storey on top of the building, thereby fundamentally changing the overall scale of the building when viewed from the rear. Consequently, when viewed in relation to overall modest proportions of the existing property, the dormer extension is out of scale with those proportions.
18. As originally constructed, the front elevation of these houses was well articulated and detailed, with a full-height bay feature and a recessed entrance accessed via a flight of steps. By comparison, the rear elevations are relatively plain and do not exhibit the same level of detail and articulation as the front elevations.
19. The dormer extension is, in some respects, well detailed with folding doors behind balcony screen constructed of obscured glazing. However, the uPVC cladding is completely alien in its appearance and is incongruous in the context of the external finish of the rear elevation. I am mindful that the rear elevation displays little of the detail and articulation as the front elevation. Nevertheless, by reason of the materials used in the construction of the external surfaces, the dormer extension is harmful to detailing of the existing property.
20. The character of the existing property is overtly residential. The dormer extension exhibits features that are consistent with that residential character, including the folding doors and the balcony. I am therefore satisfied that the dormer extension does not harm or detract from the residential character of the existing property.
21. Notwithstanding the absence of any harm to the residential character of the existing property, I conclude that, by reason of its bulk and external finish, the dormer extension does not respect the scale or detailing of the existing property. I therefore conclude that the dormer extension conflicts with Policy

QD14 of the Brighton and Hove Local Plan 2005 which states, amongst other things, that planning permission for extensions to existing buildings, including the formation of rooms in the roof, will only be granted if the development is well designed, sited and detailed in relation to the property to be extended. The dormer extension also fails to accord with the Council's Supplementary Design Document SPD12 *Design Guide for extensions and alterations*, which indicates that box dormers constructed using the full width and/or height of the roof are an inappropriate design solution and will not be permitted as they give the appearance of an extra storey on top of the building.

Living conditions

22. The terrace of which the appeal property forms a part runs parallel with a terrace of residential properties that front onto Bennett Road. The rear elevations of the properties in Rugby Place therefore face directly onto the rear elevations and rear gardens of the houses fronting onto Bennett Road. The separation distance between the two terraces is relatively short, such that there is already a degree of mutual overlooking of habitable rooms and garden spaces between houses in these terraces. There is similarly a degree of mutual overlooking between adjoining properties in the same terrace and, in some cases, also from blocks of flats that adjoin Rugby Place. I have taken this mutual overlooking into account in considering this issue.
23. As part of my site inspection, I was able to view the properties that front onto Bennett Road from within the room created by the dormer extension. When standing in the middle of that room, only the roofs of the properties opposite are visible. Accordingly, in the course of the normal use of that room, there is not a significant degree of overlooking of those properties. This is clearly demonstrated by the diagram contained within the appellant's Appeal Statement, which depicts the line of sight from a position of some 1.5 metres inside the room, taking into account that the Juliet balcony screen effectively serves as a solid barrier.
24. That situation changes significantly when stood at the glazed folding doors and even more so when the folding doors are opened. From that position, it is possible to look directly into the windows serving habitable rooms in the houses facing onto Bennett Road. Moreover, clear views are afforded into the rear gardens of those properties. Although a degree of mutual overlooking is inevitable in this type of residential environment, this degree of overlooking possible from the folding doors (whether open or closed) goes beyond that which may normally be considered acceptable. The result is a significant and unacceptable loss of privacy to the occupiers of those properties. Although constructed of obscure glass and therefore does not allow views through it, the Juliet balcony screen is only 1.1 metres in height and consequently does not prevent unrestricted views over it when standing close to the folding doors.
25. As a comparison, I was able to view the properties that front onto Bennett Road from the window on the first floor, immediately below the dormer extension. There were some similarities in terms of the potential to overlook the properties fronting onto Bennett Road but there were also some subtle yet nonetheless important differences. In particular, at first floor level, the views towards the properties in Bennett Road were subject to more interference by vegetation, and this both filtered and reduced the views into the habitable rooms and garden areas. However, the greatest single difference was that the

increased elevation of the dormer extension opened views into far more of the garden space of the properties fronting onto Bennett Road. The increased overlooking and subsequently loss of privacy that result significantly reduces the amenity value of those spaces. Having regard to these differences, I consider that the overlooking that is undoubtedly possible from first floor level does not justify the greater opportunities that are possible from the dormer extension.

26. I conclude that the dormer extension has an unacceptable effect on the living conditions of the occupiers of neighbouring residents, specifically in relation to their privacy. I therefore conclude that the dormer extension conflicts with Policies QD14 and QD27 of the Brighton and Hove Local Plan 2005. These policies state, amongst other things, that planning permission for extensions to existing buildings, including the formation of rooms in the roof, will only be granted if the development would not result in a loss of privacy or amenity to neighbouring properties. The dormer extension also fails to accord with the Council's Supplementary Design Document SPD12 *Design Guide for extensions and alterations*, which indicates that balconies held within dormers will generally not be permitted if they overlook neighbouring properties.

Other Considerations

27. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the dormer extension fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
28. The appellant has described the circumstances that led to the construction of the dormer extension, including the delays to the project as a result of illnesses suffered by himself and his family. The appellant has also set out his concerns regarding the approach and conduct of the Council in relation to the alleged breach of planning control. Nevertheless, although I have no reason to doubt that the appellant's intention was always to comply with planning legislation, I have found that a breach of planning control has occurred. Therefore, I must and have dealt with the appeal on ground (a) having regard to the development and any other material considerations, including the points made by the appellant referred to above. However, having taken those points into account, I do not consider that they outweigh the conflict with the development plan that I identified above.
29. The appellant has suggested that the existing dormer could be amended to address the concerns raised by the Council in issuing the notice, and that planning permission could be granted subject to appropriate conditions. To my mind, that is a point that more properly falls to be considered in the context of the appeal on ground (f) and I return to it below.

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

30. Having regard to the above, I find that the dormer extension is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be

determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted.

31. Accordingly, the appeal on ground (a) fails and the deemed planning application will not be granted.

The appeal on ground (f)

32. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice include the complete remove the rear dormer and return/reinstate the rear roof slope to match the properties either side at Nos 21 and 25 Ruby Place. The primary purpose of the notice must therefore be to remedy the breach of planning control.
33. The amendments proposed by the appellant are in two parts: the replacement of the uPVC cladding with tiles to match other dormers in the vicinity, and to fit obscured glazing in the two outermost sections of the bi-fold doors. The appellant considers that these two amendments would overcome the planning difficulties, and could be controlled by the imposition of suitably worded conditions.
34. The replacement of the uPVC cladding with tiles to match other dormers in the vicinity would, I accept, improve the appearance of the structure and would go some way to overcoming the conflict with the detailing of the existing property. However, the application of tiles would do nothing to reduce the scale of the dormer. Consequently, the replacement of the uPVC cladding with tiles would not prevent the dormer extension from giving the appearance of an extra storey on top of the building, and thereby fundamentally changing the overall scale of the building when viewed from the rear.
35. During my site visit, with the assistance of the appellant, the fitting of obscured glazing in the two outermost sections of the bi-fold doors was simulated by covering the outer sections with curtains. This effectively re-created the reduced field of vision from within the room. However, as described above and demonstrated by the diagram contained within the appellant's Appeal Statement, when standing in the middle of that room, only the roofs of the properties opposite are visible in any event. It is only when standing close to the bi-fold doors that the significant overlooking of neighbouring properties becomes possible and unacceptable. It follows that fitting the two outermost sections of the bi-fold doors with obscured glazing would have no effect when standing close to those doors, including when the doors are open.
36. I recognise that the Council has indicated that the harm caused by the current dormer could be reduced if these amendments were made, together with the installation of a gutter between the first and second floor. However, I note the use of the term 'reduced' and that the Council stops short of suggesting that the harm would be completely overcome or that the dormer would then would become acceptable. I concur with that position.

37. I therefore consider that neither of the amendments put forward by the appellant would overcome the planning difficulties identified in the notice. I have considered whether there are any other suitable alternatives to the complete removal of the dormer extension which would overcome the planning difficulties with less cost or disruption to the appellant, but none are obvious to me.
38. I therefore conclude that the requirements of the notice are not excessive. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

39. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six months.
40. The essence of the appellant's appeal on this ground is that works to remove the dormer would involve significant disruption, and are likely to take longer than six months to arrange and complete. A period of compliance of twelve months is considered more reasonable, and this is the period sought.
41. As a generalisation, I can accept that works to remove the dormer extension would involve significant disruption partly, I acknowledge, due to the modest size of the host property. However, I have been provided with no evidence to support the appellant's contention that twelve months would be required to complete these works. For example, I have been provided with no technical assessment by a suitably qualified person of the work required or a detailed timetable for undertaking those works. It also appears to me that the requirements of the notice are not especially complex or technical, such that they would require a specialist contractor to carry them out. Neither have I been provided with evidence to show that suitably qualified builders have been found and approached but are unable to carry out the work within the required timescale. I am therefore not persuaded that the appellant's concerns about being unable to complete the works in the stipulated timescale are sufficient to justify an extension to the period of compliance specified in the notice.
42. Accordingly, the appeal on ground (g) fails.

Conclusion

43. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as varied and refuse the grant planning permission on the deemed planning application.

Formal Decision

44. It is directed that the notice be varied by deleting the requirement at paragraph 5. (ii) of the notice
45. Subject to that 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.

Paul Freer

INSPECTOR