

Appeal Decisions

Site visit made on 13 April 2016

by Chris Hoult BA(Hons) BPhil MRTPI MIQ

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 May 2016

Appeal Ref: APP/X5210/C/15/3130682 (Appeal A)

Land at 17 Fairhazel Gardens, London, NW6 3QL

- 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 1990 Act").
- The appeal is made by Starlevel Properties Limited against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN14/0546.
- The notice was issued on 12 June 2015.
- The breach of planning control as alleged in the notice is the unauthorised installation of a rear dormer roof extension.
- The requirements of the notice are to: (1) Completely remove the rear dormer roof extension. (2) Reinstall the rear roof to match the form, profile and materials of the original.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (e) and (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal Ref: APP/X5210/W/15/3131272 (Appeal B)

17 Fairhazel Gardens, London, NW6 3QL

- 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 Starlevel Properties Limited against the decision of the Council of the London Borough of Camden.
- The application Ref. 2015/1993/P, dated 3 April 2015, was refused by notice dated 4 June 2015.
- The development proposed is described as "retrospective application to retain and alter existing loft conversion to form a reduced rear dormer".

Summary of Decision: The appeal is dismissed.

Preliminary matters

1. A rear dormer has been installed at the appeal property without planning permission and is therefore unauthorised. The appeal against the enforcement notice is on the grounds that it was not properly served on everyone with an interest in the land and that, if the notice is upheld, the period for compliance with its requirements is too short. No challenge is made to the notice on the planning merits of the dormer which is in place. If I were to not quash the notice on the grounds of defective service, this dormer would represent an unlawful extension to the rear roof.
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2. The appeal under s78 of the 1990 Act is concerned with a proposal for a revised dormer of reduced size, as I explain below in dealing with Appeal B. If I were to have allowed that appeal, the notice would still be upheld but the provisions of s180 of the 1990 Act would operate so that it would cease to have effect in so far as it would be inconsistent with any permission granted. In other words, its provisions in respect of the existing dormer would be superseded by the installation of a revised dormer.
3. The application subject of Appeal B is worded as I have indicated, above. However, the existing dormer is an unlawful structure and so the application, rather than refer to its retention (which is not an act of development in any event), must be for a replacement dormer. To that extent, it is not therefore a retrospective application. I deal with Appeal B on that basis.
4. My decision is structured to deal firstly with the ground (e) appeal on Appeal A, since that will determine whether the notice is quashed or upheld, and then with Appeal B, which concerns the planning merits of a replacement dormer. Although the notice would be upheld if I dismiss the ground (e) appeal, it would only be necessary to deal with the ground (g) appeal in Appeal A if I were to dismiss Appeal B.

Appeal A – ground (e)

5. The appellants contend that the notice should be quashed as invalid because it was not served at the company's registered address and that contact details were in any event given on the form for the application subject of the s78 appeal and, when served at the property, it was vacant at the time. Thus, they say, it was not picked up until around 6 weeks following the date of issue and they note also that it had to be re-sent in any event on 10 July 2015 as the initial recorded post was returned unsigned/undelivered. They add that it had always been the intention to lodge an appeal against refusal of the planning application for a reduced dormer before any notice was either served or took effect. They acted as quickly as possible in appealing the notice but my reading of their concerns is that the date when it would have come into effect should have been amended to allow for the s78 appeal to run its course.
6. The appellant company's registered address is 59 Grosvenor Street, London W1, but the register of title of the appeal property obtained by the Council from the Land Registry shows it to be 57 Grosvenor Street, the address at which the notice was served. The application form for the reduced dormer, submitted in April 2015, indicates that, at that time, the appeal property was not vacant so the Council served the notice at the property on that understanding. An earlier site visit by officers in January 2015 showed that the property appeared to be furnished and either occupied or ready for occupation. In the light of that, and the evidence from the application form, the Council's assumption that it would have been occupied when serving the notice appears reasonable. I can find no explanation in the evidence for the discrepancy between the two accounts of the appellants' registered address.
7. In the light of that, it seems to me that all reasonable attempts were made by the Council properly to serve the notice on all those with an interest in the land. However, if the notice was not properly served, s176(5) of the 1990 Act in any event entitles me to disregard any failure to serve the notice on a person who should have been served it if neither the appellant nor that person has been substantially prejudiced by any such failure. The appellants became

aware of the notice and were able to lodge an appeal against it in time. There is no evidence to the effect that their case has been weakened or in any other way prejudiced by having to submit their appeal late in the day.

8. Regarding the s78 appeal, the Council refused planning permission in early June. The appeal was not submitted until 29 July 2015, after the date that the notice would have come into effect (24 July 2015). I find that at odds with the claim that it had always been intended to submit it before such a time and they would have known about the date of the notice coming into effect on 21 July 2015 at the latest. In any event, as I have explained, the appeal does not seek to argue the merits of the existing dormer but is for a different structure.
9. The appellants separately object to the notice under this ground on the basis that it fails to identify precisely the boundaries of the land to which it relates, and invite me to find it invalid on that account. As I read it, this objection appears to stem from the fact that, aside from any other failings, the copy of the notice served on the appellants did not have a plan attached. While I acknowledge it as a failure on the Council's part to serve the notice properly, the appeal site is a straightforwardly well-defined residential plot in an urban area. It would be clear simply from reading the address which land the notice covers. There is a plan, and the copy attached to my copy of the notice, while poor, clearly identifies the appeal site. I see no grounds for arguing substantial prejudice being caused to the appellants on that separate basis.
10. I therefore conclude that the appellants have not been substantially prejudiced by any failure to serve the notice properly and that it should not be rendered invalid on that account. As for any alteration to the date that it would have come into effect, I have explained how s180 of the 1990 Act would operate should I have allowed Appeal B. I therefore conclude that the appeal on ground (e) is unfounded and, accordingly, must fail.

Appeal B

Main issue

11. The main issue is whether the proposed dormer would preserve or enhance the character or appearance of the South Hampstead Conservation Area (CA).

Reasons

12. The character and appearance of the CA is thoroughly analysed and explored in the Character Appraisal and Management Strategy (CAMS) published by the Council in 2011 and included in its evidence for the appeal. Its special interest is succinctly described¹ as in so far as it is a well-preserved example of a leafy Victorian suburb, almost exclusively residential in nature and largely homogenous in scale and character. It is characterised by large semi-detached and terraced properties, in red or gault brick, with a distinctive roofscape. Reference is made to a variety of decorative treatments. Vegetation is viewed as one of its most prominent features, the properties being set back behind green front gardens while, to the rear, there are large green open spaces made up of communal rear gardens or converging private gardens.
13. The pattern of development is that of a grid-iron of streets with grand terraces of houses of 4-5 storeys, whose upper-ground floors and basements emphasise

¹ See paragraphs 3.1-3.3

their scale and height. The appeal property is a plain modern infill dwelling, with simple detailing, part of a short terrace which is adjacent to a modern block of flats at the junction of Fairhazel Gardens and Greencroft Gardens. It contrasts in its appearance with the imposing form and pattern of the period development within which it is set. It is not referred to expressly in the CAMS but that document notes that modern infill within the CA is often of poor design quality. The Council highlights its uncluttered elevations and clean roof lines but, on account of its plainness and limited height as contrasted with the Victorian terraces which are around it, its contribution to the character and appearance of the CA must be viewed as no more than neutral.

14. Views of the rear of the property from neighbouring streets are very limited, the only clear sighting of the existing dormer being an oblique view from further south on Fairhazel Gardens. However, it overlooks an extensive rear garden area between Greencroft Gardens and Aberdare Gardens to the south, where views of it are only partially filtered by trees. The roof line is, to that extent, prominent in the locality. The appellant appears to accept that the existing dormer is unacceptable so has sought to reduce its size. Its side cheeks and face have been brought in from the edge of the roof and eaves accordingly. Its height relative to the ridge would remain unchanged, however, being no more than 150mm (15cm) below ridge height, on account of the need to maintain floor-to-ceiling heights internally. I noted on my visit the low ceiling height when in the room within which the present dormer is located.
15. The Council has produced design guidance related to dormers² and, while such guidance should not be viewed as prescriptive, it is aimed at achieving a roof extension which would appear subordinate and proportionate to the main roof. Importantly, it requires a minimum gap of 500mm (50cm) between the dormer and roof ridge to avoid an impression of the dormer projecting into the roof line when viewed from a distance. Otherwise, the clear impression would be of an overly dominant or top-heavy dormer roof extension.
16. In this case, plainly, such a gap would not be achieved. Moreover, the Council objects to the width of the proposed dormer which, even though reduced, would still cover two-thirds of the width of the roof, reinforcing the extent to which it would appear overly dominant. I have some sympathy for the appellants' attempts to strike the correct balance between providing practicable living accommodation in an extended second-floor room and installing a dormer of sympathetic appearance in term of fenestration and materials. However, I share the Council's concerns.
17. The property is unassuming in its appearance and its neutral effect on the character and appearance of the CA largely derives from this quality, allied to its simple form. A dormer of the size proposed, with no discernible gap to the ridge, would draw undue attention both to its presence and to the top-heavy appearance of the dormer itself. In terms of its proportions, relative to the roof mass, it contrasts unfavourably with the approved dormer at the adjacent no. 17a, now in the process of being constructed, as the appellants' street context drawing all too readily shows. This is in spite of the distracting presence on the drawing of the terraced properties on the eastern side of Fairhazel Gardens which, in practice, would not register to the extent shown in main views of the property's rear elevation from neighbouring gardens.

² See document CPG1 published in September 2013, paragraph 5.11

18. Viewed in the wider context of the short terrace of which it forms part, and the wider locality, it would set a precedent for similarly over-sized dormers on neighbouring properties. That at no. 23 has already been the subject of a previous application for a rear dormer which was dismissed at appeal in 2011. The whole of the terrace has previously been the subject of pressures to increase living space, as evidenced by proposals to add a further storey to each dwelling in 1996 (also dismissed at appeal) and for increases to ridge heights and the installation of rear dormers and front roof lights, in 2008. Given the high premium on living space in London, such pressures would be difficult to resist should the proposal be allowed.
19. The appellants rely on the works currently taking place at no. 17a, which I saw on my visit, in order to highlight differences in circumstances between this appeal and that relating to no. 23 in 2011. In that case, the Inspector, in dismissing the appeal, relied to some degree on an uncertainty as to whether the then extant permission for a dwelling would be implemented. However, I do not share the appellants' view that that now sets a "blanket" precedent for other dormer extensions within the terrace. The Council's concerns relate not to the terrace as a whole but to what it refers to as "the integrity of the building". I take it from that, all other things being equal, that it would have no objection to an acceptably-designed rear dormer on the appeal property.
20. The appellants also draw my attention, supported by aerial photographs, to other rear dormers on the larger period properties in the locality. I was able to see numerous examples of such dormers in the course of my visit, including some of considerable size and which were quite prominent in views from surrounding streets. However, it is plain that a neighbourhood such as this will have evolved over time. What might have been acceptable in terms of the design of extensions such as rear dormers will have changed in the light of successive policies and guidance, in particular those which, more recently, have aimed at preserving the CA's special interest. The mere presence of such extensions cannot justify similar development which would otherwise be harmful and no supporting evidence is presented which might enable me to make a meaningful comparison of the circumstances in which they were built.
21. Accordingly, and for the reasons given, I conclude that the proposed dormer would cause harm to the appearance of the building, which would result in its having a negative effect on, and would thus fail to preserve the character or appearance of the CA. As such, it cause harm to the appearance of the CA. It would conflict specifically with Policy DP25(b) of the Camden Development Policies 2010-2025 and with the wider encouragement to high quality design in Policy DP24. It would run contrary to the aims of Policy CS14 of the Camden Core Strategy 2010 in respect of heritage assets and to the wider aims of Policy CS5 as regards protecting the Borough's heritage. Its design would conflict with criteria (b) and (d) of the guidance on dormers set out in paragraph 5.11 of document CPG1 on account of its height and overall size.
22. With regard to paragraph 134 of the National Planning Policy Framework, it is plain that the harm caused to the significance of the CA as a designated heritage asset, taken as a whole, would be less than substantial. I considered whether the provision of additional living space which, as the appellants say, would suit a growing family, might amount to a public benefit capable of outweighing the harm. However, a dormer of this size is not required to make the room habitable nor, of itself, would it be decisive in achieving acceptable

additional living space and bringing daylight to the room. I therefore conclude that the harm would not be outweighed by any public benefits arising. In the light of this, I conclude that the appeal should be dismissed.

Other issues

23. With regard to the objection to the proposal from the occupiers of Flats C and D of no. 47 Greencroft Gardens, I note their concerns as to the effect on their outlook. The attached photographs are of the present dormer, which it is proposed to reduce in size in any event. The appeal property is at the far end of the terrace as viewed from their property and the proposed dormer would not have such a dominant effect on outlook as in the case of no. 23, in respect of which previous Inspectors identified harm.
24. I accept that any proposal to extend the roofs of properties in the terrace would, as they approach no. 47, risk harm to the outlook from, and most likely also to daylight and sunlight to these flats. However, the Council does not identify harm on this account arising from a proposal limited to no. 17 only and, given the intervening distance, I concur with that view. However, that does not alter my conclusions on the main issue which I have identified.

Appeal A – ground (g)

25. The appellants' appeal on this ground amounts to an extension, and further explanation, of their appeal on ground (e). No evidence is adduced in order to support a view that, if the notice were upheld, a period of three months to comply with the notice's requirements, to remove the present dormer and make good the roof, would be too short. I see no reason to suppose, given the scale of the required works, that such a period would be inadequate. With regard to the appellants' concern regarding the date that the notice would take effect, appeals against the notice and in respect of an alternative dormer have been dismissed. They have, however, been allowed to run their course and the upheld notice would take effect once my decision is issued, in the absence of any challenge to the decision. Accordingly, the appeal on this ground must fail.

Decisions

Appeal Ref: APP/X5210/C/15/3130682 (Appeal A)

26. The appeal is dismissed and the enforcement notice is upheld.

Appeal Ref: APP/X5210/W/15/3131272 (Appeal B)

27. The appeal is dismissed.

C M Hoult

INSPECTOR