
Appeal Decisions

Site visit made on 30 March 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 16 May 2017

Appeal A: APP/X5210/C/16/3159484

Land at 45 Goldhurst Terrace, London NW6 3HB

- 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 Martin Owen Clarke against an enforcement notice issued by the Council of the London Borough of Camden.
- The notice was issued on 17 August 2016.
- The breach of planning control as alleged in the notice is without planning permission:
 - 1) Erection of a rear dormer, side dormer and rear roof terrace materially different from approved plans so as to be without planning permission;
 - 2) Removal of the clay tile roof to the projecting bay at rear first floor level and creation of a brick balustrade to create an external balcony;
 - 3) Installation of a uPVC door installed at ground floor rear within the bay.
- The requirements of the notice are:
 1. Completely remove the rear and side dormers and reinstate the rear and side roof to match the materials and profile of the original roof slope, remove the brick balustrade and reinstate the original bay window roof at rear first floor level, as shown on existing drawings A9743PA/001 and A9743PA/003 approved under application ref. 2015/5564/P: **or**
 2. Make the rear roof dormer and terrace, the side dormer, the first floor rear bay roof and the upper ground floor rear bay windows comply with the terms (including conditions and limitations) of the planning permission granted in respect of the land ref: 2015/5564/P as shown on drawings A9743PA/005A, A9743PA/007A and A9743PA/008A.
- The period for compliance with the requirements is within a period of six (6) months of the Notice taking effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed in part only and the enforcement notice upheld with corrections.

Appeal B: APP/X5210/W/16/3159490

45 Goldhurst Terrace, London NW6 3HB

- 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 Ivan Forster against the decision of the Council of the London Borough of Camden.
- The application Ref 2016/2958/P, dated 25 May 2016, was refused by notice dated 5 October 2016.
- The development proposed is described as retrospective application to retain works to loft conversion, single storey rear extension and fenestration works.

Summary of Decision: The appeal is dismissed.

Matters concerning the enforcement notice

Hidden ground (b) – that the breach of planning control as alleged in the notice has not occurred as a matter of fact.

1. It is submitted that allegation 3) should be deleted from the description of the breach of planning control in the notice, as the door is not uPVC but of timber construction. This is an argument on ground (a) which ought to have been raised on ground (b). I shall therefore treat it as a hidden ground (b) appeal.
2. I visited the site accompanied by the appellants' representative and the Council's officer. On my inspection it was apparent that the door unit installed at upper ground floor level was of timber construction and, having regard to the evidence there is no reason to suppose that the door has been altered since the enforcement notice was issued. Accordingly I am satisfied on the balance of probabilities that the alleged breach has not occurred as a matter of fact.
3. However this part of the notice also attacks the installation of the double door unit that replaced windows existing in the bay to the rear upper ground floor. The notice should therefore be corrected so as to omit "uPVC" from this part of the allegation, omit the superfluous "installed" and to clarify that it refers to the upper ground floor.
4. The ground (b) appeal therefore succeeds to a limited extent. This does not necessarily defeat the notice, given the power of correction which I propose to exercise under s176(1)(a) of the Act.

Requirements of the notice

5. Requirement 1. does not match allegation 3) as corrected and should be amended to include the removal of the double door unit and reinstatement of the original bay window in addition to the roof element. Having regard to the aim of requirement 1. which is to restore the property to its pre-existing condition prior to the breach, I am satisfied that I can correct the notice without injustice to either party.

Appeal A on ground (a) and Appeal B (s78 appeal)

Background, preliminary matter and main issues.

6. In 2015 planning permission Ref 2015/5564/P was granted for the erection of a single storey rear extension at lower ground floor, erection of side and rear roof dormers, installation of Juliette balcony at first floor rear elevation, installation of 2 conservation style rooflights to front roof slope and installation of windows in the side elevation at lower ground, ground, first and second floors.
7. The application subject to the s78 appeal is essentially for the development already carried out as alleged in the enforcement notice, although there are slight variations proposed to what has been built. Accordingly, and as retention of works is not in itself development, I have dealt with the s78 appeal on the basis of the submitted plans and what I have seen from my site visit.
8. The main issues are firstly, the effects of the development on the character and appearance of the host building and the surrounding area; and secondly, the

living conditions of occupiers of neighbouring properties with reference to any potential for overlooking and loss of privacy.

Character and appearance

9. 45 Goldhurst Terrace is in the South Hampstead Conservation Area (CA). A duty exists, when considering the grant of planning permission in a conservation area, to pay special attention to the desirability of preserving or enhancing its character or appearance. It is important to assess the significance of heritage assets such as the CA before a conclusion is drawn about what harm, if any has been caused by the development to such assets.
10. The appeal property is an end of terrace four-storey red brick period property divided into four flats. The area surrounding No 45 comprises mainly 19th century dwellings, four to five storeys in height with original detailing. From what I have seen and read, the appeal property and surrounding dwellings make a positive contribution to the character and appearance of the CA, the particular significance of which is appreciated through the uniform roofscape, materials used and the rhythm of details repeated throughout the terrace. This is so, mainly with regard to the front elevations, but also to the rear where despite the existence of some large rear additions nearby, elevations generally retain a consistent character, for example in the established form of the roofs of the rear bay windows.
11. The character appraisal document for the CA, a material consideration in this appeal, notes that garden settings should not be compromised by overly large rear extensions and dormers should be subordinate to their hosts.¹
12. Supplementary planning guidance issued by the Council regarding extensions to dwellings focuses on the importance of development complementing the character and design of the property and its surroundings, whilst stating that rear extensions should be subsidiary to the host building.²
13. The guidance is underpinned by the Council's Core Strategy 2010-2025 (CS), and Development Policies 2010-2025 (DP). DP Policy DP24 requires development to respect local context and character and Policy DP25 aims to grant permission only where the character and appearance of the CA is "preserved and [sic] enhanced".
14. Considering as a whole what has been built, I agree with the Council that the changes go so far beyond the approved plans as to have been constructed without planning permission. Key changes in the development, from the "as built" to the approved plans in the 2015 permission, are described below.
15. The side dormer that has been erected is substantially larger than the approved modest addition. The submitted photograph shows the street scene from only one angle and I saw that the dormer is not screened by the existing chimneys. Whereas it would have sat unobtrusively within the side roof slope, allowing a clear definition of the original chimney sets, as built it takes up a disproportionately large area of the roof. Its hipped roof form and reduced depth do not materially alleviate this harmful effect: as I viewed it from within the street, it appears at odds with the surrounding roofscape of the terrace.

¹ The South Hampstead Conservation Area Character Appraisal and Management Strategy, 2011.

² Camden Planning Guidance: *Design* CPG 1, 2015.

16. As approved the rear roof terrace was to be recessed to avoid the need to break the line of the roof slope. However as built the extension is deeper and the terrace projects further forward with new railings rising above the roof slope. In addition the dormer has been sited significantly closer to the eaves, as well as to the side adjacent to No 43. The steel railings have been placed in front and to the side of the dormer, adding unnecessary clutter to the design which is not subordinate to the main roof.
17. Several rear dormer extensions exist in the vicinity, but they do not provide a compelling justification for the unauthorised dormers which are overly dominant and inappropriately located in their respective roof slopes.
18. With regard to the approved rear first floor opening with Juliet balcony, this is taller than approved, the increase in height enabled by the unauthorised removal of the roof above the upper ground floor bay. A small balcony area has been created. Although this area is shallow, taken together with the removal of the traditional clay tiles to the rear bay and replacement of the sloping roof with a flat roof, the addition is markedly unsympathetic to the traditional forms of the bays found in adjacent rear elevations.
19. At the rear upper ground floor level, sash windows have been replaced with full length double patio style doors. The opening looks onto the flat roof of the lower ground floor extension; however railings have been placed immediately in front of the doors. That said, the increase in area of fenestration and replacement of traditional double sash windows is in my view out of scale and harmony with the proportions of the rear elevation in the approved scheme.
20. The alterations I have described comprising the construction of the dormers, and the alterations of the rear bay window and roof above, are particularly detrimental to the host property. They also undermine the prevailing characteristics of this part of the CA by interrupting the uniform roofscape in the street scene, and introducing changes to the rear elevation that are over-dominant and unsympathetic to the established character of the rear elevations of the terrace. Considerable importance and weight is given to the desirability of preserving the character and appearance of a conservation area which is a designated heritage asset.
21. The harm caused would be serious although as it would affect a small part of the CA, it would cause less than substantial harm to its significance. As such paragraph 134 of the National Planning Policy Framework (Framework) requires the harm to be weighed against public benefits of the proposal. Optimisation of housing accommodation is a general benefit to be acknowledged; however I am not convinced that the extra accommodation outweighs the specific harm identified.
22. The differences between the drawings submitted for the refused application and what is described in the notice as the breach of control are slight. They are annotated "as built", however they show for example that railings around the rear dormer would be brought back from the eaves where they are now, to sit partially below the roof slope. Although a minor improvement, this would not significantly affect the external appearance of the dormer as seen from within No 45 and surrounding properties.
23. The unauthorised door unit at upper ground floor level differs from the s78 application in that an additional glazing bar has been installed. This may be

more appropriate to the original fenestration, however it is a minor alteration that does not redeem the harm caused by the loss of the traditional double sash hung windows and sloping tiled roof.

24. Overall the differences in what is proposed in the s78 appeal are not such as to persuade me to grant permission on that scheme. This is because they would not outweigh the harm caused by the major changes previously described in the "as built" scheme from the approved scheme, which would still be retained.
25. I conclude on this issue that the side and rear dormers and roof terrace, by reason of their design, bulk and introduction of visual clutter at roof level, harm the character and appearance of the host building, the roofscapes in the terrace and as a result the CA. Replacement of the double sash windows, removal of the clay tiled roof and creation of balcony to the rear elevation has resulted in a development unsympathetic to the architectural qualities of the rear elevations of the host and surrounding properties. To retain these elements would be contrary to aims of DP Policies DP24 and DP25 as described and CS Policy CS14 in that it would fail to relate to the established character of the property and its neighbours, or to preserve or enhance this part of the CA.
26. These policies are consistent with the aims of the Framework, in particular section 7 in seeking in all development a high quality design, and section 12 which encourages consideration of the impact of development on the significance of designated heritage assets.

Living Conditions

27. Supplementary planning guidance³ advises that development should be designed to protect the privacy of new and existing dwellings, including parts of gardens nearest to the house and taking account of the distance, horizontal and vertical angles of view. The guidance is detailed, relevant and supported by CS Policy CS5 and DP Policy DP26 which aim to ensure development considers impacts on neighbours and does not cause harm by reason of, among other matters, privacy and overlooking.
28. The shallow balcony at the rear first floor level has railings installed across the opening. A condition could ensure that these remain in place and I do not consider that by itself, this element is a harmful influence on the use or enjoyment of adjacent properties. However on the floor below a radical change has taken place in replacing the windows with double doors in front of the large roof of the lower ground floor extension which projects into the rear garden. Whilst I appreciate that the current railings prevent access, the combined effect of the new doors and expanse of roof to the fore, is likely to result in a significant sense of overlooking and loss of privacy experienced by adjoining occupants from within their gardens, at close proximity to the rear elevations, in particular at No 43.
29. To add screening to the development might lessen the effects of overlooking but it would further degrade the visual qualities of the rear elevation. I do not therefore consider that these undesirable effects could be successfully overcome by means of conditions on an eventual permission.
30. I therefore find on this issue that the installation of double access doors at rear upper ground level of the host building is likely to result in overlooking and loss

³ Camden Planning Guidance: *Amenity* CPG 6.

of privacy including a sense of loss of privacy for occupiers of neighbouring properties, contrary to supplementary guidance and CS Policy CS5 and DP Policy DP26.

Other matter

31. I have had regard to relevant draft policies of the Submission Draft Local Plan which are material considerations but of limited weight pending the Inspector's report. I have not found any draft policies to be such as would, in this appeal, override the adopted development plans policies previously cited.

Conclusion on ground (a) and Appeal B (s78 appeal)

32. For the reasons given above and taking into account all other matters raised the s174 appeal fails on ground (a) and the s78 appeal will be dismissed.

Appeal A on ground (f)

33. The issue under this ground is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity caused by the development. The notice indicates that its purpose is to remedy the breach of planning control in accordance with s173(4)(a) of the Act.
34. No lesser steps are proposed that would remedy the breach of planning control that has occurred. Minor alterations are put forward that relate to the s78 appealed scheme whose planning merits have been considered and rejected under ground (a). It is therefore necessary and not excessive to require either the removal of the unauthorised rear and side dormer extensions, first floor terrace and upper ground floor rear double doors, and reinstatement of the original layout, but also enabling an alternative to comply with the scheme approved in 2015.

Appeal A on ground (g) - that the time given to comply with the notice is too short

35. The appellant requests an extension of the period for compliance from 6 to 9 months on the basis that vacant possession is required to do the work, tenants are entitled to a minimum of 6 months tenancy and the construction work to be carried out thereafter would take 3 months.
36. Although no highly complex building operations are involved, the work is fairly substantial and I agree it is difficult to envisage it being carried out with tenants in occupation. The appellant has been well aware of the breach for a considerable amount of time, however he is entitled to assume success and so is entitled to a reasonable period for compliance after the notice takes effect.
37. The information supplied to support the request is however vague, it being suggested that "any" tenants would require 6 months to complete their tenancy. No actual details of tenancies are provided and it is suggested that the time to complete the tenancy "could" be for 6 months. Issues commonly arise in seeking vacant possession of tenanted property which might be delayed for several reasons. I am not persuaded to extend the compliance period without further supporting evidence which has not been provided.
38. Furthermore, to allow the full course of a tenancy to run does not necessarily involve the same period as may be required to give notice in order to carry out

works to a property to comply with planning regulations, and to make suitable arrangements for the temporary rehousing of tenants. In all the circumstances I consider 6 months to be an adequate period within which to organise and carry out the required work. The appeal on ground (g) therefore fails.

Other matter

39. I have taken into account the European Convention on Human Rights, in particular the rights to respect for private and family life, home and the peaceful enjoyment of possessions included in Article 8 and Article 1 of the First Protocol. I acknowledge that to dismiss the appeal would interfere with the tenants' rights in this respect. However, this must be weighed against the wider public interest inherent in the determination of the appeal. On balance, I consider that interference with such rights is justified and dismissal of the appeal is necessary as well as proportionate.

Overall Conclusions

Appeal A

40. For the reasons given above I conclude that the installation of a uPVC door as described in the notice has not occurred as a matter of fact. I am correcting the notice accordingly and making further corrections, prior to upholding it. The appeal on ground (b) therefore only succeeds to that extent.

Appeal B

41. For the above reasons and having regard to all other matters raised the appeal is dismissed.

Formal Decisions

Appeal A

42. The appeal is allowed on ground (b) and it is directed that the enforcement notice be corrected as follows:

1. In the allegation of breach of control 3), delete "uPVC" and "installed", and before "ground floor" insert "upper"
2. In requirement 1. before "reinstate" insert "the double door unit and"
3. In requirement 1. after "window" insert "at rear upper ground floor level, and"

43. Subject to these corrections the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Appeal B

44. The appeal is dismissed.

Grahame Kean

INSPECTOR