



Appeal Decisions

Site visit made on 6 February 2018

by **Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

an Inspector appointed by the Secretary of State

Decision date: 15 February 2018

Appeal A: Appeal Ref: APP/X5210/C/17/3178475 8 Manstone Road, London, NW2 3XG

- 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 Adel Bentalib against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice, reference EN17/0288, was issued on 26 May 2017.
- The breach of planning control as alleged in the notice is the unauthorised installation of side dormer windows without planning permission.
- The requirements of the notice are to:
 - 1) Totally remove the existing side dormer windows and reinstate the roof of the main building, or
 - 2) Totally remove the existing side dormer windows and make the development comply with the planning permission granted on 14 March 2017 under application reference 2017/0343/P.
 - 3) Make good any damage caused as a result of the above works.
- The period for compliance with the requirements is four months.
- 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 dismissed and the enforcement notice upheld.

Appeal B: Appeal Ref: APP/X5210/W/17/3178409 8 Manstone Road, London, NW2 3XG

- 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 Adel Bentalib against the decision of the Council of the London Borough of Camden.
- The application Ref 2017/1926/P, dated 3 April 2017, was refused by notice dated 19 May 2017.
- The development proposed is the installation of 5 rooflights on the front and side roof slopes (retrospective) and erection of one rear dormer and two side dormers on roof.

Summary of Decision: The appeal is allowed and planning permission granted subject to conditions set out below in the Decision.

Appeals A and B: The appeal on ground (a), the deemed planning application and the s.78 appeal

1. In an appeal on ground (a) the Appellant is saying that planning permission ought to be granted for the matters stated in the notice, that is, the existing side dormers and the deemed planning application is in similar terms. The s.78 appeal is, however, in the terms of the application which is 'the retention of the

5 rooflights on the front and side roof slopes and the erection of one rear dormer and two side dormers on the roof'. The notice does not seek to attack the rooflights or the rear dormer and the Council has not put forward any case against them in the s.78 appeal. I will determine the appeal on this basis.

2. From the reasons for issuing the notice and the reasons for refusal the main issue these appeals is the effect of the side dormers on the character and appearance of the street-scene and the host building.
3. The appeal site is located on the north side of Manstone Road. It is a detached two storey property that comprises 9 residential flats. It is similar in design to other properties in the Road.

The existing dormers

4. The existing side dormers are large and obtrusive flat roofed structures that dominate the roof of No 8 and are prominent in the street scene. They are set close to the eaves which, together with the flat roof and their height, emphasises their bulk and mass. From the front of the dwelling they appear to be closer to the ridge line than shown on the plan¹ and their bulk and mass is emphasised by the white fascia and the grey slates/tiles. The side dormers are not as apparent as one approaches No 8 along the Road because of the small gaps between the detached houses but they remain visible and prominent.
5. The extensive increase in the volume of the roof at No 8 resulting from the side dormers is out of scale with the two storey house and completely at odds with the majority of properties in the street that retain their original roof shape.

The proposed dormers

6. The side dormers proposed in the s.78 appeal would be set further back from the eaves than the current ones, would be lower in height and would have a hipped roof.
7. The distinct set back from the eaves would result in the proposed dormers being less prominent than the current dormers because they would be a clear difference between them and the roof. The hipped roof profile would not be as stark as that existing and would have a softer appearance.
8. In reaching this conclusion I have taken into account the consent granted on 14 March 2017 for the installation of 5 rooflights (retrospective) and erection of one rear and two side dormers² at No 8. This permission represents the fallback position and permitted side dormers similarly set back from the eaves but slightly smaller than those proposed in this appeal. I do not consider that the proposed larger dormers would result in harm that would be sufficient to justify a refusal of permission.
9. I have also taken into account the two planning permissions for side dormers approved by the Council for 5 Manstone Road³ and 163 Fordwych Road⁴. No 5 is opposite the appeal site and I noted on my visit that the scheme approved has not yet been implemented and there is no certainty that it will be. However, the proposed dormers in that case, although flat roofed would be set

¹ Drawing No 8/10A

² Ref: 2017/0343/P

³ Ref: 2017/0074/P and drawing No BLC-1577-PE-103 D

⁴ Ref: 2016/1832/P and drawing 16.116/02 E

back from the eaves and would be less high than the current flat roofed dormers at No 8. The flat roofed dormers at No 163, which faces Manstone Road, are similarly set back from the eaves by some distance and relatively shallow.

10. These two developments are therefore not comparable with the existing dormers at No 8 but they do represent an 'in principle' permission for side dormers of a specific design and set back which the proposed dormers in the s.78 appeal meet. In the circumstances I find no harm would result from the proposal in the s.78 appeal.
11. Since the refusal of the application in the s.78 appeal and the issuance of the notice the Council has adopted the Camden Local Plan⁵ and policy D1 of the Plan therefore supersedes policy DP24 of the Local Development Framework Development Policies referred to in the reasons for refusal and the reasons for issuing the notice. The Council advises that there is no material difference between these policies⁶ which seek the highest standard of design and expects development to consider, among other things, the character, setting, context and the form and scale of neighbouring buildings and the character and proportions of the existing building.
12. I have also been referred to the Council's supplementary planning guidance CPG1 which states that roof dormers should be sensitive changes which maintain the overall structure of the existing roof form and sets out a number of specific circumstances that have to be met.
13. The extant permission at No 8 and the permissions at Nos 5 and 163 were all permitted under the same policy regime and I see no justification to distinguish the current proposal from them. The same cannot be said for the existing flat roofed dormers for the reasons give above.
14. In addition to the usual time limit, the Council has suggested two conditions, one to ensure the development is carried out in accordance with the approved plans and secondly that the development be carried out in matching materials. The Appellant has no dispute with these and in order to ensure the development complies with the permission granted and to safeguard the appearance of the area and the host property I consider both conditions are reasonable and necessary.

Conclusions

15. For the reasons given above I conclude that the existing side dormers have a harmful effect of the on the character and appearance of the street-scene and the host building and they do not comply with the development plan and supplementary planning guidance referred to above. It follows that the ground (a) appeal should fail and the deemed planning application should be refused.
16. However, also for the reasons given above I conclude that the proposed side dormers in the s.78 appeal would not have a harmful effect of the on the character and appearance of the street-scene and the host building and there would be no material conflict with the development plan and supplementary planning guidance referred to above. Therefore the s.78 appeal should be allowed.

⁵ 3 July 2017

⁶ Paragraph3.3 of the Council's statement dated 12 December 2017

Appeal A: The appeal on ground (f)

17. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or to remedy any injury to amenity which has been caused by any such breach.
18. In his grounds of appeal the Appellant raised matters such as the effect of the side dormers on the character or appearance of the host property and the area and the facilitation of the beneficial use of the dormers to provide increased residential accommodation.
19. The planning merits of the existing side dormers were taken into account in the ground (a) appeal. The lesser step suggested by the Appellant is the grant of permission for the scheme in proposal s.78 in addition to the alternative of the previously approved scheme. However, I have no power to vary the notice in this way because the scheme in the s.78 appeal is not one of the matters stated in the notice.
20. The requirements of the notice as stated fulfil the statutory purpose to remedy the breach by making any development comply with the terms of any planning permission which has been granted in respect of the land or by restoring the land to its condition before the breach took place⁷.
21. The appeal on ground (f) fails.

Appeal B: The appeal on ground (g)

22. In an appeal on ground (g) the Appellant is saying that the time in which to comply with the requirements is unreasonable and in this case the Appellant seeks a period of six months because of disruption to the tenants and possible adverse weather conditions.
23. I note that the loft area was not occupied at the time of Appellant's statement in December 2017⁸ and I have no further information. Given the date of this decision the point relating to adverse weather conditions may no longer be relevant. I cannot speculate which of the alternative actions the Appellant will take but it seems to me that four months is not an unreasonable period of time in which to comply with the requirements.
24. The appeal on ground (g) fails.

Appeal A: Conclusions

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

Appeal B: Conclusions

26. For the reasons given above I conclude that the appeal should be allowed.

⁷ S.173(4) of the 1990 Act

⁸ paragraph 2.1

Decisions

Appeal A: Appeal Ref: APP/X5210/C/17/3178475

27. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: Appeal Ref: APP/X5210/W/17/3178409

28. The appeal is allowed and planning permission is granted for the installation of 5 rooflights on the front and side roof slopes (retrospective) and erection of one rear dormer and two side dormers on roof at 8 Manstone Road, London, NW2 3XG in accordance with the terms of the application, Ref 2017/1926/P dated 3 April 2017, and the plans submitted with it, subject to the following conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Location plan, drawing no 8/10A and drawing no 8/200D.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Gloria McFarlane

Inspector