The Planning Inspectorate

Appeal Decisions

Site visit made on 26 February 2019

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 12 March 2019

APPEAL A Ref: APP/T5150/W/17/3188605
274 Dollis Hill Lane, London NW2 6HH

- 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 Mrs Arousiak Klendjian against the decision of the Council of the London Borough of Brent.
- The application Ref 17/3809, dated 4 September 2017, was refused by notice dated 30 October 2017.
- The development proposed is described as "retention of loft alterations (involving hip to gable, rear dormer and three front rooflights)"

Summary of decision: The appeal is dismissed.

APPEAL B Ref: APP/T5150/C/17/3192342
274 Dollis Hill Lane, London NW2 6HH

- 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 Mrs Arousiak Klendjian against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 15 November 2017.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a hip to gable end roof extension, rear dormer window, and insertion of rooflights to the front of the premises.
- The requirements of the notice are
    1. Demolish the unauthorised hip to gable end roof extension and rear dormer window
    2. Remove all unauthorised rooflights
    3. Remove all associated debris, items and materials arising from that demolition and removal, and remove all materials associated with the unauthorised development from the premises
    4. Re-instate the roof back to its former state before the unauthorised works were carried out.
- The period for compliance with the requirements is three 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 with variation.

Procedural matters

1. Applications for costs have been made by the Appellant against the Council, and by the Council against the Appellant. Those applications will be the subject of a separate Decision Letter.

2. Appeal B originally included an appeal on the grounds set out in section 174(2)(c) of the 1990 Act as amended, but by email dated 21 February 2019 the Appellant notified the Planning Inspectorate that because the development addressed by the notice is not Permitted Development the appeal on ground (c) was considered untenable, and was consequently withdrawn. My determination of Appeals A and B proceeds on that basis.

Background

3. No. 274 Dollis Hill Lane is a detached house in a residential street. In 2014, the Appellant made a successful application for a Certificate of Lawful Development (LDC) for a hip-to-gable loft conversion, which included a rear-facing dormer and rooflights in the front slope.[1]

4. Following complaints that the house was being used by an increased number of occupants the Council took action, and in August 2016 issued an enforcement notice alleging the material change of use of the premises to a House in Multiple Occupation (HMO), and the erection of an outbuilding in the rear garden for residential purposes. An appeal[2] ("the 2017 Appeal") made against that notice was partially successful, in that the Inspector found that the main house had been in a *sui generis* HMO use for a period that rendered that use immune from enforcement, and varied the notice accordingly; the requirement of the notice to stop using, and then demolish, the outbuilding was however retained and upheld. The outbuilding was subsequently demolished.

5. In August 2017 the Council wrote to the Appellant setting out its view that the loft conversion had taken place without the benefit of planning permission. In response the Appellant submitted an application (now the subject of Appeal A) for the retrospective grant of planning permission for the loft conversion. The Council refused the application, and issued an enforcement notice against the development (now the subject of Appeal B).

6. The subject and arguments of Appeal A, and ground (a) of Appeal B, are effectively the same: that is, that planning permission should now be granted for the loft conversion as carried out. I shall therefore address them together.

Appeal A, and Appeal B on ground (a)

Main issues

7. The two main issues are (1) the effect that the development has on the character and appearance of the area, and (2) its effect on living conditions at the premises.

The effect on character and appearance

8. No. 274 lies on the northern side of Dollis Hill Lane. The houses on this side of the road have a fairly uniform two-storey eaves height, and predominantly

[1] Ref 14/4565, Certificate dated 12 February 2015
[2] Ref APP/Y5420/C/16/3158369, Decision Letter dated 21 July 2017

hipped roof forms, but it is apparent from the presence of front- and side-facing dormers that a considerable number of them contain living accommodation in the roofspace. In most cases these side dormers are fairly modest in scale and subordinate to the main roof form, and so do not undermine the regular and distinctive pattern of side-hipped roofs.

9. The western end of the roof at No. 274 is anomalous, in that it is a straight gable end with no hipped element at all. I appreciate that this pre-dates the development that is the subject of the current appeals, but it is notable as a discordant element in the street scene, as it gives rise to an uneasy visual relationship between No. 274 and the neighbouring property at No. 272. I saw at my site visit that in views from Dollis Hill Lane, the visibility of the rear dormer at No. 274 through the gap between the two houses exacerbates the visual tension caused by the unusual proximity of their roofs, in comparison with the strong pattern of more generous spaces between side-hipped roofs on this side of the road.

10. At the eastern end of the roof at No. 274, the hip-to-gable conversion and the flank wall of the rear dormer combine to create a large continuous plane, below a flat roof set at the same height as the ridge of the house. There is thus no individuation between the original and subsidiary elements of the roof, such that in views looking west along Dollis Hill Lane, the roof of the property appears to have been entirely re-modelled. The resulting roof form is an obtrusively bulky and flat-sided addition to the street scene which adversely affects the character and appearance of the area.

11. The rear dormer is visible in limited views between the houses from Oxgate Gardens, and more prominently in views from Coles Green Road between its junction with Oxgate Gardens and Dollis Hill Lane. Indeed, I saw at my site visit that passengers waiting at the bus shelter on the west side of Coles Green Road have clear views toward the dormer. In all of these public views, the marginal setback from the eaves and sides of the roof are not readily apparent, so the dormer appears to occupy almost the full depth and width of the roof-slope, and forms an incongruously top-heavy and box-like addition to No. 274 that is entirely at odds with the sloped and hipped roof forms of the properties to either side.

12. As to the rooflights created as part of the loft conversion, the two to the left of the protruding front-hipped bay, and the rooflight inserted in the east-facing roof-slope of this bay (although some of the plans submitted by the appellant show it located in the west-facing roof-slope) are modest in scale and not unduly obtrusive. However, the rooflight to the right of the bay is located within the part of the front-facing roof slope which did not exist prior to the hip-to-gable conversion, and its presence serves to draw attention to the adverse impacts of this alteration that I have discussed above.

13. I conclude that the development conflicts with the objectives of Policy CP17 of the *London Borough of Brent Core Strategy* (July 2010), which seeks to prevent the erosion of the character of suburban housing, and also conflicts with the aims of Policy DMP1 of the *London Borough of Brent Local Plan Development Management Policies* (November 2016), which seeks to ensure that (among other things) the siting, layout, detailing and design of new development complements the locality.

14. The development also conflicts with the guidance set out in the Council's Supplementary Planning Document (SPD) *Residential Extensions and Alterations* (adopted January 2018), which advises that outside Conservation Areas dormers can be the full width of the original roof plane, but should be set down from the ridge by at least 0.3m and up from the eaves line by at least 0.5m. The Appellant has drawn my attention to the advice in the SPD that "the conversion of a hipped roof into a full gable is generally acceptable", but the inclusion of the word "generally" recognises that there will be circumstances in which such a conversion would not be acceptable. For the reasons set out above, I consider that the impact of the hip-to-gable conversion is not acceptable here.

15. The appellant has also drawn my attention to a number of other roof alterations and extensions in the area. As noted above, the majority of these are modest in scale and subordinate to the original roof forms, and so do not disrupt the pattern of side-hipped roofs along the northern side of this stretch of Dollis Hill Lane. Further to the west, where the building line steps back after the grouping of semi-detached pairs at 280-290, there are some examples of excessively large side-dormers and an incongruous hip-to-gable conversion but these are some distance away, and do not justify permitting what is in my judgment a harmful form of development at the appeal site.

Living conditions at No. 274

16. The Council contends that the loft conversion has resulted in an additional unit of accommodation at a HMO that is substandard in terms of the number of persons and households sharing facilities and outdoor space, and notes that extending the building to accommodate more people without enhancing the existing facilities can only be to the detriment of those within. However, I saw at my site visit that the living space accommodated within the loft conversion includes a private bathroom and a kitchen area, such that its occupiers need not be dependant on sharing the communal bathroom and kitchen facilities provided for the use of the occupiers of the ground- and first- floor rooms.

17. Local Plan Policy DMP 20 states that proposals for accommodation with shared facilities or additional support will be supported, where four criteria are met. There is no dispute that the development accords with criterion (a), which requires it to be located in an area with good access to public transport and other amenities. Criterion (b) requires the development to be of an acceptable quality, meeting appropriate standards for the needs of its occupants. The Council does not allege that the internal or external amenity space provided falls short of any relevant published or adopted standards, such as those expressed in Local Plan Policy DMP 19 or Table 3.3 of the London Plan.

18. Criterion (c) requires the inclusion of management arrangements suitable to the proposed use and size of the development. This appears to be aimed at development which includes the provision of on-site support or care for occupiers; in any event, the Council has not specified what management details ought to have been provided here that would not be better addressed under the HMO Licensing regime. Criterion (d) requires the demonstration of need for the use proposed, but since No. 274 is already in lawful use as a HMO, that criterion does not appear to be relevant here.

19. On the basis of the evidence before me, then, I find nothing to indicate that either the living conditions of occupiers of the development, or the effect of the

development on existing living conditions at No. 274, conflicts with any relevant Development Plan policy or national or local planning guidance.

Other matters

20. The Appellant initially sought to argue that the loft conversion that is the subject of these appeals could have been carried out as Permitted Development in accordance with the provisions of The Town and Country Planning (General Permitted Development Order) 2015 as amended ("the GPDO"), but now accepts that what has been built does not fall within the requirements of the GPDO.

21. That being the case, the existence of the 2015 LDC for a proposed loft conversion has limited relevance to the current appeals. It was issued on the basis that the development detailed in the submitted plans would comply with the relevant provisions of the GPDO: the development which has in fact been carried out, then, is acknowledged by the Appellant to be materially different.

22. It is worth noting here that even if it were the case that a substantially similar form of development could be carried out under Permitted Development Rights, I do not consider that would justify making an express grant of planning permission for a form of development that I have found to be harmful. The *National Planning Policy Framework* advises that the planning system must be plan-led. The fact that the Government drafted the GPDO to permit a broad range of householder development does not lend weight, in situations where an express grant of planning permission falls to be considered, to allowing development that would conflict with adopted Development Plan policy.

Conclusion

23. For the reasons set out above, I find that the development has a significant adverse impact on the character and appearance of No. 274 and its immediate surroundings, and so conflicts with Local Plan Policies CP17 and DMP1. There are no other relevant material considerations of sufficient weight to overcome the conflict with the adopted Development Plan. I therefore conclude that Appeal A, and Appeal B on ground (a), should be dismissed and planning permission for the development alleged by the notice should be refused.

Appeal B, ground (f)

24. The ground of appeal is that the steps required by the notice to be taken are excessive. Since the notice requires the removal of the unauthorised loft conversion and the reinstatement of the roof to its former condition, its purpose must be to remedy the breach of planning control that has occurred. In that sense, the requirements of the notice are not excessive. Nevertheless, I have a duty to consider whether there is an obvious alternative to the requirements of the notice which would overcome the planning difficulties, at less cost and disruption.

25. A *sui generis* HMO such as No.274 may potentially (as a matter of fact and degree) be a "dwellinghouse" for the purposes of the GPDO, and thus benefit from Part 1 Permitted Development Rights for alterations and additions to its roof. With the withdrawal of the appeal on ground (c), the Appellant no longer contends that the loft conversion as built constitutes Permitted Development. There is no provision for the retrospective acquisition of Permitted Development Rights through making adjustments to development that has

already taken place, so altering the existing loft conversion to bring it within the requirements of the GPDO would not in any event remedy the breach of planning control.

26. If No. 274 is a dwellinghouse and benefits from Part 1 Permitted Development Rights, it could potentially be excessive to require the complete removal of the dormer and hip-to-gable conversion and the reinstatement of the original roof, since this work could be immediately and legitimately followed by the construction of an alternative loft conversion which complied with the relevant requirements of the GPDO. This would suggest that alternative steps, which would achieve the same result without involving the expense and inconvenience of demolition and rebuilding, would be to re-model the existing development to a form which could legitimately be rebuilt after its removal. The question is whether this could be achieved through the measures available to me in the context of this appeal; that is, either by varying the requirements of the notice, or through a grant of planning permission in connection with the deemed application under ground (a).[3]

27. The Appellant has not made any suggestion as to how the requirements of the notice could be amended. Clearly it would not be appropriate simply to delete the requirement to demolish and remove the existing development, as doing so would allow it to remain in its current form. Varying the requirements to require alterations to the existing development so as to bring it into line with the requirements of the GPDO, or wording to similar effect, would not in my view be sufficiently precise. In the absence of any worked-out proposal or plan detailing how the necessary alterations could be achieved, such a requirement would lack clarity as to how exactly the notice was to be complied with.

28. Similarly, granting planning permission for the existing loft conversion subject to a condition that a scheme for its alteration be submitted to and approved by the Council leaves too much uncertainty, both in terms of the final appearance of the development, and whether it could in fact be legitimately considered "part of" the development already carried out in breach of planning control.

29. I am not therefore persuaded that, even if No. 274 does constitute a "dwellinghouse" for the purposes of the GPDO, any lesser steps than the existing requirements of the notice can be identified which would achieve the notice's purpose. These requirements do not preclude the landowner from doing what she is lawfully entitled to do in the future, once the notice has been complied with.

30. The Appellant contends that if the development as built is found unacceptable, it would nevertheless be appropriate to grant planning permission for a reduced version of it, as set out in plans submitted with Appeal B detailing the proposed "Ground (f) Remedy", on the basis that this alternative scheme would accord with the relevant policies of the Development Plan and the Council's SPD. The plans show the retention of the hip-to-gable conversion and rooflights, with the rear dormer also retained, but reduced in width so as not to extend beyond the line of the hip as it existed prior to the hip-to-gable conversion.

31. I accept that this scheme can be considered "part of" the development already carried out in breach of planning control, such that it would be open to me to

[3] An Inspector has the power, under s177 of the 1990 Act, to grant permission for the whole *or any part* [my emphasis] of the matters constituting the alleged breach of planning control.

grant permission for it on the deemed planning application under ground (a). It is therefore necessary to assess the planning merits of the scheme.

32. Looking firstly at the rear dormer, the advice contained in the Council's adopted SPD *Residential Extensions and Alterations* states that outside Conservation Areas, rear dormers can be the full width of the original roof plane: they should be set down from the ridge by at least 0.3m, and must be set up from the eaves line by at least 0.5m measured along the roof plane. The original roof had a hip on its eastern side, which aligned with the ridge line of the hipped roof on the front gable. Reducing the width of the dormer, by moving its eastern flank to align with the position of the former hip, would ensure that it accorded with the first part of this guidance. However, its roof would remain at the same height as the ridge of the main roof (rather than being set down by at least 0.3m), and its front elevation would continue to be set up from the eaves line by less than 0.5m. The resulting form of development would therefore still be at odds with the guidance in the SPD.

33. More importantly, the proposed "Ground (f) Remedy" would not overcome the harm that I have identified above. There would be no reduction in the visibility of the dormer through the gap between Nos. 272 and 274, where it would continue to exacerbate the visual tension caused by the unusual proximity of their roofs. In views from Coles Green Road, the dormer would still appear to occupy almost the full depth of the roof slope. Reducing its width from one end only would do nothing to correct its top-heavy appearance; rather, its off-centre alignment would heighten the imbalance and incongruity of this addition to the roof. I have set out above the reasons why I consider that the hip-to-gable conversion has resulted in an obtrusively bulky addition to the street scene, and this element of the existing development would be retained.

34. I conclude that this proposed alternative scheme would, like the existing development, conflict with Policy CP17 of the Core Strategy and Policy DMP1 of the Local Plan, as well as with advice set out in the Council's adopted SPD, and that planning permission for it should not be granted.

35. The Appellant also contends that consideration should be given to whether individual elements of the loft conversion (namely the dormer, the hip-to-gable conversion, and the rooflights) would be acceptable on their own, such that requiring the removal of that particular element would be excessive. However, it is important to bear in mind that the purpose of the notice is to remedy the breach of planning control, rather than to remedy any injury to amenity which has been caused by the breach. Thus, while I have found that (unlike the dormer and the hip-to-gable conversion) the two rooflights to the west of the projecting front gable do not themselves cause any significant harm, they are nevertheless part and parcel of the unauthorised loft conversion as carried out. To require their removal in order to remedy the breach of planning control is not, therefore, excessive.

36. Drawing all of this together, I conclude that the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. I therefore determine that the appeal on ground (f) should fail.

Appeal B, ground (g)

37. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The Appellant contends that six months is needed.

38. The Council has given three months, and I accept that this should be sufficient time for the required works to be carried out. It is in the public interest that the roof alterations should be removed within a reasonable period to overcome the harm identified by the Council in its reasons for issuing the notice. However, the loft conversion is currently occupied by tenants on an Assured Shorthold Tenancy, the terms of which require a period of two months' notice to be given by the Landlord, and it would not be in their best interests for the Appellant to commence the remedial works while they remained in occupation.

39. In my view, a period of five months would strike the appropriate balance between these two conflicting interests so that there would not be a disproportionate burden placed on the Appellant, or the current tenants of the loft accommodation. To this limited extent, the appeal on ground (g) succeeds.

Formal decisions

APPEAL A

40. The appeal is dismissed.

APPEAL B

41. I direct that the enforcement notice be varied by the deletion from Schedule 5 of the words "3 months" and the substitution therefor of the words "5 months" as the time given for compliance with the requirements of the notice. Subject to this variation, 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.

Jessica Graham

INSPECTOR