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## Appeal Decisions

Site visit made on 13 October 2020

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

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**Appeal A Ref: APP/B5480/C/19/3228910**

**Appeal B Ref: APP/B5480/C/19/3228911**

**Appeal C Ref: APP/B5480/C/19/3228914**

**Appeal D Ref: APP/B5480/C/19/3228915**

**Land known as 106 Whitchurch Road, Romford RM3 9AD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mrs Paula Smith, Appeal B is made by Mr Christopher Smith, Appeal C is made by Mr Shane Smith, Appeal D is made by Mr Daniel Smith, against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice, numbered ENF/492/16, was issued on 15 April 2019.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of the rear dormer not in accordance with planning permission P0319.15.
- The requirements of the notice are:
  1. To remove or demolish the rear dormer, or
  2. Modify the rear dormer in accordance with approved plans ref: P0319.15 as per the drawing below, and
  3. Clad all sides of the reduced sized dormer with tiles matching those of the host dwelling; and
  4. Remove all building materials and debris as a result of taking steps 1, 2 or 3 from the site.
- The period for compliance with the requirements is three months.
- Appeal A 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeals B, C and D are proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Act.

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### Decision

1. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a rear dormer not in accordance with planning permission P0319.15 on land known as 106 Whitchurch Road, Romford RM3 9AD as shown on the plan attached to the notice and subject to the condition in the attached schedule.
2. I take no further action in respect of Appeals B, C and D.

### **Preliminary Matter**

3. The appellants argue that the Council should be estopped from taking enforcement action, as they acted on the advice given by the duty planning officer at pre-application stage, when the Council was aware of the planned extension. However, it is well established by case law that concepts of private law should not be introduced into the public law of planning control, which binds everyone. Public authorities cannot be estopped from performing their statutory duties.

### **Appeals on ground (c)**

4. This ground of appeal is that the matters stated in the notice which give rise to the alleged breach of planning control, did not constitute a breach of planning control. The burden of proof is on the appellants, and the standard of proof is the balance of probabilities.
5. The house has previously been enlarged to the side. The appellants applied for and were granted planning permission for a rear dormer in the extended part of the dwelling, under reference P0319.15. The dormer window that has been built extends across the entire rear roof slope, set slightly in from the side boundary. It is significantly wider than the dormer window shown on the approved drawings and there is no dispute that the dormer has not been built in accordance with the approved plans.
6. The appellants' case is that the dormer complies with the plans that were shown to Council planning officers at pre-application stage, when the appellants were advised that planning permission was only required for a dormer window within the roof of the extended part of the dwelling, and that a dormer window added to the roof of the original house would not need planning permission, under Schedule 2 Part 1 Class B of the GPDO<sup>1</sup>.
7. The dormer has been built as a single building operation, rather than as two separate elements. Permitted development rights cannot be claimed for work that is carried out as one development where only part of it complies with the limitations set out within the relevant class of the GPDO. The dormer as built does not benefit from permitted development rights, nor does it accord with permission P0319.15. Therefore, planning permission is required and the appeals on ground (c) fail.

### **Appeal A on ground (a) and the deemed application**

8. The ground of appeal is that planning permission should be granted for the breach of planning control stated in the notice. Having regard to the reasons for issuing the notice, the main issue is the effect of the rear dormer on the character and appearance of the site and surrounding area.
9. The property is an end of terrace dwelling in a row which fronts onto Whitchurch Road in a predominantly residential area, opposite a parade of shops and other commercial premises. The rest of the terrace is finished in brick and tiled roofs, but No 106 has a brick and render finish to the front, pebble dash to the side, and cladding to the rear. It is set back from the road behind a wide verge, and at a higher land level due to the local topography.

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<sup>1</sup> Town and Country Planning (General Permitted Development) (England) Order 2015

10. The land continues to rise to the rear of the site. To the rear of No 106 is a terrace of three dwellings in Nuthatch Close which face its rear elevation. They are accessed via a driveway which runs alongside the side elevation of No 106. The rear of the appeal site is also visible from the rear of properties on Woodbridge Lane, located to the rear of the site, backing onto Nuthatch Close.
11. The dormer is a large structure which dominates the rear roof slope, with a large flat roof. It is clad in pale coloured textured concrete cladding, which matches cladding on the rear elevation of the house at first floor level. It is not visible from the front of the property, but is prominent in views from the parking area and from dwellings on Nuthatch Close, as well as from properties on Woodbridge Lane. The side of the dormer is also visible in a glimpsed view from the footway on Woodbridge Lane at an oblique angle between dwellings.
12. Due to the scale and form of the dormer, and the light colour of the cladding, it is prominent on the rear elevation of the dwelling. I saw however that there are other large dormer windows on the rear elevations of properties in the nearby area, of similar proportions to this one, which are visible from the public realm. Rear dormers of this scale and design are not therefore uncharacteristic of the area. While this dormer is larger than the permitted scheme, its scale and bulk are similar to those on properties in the vicinity of the site.
13. However, due to its pale colour, the cladding on the elevations of the dormer is at odds with the appearance of the roof tiles of the adjacent dwellings, which makes it appear incongruous and unduly prominent. In relation to the appeal on ground (f), the appellant has suggested that the colour/materials of the dormer could be agreed. If the cladding were to be painted or otherwise finished in a colour to match more closely the roof of the host dwelling and the neighbouring properties, it would not appear incongruous or detract from the appearance of the wider area. I am satisfied that this could be achieved through an appropriately worded condition, and would overcome the identified harm.
14. For the reasons set out above, and subject to a condition requiring the colour of the cladding to be agreed with the Council, I conclude that the development is not harmful to the character and appearance of the site and surrounding area. It therefore is not in conflict with Policy DC61 of the London Borough of Havering Core Strategy and Development Control Policies Development Plan Document 2008 and Policy 7.6 of the London Plan 2016 insofar as they seek to ensure that new development responds to the distinctive local building forms and complement the materials of surrounding buildings. It is also not in conflict with the guidance in the London Borough of Havering Residential Extensions and Alterations Supplementary Planning Document 2011 or the National Planning Policy Framework.

#### *Condition*

15. A condition is necessary to secure the revised finish to the cladding. The purpose of the condition is to require the appellant to comply with a strict timetable for dealing with the provision of a revised finish. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding

detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

16. The Council has suggested a condition requiring all external surfaces of the rear dormer to be clad in tiles matching those of the main roof of the host dwelling. However, as I have found that it would be sufficient to change the colour of the cladding, whether by painting or other means to be agreed between the appellants and the Council, it would be excessive to require the dormer to be clad in tiles.

### **Conclusion**

17. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described on the notice. The enforcement notice will be quashed, and it follows that Appeals A, B, C and D on grounds (f) and (g) do not fall to be considered.

*N Thomas*

INSPECTOR

### **Condition Schedule**

- 1) The dormer shall be removed and all materials arising from its removal shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
  - i) Within 1 month of the date of this decision a scheme for the provision of an alternative colour finish to the dormer shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
  - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
  - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
  - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.