



## Appeal Decision

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by Melissa Hall BA(Hons), BTP, MSc, MRTPI

an Inspector appointed by the Welsh Ministers

Decision date: 16/02/2024

Appeal reference: CAS-02728-X4W4Z5

Site address: 146 Richmond Road, Roath, Cardiff CF24 3BX

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- 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 Simon Kayhanian of Salisbury Maintenance Ltd against an enforcement notice issued by the City and County of Cardiff.
  - The enforcement notice, numbered E/20/00189, was issued on 30 March 2023.
  - The breach of planning control as alleged in the notice is:  
*'Without planning permission, the alteration to the side of the main roof to a gable end, the erection of a second-floor dormer extension to the existing two storey rear annex, a first-floor rear extension over the existing single storey annex and a rear dormer roof extension to the rear roof plane of the roof of the principal building'.*
  - The requirements of the notice are:  
*'1. Remove the:*
    - *unauthorised dormer extension to the existing two storey annex*
    - *unauthorised first floor rear extension over the existing single storey annex and*
    - *unauthorised dormer roof extension within the rear plane of the principal building.**and reinstate the building to its form and appearance prior to the developments being undertaken (as shown on the plan attached at Appendix 1); or in accordance with planning permission reference 16/00431/MNR (as shown on the plan attached at Appendix 2) and in materials which match those used on the equivalent elements of the existing building.*  
*2. Obscurely glaze and render non-opening, below 1.7m from internal floor level, the second-floor window within the side elevation of the principal building which, thereafter, shall be retained as such in perpetuity'.*
  - The period for compliance with the requirements is 9 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.
  - A site visit was made on 14 November 2023.
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## Decision

1. The appeal is allowed in respect of ground (g) only, but otherwise dismissed. I direct that the Notice be varied by the deletion of the words 'nine months' and their substitution with the words 'twelve months' from the date the Notice takes effect. Subject to this variation, the Notice is upheld.

## Procedural Matters and Background

2. Planning permission was granted in 2016 for what was described as '*A change of main roof from pitch to a gable end with a rear dormer and first floor rear extensions*'. Accordingly, I have been provided with a copy of the corresponding plans.
3. The development as constructed differs from that approved in terms of the design, size and form of the rear dormer and first floor rear extension, together with the introduction of a 'box' style dormer extension to the existing two storey rear wing. Although not shown in the submitted 'as built' elevations, I also saw that there is a window in the south facing side elevation of the first floor rear extension, which serves a bathroom. Neither has the appellant made specific reference to the door that has been added to the first floor extension's east facing rear elevation, leading onto an existing flat roof extension, which has replaced the window in this position shown on the approved plans.
4. Whilst the appellant states that the obscure glazing to the window in the gable end of the main building is likely to be installed by the time of any Inspector visit and determination of the appeal, I must consider the appeal on the basis of the development that had been carried out at the time the Notice was served.
5. The appellant submitted late evidence consisting of the Council's recent grant of planning permission for a ground, first and second floor rear extensions and gable end roof extension at 144 Richmond Road, i.e. next door to the appeal property. As this evidence represents a material change in circumstances that was not known to the appellant at the time the appeal was submitted, I accepted the submissions and provided the Council with an opportunity to comment. No party has been prejudiced by my doing so.
6. I have considered the possibility of making a split decision. Nevertheless, I cannot be certain whether components of the development are physically and functionally severable. I have therefore treated the development the subject of the Notice as a whole.

## The ground (a) appeal / deemed planning application

7. An appeal on ground (a) is that planning permission should be granted. The main issues are the effect of the development on the character and appearance of the area and on the living conditions of neighbours.

### *Character and appearance*

8. The appeal property is a traditional end of terrace dwelling which has been converted into apartments. It is situated in a densely developed, predominantly residential area characterised by a mix of large two to three storey, semi-detached and terraced properties and modern blocks of flats. A number of the properties in the vicinity have large detached rear outbuildings fronting onto the rear lane.
9. I also saw that many of the properties have been altered and / or extended previously, some more sympathetically than others, such that there is little uniformity in terms of design, form and external appearance. I note that the Council has approved a scheme at

144 Richmond Road which, from my reading of the approved plans, show a flat roof dormer to the rear wing facing the appeal property, which is not dissimilar to that the subject of the Notice. It is for this reason, and having regard to the context of the surrounding area, that I consider many of the elements in the development before me to no longer constitute incongruous features.

10. Nonetheless, the Council has taken issue with several elements of the development insofar as they differ from that approved; I will deal with each of these in turn. In terms of the dormer in the principal rear facing roof plane, I consider that it is not dissimilar to the scale of that which already exists in Richmond Road. Similarly, of itself, I am not persuaded that the visual impacts arising from the first floor rear extension are so different from that associated with the approved scheme that refusal on this basis is justified.
11. That being said, taking these elements as a whole, and when also read alongside the introduction of the large, flat roof dormer to the two storey rear wing (which occupies the vast majority of its south facing roof slope), I am concerned that they overwhelm the proportions of the building to the extent that its original form has been lost. The cladding of the new dormer in white UPVC only draws attention to the incongruity of this element. Together, these additions have a harmful effect on the character and appearance of the building and its surroundings.
12. Although I have taken into account the scheme that has been approved at No. 144, I consider that there are clear differences here in terms of the scale, form and design of the additions and their relationship with the host building.
13. The development therefore conflicts with Policy KP5 of the adopted Cardiff Local Development Plan (LDP) 2016, which requires new development to respond to the character and context of its surroundings.

#### *Living conditions*

14. Turning to the effect on the living conditions of neighbours. I am of the opinion that the development has no materially greater overshadowing or overbearing impact that makes it any more or less objectionable than the approved scheme.
15. I also do not dispute that certain elements of the development may be made acceptable by the imposition of planning conditions, such as that requiring the first floor, south facing, bathroom window in the rear extension to be obscurely glazed or the first floor door in the rear extension to be fitted with a flush fitting balustrade to prevent the use of the flat roof as an elevated amenity space which would impact the privacy of neighbours. However, I do not consider it appropriate to attach such a condition to the main south facing window in the dormer extension on the rear wing given my understanding from the floorplan in the appellant's submissions that it is the only window serving a habitable room. Hence, to do so would be to compromise the living conditions that the occupant of that apartment should reasonably expect to enjoy.
16. In view of the above, the development conflicts with LDP Policy KP5 insofar as it seeks to ensure no undue effect on the amenity of neighbouring occupiers.

#### **The ground (f) appeal**

17. An appeal on ground (f) is that the steps required to comply with the requirements of the Notice are excessive and lesser steps would overcome the objections.
18. The appellant's case under ground (f) is that the main difference between the 'as built' and 'as approved' development relates to the scale and volume of the extensions which

have been constructed only slightly larger than that approved. Consequently, he considers it excessive to require the removal of the extensions in their entirety.

19. Nevertheless, the appellant also goes on to state that the Council is misconstrued in its assumption in Requirement (1) of the Notice that the development already approved could be implemented (as an alternative to the removal of the extensions in their entirety), given the lack of understanding of the level of works required to physically deconstruct and re-build the three extensions.
20. Hence, there are no other suggestions before me of realistic or suitable lesser steps that would address the fundamental concerns in respect of the development that has been carried out and which is the subject of the Notice. Neither am I convinced that there are elements of the development that are clearly severable and could be allowed under the ground (f) appeal. It follows that the requirements are entirely appropriate to achieve the objectives of protecting the character and appearance of the area and the living conditions of neighbours.
21. The requirements of the Notice are not excessive and there are no lesser steps put forward by the appellant that would remedy the breach of planning control that has been caused. The appeal on ground (f) must therefore fail.

### **The ground (g) appeal**

22. The appeal on ground (g) is made on the basis that the 9 month period for compliance with the Notice is too short in view of the significant financial implications associated with the works, the availability of materials and labour and the need for the tenants to find alternative accommodation while the works are undertaken. Accordingly, a period of 18 months to comply with the Notice is sought.
23. There is no compelling evidence before me that materials and /or labour are in such short supply that a nine month period for carrying out the works would be too short. Neither am I satisfied that the appellant's claim of 'significant financial implications' has been substantiated to the extent that a longer period for compliance would be justified for this reason alone.
24. Be that as it may, the need to find alternative accommodation is an important consideration; when the Notice comes into force, the tenants of the affected apartment(s) will lose their homes, even if only for the short term. It is not possible to guarantee that occupiers can find somewhere new to live, but I must ensure that the tenants affected are given a reasonable period of time to look for other housing.
25. Although I am not convinced by the appellant's arguments that the compliance period should be extended to 18 months, I nonetheless conclude that it is reasonable and proportionate to extend the period to 12 months.

### **Conclusion**

26. The appeal on ground (g) succeeds as I find the compliance period too short, and I am therefore varying the Notice accordingly prior to upholding it.
27. In reaching my decision, I have taken into account the requirements of sections 3 and 5 of the Well-Being of Future Generations (Wales) Act 2015. I consider that this decision is in accordance with the Act's sustainable development principle through its contribution towards the Welsh Ministers' well-being objective to make our cities, towns and villages even better places in which to live and work.

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*Melissa Hall*

INSPECTOR