
Appeal Decision

Site visit made on 14 September 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 5 October 2016

Appeal Ref : APP/A5840/C/16/3144453

Land at 167 Camberwell Road, London, SE5 OHB.

- 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 Anil Madhok against an enforcement notice issued by the Council of the London Borough of Southwark.
- The notice was issued on 12 January 2016.
- The breach of planning control as alleged in the notice is that works have been undertaken which are not in accordance with what has been granted in the planning application 12/AP/1390, therefore making the development unlawful.
- The requirements of the notice are to 1. comply with planning permission 12/AP/1390 in terms of the detailed design and materials for the front and rear elevation as shown in drawing A/2/03; Front elevation (a) reinstate the chimney stack to its original state; and (b) clad the mansard with Welsh slate; and (c) install wooden sash windows in the dormer and paint them white; and (d) restore the brick work on the façade; and (e) replace the uPVC windows with the original box wooden sash windows ; Rear elevation (a) clad the mansard with Welsh slate; and (b) reinstate the butterfly ('v') parapet; and (c) install wooden sash windows in the dormer and paint them white; and (d) restore the brick work on the facade; and (e) replace the uPVC windows with the original box wooden sash windows; and (f) position the windows on the second and third floor in the location indicated on the approved plans; and (g) correct the alignment of the rainwater good; and 2. Remove all resulting debris OR 3. Revert the building back to its original state; and 4. remove all resulting debris,
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld with a correction

Preliminary Matter

1. The allegation the subject of the notice describes the breach of planning control as works not in accordance with what has been granted in planning application 12/ AP/ 1390. The allegation does not explain in what way it is alleged that the planning permission is not satisfied. But the reasons for issue of the notice refer to the conditions attached to the permission that are alleged to have been breached and the requirements of the notice specify the steps required to be taken to secure compliance with those conditions (or to revert the building to its previous state). Therefore whilst I consider that the description of the alleged breach is not entirely clear I am satisfied that read as a whole the notice adequately explains the breach and what needs to be done to remedy it. As there is no dispute between the parties as

to the alleged breach I am able to correct the notice to clarify the description of the breach of planning control without prejudice to the parties.

Background

2. Planning permission Ref 12/AP/1390 (the Permission) has been granted for the change of use of part lower ground floor from existing café to part business and part residential use to provide two bedroom flat behind and rear extension at lower ground floor level; rear extension at upper ground level and reconfiguration of upper floor to create further 2 flats, including a roof terrace to the rear of the upper ground and first floor flat and new dormer windows in existing mansard roof.
3. The Permission includes a condition (condition 2) that the development permitted shall not be carried out otherwise than in accordance with defined approved plans. The list of approved plans includes drawing A/2/03 rev C (the Approved plan). It also includes a condition (condition 3) that the materials to be used in the implementation of this permission shall not be otherwise than as described and specified in the application and on the drawings hereby approved unless the prior written consent of the local planning authority has been obtained for any proposed change or variation.
4. There is no dispute between the parties that the works specified in the notice do not accord with these conditions.
5. An application for planning permission for the development as built (ref 15/AP/0068) has been refused by the Council.

Ground (a) appeal and deemed application

6. The ground (a) appeal is for the discharge of conditions 2 and 3 subject to which the Permission was granted and the deemed application is for permission for the matters stated in the enforcement notice as constituting the breach of planning control, but without compliance with those conditions. I have the power in discharging a condition to substitute another condition.

Main Issue

7. The main issue in the determination of this appeal is whether the conditions in question are necessary to safeguard the character and appearance of the host building and surrounding area with particular regard to the setting of the Addington Square Conservation Area.

Character and appearance

8. The appeal site is a terraced property. The property is not within a conservation area but the Addington Square Conservation Area (the Conservation Area) is located nearby and therefore I must have regard to its setting.
9. The development plan (including the London Plan, Core Strategy and saved policies in the Southwark Plan) mirrors the National Planning Policy Framework (the Framework) in seeking to promote high quality design. Strategic Policy 12 of the Core Strategy requires the highest possible standard of design and an expectation that development will conserve or enhance the significance of the Borough's heritage assets and their settings. Saved policy 3.12 of the Southwark Plan provides that development should

achieve a high quality of both architectural and urban design enhancing the quality of the built environment.

10. The Permission cites the reason for the imposition of condition 2 as 'for the avoidance of doubt and in the interests of proper planning'. The reason for condition 3 is cited as 'to ensure the use of appropriate materials in the interest of the design and appearance of the building and the visual amenity of the area' in accordance with specified development plan policies. I consider that these conditions are both reasonable and necessary to prevent undue harm to the character and appearance of the area. I consider these conditions to be valid and to satisfy the tests set out in the Framework.
11. I agree with the objections from a neighbour and the Walworth Society who draw attention to the harm caused by the variations from the Approved plan and the importance of retention of original features in protecting the character of the area. I find that the changes from the Approved plan have adversely altered the character of the building. The installation of aluminium framed windows flush with the front elevation and the loss of the original materials, pattern and placement of the windows on the rear elevation creates a discordant appearance out of keeping with its setting. The changes from the Approved plan in respect of the windows on both elevations are harmful to the appeal property, the surrounding area and in the case of the rear elevation the setting of the Conservation Area.
12. The use of render on the rear elevation creates a stark and visually prominent appearance out of keeping with its neighbours and the surrounding area. It is possible to see it from a small section of the highway and it is highly visible to neighbouring properties. It is incongruous and causes harm to the character and appearance of the surrounding area. It does not preserve or enhance the character or appearance of the setting of the Conservation Area.
13. The remaining deviations from the Approved plan cited in the notice including the construction of the mansard with artificial slate, the loss of chimney stacks and butterfly 'v' parapet, changes to the alignment of rainwater goods and failure to restore brickwork on the front elevation contribute to a lack of high quality design. The loss of original features and poor quality of execution cause harm to the character and appearance of the host building, surrounding area and the setting of the Conservation Area, contrary to relevant development plan policies.
14. My attention is drawn to permission for the erection of a rear dormer extension on a building opposite. But I do not know the particular circumstances of that site and determine this appeal on its particular facts. Any harm from other development does not in any event justify further harm on the appeal site and I do not find similar development characteristic of the area.
15. I have considered whether the identified harm could be addressed by alternative conditions. I have taken into account the Planning Policy Guidance. The Appellant suggests a condition requiring the submission of detailed cross section drawings of windows to be submitted within 2 months of the decision and implemented within 2 months of approval. The Council does not comment on this proposed condition. I consider that the proposed condition is not sufficiently precise. It does not set out the consequence of

noncompliance by the Appellant or the position in the event the Council does not provide a timely decision on the drawings nor does it state that an approved scheme should be retained. Whilst I could amend the wording to remedy the lack of precision it would not address other aspects of the identified harm. I am therefore not satisfied that allowing the appeal subject to alternative conditions would address the identified harm.

16. In conclusion I find that the development as built causes undue harm to the character and appearance of the host building and surrounding area, including the setting of the Conservation Area. The development does not comprise high quality development and fails to preserve or enhance the setting of the Conservation Area contrary to development plan policies. Whilst the harm is less than substantial there is no public benefit before me to outweigh that harm. I do not consider that the disputed conditions attached to the Permission should be discharged or that planning permission should be granted to carry out the development without compliance with the conditions. The appeal on ground (a) therefore fails.

Ground (f) appeal

17. The main issue is whether, having regard to the purpose for which the notice was issued, the steps exceed what is necessary to meet that purpose.
18. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy any breach of planning control which has occurred. The second is to remedy any injury to amenity which has been caused by the breach.
19. It seems to me from the terms of the notice that overall the purpose of the notice is to remedy the breach of planning control as the steps require the development to comply with the Approved plan or to restore the land to its condition before the breach took place.
20. The Appellant does not specify specific lesser steps but says that the notice is excessive because the Council accepts that not every element of the breach causes harm. But in the ground (a) appeal I have concluded that the conditions should not be discharged and that planning permission should not be granted in whole or part for the development as built. I am therefore satisfied that no lesser steps than those set out in the notice would remedy the breach of planning control.
21. Consequently, the ground (f) appeal does not succeed.

Other matters

22. The Appellant argues that the Council is seeking to secure compliance with the Approved plan without considering the planning merits of the development as built. This is not a ground of appeal.
23. A neighbour raises concerns about matters including waste storage and compliance with building regulations. But these are not matters for me to take into account in this appeal.

Formal Decision

24.I direct that the enforcement notice is corrected by substitution of the following in paragraph 3 of the notice ' failure to comply with conditions no 2 and no 3 of planning permission Ref 12/AP/1390 granted on 29 August 2013' . Subject to that correction I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S.Prair

Inspector