

Appeal Decision

Site visit made on 28 September 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 13 October 2016

Appeal Ref: APP/Q5300/C/16/3146009
74 Broomfield Avenue, London N13 4JP

- 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 and Mrs S Kissack against an enforcement notice issued by the Council of the London Borough of Enfield.
- The enforcement notice, numbered ENF/15/0481, was issued on 4 February 2016.
- The breach of planning control as alleged in paragraph 3 of the notice is:
"Without planning permission, the unauthorised single storey rear extension at Premises in excess of the parameters set out within Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 and the installation of french (sic) windows at first floor rear level."
- The requirements of the notice are set out in paragraph 5 as follows:
 - 5.1** Remove the single storey rear extension (outlined in blue on the plan for identification purposes)
 - 5.2** Remove the french (sic) windows from the rear first floor elevation
 - 5.3** Install a window within the rear first floor level and make good the original rear elevation of the Premises with materials to match that of the original (sic) Premises
 - 5.4** Remove all resulting materials from the Premises
 - OR**
 - 5.5** Reduce the height and depth of the single storey rear extension (outlined in blue of (sic) the attached plan for identification purposes) to a height from original ground level and depth from the original rear elevation of the Premises, in order to comply with the parameters set out within Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - 5.6** Render and paint the ground floor single storey rear extension to match the external appearance of the original Premises.
 - 5.7** Install a juliette (sic) balcony across the french (sic) windows within the rear first floor elevation, to prevent unrestricted (sic) access to the roof of the single storey rear extension.
 - 5.8** Remove all resulting materials from the Premises"
- The period for compliance with the requirements is three calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.

Decision

1. It is directed that the enforcement notice be corrected at paragraph 3: by deleting the words "at Premises"; by inserting the words "erection of a" after the word "unauthorised"; and by changing the word "french" to the word
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"French". Subject to those corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended for the development already carried out, namely the erection of a single storey rear extension in excess of the parameters set out within Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 and the installation of French windows at first floor rear level at 74 Broomfield Avenue, London N13 4JP referred to in the notice, subject to the following condition:

- 1) The roof area of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area.

The enforcement notice and the grounds of appeal

2. The heading above identifies a number of typographical errors in the paragraphs of the notice dealing with the breach of planning control and the requirements. As my decision results in the quashing of the notice, the requirements of the notice will be of no effect. I have therefore focussed on the breach and made three corrections to it in the decision above. These should be fairly self-explanatory and I am satisfied that they would not cause injustice to the parties.
3. Sections 1.5, 1.8 and 7.3.0 of the appellant's statement mention an appeal on ground (f). This appears to be an error because the supporting text in the latter two sections suggests that the compliance period is too short, which is a matter that falls under ground (g). Ground (g) is clearly set out on the original appeal form and at sections 6.7.0 to 6.7.3 of the appellant's statement.

Background and matters of clarification

4. The land at 74 Broomfield Avenue is occupied by a two-storey, semi-detached house with further accommodation in the loft. It lies within a residential area.
5. The adjoining property is no. 72; this is a similar building which appears to have been converted into flats. The rear studio flat is known as no. 72B.
6. Measurements taken and agreed by the parties at the site visit revealed that the flat-roofed, single storey rear extension has a maximum depth of 5.38 m on the side adjacent to the boundary with no. 72 and a height (to the top of the parapet) of 3.12 m.
7. In a rear bedroom at first floor level above the extension, French windows have been installed. It is possible to access the extension's roof from that new opening.
8. There is no dispute between the parties that a substantial part of the common rear garden boundary between nos 74 and 72 is defined by a belt of mature common ivy (*Hedera helix*), an evergreen and hardy climbing shrub.
9. The Council has not submitted a planning officer's report or an appeal statement and has not responded to the appellant's statement. The Council's case is essentially formed by the content of the enforcement notice.

The appeal on ground (a) and the deemed planning application

10. Reading the reasons given in the notice for its issue, there is reference to the impact of the developments on the adjoining semi-detached property, no. 72, through overlooking and loss of privacy, loss of light and outlook and a heightened sense of enclosure. At my site visit, I found that no other neighbouring properties were significantly affected. The main issue is therefore whether the developments negatively impact upon the living conditions of the occupiers within no. 72 for any reason to an extent that justifies withholding planning permission.
11. Planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
12. The development plan includes the Core Strategy (CS) November 2010 and the Development Management Document (DMD) November 2014.
13. Core Policy 30 of the CS and Policy DMD 37 of the DMD are general policies aimed at achieving high quality design. Policy DMD 8 of the DMD sets out general standards for new residential development. Policy DMD 11 of the DMD is of most relevance as it is specifically concerned with rear extensions and one of its aims is to avoid impact on the amenities of neighbouring properties. This policy restricts single storey flat-roofed rear extensions to a maximum depth of 3 m for semi-detached properties, with a maximum height of 3 m to the eaves (and between 3.3 m to 3.5 m to the top of a parapet wall). These extensions should also not exceed a line taken at 45 degrees from the midpoint of the nearest original ground floor window to any of the adjacent properties. Extensions of greater depth may be justified to secure a common alignment of rear extensions.
14. The Council is concerned that the introduction of a door to the rear elevation at first floor level allows for free access to the roof of the single storey rear extension for recreational purposes, giving rise to an increased perception of overlooking and a loss of privacy to the living areas of 72 Broomfield Avenue. However, there is no evidence before me to suggest that the roof has been used in this way. Given the large skylight in the roof just outside the French windows and the lack of proper safety features around the edges of the roof, I am rather inclined to agree with the appellant that the roof of the extension has not been designed as a usable amenity area.
15. I am aware that future owners or occupiers may take a different approach. The appellant is prepared to install a Juliet balcony across the doorway to prevent access to the roof and I note that this is one of the alternative requirements of the notice. A planning condition could be devised to require the fixing and retention of such a feature. As an alternative, with its questionnaire the Council has suggested a condition "restricting the use of the roof" (presumably as a balcony, roof garden or similar amenity area). I prefer this latter approach and I am satisfied that with such a condition in place there would be no increased overlooking of or loss of privacy to the living areas of 72 Broomfield Avenue.
16. In terms of the physical impact of the extension, there is compliance with the parameters on height in Policy DMD 11 of the DMD. However, the extension is

deeper than allowed for by that policy and there can be little doubt that it breaks the 45-degree line in respect of the adjacent ground floor bay window in the rear of no. 72B. It does not secure a common alignment of rear extensions. The extension is in conflict with part 2 of Policy DMD 11 of the DMD viewed as a whole.

17. Turning to other material considerations, it is a telling point that by my estimation the belt of mature common ivy, which the appellant says is in the ownership of no. 72, masks the part of the side wall of the extension that exceeds 3 m in depth and infringes the 45-degree line. Thus, in all practical terms the impacts of the extension on no. 72B around the matters of loss of light and outlook and enclosure are not significantly different to those that would result from an extension (3 m in depth) which could have been built as permitted development.
18. There have been no objections from any neighbouring occupiers in response to this appeal. The occupier of the rear studio flat at no. 72B has written to say that the extension has caused no concern and has not resulted in any reduction to the light received by this neighbouring property.
19. I saw that the deep bay window in the ground floor rear wall of no. 72B is split into three sections. When standing in the room it serves, the extension would have no impact on the view out of the right-hand window. The outlook from the left-hand window would be adversely affected by a rear extension of any depth at no. 74. Normal views from the central window of the bay would be across the sizeable and open rear garden or towards the common ivy along the boundary with no. 74 including the part that masks the rear end of the extension. In all, I am satisfied that the light entering and the outlook from this bay window remains acceptable and that an overwhelming sense of enclosure has not been created.
20. There can be no certainty but it is highly probable on the facts before me that had the appellant followed the General Permitted Development Order and notified the Council of his intention to erect the extension, prior approval would not have been required for it. This and the four appeal decisions in the same borough presented by the appellant are not determining factors in this appeal, but they do illustrate that rear extensions substantially greater than 3 m in depth can be acceptable through specific legislation or an assessment of the planning merits applicable to each case.
21. The Council's reasons for issuing the notice refer to the use of materials that do not match the original property but this is, somewhat confusingly, linked in with the impact on the amenities enjoyed by the occupiers at no. 72. For the avoidance of any doubt, I found the bricks to be a reasonable match to those used on the original upper rear elevation and more importantly, a very good match to those used in the rear of the ground floor kitchen on the southern side of the property. The bricks exhibit mellow and mixed colours which are not harsh on the eye when viewing from no. 72B.
22. I find on the main issue that the developments do not negatively impact upon the living conditions of the occupiers within no. 72 for any reason to an extent that justifies withholding planning permission. There is no conflict with Core Policy 30 of the CS or with Policies DMD 8, DMD 11 (part 1) and DMD 37 of the

DMD. There is conflict with some of the precise physical criteria for rear extensions in Policy DMD 11 (part 2) of the DMD, but other material considerations point to an outcome otherwise than in accordance with this particular part of the policy.

23. Having regard to all other matters raised, I conclude that the appeal on ground (a) and the deemed planning application should succeed. Conditional planning permission has been granted accordingly, the single condition arising from the considerations set out in paragraph 15 above.

The appeal on ground (g)

24. The enforcement notice has been quashed as a result of the success of the appeal on ground (a). Ground (g) no longer falls to be considered.

Andrew Dale

INSPECTOR