
Appeal Decision

Site visit made on 1 November 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 11 November 2016

Appeal Ref: APP/Y5420/C/16/3147992
23 Creighton Road, London, N17 8JU

- 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 Ms Tracey Pham against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice (Council's Ref: UNW/2015/00714) was issued on 3 March 2016.
- The breach of planning control as alleged in the notice is "Without planning permission the construction of a ground floor rear extension.
- The requirements of the notice are:
 1. Remove the unauthorised ground floor rear extension;
 2. Remove all resultant debris.
- The period for compliance with the requirements is three (3) months after the notice takes effect.
- 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 allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Background

1. Before considering the development that has taken place and the grounds pursued it is important to first examine the history of extensions at the rear of this property. The photographs provided assist in this respect.
2. The only historical record cited by the Council in terms of a planning application is that for the retention of the existing extension which was refused planning permission on 28 January 2016, just over a month before the enforcement notice in question was issued. There is no record of any other planning application or decision relating to an earlier rear extension.
3. Notwithstanding this finding, it is evident from the photographs supplied that a rear addition (or additions) was in existence prior to the creation of the present rear extension. Firstly there appears to have been a flat-roofed single storey extension with brick walls which extended as far as the present rear wall of the extension with the exception of the south-western corner adjacent to the boundary with 25 Creighton Road where the side wall was not as deep and a set back or return was introduced. This is evident from the photographs supplied by the Council in the Appendix to their statement and Figure 5 in the appellant's agent's statement which reveal vertical junctions in the brickwork of both the rear and side elevation facing No.25.

4. The agent asserts that what has happened is that a modest infill extension has been added to fill the undeveloped corner and square off the rear wall following the same building line that was already existing. As for the roof the flat roof that existed has been replaced by a shallow mono-pitched roof clad in tiles with an eaves overhang of about 1 metre (m). The Council's photographs support this conclusion revealing a triangular section of blockwork in the side wall facing No.25 above a line of corbelled bricks which appears to be the line of the former flat roof. This appears to have been introduced close the main rear wall of the appeal property to create the pitched roof form. There is also another photograph supplied by the agent that shows the corner of a timber clad addition at the rear of the appeal property but this no longer exists and is not the subject of the enforcement notice.

Ground (a)

Main Issue

5. It is evident from the reason given by the Council for issuing the notice that the harm alleged concerns the impact of the extension on the residential amenities of neighbouring occupiers. The reason given does not allege harm in terms of the design or appearance of the extension and there is no case made out in this respect in the Council's statement. Consequently the matter in contention and the main issue to address is whether the extension has caused harm to the living conditions of the neighbouring occupiers.

Reasons

6. The Council assert that the notice relates to the whole of the single storey rear addition and not simply the infill section at the south-western corner and the new roof form. There is no legal ground of appeal arguing that part of the extension is lawful and as explained above no planning permission or indeed a Lawful Development Certificate for what previously existed. Given this background and the fact that it is for the Council to confirm the nature of the development to which the notice relates I accept this as being the situation. Nevertheless the pre-existence of an earlier extension is a fact and a material consideration in my opinion. It cannot simply be disregarded. Moreover whilst no case is made out that the earlier extension had been in existence for over 4 years before the notice was issued this is certainly a possibility which would have led to a conclusion that it was immune from enforcement action.
7. Saved Policy UD3 of the Haringey Unitary Development Plan (UDP) requires development to not have a significant adverse impact on residential amenity in terms of, amongst other things, light and aspect. In this case other matters referred to in the policy such as harm to privacy or overlooking do not arise.
8. Both the adjoining properties have been extended at rear ground floor level. At No.21 there is a shorter single storey brick extension beyond which is a timber lean-to which projects in part slightly beyond the rear wall of the appeal extension. At No.25 there is an extension of timber construction which is slightly recessed behind the rear wall of the appeal extension. I consider that given the additions to these properties and the physical relationship created there is no material impact on the light received within these neighbouring houses and no demonstrable overbearing impact as claimed by the Council.

9. As the agent points out neither of the neighbours have objected on this basis. In coming to this view I have had regard to the fact that rear of the houses faces south and would therefore receive a significant amount of sunlight. No technical evidence has been provided to show that the impact of the extension has materially reduced daylight or sunlight reaching the neighbours windows. I therefore find no conflict with Policy UD3 of the UDP.
10. The Council have also referred to their Supplementary Planning Guidance - 1a Design Guidance which provides guidance on the depth of extensions that will normally be permitted. For a terraced house such as this the figure given is 3m. From the measurements I took on site the depth from the original rear wall of the house to the rear wall of the extension is about 4.5m with an eaves overhang beyond of about another metre. So this extension clearly exceeds the guidance figure. However given the assessment above and the shallow nature of the roof form, which does not exceed 4m at its highest point, I consider that it is reasonable to make an exception to the guidance in this instance. As is pointed out by the agent single storey rear extensions have been permitted at other terraced properties in Creighton Road where their depth exceeds 3m¹. Whilst these were prior notification applications and not planning applications no prior approval of details were required by the Council. It also demonstrates that under the rights conveyed by The Town and Country (General Permitted Development) (England) Order (GPDO) 2015 it is possible to erect a single storey rear extension of more than 3m and up to 6m in depth at terraced houses such as these².
11. Additional to these findings I return to the fact that the previous rear extension covered the majority of the footprint of the present one and extended as far in depth. Even if the earlier extension was something that required planning permission which is not certain it appears that no action was taken by the Council and there is no evidence to suggest that it was a form of development that led to objections from the neighbours on the grounds of harm to living conditions.
12. For all these reasons and in the particular circumstances that prevail I find that not material harm to the living conditions of the neighbouring occupiers has arisen and that the requirements of Policy UD3 of the UDP are met. It has not been explained in what respect the other policies referred to by the Council in the reasons for issuing the notice are relevant but I am satisfied that any aspect which may concern residential amenity would be complied with.
13. I therefore intend to allow the appeal on ground (a) and quash the notice. As a consequence the arguments concerning ground (g) do not come into consideration. The Council have not asked that any conditions be imposed if planning permission is granted. On this basis and given that the design and finish of the extension is satisfactory and not in contention none are necessary.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

¹ 13 Creighton Road – 4.5m depth; 55 Creighton Road – 4m depth.

² The position under the terms of Class A of Part 1 of Schedule 2 of the GPDO 2015 is that single storey rear extensions of over 3m in depth but no more than 6m in depth from the rear wall of the original terraced house can be built until 30 May 2019 without the need for planning permission (paragraph A.1(g)(i) applies) subject to following the prior notification procedure set out in paragraph A.4.

Formal Decision

15. 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 1990 Act as amended for the development already carried out, namely the construction of a ground floor rear extension on land at 23 Creighton Road, London, N17 8JU referred to in the notice.

NP Freeman

INSPECTOR