

Appeal Decisions

Site visit made on 5 October 2016

by George Mapson DipTP DipLD MRTPI

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

Decision date: 22 November 2016

Appeal 1 - Ref: APP/G5750/C/16/3145795

Appeal 2 - Ref: APP/G5750/W/16/3145402

62 Market Street, East Ham, London, E6 2RB

- Both appeals are made by Mr Bhupinder Ahir against decisions of the Council of the London Borough of Newham.
 - **Appeal 1** is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice.
 - The Council's references are 16/00060/ENFNOT and 15/00421/ENFC.
 - The notice was issued on 29 January 2016.
 - The breach of planning control as alleged in the notice is: *"Without planning permission the erection of a side extension."*
 - The requirements of the notice are: *"Demolish the extension (as shown edged in blue on the attached plan, and edged in yellow on the photograph attached at Appendix 1). 2. On completion of step 1 above, remove all materials and debris from the site."*
 - 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 (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 Act as amended is fee exempt and falls to be considered.
 - **Appeal 2** is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The application Ref 15/03382/HH, dated 21 November 2015 (though stated to be 30 November 2015 on the decision notice), was refused by a notice dated 25 January 2016.
 - The development proposed is described on the application form as *"Demolition of side and rear structure. Erection of single storey side and rear extension."*
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Decisions

APP/G5750/C/16/3145795

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act as amended.

APP/G5750/W/16/3145402

2. The appeal is dismissed.

Background

The appeal site and surroundings

3. No. 62 Market Street is a two-storey end-of-terrace house, located at the junction with Wellington Road. The surrounding area is residential in character, consisting mainly of similar two-storey houses.

Appeal 1 - The enforcement appeal development

4. The appellant says that he bought the house in 1992 and has lived there ever since. He claims that a side extension existed when he bought it, but he has not submitted any corroborating evidence to support that claim. The enforcement notice was issued in 29 January 2016, so were any claims to be made that the extension is immune from planning control, the relevant date would be 29 January 2012.
5. The appellant confirms that works were carried out in April 2015, but claims that the side extension was repaired, with windows added to provide light and ventilation.
6. No photographs of the appeal building prior to 29 January 2012 have been submitted. The Council's before and after photographs were taken in June 2014 and May 2015. They show the gable wall of No. 62 Market Street that faces Wellington Road.
7. The June 2014 photograph shows a flat-roofed single-storey side extension abutting the footway on Wellington Road. The May 2015 photograph shows a higher flat-roofed single-storey side extension in the same position, with a row of high level windows running the full length of the structure. This was the development that I saw on 5 October 2016.
8. According to the Council's measurements, the extension is about 2.8m high (at its highest point), 11m long and 1.3m wide. It runs from a point that is flush with the front wall of the original house to a point that is flush with the back wall of an existing single-storey rear extension.

Appeal 2 - The planning appeal development

9. The planning proposal is to demolish the existing flat-roofed extension and erect a brick-built, hipped-roofed extension in its place. According to the Council's delegated report of 25 January 2016, the dimensions would about 3.7m high (at its highest point) and 11m long. The application plan shows that the extension would contain two rooms; a cloakroom at the front and a utility at the back, both accessed from within the house.

Appeal 1, the implied appeal on ground (c)

10. The appellant's 'repair' argument is akin to an appeal on ground (c); that the matters stated in the notice which give rise to the alleged breach of planning control, if they occurred, did not constitute a breach of planning control.
11. This ground of appeal is argued where it is asserted that either (1) no 'development' was involved; or (2) planning permission has already been granted; or (3) it is 'permitted development'. In this case, the gist of the appellant's case is that no development requiring planning permission was involved.

The meaning of 'development'

12. In deciding whether development requiring planning permission has occurred, the starting point is to consider the meaning of 'development' within the context of the planning acts. Section 55(1) of the 1990 Act defines 'development' as "the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change in the use of any buildings or other land".

13. The appeal development concerns '*building operations*'. For the purposes of the Act these are widely defined so as to include "(a) the demolition of buildings; (b) rebuilding; (c) structural alterations of or additions to a building; and (d) other operations normally undertaken by a person carrying on business as a builder".
14. Section 55(2) excludes from the definition of '*development*' a number of operations and uses. The first of these, in section 55(2)(a), refers to "... the carrying out of maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building ...".

Assessment of any changes to the external appearance of the building

15. Where works are claimed to be repairs, the next stage in the process is to consider the size, shape and appearance of the building before and after those works were carried out. Plans and photographs can provide useful supporting evidence.
16. In this case, the before and after photographs appear to show that there was the extension in June 2014 which differed materially in both its size and its external appearance from the extension that now stands on the site.
17. Having regard to all the available evidence I find, as a matter of fact and degree, that the works cannot be regarded simply as the maintenance or repair of an existing structure. Building operations were carried out that do not fall within any of the exclusions from the definition of development and, as such, they required planning permission.
18. I find that the breach of planning control alleged in the notice has occurred as a matter of fact and accordingly, the implied appeal on ground (c) fails.

Appeal 1, ground (a) and the deemed application

Main issues

19. The main issue in this appeal is the effect of the development on the character and appearance of the host building and the surrounding area.

Planning policies

20. No special policies, controls or designations apply to the property or the surrounding area. The Council has drawn attention to a number of general policies that seek to achieve a high standard of new development.
21. These include policies 7.1, 7.4 and 7.6 of the London Plan (2016) and policies S6, SP1, SP2 and SP3 of the adopted Newham Core Strategy (2012). The gist of these policies is that the design of new development should help to reinforce or enhance the character of the neighbourhood and should incorporate the highest quality materials.
22. The Council also refers to its Supplementary Planning Guidance [SPG] document No. 15 (2000) entitled "*Altering and extending your home*" as a material consideration in this appeal. This states that the design of new extensions and the materials used should relate to the style and character of the existing house.
23. The objectives of these policies and this guidance broadly reflect those set out in the National Planning Policy Framework [NPPF] and the DCLG's web-based Planning Practice Guidance. The NPPF explains that the "*Government attaches great importance to the design of the built environment*" and that "*good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people*".

Reasons and conclusions on Appeal 1, ground (a) and the deemed application

24. The character and appearance of No. 62 Market Street, and the terrace of which it forms part, are derived mainly from the unity that is apparent in the size, scale, proportions and detailing of the original buildings and the consistent use of matching materials.
25. Despite the various alterations and extensions to some buildings in the locality, the area retains a distinctive identity. The aim of the Council's planning policies is that even in areas of poor or ill-defined character, new development should build on the positive elements and thus contribute to establishing an enhanced character.
26. The extension at No. 62 conflicts with the character and appearance of the host building and the locality. Prior to the latest works, it was an unsightly and discordant feature in the streetscene. The present development is significantly more harmful than that extension.
27. From the before and after photographs that have been supplied, it appears that the original boundary wall had been replaced by a high wall consisting of a row of precast concrete fence posts interspersed with pebbledash rendered panels. These materials were wholly out of keeping with the wire-cut red brick that has been used for the houses in this terrace and their boundary walls.
28. The present building is significantly higher than previously, with poorly detailed and finished high-level windows. There is a noticeable difference in colour between old and new areas of brickwork on the front elevation. It appears that little, if any, attempt has been made to choose a matching brick. Furthermore, the standard of workmanship is poor, giving the development a shoddy appearance.
29. None of the examples of other extensions in the locality that have been brought to my attention appear as poorly designed or unsympathetic to their surroundings as the appeal development. It is an unsightly and incongruous structure that harms the character and appearance of the host building and the surrounding area and fails to accord with local and national planning policies or the Council's SPG. No conditions would overcome the harm that the development has caused.
30. For these reasons, Appeal 1 on ground (a) fails and the planning permission in respect of the deemed application is refused.

Appeal 1, ground (g)

31. The appellant's case is that three months provides insufficient time for finance to be raised for the demolition work; for contractors to carry out the required works; and for the resulting debris to be removed. He contends that the compliance period should be extended to nine months.

Reasons and conclusions on Appeal 1, ground (g)

32. The Council says that the authority has 'direct action' experience of completing demolition work such as this and three months provides adequate time to carry out these works. No evidence has been put forward to indicate that a longer period than three months would be needed to carry out the required works. Accordingly, the appeal 1 on ground (g) fails.

Appeal 2

33. As with Appeal 1 on ground (a), the main issue in this appeal is the effect of proposed the development on the character and appearance of the host building and the surrounding area. The planning policy context to be applied in this case is the same as with Appeal 2 on ground (a).

Reasons and conclusions on Appeal 2

34. The Council's SPG advises that new extensions should relate to the style and character of the existing house. The main planning considerations will be the size, shape and proportions of the extension; the roof style; the type of doors and windows and their relative positioning; the materials to be used; and the architectural character and detailing. The design will be assessed on how well the extension respects the design of the original house and fits in with the street scene.
35. The original house has been considerably altered and extended. These works include a front porch, a large single-storey rear extension and an outbuilding (garage) at the end of the garden. The back garden is hard paved and enclosed on the western boundary by a high precast concrete wall. That wall has a marked adverse visual impact on the street scene of Wellington Road.
36. I share the Council's concern that the proposed extension represents a disproportionate enlargement of the existing house at ground floor level. It would add significantly to the quantum of development at the property, resulting in the harmful massing of built development on the site when viewed from neighbouring properties.
37. The design of the proposed extension does not reflect the scale and proportions of the original house, the character of which would be further eroded. Being prominently located beside the public footway along Wellington Road, it would appear overly dominant and intrusive in the street scene. The height of the extension would be significantly greater than the boundary walls generally found in this area and it would have an overbearing effect when viewed from the public domain.
38. For these reasons, I conclude that the proposal development would harm the character and appearance of the host building and the surrounding area and would conflict with the objectives of the development plan, the NPPF and the Council's SPG. No conditions would overcome the harm caused. Accordingly, the appeal is dismissed.

Overall conclusions

39. I have taken account of my observations at the site and all the matters raised in the written representations in respect of both appeals. For the reasons given I conclude that the appeals should be dismissed. On Appeal 1, I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application. On Appeal 2, I refuse to grant planning permission.

George Mapson

INSPECTOR