
Appeal Decisions

Site visit made on 22 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: 6 December 2016

Appeal A: APP/U5360/C/16/3145839

95 Olinda Road, Hackney, London, N16 6TS

- 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 Mondale Estate Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice, numbered 2015/0458/ENF, was issued on 26 February 2016.
- The breach of planning control as alleged in the notice is "Without planning permission, unauthorised construction of an outbuilding in the rear garden of the Property".
- The requirements of the notice are:
 - (i) Remove the outbuilding from the rear of the property;
 - (ii) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- 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), (b), (e), (f) and (g) 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 Decision.

Appeal B: APP/U5360/W/16/3145838

95 Olinda Road, Hackney, London, N16 6TS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Lipschitz against the decision of the Council of the London Borough of Hackney.
- The application Ref. No. 2015/4082, dated 11 November 2015, was refused by notice dated 19 January 2016.
- The development proposed is described on the application form as "Retrospective consent to regularise works to an existing outbuilding".

Summary of Decision: The appeal is allowed, and planning permission granted.

Application for costs

1. Applications for costs were made against the Council by Mondale Estate Limited in respect of Appeal Ref. 3145839 and Mr Lipschitz in respect of Appeal Ref. 3145838). These applications are the subject of separate Decisions.

Procedural matter

2. The Council in the decision notice on the planning application describe the development as the "Retention of a single storey outbuilding to the rear of the site". It is matter of dispute between the parties as to whether the development that has taken place is an adaptation and extension of a pre-existing outbuilding, as claimed for the appellants, or a new building which replaced what previously existed, as claimed by the Council. I will address this below.

S174 - Ground (e)

3. The claim for the appellant appears to be that the Council have not provided sufficient proof that the notice was served properly under s172 of the Act and with the due authority required to do so. The Council have responded with details confirming that on 3 March 2016 copies of the notice were delivered by hand to the property addressed to "The Legal Owner" and "Owner occupiers", a copy of the notice was attached to the front door of the property and a separate copy posted to 46 Olinda Road N16 6TS, the address provided for Mondale Estates Ltd. In addition copies of the notice were sent by recorded delivery to the registered owners. In these circumstances I am satisfied that the requirements of s172(2) in terms of service of the notice have been met. It is also evident that a period in excess of 28 days was allowed between the date of the service of the notice (3 March 2016) and the date (11 April 2016) that it would have taken effect if no appeal had been lodged. Hence the requirement of s172(3)(b) of the Act is met.
4. The other point raised for the appellant is that it has not been shown that the notice was issued with the required authority. The Council have produced a copy of the delegated authority report recommending enforcement action be taken and the details of the "Scheme of Delegation", dated July 2015, which clearly establishes that the Enforcement Manager has the required authority to issue an enforcement notice under s172 of the Act using delegated powers. It is also explained that the title of Enforcement Officer has changed to Planning Enforcement Team Leader but that the tasks and responsibilities are the same. I am therefore satisfied that the Team Leader – a Marcin Manikowski – had the required authority to issue the notice under delegated powers.
5. For these reasons I consider that the Council have demonstrated that the enforcement notice was properly served having regard to the requirements of the Act and the standing orders of the local planning authority. It is also self-evident that not only have both the owner and occupiers had the opportunity to appeal the notice but have actually chosen to do so. Consequently having regard to s176(5) of the Act there has been no substantial prejudice. For all of these reasons the appeal on this ground fails.

S174 - Ground (b)

6. The argument on this ground is that the described breach has not occurred as a matter of fact as the outbuilding is not a new construction but an extension to what was an existing building. The Council dispute this asserting that the present building is new being significantly larger and constructed of different materials. To support this view photographs of the former and existing outbuilding have been provided.

7. I was able on my site inspection to view the building that exists both internally and externally in order to make an assessment of the likelihood of the building being a conversion and extension of what previously existed or a new building. The former building appears to have been constructed from some form of painted panelling with a central doorway in the front facing the back of the house. The new building appears to be constructed from blockwork which has been rendered and painted and then dry-lined internally. There is no dispute that it is wider and also higher than what existed before and a new entrance door now exists at the western end of the front façade with a new window more centrally placed. The eaves overhang and soffit of the new outbuilding are much greater than previously existed and there is new white guttering and rain water goods attached. Based on this analysis I consider the likelihood is that what was an old prefabricated shed has been replaced with a new larger building of masonry construction.
8. With appeals on legal grounds the onus is on the appellant to show that what is claimed is made out. No material information has been provided in this respect and in the absence of any evidence clearly demonstrating that the old building was simply incorporated into the new one by adaptation and extension I find in favour of the Council that the alleged breach has taken place. For these reasons there is no success on this ground.

S174 – Ground (a) and s78 appeal

9. Given my findings above on ground (b) that the building in question appears to be a new one I will substitute the description of development used by the Council in the decision notice on the planning application – namely “Retention of a single storey outbuilding to the rear of the site” – and consider the development on this basis. As a consequence the development under consideration with the s78 appeal is essentially the same as the deemed planning application under consideration on ground (a).

Main Issue

10. This is the effect on the character and appearance of the host property, the locality in general and the amenity space available for the occupiers.

Reasons

11. The appellants’ agent has produced a table giving details of the dimensions of the former outbuilding and the present one and these have not been disputed by the Council. They reveal that the depth of both buildings is/was the same at 2.78m but that the width has increased by 1.5m from 2.6m to 4.1m and the height increased by 0.25m from 2.45m to 2.70m. Essentially the area in the north-western corner of the garden has been built over adding about 4 sq.m. to the footprint of the outbuilding.
12. I have had regard to the policies cited by the Council from their Core Strategy 2010 and Local Plan 2015 and The London Plan. These are primarily general policies concerning design, architecture, local character and amenity space. I consider that the outbuilding that has been constructed is of a reasonable appearance and finish. It is somewhat higher than what previously existed and another shed at the rear of the neighbouring garden (No.93). However, I do not consider that it is excessively tall or overly dominant and being at the rear of these terraced houses has no impact on public views or the street scene.

13. The Council draw attention to their Supplementary Planning Document (SPD): Residential Extensions and Alterations 2009 which contains guidance on outbuildings and amenity space. Paragraph 4.17 states that as a general rule an extension should not result in the loss of more than 50% of any existing amenity space. The new outbuilding covers a greater area than the former one but the extra ground coverage is very modest and the agent calculates the increase as being from 23% of the open garden to 36% which is still less than 50%. The Council however refer to the single storey extension added at the back of the property which itself has been built over a significant part of the rear garden. I accept that taking this into account along with the ground coverage of the outbuilding the open amenity space remaining is likely to be below 50% of what existed originally.
14. Notwithstanding this finding the SPD is only guidance and the use of the words "as a general rule" imply that there will be exceptions. In this particular case the pre-existence of the former shed is a material consideration and as already indicated the actual increase in area is modest. I have also taken account of the fact that the open ground now built over, as shown in the Council's photograph, was a relatively secluded corner of the garden of only 1.5m wide between the side of the former outbuilding and the boundary wall with No.96. I doubt whether this would have provided particularly useful or attractive amenity space for sitting out or recreation. Even with the new outbuilding what is likely to be the most usable and uniform area of garden immediately behind the house remains for amenity purposes. In these circumstances, I consider that an exception to the general rule is justified.
15. Bringing these points together, I conclude that the development that has taken place has not had a materially harmful effect on the character or appearance of the host property or the locality in general and that the amenity space remaining is acceptable in the particular circumstances. For these reasons, I find no conflict with the development plan policies cited by the Council. I therefore intend to allow both appeals. The Council have not requested the imposition of any conditions should this be the outcome and I consider that given the finished nature of the building none are necessary.

Conclusions

Appeal A

16. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Appeal B

17. For the reasons given above I conclude that the appeal should be allowed.

Formal Decisions:

Appeal A: APP/U5360/C/16/3145839

18. 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 an outbuilding in the rear garden of 95 Olinda Road, Hackney, London, N16 6TS.

Appeal B: APP/U5360/W/16/3145838

19. The appeal is allowed and planning permission is granted for the retention of a single storey outbuilding to the rear of the site at 95 Olinda Road, Hackney, London, N16 6TS in accordance with the terms of the application, Ref. No. 2015/4082, dated 11 November 2015.

N P Freeman

INSPECTOR