
Appeal Decision

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: 9 December 2016

Appeal Ref: APP/G5750/C/16/3146854

98 Nelson Street, East Ham, London, E6 2QA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Ms Ssanyu Joy Namata against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 16/00091/ENFNOT, was issued on 19 February 2016.
- The breach of planning control as alleged in the notice is "Without planning permission the erection of an extension".
- The requirements of the notice are:
 1. Demolish the extension (as shown edged in blue on the attached plan).
 2. On completion of step 1, remove all materials and debris from the site.
- The period for compliance with the requirements is three months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation.

The Notice

1. Before considering the grounds of appeal it is necessary to firstly establish the development to which the enforcement notice relates. Although the wording of the allegation simply refers to "an extension" it is evident from the first requirement and the plan to which it refers that this is the whole of the single storey extension at the side and rear of the property as outlined in blue on the said plan. From the statements submitted on behalf of the appellant it is evident this is taken to be the case. However, in order to make this clear in the notice I consider that it would be appropriate to correct the wording of the allegation at Section 3 to also refer to the area edged blue on the said plan attached to the notice so as to be consistent with the requirements. This correction can be made using the powers conveyed by s176(1)(b) of the Act without causing injustice to the appellant or the local planning authority.

Ground (b)

2. The basis of this ground of appeal is that the development alleged in the notice has not occurred as a matter of fact. The argument for the appellant appears to relate solely to the single storey side extension which is said to be only a slightly altered construction from an extension that existed previously. The Council refute this and have produced photographic evidence and records of site inspections to support their claim that what now exists is essentially a new addition which replaced what was there previously.

3. I have examined this evidence and it does appear from the photographs that what existed previously was smaller and set back further from the front elevation than what now exists. The street level photograph which is dated June 2014 supports this view and site inspections carried out by Council officers on 8 January 2016 and 3 February 2016 confirmed the existence of a new extension which included the element at the side. The Council assert that the totality of the extension was undertaken as a single operation constituting a single act of development which has continuous form and that therefore the alleged breach has occurred as a matter of fact, including the side extension.
4. The onus of proof on legal grounds is upon the appellant. No clear evidence to counter what the Council assert has been provided and from my own inspection on site it would appear that the side extension does form part of one single building operation. Moreover the appellant's agent admits in the statement submitted that the roof and front elevation of the extension were altered with a new roof, door and brick cladding added. I consider that these works along with the evidence of the Council indicate that the likelihood is that a new extension has been built at the side which goes beyond alterations to a pre-existing structure. For these reasons I agree that the breach of planning control has occurred as matter of fact and there is no success on this ground.

Ground (c)

5. The arguments here are that the side extension as a separate act of development would not require planning permission being "permitted development" as it does not exceed 3m in height and is of a width which is less than half the width of the original dwelling. The particular part of The Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 which is relied upon is not cited but from the comments made I take it to be paragraph A.1(j) of Class A of Part 1 of Schedule 2 of the Order which concerns side extensions and the limitations that apply.
6. For the reasons set out about I do not accept that it has been demonstrated that the side extension was a separate act of development. Indeed from what is before me it appears to be part of a single operation to extend the house which includes the rearward additions as well. I measured the depth of the rear extension and at its greatest it is around 9.75m as stated by the Council.
7. Having regard to paragraph A.1(f) of the Order the maximum depth of extension permitted on a house of this type is 3m. By virtue of paragraph A.1(g) this maximum could increase to up to 6m but only if prior notification of the details is given to the Council before beginning the development (my emphasis) to enable the local planning authority to consider if prior approval is required.
8. The Council say that a prior approval application (Ref. No. 15/03569/PREHH) was received on 7 December 2015 but it was refused as development work had already commenced before it could be considered. A copy of what appear to be the plans submitted which are entitled "FOR PRIOR APPROVAL" have been supplied but they do not appear to be accurate as the deepest rearward projection close to the eastern boundary is not shown.
9. The agent also asserts that most of the rear extensions are permitted development without explaining which parts this claim applies to or the reasons for making this assertion. The decking at the rear under a canopy or verandah

is also claimed to be a lawful structure not referred to in the notice which should be allowed to remain and not be demolished. It appears that this is also part and parcel of the whole and not a separate act of development carried out at some later stage.

10. Taking all these factors into account I find that the development that has taken place in what is likely to be a single operation exceeds the depth permitted whether reliance is placed on paragraph A.1(f) or A.1(g). Neither of these rights assists and as a consequence the development that has occurred constitutes a breach of planning control. I would add that I have no evidence before me which indicates that it would be correct or justifiable to split the whole development down into separate parts and then consider each of these in terms of the "permitted development" rights set out in the Order. This would be a "penny-packeting" exercise which is not supported by any evidential foundation. Hence the appeal on this ground fails.

Ground (d)

11. The argument on this ground again centres on the side extension which is said to have existed for over 4 years before the notice was issued. Whilst this may be so I have found that a new extension is likely to have replaced what existed previously and from the evidence supplied by the Council this was not complete 4 years before the notice was issued – that is by 19 February 2012. The aerial photograph the Council have supplied dated 13 June 2012 clearly demonstrates that the rear extension did not exist at this date so none of this can be said to be immune from enforcement action due the passage of time. In these circumstances there is no success on this ground.

Ground (a)

Main Issues

12. These are firstly the effect on the character and appearance of the host dwelling and the surrounding area and secondly the impact on the living conditions of neighbouring residents.

Reasons

Issue (1) – Character and appearance

13. The development that has taken place is substantial wrapping around the side and rear of the property and covering large parts of the rear garden with built form. The projection along the eastern side of the plot is particularly deep extending about 9.75m from the original rear wall of the house to within about 1.5m of the rear boundary. Whilst it is evident that other nearby properties have extended at the rear there does not appear to be anything on this scale with such a large footprint. Although only single storey in height I agree that the cumulative effect of the total addition has overwhelmed the original house constituting a disproportionate addition which is at odds with the character of these modest terraced houses.
14. In addition to this harmful impact, the materials used for the construction of the rear elements are a mixture of timber and plastic cladding which fail to respect or accord with the brickwork which characterises the rear elevation of the house. A small quantity of such materials might not be discordant but due to the extent of its usage I find this to be unacceptable as it is out-of-

keeping with properties in the vicinity and of a temporary, prefabricated appearance. To allow this to remain may encourage other occupiers to pursue similar extensions which could cumulatively lead to the deterioration in the character and appearance of this residential area.

15. The Council have drawn my attention to certain relevant paragraphs of the National Planning Policy Framework and paragraph 64 advises that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area. I have also had regard to Policies 7.1, 7.4 and 7.6 of The London Plan, Policies S6, SP1, SP2, SP3 and H1 of the Council's Core Strategy and saved Policy H17 of the Council's Unitary Development Plan (UDP), as well as their Supplementary Planning Guidance (SPG) – 'Altering and extending your home'. These policies and guidance require new development of a high quality which responds well to the existing local character and established pattern of development. Given the above assessment I find that the development that has taken place does not do so and is at odds with these policies and guidance.
16. I have taken account of the repeated claims for the appellant that the presence of the windows in rear elevation of the flats in Sussex Road to the rear mean that the garden is severely overlooked and the only way to make use of it is to cover it over. I disagree. It is to be expected in a densely developed urban area such as this that there will be a significant degree of overlooking between properties, especially of the rear gardens. I do not accept that this makes them unusable as places for outdoor recreation and it remains important that open amenity areas remain to provide such opportunities so to avoid the density of built development becoming oppressive. The Council have not raised objection on the basis of the size of garden area remaining but at 60 sq.m. (the figure quoted by the appellant) I consider this is a very small amount of remaining garden space for a house that has been so substantially extended.
17. Drawing these points together I conclude that the development that has taken place is harmful to the character and appearance of the host dwelling and the surrounding area.

Issue (2) – Living conditions

18. I have considered the relationship to the two neighbouring properties based on the findings from my inspection and the photographic evidence provided. As regards the relationship with No.96 I have taken account of the depth of the single storey side extension element and how this bears on the window and double doors at the rear of this property. Given that the projection of the extension beyond the rear wall of No.96 is limited and only single storey in height and the fact that No.96 is set in about 1m from the boundary, I am satisfied that no material harm to light received or outlook from within is likely to have occurred. I also consider that the rear garden of this neighbouring house would not be materially overshadowed and would continue to enjoy a reasonable standard of amenity.
19. As regards the relationship with No.100, the side wall of the deepest element of the extension would run almost the entire length of the eastern common property boundary to within about 1.5m of the back boundary. Although at 3m high it would only be about 1m higher than what could be erected as a garden fence or wall I find that it has had an unacceptably oppressive impact on this

neighbouring house both in terms of the pleasant enjoyment of the garden and the use of the kitchen which has its window and half-glazed door adjacent to the boundary. In this respect I consider that the outlook for the occupiers of No.100 has been seriously compromised by the development resulting in harm to their living conditions. Such an impact is contrary to the terms of Policy 7.6 of The London Plan, saved Policy H17 of the UDP and the principles set out in the SPG to avoid adversely affecting neighbouring properties.

Conclusion

20. I find that the development that has taken place has caused material harm to the character and appearance of the host dwelling and the surrounding area and the living conditions of the occupiers of a neighbouring house. This is contrary to the requirements of certain development plan policies and the Council's guidance on this type of development. For these reasons the appeal on this ground fails.

Ground (f)

21. The submission for the appellant is that parts of the development are either lawful or "permitted development" and therefore should be allowed to remain rather than having to be demolished, as required by the notice. I have already addressed this argument above under the legal grounds and consider it is without substance as the development appears to comprise a single operation which in its totality is neither lawful nor "permitted development" having regard to the provisions of the GPDO 2015.
22. I have also had regard to the argument that if the finishes of the extensions are considered to be unacceptable the walls could be painted a red brick colour or clad with bricks to match the existing walls of the house. Other unspecified works are suggested to tidy up and complete the extensions. I do not accept that this would overcome the harm I have identified under ground (a) which concerns the bulk, massing and extent of the development and its impact on the neighbour's living conditions, not just the external finishes.
23. A further point is that as the rear decking and canopy are not specified in terms in the notice they should be considered as immune for enforcement action. I have already indicated that these elements appear to be part of the whole and are included within the area outlined in blue on the plan that accompanied the notice. On this basis I take it that they are included and required to be demolished under the terms of the notice.
24. The Council maintain that the lesser steps suggested for the appellant would neither remedy the breach of planning control nor the injury to amenity that has arisen. Based on my findings above I agree this is the case. I have considered whether there is any scope to modify the requirements to allow parts of the total extension, such as the side extension, to remain. However even if this were to satisfactorily address the injury to amenity, I do not consider that the parts are clearly physically separable or that it would be possible to word a lesser requirement that was clear on its face so that the parties knew what was required to comply.
25. It may be that that a modified and lesser form of development could be considered which could overcome the harm adduced and the concerns of the Council. Nevertheless I consider that the only appropriate way for this to be

pursued is by negotiation between the parties and the submission of plans with clear details which may require a planning application. Should a more modest form of development be permitted the powers conveyed by s180 of the Act would apply in that the notice will cease to have effect in so far as it is inconsistent with that permission. For these reasons there is no success on this ground.

Ground (g)

26. The appellant seeks a period of 6 months to comply with the notice, instead of 3 months, on the basis of the time it will take to engage builders and get them to carry out the necessary work. It is also argued that this extended period would give more time for the appellant to meet with Council's officers to discuss whether a lesser form of development could be permitted. I do not consider that the first point is sufficient in itself to justify extending the compliance period but the second point is a fair and persuasive one. It does seem to me that there is merit in giving more time so that an alternative form of development can be considered and for any consequent planning application that may be required to be determined. Consequently the appeal on this ground succeeds and I will vary the compliance period to 6 months.

Overall Conclusion

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction and variation and refuse to grant planning permission on the deemed application.

Formal Decision

28. The enforcement notice is corrected at Section 3 by the addition of the words "...as shown edged in blue on the attached plan." and at Section 5 (Time for Compliance) by the deletion of the word "three" and the substitution of the word "six". Subject to this correction and variation 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 1990 Act as amended.

NP Freeman

INSPECTOR