

Appeal Decision

Site visit made on 2 November 2016

by George Mapson DipTP DipLD MRTPI

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

Decision date: 12 December 2016

Appeal Ref: APP/G5750/C/16/3145788
Bindia, 273 Green Street, London, E7 8LJ

- 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 Abdul Majeed against an enforcement notice issued by the Council of the London Borough of Newham.
 - The Council's references are 14/00949/ENFC and 16/00080/ENFNOT
 - The enforcement notice was issued on 5 February 2016.
 - The breach of planning control as alleged in the notice is: *"Without planning permission the erection of a first and second floor rear extension and rear external staircase with metal balustrade."*
 - The requirements of the notice are: *"1. Demolish the first and second floor rear extension (as shown edged in yellow on the photographs at Appendix 1). 2. Demolish the rear external staircase and metal balustrade (as shown edged in yellow on the photograph at Appendix 2). 3. On completion of steps 1 and 2 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), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for deemed planning permission falls to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

The appeal site and surroundings

2. No. 273 Green Street is a 2-storey terraced building located within a local shopping centre. The property is in mixed use, with a retail use on the ground floor and residential use above.
 3. In 1981 a planning application (Ref. 81/133327/13692) was made for the 'self-containment of 1st floor flat and erection of rear external staircase'. Permission was granted.
 4. In 1997 an application (Ref. 97/0445) was made for development described as "Rear addition, rebuilding 1st floor and basement". Again planning permission was granted.
 5. There have been no further grants of planning permission for operational development, or for changes of use, at the appeal property.
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The appeal development

6. The matters alleged in the enforcement notice have three components.
 - 1) The erection of 1st and 2nd floor rear extensions. The felt-covered flat roof of the 1st floor extension has skylight windows that provide daylight to the rooms below.
 - 2) The erection of a rear external staircase. This leads from the alleyway behind No. 273 Green Street to the roof of the 1st floor extension. A walkway of metal tread plates crosses the roof and leads to the entrance to the extension.
 - 3) The erection of a metal balustrade. This tubular steel structure runs along each side the walkway across the roof.
7. On the first point, the appellant claims that, prior to the erection of the 1st and 2nd floor rear extensions, there had been an existing 1st floor extension. In his submission, this extension was 'modified' in 2012.
8. The Council has produced aerial images taken from Blomberg Viewer which show the appeal property on 6 May 2011 and 26 May 2012. Both images show clearly the shape of the building's former rear projection before the unauthorised development was carried out. From these images it is evident that the 1st and 2nd floor rear extensions differ materially, in terms of their size and external appearance, from the building in its previous form.
9. Further works have been carried out since the enforcement notice was issued. These works have entailed the cladding of the 2nd floor extension with vertically hung tiles and setting back the dormer window slightly. The Council describes these works as having resulted in the creation of a 'triangular wedge' between the flat roof of the 1st floor extension and the rear facing wall of the dormer window.
10. On the second and third points, the appellant draws attention to planning permission Ref. 81/133327/13692 (see paragraph 3 above) and says that a "*slight amendment was made to the angle of the staircase*". He has not produced any documents pertaining to that planning permission or photographs of the previous staircase.
11. The Council has produced a photograph, taken in August 2012, which shows the alleyway to the rear of No. 273 Green Street. No external rear staircase or metal balustrade is apparent in that photograph. In contrast, the Council's photograph of 2015 (Appendix 2 to the enforcement notice) shows both structures in situ. These photographs show clearly a material difference in the appearance of the site after the erection of the external staircase and balustrade.

The use of the upper floors of the appeal property

12. The Council points out that the unauthorised development has resulted in additional residential accommodation on the 1st and 2nd floors, facilitating the use of those floors as a house in multiple occupation [HMO].
13. Where premises are operated as an HMO a mandatory licence is required. Although planning permission has been neither sought nor granted for an HMO use of the appeal property, a licence was issued (following an application made in 2014) which permits residential use by 5 people living as 5 households.

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

Main issue

14. The main issue is the effect of the development on the character and appearance of the host building and the surrounding area.

Planning policies

15. 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.
16. These include policies 7.1, 7.4, 7.5 and 7.6 of the London Plan (2016); policies S6, SP1, SP3 and SP8 of the adopted Newham Core Strategy (2012); and 'saved' policy H17 of Unitary Development Plan (2001, saved 2007).
17. The broad thrust 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. Their objectives reflect the guidance set out in the National Planning Policy Framework [NPPF] and the DCLG's web-based Planning Practice Guidance.
18. 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 the ground (a) appeal

19. Policy 7.4 of the London Plan makes it clear that development should have regard to the form, function, and structure of an area, place or street and the scale, mass and orientation of surrounding buildings. In areas of poor or ill-defined character, development should build on the positive elements that can contribute to establishing an enhanced character for the future function of the area.
20. I recognise that this area could be described as possessing a "*poor or ill-defined character*". I saw that some of the rear extensions to other properties in this terrace are unsightly, but I have no information on the history or planning status of those extensions. Nevertheless, it is evident to me that rather than building on the positive elements of the site's surroundings, the unauthorised extensions at No. 273 have simply repeated past mistakes.
21. The unauthorised extensions are significantly worse than others that I saw in the locality. They are stark, utilitarian and bulky additions which are out of scale and character with the original building and the wider surroundings. The unpainted render finish compounds their unattractive appearance and the subsequent addition of vertically hung tiles on the rear dormer does little to ameliorate its overall effect. The external staircase and balustrade add clutter to the appearance of the building.
22. The unauthorised development is visible to the public at street level from Cromwell Road and from neighbouring flats that overlook it. It erodes the character and appearance of the area and fails to accord with the objectives of local and national planning policies. No conditions would overcome the harm that the development has caused. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

23. The gist of the appellant's case is that the requirement to demolish the extensions is excessive and that plans have been submitted to show that works could be carried out to reduce their size and improve their appearance.

Reasons and conclusions on the ground (f) appeal

24. As enforcement action is discretionary, the NPPF requires local planning authorities to act proportionately in responding to suspected breaches of planning control.
25. In the case of a building or extension being erected without planning permission, the appropriate requirement is to demolish it and remove the materials.

26. Although amendments to the unauthorised development have been suggested, I share the Council's view that these would not address its fundamental failings. They would go beyond what has been enforced against and would amount to new development which would require a full planning assessment. Such matters lie outside the scope of an appeal on ground (f).
27. In my planning judgment, the requirements of this enforcement notice are proportionate to the breach of planning control that has occurred. The notice requires no more than is needed to remedy the breach and accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

28. The appellant asserts that 3 months provides insufficient time to carry out the requirements of the notice, but no alternative compliance period has been suggested.

Reasons and conclusions on the ground (g) appeal

29. No specific reasons, supported by evidence, have been put forward to indicate that a longer period would be needed to carry out the required works. In the absence of such evidence, I find that 3 months provides adequate time to implement these works. Accordingly, the appeal on ground (g) fails.

Conclusions

30. I have taken account of my observations at the site and surrounding area, and all the matters raised in the written representations. For the reasons given I conclude that the appeal should be dismissed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

George Mapson

INSPECTOR