

Appeal Decision

Site visit made on 13 December 2016

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 05 January 2017

Appeal Ref: APP/A5840/C/16/3152367

42 Ann Moss Way, London SE16 2TL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Kerem Yavuzarslan against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The notice was issued on 23 May 2016.
 - The breach of planning control as alleged in the notice is
 - The construction of a rear extension and installation of wood decking extending from the back of the rear extension to the rear border fence ("the Unauthorised Development") as shown on the photographs attached to the notice.
 - The rear extension as constructed exceeds the approved dimensions of planning permission reference 14/AP/3957 dated 15 December 2014. The rear extension exceeds the permitted height by 76cm and the permitted depth by 1.6m. The wood decking does not form part of planning permission 14/AP/3957.
 - The requirements of the notice are
 - EITHER
 - i) Remove the Unauthorised Development from the Land; and
 - ii) Remove from the Land all materials and debris resulting from compliance with requirements (ii) above
 - OR
 - iii) Carry out works to the rear extension so that it accords with conditions 2 and 3 of the Decision Notice reference 14/AP/3957 dated 15 December 2014: and
 - iv) Remove from the Land the wood decking
 - v) Remove from the Land all materials and debris resulting from compliance with requirements (iii) and (iv) above.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Act as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended is also to be considered.
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Decision

1. The enforcement notice is corrected by the deletion of '*requirements (ii) above*' from Step 5(ii) and its replacement with '*requirement (i) above*'.
2. Subject to this correction the appeal is dismissed and 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.

The notice

3. Step 5(ii) should refer to requirement (i) rather than requirements (ii). I consider such a correction can be undertaken without prejudice to the parties.
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Procedural matters

4. The Council maintained the Appellant was also offering an appeal under ground (f) although that was not explicitly stated on the appeal form. The Appellant said he was '*not averse to this contention*' and I have considered the appeal on that basis.

Ground (a) appeal and the deemed planning application

Main Issue

5. The main issue in this case is the effect of the works on the living conditions of neighbouring residents and the occupiers of the property and, if harm is caused, whether that is outweighed by any material considerations.

Reasons

The effect on the neighbours

6. This appeal concerns a property on the end of a terrace that was originally a house but is now lawfully used as 2 flats. One of these flats is on the ground floor and the other is on the first floor and in the attic, with the small garden at the rear used in connection with the ground floor flat only. In 2014 planning permission was granted for a single storey extension to serve the ground floor flat (the 2014 permission), which was to project 3m into the back garden from the rear wall and be some 3m high. What was built though, and what is now the subject of this notice, is 4.5m in length with a height of 3.4m-3.6m, and the remainder of the garden has been covered in decking.
7. Guidance in the Council's Supplementary Planning Document called *2015 Technical Update to the Residential Design Standards (2011)* (the SPD) says on page 26 that, when assessing rear extensions on terraced and semi-detached houses,

'3m is usually the maximum depth that can be added without harm to neighbours and preventing a feeling of enclosure [and such extensions] should not exceed 3 metres in height to prevent a feeling of enclosure'.
8. The extension projects along the south-east boundary of the rear garden of 44 Ann Moss Way, and that property has a rear window at ground floor level close to the development. Given this relationship and taking into account the projection and height of the works, to my mind what is before me is unduly dominant when seen from the rear room and garden of No 44, and creates an unacceptable sense of enclosure in those areas.
9. The Appellant noted that the SPD advises only that 3m will '*usually*' be the maximum depth. Whilst this allows for some flexibility I see nothing in the arrangement of these 2 properties to mean such flexibility should be used here. In any event, what is now before me exceeds the SPD guideline by an appreciable extent of about 50%. I acknowledge that the additional effect on the loss of light in the rear room of No 44 diminishes as the extension gets longer, but light is not the issue in this case. Moreover, I do not share the Appellant's view that any length over and beyond that authorised by the 2014 permission does not cause harm to the sense of enclosure in that room or in the rear garden. Rather I consider its increased scale inevitably gives it a greater and more overwhelming presence when seen from next door.
10. Finally, while the Appellant offered to lower the extension if the length can remain, the harm from dominance and enclosure arises because of both of those aspects. Therefore the Appellant's offer would not allay my concerns.

11. Accordingly I find that the works result in unacceptable harm to the living conditions at No 44.

The effect on the residents of the appeal property

12. On page 25 the SPD states that

'any extension should not reduce the outdoor amenity space associated with the dwelling to less than half of its original size and the remaining amenity space must be at least the minimum standards set out [elsewhere in the SPD]'

Furthermore, new flatted accommodation must satisfy the stated standards, namely 50sqm of communal space and 10sqm of private space for units of 2 bedrooms or less (the SPD page 23). It adds on page 24 that conversions should meet the outside amenity space for new build development. As this property has now been converted (albeit becoming lawful by means of a Certificate of Lawfulness), to my mind this lesser standard relating to smaller flats is applicable.

13. There was a condition on the original planning permission for the property in the mid-1990s that protected the garden. However, little weight should be attached to that as firstly it concerned a larger dwelling rather than the ground floor flat that now has sole use of this area, and secondly by granting the 2014 permission the Council has accepted a reduction of the garden. The mid-1990s permission was also made in a different context of policy and guidance.
14. The Council noted that the rear extension subject of the notice takes up over 50% of the rear amenity space, while what was approved under the 2014 permission would have occupied slightly under 50%. However, the garden is still 11sqm and so exceeds the required provision for 1 or 2 bedrooomed conversions. I am aware of no communal open space to which this development contributes, but that situation is not materially different to the circumstances surrounding the 2014 permission and so, in itself, does not offer a basis to refuse the scheme.
15. Accordingly as it still provides on-site private amenity space in accordance with the SPD, although the extension takes up more than 50% of the garden on balance I conclude it does not result in unacceptable living conditions for the occupiers of the ground floor flat.

Other possible harm

16. A concern was expressed about the appearance of the development. However, even accepting there is nothing similar on this terrace to my mind its design is not discordant on the rear elevation of this property or the block to which it is attached. Therefore that is not a concern I share.

Material considerations to weigh against the harm

17. The Appellant said that, when compared to the scheme subject of the 2014 permission, the extra space created by the built extension is needed to bring the floor area of the ground floor unit up to the required standards for a 1-bedroomed flat. This is given as 50sqm in the SPD and the Government's *Technical housing standards* (THS) and the flat now has an area of 51sqm. It was also said the works allow a more rational layout as instead of being at the front the kitchen could be at the rear as part of the living/dining area.
18. I accept that the enlargement subject of the 2014 permission would have resulted in a flat with a floor area below that recommended in the THS and the SPD, and so there is a benefit in creating more floor space for its occupiers. However, the THS concerns new residential development. Therefore, while it might outline a

desirable standard to be attained, it does not seek to impose those standards on units such as this that were laid out and first occupied without planning permission. Indeed I consider it may be difficult to adapt such units to accord with the THS as their settings or contexts may not allow the necessary work to be undertaken.

19. In any event, the Appellant's desire to create a suitable floor area for a 1-bedroomed flat does not sit comfortably with the fact that, when I visited, it in fact had 2 bedrooms, with a utility room at the front having been converted. Considering the flat on that basis, it falls significantly below the floor space given in the SPD and the THS.
20. To my mind, when balanced against the nature and scale of the harm identified any benefits from providing this limited amount of further floor space, whether or not it results in a unit in line with the THS and SPD, cannot be seen to justify the enlargement before me.
21. Finally, the flat is not large and so the distance between the kitchen at the front and the rear living room in the layout of the 2014 permission, would not be unreasonable or impractical.
22. Therefore, taking all these factors together I find that they do not outweigh the harm resulting from the impact on the adjacent residents.

Conclusions

23. Accordingly I conclude that the extension would cause unacceptable harm to the living conditions of the neighbouring residents, and any benefits that may result from an enlargement of the ground floor flat do not outweigh this harm. Therefore the works are contrary to the SPD, Policy 3.2 in the *Southwark Plan* and Policy 7.6 in *The London Plan*. Accordingly the appeal under ground (a) fails and planning permission is refused for the deemed planning application.

Ground (f) appeal

24. Sections 173(3) and (4) of the Act as amended broadly say the steps required by an enforcement notice are to achieve, wholly or in part, a remedy of the breach of planning control that has occurred, or a remedy of the injury to amenity that has been caused by the breach. An appeal under ground (f) contends that the steps required by a notice exceed what is necessary to remedy the breach of planning control or remedy any injury to amenity, whichever the case may be.
25. In this case the ground (f) appeal relates to the desire only to lower the extension rather than to reduce its length. However, as discussed above I have found that would not allay my concerns and it would not address the breach of planning control. Therefore the appeal under ground (f) fails.

J P Sargent

INSPECTOR