
Appeal Decision

Site visit made on 16 December 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 2 March 2017

Appeal Ref: APP/Y5420/C/16/3145096

Land and building(s) known as 109 Gladesmore Road, London N15 6TL

- 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 David Piller against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 22 January 2016.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a single storey rear extension.
 - The requirements of the notice are:
 - i Remove the single storey extension in its entirety.
 - ii Remove all resultant debris
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice upheld as corrected

Application for costs

1. An application for costs was made by Mr David Piller against the Council of the London Borough of Haringey. This application is the subject of a separate Decision.

Procedural Matters

2. The enforcement notice is concerned with a breach of planning control rather than other areas of legislation. The breach of planning control alleged in the notice should therefore refer to the erection of a single storey rear extension 'without planning permission' rather than an 'unauthorised' installation as stated in the notice. No injustice would arise from correcting the notice in that respect, and I shall therefore correct the notice accordingly.
 3. The appellant considers that the enforcement notice is void for uncertainty and is not capable of correction, such that it is a nullity. In particular, the appellant considers that the wording of the notice is ambiguous and that it is not clear within the four corners of the document what is required of him to comply with it. In that respect, the appellant points to the requirements at 5(i) and 5(ii) of the notice.
 4. The requirement at 5(i) of the notice is to remove the single storey extension in its entirety. The appellant considers that it is unclear whether this relates solely to the removal of the wall panels or whether it extends to the removal of
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the concrete base on which it stands. This is partly on the basis that the concrete/hardcore base on which the walls of the extension are affixed is claimed to have existed as a patio prior to the construction of the extension, and as such is not part of it. The matter is further complicated because the extended element is incorporated into the original parts of the dwelling, which include a kitchen/habitable room.

5. In relation to the concrete/ hardcore base, the appellant has not provided any documentary evidence to demonstrate that this base existed as a separate structure prior to the construction of the extension. This patio is not shown on the drawings that accompanied the application for Prior Approval of an extension to the property. In the absence of any evidence to the contrary, I consider that the concrete/ hardcore base forms part of the single-storey extension that is subject to the notice.
6. To my mind, as a matter of ordinary language the inclusion of the word 'entirely' within the requirement at 5(i) is a clear indication that all of the extension should be removed. By definition, this would include the walls, the roof and the base on which the extension stands. In my view, the wording of the requirement at 5(i) is neither ambiguous nor uncertain, such that the actions required to comply with the notice are clear within the four corners of the document. I recognise the appellant's concern about the effect on the kitchen/habitable room but I noted on my site inspection that the original side and rear walls of the dwelling were largely in situ. The kitchen/habitable room is wholly contained within the original part of the dwelling, such that compliance with requirement at 5(i) would not impact greatly upon the use of the kitchen/habitable room.
7. Similarly, I find nothing ambiguous or uncertain with the wording in the requirement at 5(ii). As a matter of ordinary language, the remove all resultant debris must mean the removal of the debris resulting from the demolition of the walls and roof of the extension, as well as the concrete and hardcore that forms the base upon which it stands.
8. In his Final Comments, the appellant contends that the enforcement notice is a nullity because there is no proof that it was issued by an authorised party or person. This follows the decision in an appeal within the London Borough of Enfield (APP/Q5300/C/15/3006366), in which the Inspector found that the notice was a nullity because there was no evidence before him that the notice had been properly authorised.
9. However, in this case, the Council has provided copies of the Council Constitution and the Constitutional Scheme of Officer Delegation. From those documents, it is evident that the Council officer who authorised the issue of the enforcement notice was the holder of a post entitled so to do under the Constitutional Scheme of Officer Delegation. I therefore conclude that the enforcement notice was properly authorised and, in that respect, can be distinguished from that found to be a nullity in the above appeal.
10. I therefore conclude that the enforcement notice is not a nullity. I have given careful consideration as to whether the notice should be corrected or varied in order to make it clear what is required of the appellant in order to comply with it. However, I am satisfied that it is clear within the four corners of the document what is required in order to comply with the notice, such that no correction or variation is required.

The appeal on ground (e)

11. The ground of appeal is that copies of the enforcement notice were not served as required by section 172 of the Town and Country Planning Act 1990.
12. The appellant invites the Council to prove, on the balance of probability, that the enforcement notice was properly served. The appellant considers that the notice was not correctly served because it was served on an unnamed owner and not on the appellant, Mr David Piller, who is said to be the legal landlord.
13. In response, the Council has provided the Official copy of register of title produced by the Land Registry. This clearly shows the Title Absolute to be held by a Mr Aaron Piller of 109 Gladesmore Road, London N15 6TL, and the Council has indicated that the notice was served on Mr Aaron Piller by hand delivery on 25 January 2016. The Council is not in a position to provide documentary evidence of this but, given that the date indicated is precisely defined and is shortly after the date on which the notice was issued, I am satisfied on the balance of probability that the notice was served on that date.
14. I also note that, contrary to the appellant's assertion, the Enforcement Notice Instruction prepared by the Council officer authorised to issue enforcement notices indicates that the notice was to be served specifically on Mr Aaron Piller, identified by the Council as being the owner. In addition, the Enforcement Notice Instruction also indicates that the notice was to be served on the "owner" and "occupier" of 109 Gladesmore Road, London N15 6TL, as well as a company known as Mortgage Express identified on the Official copy of register of title as having an interest in the land. I am therefore also satisfied, again on the balance of probability, that the notice was served on all parties identified by the Council as having an interest in the land.
15. In that context, although the appellant has declared himself to be the legal landlord of the property, no documentary evidence has been provided to that effect. Neither has the appellant provided any indication as to where that evidence might be found or where the appellant is listed as being the legal landlord. In the absence of that information, I am unclear as to how the Council could reasonably have been expected to have identified the appellant's interest in the land, given that the appellant does not appear on the Official copy of register of title produced by the Land Registry. I therefore have no reason to believe that the Council erred in failing to serve the notice on the appellant or that the enforcement notice was served other than as required by section 172 of the Town and Country Planning Act 1990.
16. Moreover, as the Council point out, section 176(5) of the 1990 Act provides that where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him. In this case, the person on which the notice is claimed not to have been served is the appellant. Clearly, the appellant became aware of the notice and had the opportunity to instruct a professional representative to submit an appeal on his behalf within the required timescale. Consequently, even if the Council had erred in failing to serve the notice on the appellant, he has not been prejudiced in any way and any failure in that respect can be disregarded.

17. Accordingly, the appeal on ground (e) fails.

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

18. The ground of appeal is that planning permission ought to be granted. The Council has stated three substantive reasons for issuing the enforcement notice, from which the following main issues are raised:

- the effect of the extension on the character and appearance of the host property and the prevailing pattern of development in the area, and
- the effect of the extension on the living conditions of the occupiers of the adjoining residential properties, specifically in relation to outlook.

Character and appearance of the host property and the prevailing pattern of development in the area

19. The appeal property is a mid-terraced house located on the north side of Gladesmore Road. As originally constructed, the property featured a two-storey outrigger that occupied some two-thirds of the width of the rear elevation and has a depth of some 6.5 metres. Other properties in the terrace also feature similar outriggers. These outriggers are handed in pairs, such that there is a space between the outriggers of adjoining properties. The alternation between projecting outriggers and the deeply recessed space between them provides the rear of this terrace with a cohesive and distinctive character and appearance.
20. The extension subject to the enforcement notice has a depth of some 5.0 metres measured from the rear elevation of the outrigger. This results in a total depth of some 11.5 metres from the rear elevation of the main house. There is some dispute about the height of the extension as constructed. The appellant contends that the height is 2.5 metres. The Council suggest that the height is nearer 3.4 metres, plus an additional 0.6 metres for the lantern on top of the flat roof. Although the height of the extension was not measured during my site visit, it was nevertheless apparent to me that the height of the extension is significantly higher than the 2.5 metres suggested by the appellant, and that the height suggested by the Council is more representative. The extension occupies the full width of the plot, and encloses the space between the outrigger and the boundary.
21. Moreover, and irrespective of the precise dimensions of the extension as constructed, by reason of its height, bulk and width the extension dominates the rear elevation of the property rather than being subservient to it. The external walls of the extension are currently constructed of un-rendered breeze blocks and the use of these poor quality materials serves to exacerbate the bulk and incongruous appearance of the extension. For all these reasons, the extension represents an incongruous addition that detracts significantly from the character and appearance of the host property.
22. Because the extension dominates the rear elevation of the property, it distracts from and visually erodes the prevailing pattern of development exhibited by the alternation between projecting outriggers and the deeply recessed space between them at the rear of this terrace. Although other properties in this terrace have been extended at the rear, unlike the extension subject to the enforcement notice, they are not of such bulk and incongruous appearance that they detract from the prevailing pattern of development in that way.

23. I acknowledge that the extension is not visible from the public highway, and that the front elevation of the house remains unchanged. Nevertheless, by reason of its height, bulk and incongruous appearance, the extension is widely visible from a number of the surrounding properties. Indeed, I note that an occupier of a property in Leland Road objects to the extension on the grounds, amongst other things, of its effect on the environment and neighbourhood. It is therefore evident that the extension is perceived by the occupiers of adjoining properties as being harmful to the prevailing pattern of development in the area.
24. I conclude that the extension unacceptably harms the character and appearance of the host property and unacceptably affects the prevailing pattern of development in the area. I therefore conclude that the extension is contrary to Policies 7.4 and 7.6 of The London Plan, Policy SP11 of the Haringey Local Plan 2013 and Policy UD3 of the Haringey Unitary Development Plan 2006. These policies require, amongst other things, that development compliments the character of the local area and is of a scale that is sensitive to the surrounding area.

Living conditions

25. Because of the height and depth of the outriggers to the properties in this terrace, the space between them is already restricted in terms of outlook. Neither of the houses adjoining the appeal property has been extended at ground floor level. There is a window in the rear elevation of the adjoining house at No. 107 Gladesmore Road as well as a window in the flank of the outrigger to that property, although I have not been advised of which type of room these windows serve.
26. By reason of its depth, width and height, together with the proximity to the boundary, the extension dominates the outlook from both adjoining properties. For the same reasons, the extension creates an unacceptable sense of enclosure when viewed from No. 107 Gladesmore Road, including from the window in the flank of the outrigger. In this context, by reason of its height, the extension projects significantly above the boundary treatment to both adjoining properties, such that the difference in outlook resulting from the extension is both material and substantial.
27. I conclude that the extension unacceptably harms the living conditions of the occupiers of the adjoining residential properties in relation to their outlook. I therefore conclude that the extension is contrary to Policies 7.4 and 7.6 of The London Plan, Policy SP11 of the Haringey Local Plan 2013 and Policy UD3 of the Haringey Unitary Development Plan 2006 in this respect also. These policies require, amongst other things, that development proposals do not have a significant adverse impact on residential amenity.

Other matters

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the extension subject to the enforcement notice does not accord with the development plan. I must therefore consider whether there

are any matters of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

29. The appellant has referred me to an appeal decision in respect of a property at 38 and 40 Riverside Road, also within the London Borough of Haringey (APP/Y5420/D/13/2198877), in which the Inspector found that a garden of less than 50% of the area available was acceptable in terms of the Council's policies. However, inadequate garden area not an objection raised by the Council in its reasons for issuing the enforcement notice in this case. This is therefore a matter to which I attach only limited weight.
30. I also acknowledge that, whilst presently constructed in un-rendered breeze blocks, the appellant intends to render these blocks as part of completing the extension. Whilst a suitably worded condition could be imposed to ensure that this was the case, rendering the extension would not disguise the height, depth and bulk of the extension, which is the cause of the harm identified above. Rendering the breeze blocks would therefore not overcome the harm caused in terms of the character of the host property, the prevailing pattern of development in the area or in terms of the living conditions of the occupiers of the adjoining properties.

Conclusion on the ground (a) appeal

31. I find that the extension subject to the enforcement notice is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted.
32. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

33. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 (1990 Act) sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to remove the single storey extension in its entirety. The purpose of the notice must therefore be to remedy the breach of planning control.
34. In October 2013, the Council confirmed that prior approval was not required for a single storey extension to No 109 Gladesmore Road which extended beyond the rear elevation by 3 m, for which the maximum height would be 2.5 m and for which the height of the eaves would be 2.6m (Ref: HGY/2013/1731). The essence of the appellant's case on this ground of appeal is that the enforcement notice should allow him to modify the extension such that it would accord with the criteria for permitted development. In that respect, the appellant refers me to the principle established in *Mansi v Elstree RDC* [1964] 16P and CR 154 that an enforcement notice should include saving for any element of lawful use.

35. The extension for which the Council considered prior approval was not required was of similar width as that constructed, but was of a lesser depth and a lower height. It is shown on drawing No GR.109.PR.02 submitted with the application for prior approval under reference HGY/2013/1731, such that the dimensions are known and can be referenced. I am therefore satisfied that the extension could be modified with sufficient precision to accord dimensionally with that for which prior approval was found by the Council not to be required.
36. However, although the extension for which prior approval was found not be required would have projected beyond the rear elevation of the outrigger by 3 metres, it would have projected beyond the rear wall of the main dwelling by some 10 metres. Consequently, notwithstanding that the Council had indicated that Prior Approval was not required, the extension then proposed did not accord with the limitation at Article 3, Schedule 2, Part 1, Class A.1(ea) of the Town and Country (General Permitted Development) Order 1995 (GPDO) and therefore could not have been permitted development. The Council accepts that this was an oversight on its part. Nevertheless, the corollary is that the extension shown on drawing No GR.109.PR.02 would not have been permitted development and at no time has express planning permission been granted for it. The extension shown on that drawing therefore cannot be relied upon by the appellant in relation to Section 173(4) of the 1990 Act.
37. Moreover, permitted development rights cannot be gained retrospectively and unlawful development cannot be modified to become permitted development. Consequently, even if the works already in place could be modified to the point where they would otherwise accord with the limitations under permitted development, the development so modified would not itself become permitted development under the GPDO. As such, the extension as modified would not be subject to the same conditions that may apply to development permitted by the GPDO, including the condition set out at Article 3, Schedule 2, Part 1, Class A.3(a). The latter states that development is permitted by Class A subject the condition that the materials used in any exterior work (other than materials used in the construction of a conservatory) shall be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
38. The extension as constructed from materials which are not of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse and therefore does not accord with that condition. Consequently, if the extension was modified to accord with the tolerances allowed under permitted development, then by reason of Section 173(11) of that Act planning permission shall be treated as having been granted by virtue of Section 73A of 1990 Act. This would be an unconditional planning permission and therefore not subject to the condition at Class A.3(a) of the GPDO requiring the materials used in any exterior work to be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
39. Whilst I recognise that the appellant has indicated an intention to render the external walls in due course, by reason of Section 173(11) of the 1990 Act the Council would not have the ability to enforce that. Consequently, the extension as amended could in those circumstances remain without any external finish to the breeze blocks. This would be harmful to the character and appearance of the host property, that being one of the reasons why the enforcement notice was issued.

40. It follows from the above that varying the requirements of the notice to alter the extension to accord with the GPDO would not overcome the planning difficulties and would not achieve the purpose of the notice. Consequently, whilst I fully recognise that the enforcement procedure is intended to be remedial and not punitive, in the particular circumstances of this case the requirements of the notice do not exceed what is necessary to achieve the purpose of the notice.

41. The appeal on ground therefore (f) fails.

The appeal on ground (g)

42. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is four months.

43. The appellant considers that a period of four months is not sufficient to find a suitably qualified contractor and carry out the work, allowing for the possibility of inclement weather. A period of compliance of 10 months is sought.

44. The requirements of the notice are to remove the single storey extension in its entirety and to remove the resultant debris. I am not convinced that this straightforward act of demolition requires a specialist contractor but, even if it did, the appellant has provided no evidence to support the contention that such a contractor could not be found within the period specified in the notice. Moreover, because compliance with the notice would primarily involve demolition of an uncompleted structure and would not affect the accommodation within the main dwelling, I see no reason why that work could not be undertaken in even inclement weather conditions.

45. I acknowledge that the appellant enjoys rights under the Human Rights Act 1998, including the right to respect for private and family life, home and correspondence under Article 8 and the right to peaceful enjoyment of one's possessions under Article 1 of the First Protocol. However, aside from contending that four months is too short and unreasonable, the appellant has not explained how his rights under Article 8 and Article 1 of the First Protocol would be infringed by the compliance period specified in the notice.

46. Moreover, as the appellant concedes, the rights under the Human Rights Act 1998 are qualified rights. Consequently, there is a balance to be struck between the rights of the appellant under that Act and those who may be affected by the development that has taken place. In this context, I am mindful that the extension unacceptably harms the living conditions of the occupiers of the adjoining residential properties. Indeed, in a representation dated October 2016, the occupier of a property in Leland Road complains that the extension has already had such an impact on her property for over a year at the time of writing.

47. In weighing the balance between the rights of the appellant and the impact on neighbours, and given also that the steps required to comply with the notice are neither complicated nor difficult, I consider that the period of four months specified in the notice is reasonable and proportionate. The period of 10 months sought by the appellant has not been justified.

48. Accordingly, the appeal on ground (g) fails.

Conclusion

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

Formal Decision

50. It is directed that the notice be corrected by replacing the word "unauthorised" in paragraph 3. with the words "without planning permission". Subject to that 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 1990 Act as amended.

Paul Freer

INSPECTOR