

Appeal Decisions

Site visit made on 27 March 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 21 April 2017

Appeal A: Appeal Ref: APP/Y5420/C/16/3165232

6 Rostrevor Avenue, London N15 6LR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr and Mrs S Schechter against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice, reference DEP/2015/00626 was issued on 7 November 2016.
- The breach of planning control as alleged in the notice is the unauthorised erection of a partially constructed single storey ground floor rear extension and the erection of a box shaped structure on top of the roof of a roof extension.
- The requirements of the notice are
 - i. Remove the partially constructed single storey rear extension in its entirety or modify the development so that it accords with drawing numbers RAO11 REVB and RAO14 REVB associated with planning permission HGY/2011/1888, granted by the Council on 6 December 2011.
 - ii. Remove the box shaped structure that has been erected on top of the roof to the roof extension in its entirety.
 - iii. Remove all resultant debris.
- The period for compliance with the requirements is four months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (b) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal B: Appeal Ref: APP/Y5420/W/16/3165533

6 Rostrevor Avenue, London N15 6LR

- 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 Mrs S Sthechter against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2016/3514, dated 11 October 2016 was refused by notice dated 28 November 2016.
- The development proposed is the erection of a single storey rear extension (retrospective).

Summary of Decision: The appeal is dismissed.

Application for costs

1. An application for costs was made by the Appellants against the Council. This application is the subject of a separate Decision.
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Procedural Matter

2. The Appellants' name is spelt Sthecther and Schechter in the documents. For the purposes of these appeals I will use the spelling on the application form in Appeal B, that is, Sthecther.
3. Mrs Sthecther was the applicant for planning permission in Appeal B and therefore only she can make the appeal, not both Mr and Mrs Sthecther as named on the appeal form. The appeal in Appeal A was made in the names of both Mr and Mrs Schechter but only one fee was paid in respect of the ground (a) appeal and I will therefore determine this ground of appeal on the basis of Mrs Sthecther as the sole Appellant.

Planning history

4. Planning permission (HGY/2011/1888) was granted for roof top extensions front and back and a 5m deep single storey rear extension and this permission has been partially implemented. However, the rear extension that has been built, but which is not complete, is 5.75m deep. I will take this into account in the determination of the appeals.

Appeal A: The appeals on ground (b)

5. In an appeal on ground (b) the Appellants are saying that the breach of planning control alleged in the notice has not occurred as a matter of fact. The Appellants' appeal on this ground is confined to 'the erection of a box shaped structure on top of the roof of a roof extension' and they say that there is no unauthorised 'box' structure on the roof.
6. There was no such structure on the roof at the time of my visit but the Council produced a photograph dated 14 October 2016¹ which clearly shows such a structure; Mrs Sthecther confirmed that the structure was present but that it had been removed, but she did not say when. The Appellants also produced photographs attached to an email dated 17 November 2016 in which no structure is apparent, but these photographs have not been dated.
7. I have to consider the development at the time the notice was issued, which in this case was 7 November 2016. It is for the Appellants to prove that the structure was not present on that date and they have not done so.
8. The breach of planning control as alleged in the notice with regard to 'the erection of a box shaped structure on top of the roof of a roof extension' had occurred as a matter of fact and the appeals on ground (b) fail.

Appeals A and B: The appeal on ground (a) and the s.78 appeal

9. In an appeal on ground (a) the Appellant is saying that planning permission should be granted for what is alleged in the notice which in this case is the erection of a partially constructed single storey ground floor rear extension and the erection of a box shaped structure on top of the roof of a roof extension. In the s.78 appeal planning permission is sought for the erection of a single storey rear extension (retrospective).

¹ Date confirmed in an email dated 27 March 2017

10. The box shaped structure on the roof no longer exists and the Appellant has not made any case for planning permission for it in the ground (a) appeal nor is it included in the s.78 appeal.
11. The main issues to be considered are firstly the effect of the single storey rear extension on the character and appearance of the host property and secondly its effect on the living conditions of neighbouring occupiers with regard to outlook and whether it is overbearing.
12. The appeal property is a semi-detached two storey house which has planning permission for an extension to the roof which appeared to be partially complete at the time of my visit and for a 5m deep single storey rear extension, the walls of which had been partially completed but with a depth of 5.75m.
13. The permission that has been granted is a material consideration and I note that it was granted by the Council in the same policy context. However, I take into account the supplementary planning document 'House Extensions in South Tottenham' (SPD) which was adopted in 2013 after a full consultation process. This SPD recognises the need to tackle overcrowding in this area and the need to provide additional habitable accommodation for large families; the recommended way was to build roof extensions and a large roof extension has been granted for No 8.
14. The SPD goes on to explain that rear extensions should not extend beyond 4m for semi-detached properties² and that proposals should be assessed for their impact on adjoining dwellings so that, among other things, a reasonable outlook is maintained. In addition, larger rear extensions are generally discouraged, and are not normally permitted when they would leave a rear garden of less than 50sq m³.
15. I noted on my visit that many of the properties in the area had been extended in the roof but only a few had been extended at the rear in the vicinity of No 6 and only No 4 had been extended to such an extent. It appeared that No 8 had not been extended at all.
16. The additional 0.75m has resulted in the rear garden being only 45sq m, less than that stated in the SPD and an extremely long, high and blank wall adjacent to the boundary with No 8. This wall is overbearing resulting in a sense of enclosure for the occupier of that property and providing an extremely adverse outlook from the rear ground floor windows/French doors.
17. In permitting an extension of 5m the Council had gone beyond the limit in its own SPD, having taken into account matters such as the need for the accommodation and its impact on the neighbouring property. In my opinion there is a limit to which any property can be extended and the rear extension as built fails to respect the scale and proportions of the host building and has an adverse impact on the neighbouring property. Given the reduction in garden space and the harm to the neighbouring property I consider that the additional 0.75m depth is taking this rear extension beyond that limit.
18. The Appellant has referred to other extensions in the area but I have to determine this development on its own merits. I have also taken into account

² para 3.40

³ Para 3.43

the authorities referred to by the Appellant⁴ and the needs of the Appellant for larger accommodation and I note that the SPD was consulted on with the Charedi Jewish community to provide clear guidance and took into account the needs of that Community for large habitable living space.

19. I have had due regard to the Public Sector Equality Duty (PSED) contained in s.149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
20. I have also taken into account the best interests of the children of the family which in this case seems to me to be between the need for indoor space and the need for outdoor private space in the back garden.
21. Also, Article 1 of the First Protocol of the European Convention on Human Rights concerns enjoyment and deprivation of possessions and Article 8 states that everyone has a right to respect for his home and private life, his home and correspondence. However, these are qualified rights, whereby interference may be justified in the public interest and the concept of proportionality is crucial. The legitimate aim of protecting the environment cannot be achieved by any means which are less interfering with the Appellant's rights and these means are therefore proportionate and necessary in the circumstances and do not result in a violation of human rights.
22. I do not consider that these other matters and duties outweigh the harm that I have identified above. I therefore conclude firstly that the single storey rear extension has a harmful effect on both the character and appearance of the host property and on the living conditions of neighbouring occupiers with regard to outlook and that it is overbearing. The single storey rear extension does not comply with Policies 7.4 and 7.6 of the London Plan; Saved Policy UD3 of the Haringey Unitary Development Plan; Policy SP11 of the Haringey Local Plan; and draft policies DM1 and DM12 of the Haringey Development Management Plan DPD which seek, among other things, to ensure that development has regard to the scale and mass of the original building and does not cause unacceptable harm to the amenity of adjoining neighbours.
23. The appeal on ground (a) fails and the s.78 appeal is dismissed.

Appeal A: The appeals on ground (g)

24. In a ground (g) appeal the Appellants are saying that the time given to comply with the notice is too short.
25. The Appellant's case on this ground was conditional on whether they had been caused any prejudice with regard to their ability to make an appeal in respect of the refusal of planning permission in ref HGY/2016/3514 by what they consider to have been the premature issue of the enforcement notice.
26. In the event both appeals have been considered in this linked decision and not prejudice was caused to the Appellants.
27. The appeals on ground (g) fail.

⁴ Sedgemoor DC v Hughes [2012] EWHC 1997 (QB) and R(Harris) v LB Haringey [2010] EWCA Civ 703

Appeal A: Conclusion

28. 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.

Appeal B: Conclusion

29. For the reasons given above I conclude that the appeal should be dismissed.

Decisions

Appeal A: Appeal Ref: APP/Y5420/C/16/3165232

30. 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.

Appeal B: Appeal Ref: APP/Y5420/W/16/3165533

31. The appeal is dismissed.

Gloria McFarlane

Inspector