

Appeal Decisions

Hearing held on 10 May 2017

Site visit made on 10 May 2017

by P N Jarratt BA DipTP MRTPI

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

Decision date: 17 May 2017

Appeal A, Ref: APP/U5360/C/16/3161809

Appeal B, Ref: APP/U5360/C/16/3161810

Land at 69 Watermint Quay, Craven Walk, London.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by H Schneck and Appeal B is made by Mrs S Schneck against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice, numbered 2016/0206/ENF, was issued on 22 September 2015.
 - The breach of planning control as alleged in the notice is without planning permission the operational development comprising the erection (of a) two storey extension at rear lower ground floor and upper ground floor levels of the property.
 - The requirements of the notice are;
 - I) Remove the unauthorised two storey extension at rear lower ground floor and upper ground floor levels from the property;
 - II) Make good any damage resulting from compliance with the requirements of the notice and restore the relevant parts of the property to the condition they were before the two storey extension was erected;
 - III) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on grounds (b) and (c). Since the prescribed fees have not been paid for Appeal B within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
 - **Summary of Decisions**
 - Appeal A: Notice corrected, upheld and planning permission refused.**
 - Appeal B: Notice corrected and upheld.**
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Procedural Matter

1. The Council has indicated that the date of the notice incorrectly states 2015 and not 2016. As no injustice would arise to the appellant, I intend to correct the notice to refer to the correct year.

The highway is at a lower level and a flight of steps links the highway to the footway.

3. At the rear the terrace the ground rises steeply to a private service road. The original layout and land levels are evident from some of the houses and this generally consisted of a shallow patio to the rear of the lower ground level, a landscaped area with terraces and steps rising to a car parking area backing on to the service road. To the rear of the service road is the large blank elevation of commercial premises.
4. The six metre deep brick extension is built up to the boundaries of adjacent properties. It visually appears as a two storey flat roofed building to the rear of No 69 and is about 6m high. There is an opening skylight (used as a succa) to the extension which sits above the general line of the roof.
5. The front door provides direct access into a long open plan room at upper ground floor level from which stairs lead down to the lower ground floor and up to two upper floors. Patio doors open out at the rear of the extension at upper ground floor level onto a platform comprising a metal grid from which two wide metal grid steps drop down to a patio. To one side of the steps is a spiral staircase to the lower level which is a paved area giving access through patio doors to the lower ground floor level. Within each of the two side lower level patio walls, which provide the support for the extension above, are two openings in which decorative fence panels have been inserted, which themselves have replaced windows that had originally been installed.
6. On 24 December 2013 notification was given of a larger home extension under the Town and Country Planning (General Permitted Development) Order 1995 (as amended) Schedule 2, Part 1 (Class A.1(ea)) (the 1995 GPDO). The proposal was described as 'Large home rear extension, dimensions, 6 metres deep, 4.5 metres wide and a height of 3 metres from natural ground level'. A plan attached to the notification showed the extension in relation to the upper ground floor of the dwelling and the garden. The plan does not indicate the rear metal platform or steps. The Council described the proposal as for 'erection of a single storey rear extension at ground floor level measuring 6m in depth x 3m to the eaves (3m height max)'. The Council did not carry out any site inspection or request further information from the appellant although the adjoining occupiers were notified. The Council determined that deemed approval was not required on 4 February 2014 (Ref 2014/0068). The appellant then proceeded to construct the extension.

The appeals on ground (b)

7. An appeal on this ground is that the breach has not occurred as a matter of fact. The appellant states that only a single storey extension was constructed although the notice alleges the construction of a two storey extension. The appellant states that in order to construct a level extension from the ground floor, part of the garden was removed from beneath it to create a void, albeit that it has side walls for structural purposes and can be used for covered amenity purposes. I note that although the appellant says there is no desire to create a northern wall at lower ground level to enclose the void, a northern wall retains the open upper patio area and is only separated from the extension by the width of the metal grid platform and steps which effectively performs the role of a skylight.

8. The term 'storey' is not defined in the GPDO but the appellant considers that a 'storey' of a building cannot include a void or an undercroft which is open to the elements. Reliance is placed on *Bristol City Council v Digs (Bristol) Ltd [2014] EWHC 869 (Admin)* in which 'a storey of a building or house would ordinarily be understood as meaning the whole floor, that is all the space at a given level, within that building'. I note the case related to HMOs in the context of the Housing Act and not to any defined planning use of the term.
9. It was evident at my site inspection that the appeal property did not have a 'ground floor' as such but it had an upper ground floor and a lower ground floor. To create a rear extension at upper ground floor level substantial structural works were required to support it. This has provided useable amenity space at lower ground floor level which, until the side windows were replaced with fencing panels, was only unenclosed by virtue of the open grid platform and steps. The Council has drawn attention to dismissed appeal APP/M1710/X/15/3138453 but that case can be distinguished on its facts from this appeal.
10. Whilst I have the power to correct the notice by deleting reference to the number of stories and this could be done without injustice, I am satisfied that the allegation as described in the notice is sufficiently accurate and unambiguous such that any observer of the extension as constructed would conclude that it comprises two storeys.
11. As a matter of fact, I conclude that a two storey extension has been constructed and the appeal on this ground fails.

The appeals on ground (c)

12. The appeal on this ground is that no breach has occurred as the development represents permitted development. As the prior approval notification was made in December 2013 and determined in February 2014, the relevant statutory instrument is the 1995 GDPO as amended by the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013¹ and the relevant DCLG Technical Guidance is the January 2013 version. I note that the parties refer to the equivalent paragraphs in the 2015 GPDO which are the same or similar to those of the superceded 1995 GDPO.
13. Paragraph 3(1) of the 1995 GDPO grants planning permission for the classes of development described as permitted development in Schedule 2. Class A provides for the enlargement, improvement or other alteration of a dwellinghouse and paragraph A.1(ea) introduced a prior notification procedure for large extensions. However the permission granted by the Order is subject to any relevant exceptions, limitation or condition specified in the Order.
14. The appellant cites *R (Orange) v Islington LBC [2006] JPL 1309* in which it was held that in a prior approval case the permission accrues or crystallises upon the developers' receipt of a favourable response from the planning authority to the application. Whilst this may be the case, it does not over-ride the need for the developer to ensure that the relevant exceptions, limitations or conditions are met.
15. On the face of it the details submitted with the prior notification application indicate that the proposal represented permitted development. However doubt

¹ SI 2013 NO 1101

is raised over certain matters which were not apparent from the submitted details.

16. I have already concluded above that the nature of the extension is that of a two storey building and this is at odds with paragraph A.1(ea) which does not permit development unless the enlarged part of the dwellinghouse would have a single storey.
17. Paragraph A.1 (g) limits the height of the eaves of the enlarged part of the dwellinghouse to 3 metres where it is within 2 metres of a boundary. Height is defined in the Order in which it is made clear that the measurement of height where ground level is not uniform such as where the ground is sloping, the ground level is the highest part of the surface of the ground next to the building. The appellant indicated on site where the original ground level was prior to the development, by reference to the adjoining property. Whilst I have no reason to question what I was shown, the fact is that there is no evidence within the appeal site of where ground levels were prior to the development as the ground had been excavated to a point further back than 6 metres from the rear wall of the original dwellinghouse to accommodate the northern retaining wall and raised platform and steps. As a result, I consider the overall height of the extension to be in the order of 6 metres in the absence of any remaining original ground level.
18. Paragraph A.1 (c) does not permit development where the height of the eaves of the part of the enlarged dwellinghouse would exceed the height of the eaves of the existing dwellinghouse. The roof and eaves of the front of the house sits above the top floor. At the rear the roof design is substantially different with the eaves being below the first floor level. The houses have flat roof dormers at first floor level and roof lights at second floor level. With the appellants' house, larger flat roof dormers have been constructed at both first and second floor levels but the extension the subject of this appeal clearly extends above the eaves line at the rear by reference to the adjoining properties. Mr Allen, on behalf of the appellant, argued that by reference to the illustrative drawing of the Technical Guidance the relevant eaves height is that of the highest eaves height, this being the one on the front elevation. However such an interpretation is at odds with the guidance note which states that 'However, where a house is built on sloping ground, the height of the eaves on the existing house should be measured in terms of the elevation from which any extension of a house is to be made.' Consequently the eaves height fails to comply with the limitation in paragraph A.1 (c).
19. Paragraph A.1 (i) does not permit the construction or provision of a veranda, balcony or raised platform. I consider that the metal grid platform adjacent to the rear wall of the extension to be a raised platform for the purposes of the GPDO.
20. The Council states that because prior approval was not required in the light of the information in the submitted application further conditions are relevant (condition A.4 (9) of the 1995 GPDO/ condition A.4 (11) of the 2015 GPDO). The Council contends that the drawings submitted with the prior approval notification carry no weight. Additionally, they say that the development must accord with the description in the application, which it does not. In the alternate if the extension is deemed to fall within the category of large home extensions (Class A.1(ea) of the 1995 GPDO) then the developer has not met

the conditions relating to the notification by the developer of the completion of the development. However the Council did not wish to pursue these arguments at the hearing. The Council has been in correspondence with the appellant since May 2016 and the purpose of the notification is to confirm that the development was completed before 30 May 2016 (1995 GDPO) and later extended to 30 May 2019.

21. In view of my findings above, the extension as built does not fall within the limitations and conditions of the GPDO for a number of reasons and cannot therefor be considered as permitted development. Even had I reached a different conclusion on whether the extension represented a single-storey extension rather than a two storey extension, the development would still have been at odds with the limitations of the GPDO.
22. Although Mr Turney at the hearing sought solace for his client on how he could exercise his permitted development rights to construct a ground floor single storey extension, it is evident that the sloping nature of the site and the elevated upper ground floor level may make this impossible within the limitations of the GPDO.
23. As no planning permission exists for what has been built, the appeal on this ground fails.

The appeal on ground (a)

24. An appeal on this ground is that planning permission should be granted.
25. I consider the main issues to be the effect of the development on the character and appearance of the host building and on the terrace, and on living conditions in terms of overlooking, privacy and outlook.
26. Although the character of the space directly visible from windows in the rear of the terrace is dominated by the expanse of the brick wall to the commercial building opposite, the extension through its massing and proportions is contextually inappropriate in relation to the terrace. I viewed the appeal site from the upper ground floor of No 65 and from elsewhere. Notwithstanding the limited public views, the development is a dominant extension being about 6m high with blank flank brick walls at the upper ground floor level. It appears utilitarian in design, incongruous and out of character and appearance with the remainder of the rear façade of the terrace. It has little or no regard for the design characteristics of the host building.
27. As the extension being is on the north side of the terrace it has little impact on daylight or sunlight, and overlooking and privacy issues do not occur. However I consider that living conditions in terms of the outlook for the adjacent occupiers are significantly harmed through the scale and proximity of the extension to the lower ground floor windows and the outside amenity areas.
28. At my site visit I observed that extensions had been added to the rear of houses in the terrace and that a lower ground floor single-storey extension was under construction at No 47.
29. The Residents Association has drawn attention to an appeal at No 43 for a ground floor and lower ground floor rear extension that was dismissed in 2014 (APP/U5360/A/14/2207304). The Inspector found that the proposed two storey extension would be at odds with the character of the area.

30. I conclude that the extension has had an adverse effect on the character and appearance of the host building and rear of the terrace. It is also harmful to the outlook of neighbouring dwellings. The development fails to accord with Policy 24 of the Hackney Core Strategy 2010, Policies DM1 and DM2 of the Development Management Local Plan 2015, Policies 7.4 and 7.5 of the London Plan 2015 and paragraph 207 of the National Planning Policy Framework, all of which seek to achieve good design.
31. I have had regard to all other relevant considerations including the representations in support of the appellant but these do not outweigh the effect that the development has had.
32. For the reasons given above I conclude that the appeal on ground (a) fails.

Decisions

Appeal A, Ref: APP/U5360/C/16/3161809

33. I direct that the enforcement notice be corrected by the deletion of the date '22 September 2015' and the substitution of the date '22 September 2016' in part 7 of the notice. 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 1990 Act as amended.

Appeal B, Ref: APP/U5360/C/16/31618010

34. I direct that the enforcement notice be corrected by the deletion of the date '22 September 2015' and the substitution of the date '22 September 2016' in part 7 of the notice. Subject to this correction the appeal is dismissed and the enforcement notice is upheld,

P N Jarratt

Inspector

APPEARANCES

FOR THE APPELLANT:

Richard Turney of counsel instructed by Anthony Allen
Anthony Allen MRTPI of Allen Planning Ltd
Mr H Schneck, appellant
Mr Leibowitz, agent for the prior notification of a proposed larger home extension

FOR THE LOCAL PLANNING AUTHORITY:

Patrick O'Connor BA, MSc, PGDip
Nick Kirk BRTP

INTERESTED PERSONS:

Katie Wells, Chair of Watermint Quay Residents Association
Damian O'Neill, Secretary to the Residents Association
C Isaac, local resident
Ashen Eisen, local resident

DOCUMENTS

- 1 Legal submissions (Appellant)
- 2 R v LB Islington [2006] EWCA Civ 157 (Appellant)
- 3 Bristol CC v Digs (Bristol) Ltd CO/177738/2013 (Appellant)
- 4 Delegated officer report 2016/0206/ENF (LPA)
- 5 3 photographs of rear of appeal property (Appellant)
- 6 Plans relevant to APP/M1710/X/15/3138453 (Appellant)
- 7 Photograph of front of appeal property and 2 photographs showing side views of rear extension (Residents Association)
- 8 Letter of support dated 7 May 2017 signed by 3 local residents