
Appeal Decisions

Site visit made on 9 May 2017

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 19 May 2017

Appeal Ref: APP/P5870/C/16/3154202 and 3154203
142 London Road, Wallington SM6 7HF

- 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 Adrian Lasrado and Mrs Flavia Lasrado against an enforcement notice issued by the London Borough of Sutton.
- The enforcement notice, numbered EC16/0073 was issued on 10 June 2016.
- The breach of planning control as alleged in the notice is: the removal of one window in the first floor rear elevation and replacement with a door in the location indicated by the green line on the attached plan and the creation of a roof terrace with associated fencing/balustrade, above the single storey rear extension in the area indicated by the blue line on the attached plan.
- The requirements of the notice are as follows:
 - i. Remove the door in the first floor rear elevation and insert a window to match the existing window in the first floor rear elevation. The area below the replacement window is to be finished in materials to match the adjoining part of the first floor rear elevation.
 - ii. Remove the roof terrace, including the supporting structure above the roof of the single storey extension and fencing and balustrade; and
 - iii. Remove from the land all building materials and rubble arising from the compliance with (i) and (ii) above.
- The period for compliance with the requirements is 4 months.
- The appeals were made on grounds (a), (d) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Costs applications: Applications for costs has been made by the Council against Mr Adrian Lasrado and by Mr Adrian Lasrado against the Council. These are the subject of separate decisions.

Decisions

1. The appeals are dismissed.

Background information and matters of clarification

2. I note from the LPA statement that there is an on-going planning enforcement action in respect of a dormer extension at the property. I also note that retrospective planning permission was refused in 2010 for conversion of the loft space and that there is no planning record for the conversion of the property to either 2 or 3 separate residential units. At the time of my visit it appeared that the property was in two parts with a ground floor unit and the upper unit which has been altered as set out in the allegation above. None of the other matters are before me. I am only empowered to deal with this enforcement notice and the two related costs applications.

3. The semi-detached appeal property is located on the west side of London Road within a group of properties numbered 138 to 146. No 138 is in use as a surgery and there is a church to the south of No 146. The properties all have long rear gardens

which share a boundary to the west with No 1 Longfield Avenue. During my site visit I was unable to gain access to the first floor unit and could not, therefore, view the surrounding properties from the unauthorised terrace. However, I was able to fully assess the physical relationship of the new door and balcony with the neighbouring properties from the rear garden of No 142; from the adjacent surgery car park and from a further distance to the west, beyond the rear boundaries of the properties.

The appeals on ground (d)

4. An appeal under this ground is made on the basis that, at the time the notice was issued it was too late for the Council to take enforcement action against the matters alleged to have taken place. In this case the onus is on the appellants to conclusively show that the works alleged to have taken place were carried out and completed 4 years prior to the issue of the notice on 10 June 2016. The relevant date, therefore, is 10 June 2012.

5. The Appellants have not provided any evidence to show that this is the case. Indeed, the dated photographic evidence submitted by the Council clearly shows that that the works could not have been carried out 4 years prior to 10 June 2016. Photograph 3 taken on 7 April 2015 shows that the window as opposed to the door was in place at that date. Furthermore, photograph 4, dated 16 February 2016 shows the roof terrace under construction.

6. I do not consider, therefore, that the works were carried out 4 years prior to the issuing of the notice. I agree with the Council that the appellants have been unable to support the appeals under ground (d) and it follows that the appeals must fail on this first ground.

The appeals on ground (a)

7. Under this ground of appeal the onus is on the appellants to indicate why planning permission should be granted for the unauthorised works as carried out. In the 'grounds and facts' section of the appeal form the appellants state '*Planning permission is not required as it is malicious enforcement. Endangering lives and safety of the residents and their right to fresh air in an area of heavy traffic and smell of sewage*'. During my visit the sewage situation at the adjacent property was pointed out to me. However, whilst sympathising with the appellants' predicament in this respect, the traffic and sewage issues are not directly related to the enforcement notice before me.

8. There can be no dispute that planning permission for the works is required. The works do not constitute permitted development and there is no planning permission in place. The argument relating to the endangerment of lives appears to relate to the fact that the door provides a fire escape from the upper floor unit within the property. From my inspection I noted that even if occupants could escape on to the terrace there was no fire escape stair to the ground level. In any case this does not obviate the need for permission for the works carried out; namely the creation of the door and the construction of the terrace.

9. The main issues relate to the effect on the character and appearance of the area and the effect of the use of the roof terrace (facilitated by the door access) on the living conditions of the occupants of neighbouring properties with particular regard to overlooking and loss of privacy.

10. Relevant policies include those within the London Plan (LP) and the Council's Site Development Policies DPD (SDPPDP) and its Core Planning Strategy (CPS). Policies BP12 of the CPS and DM1 of the SDPPDP seek to ensure good standards of design and to protect the character of the Borough. Policy DM2 of the SDPPDP is aimed at

protecting the amenities or peoples' living conditions. These policies accord with the National Planning Policy Framework (NPPF) and, in particular, section 7 which requires good design.

11. Having inspected the property and noted the relationship of the terrace to its immediate surroundings, I share the LPA's concerns. The terrace is seen as being obtrusive and ungainly. In my view it is poorly designed and detracts from the simplicity of the other rear elevations. I consider that it is contrary to policies BP12 of the CPS and DM1 of the SDPPD, as well as to policies within section 7 of the NPPF. Paragraph 64 of the NPPF indicates that planning permission should be refused for development of poor design that fails to take opportunities available for improving the character and quality of an area and the way it functions.

12. It is evident that anyone using the terrace would overlook the neighbouring gardens at No 144 and 146. In my view this would significantly affect the privacy of the occupants to these properties. There would also be views into the gardens of the rear boundary properties to the west. I accept that any overlooking of the surgery car park would have minimal effect on privacy. However, I find that this particular terrace is also contrary to policy DM2 of the SPDDPD which is aimed at protecting amenities and peoples' living conditions.

13. For the above reasons I consider that the works as carried out and the use of the terrace detract markedly from the character and appearance of the area. I also consider that the use of the terrace is harmful to the living conditions of the occupants of neighbouring properties. The unauthorised development is therefore, contrary to the above policies as well as being contrary to section 7 of the NPPF.

14. The works carried out are far from a quality design and, for the reasons set out above, I do not consider that planning permission should be granted for the creation of the door and the construction of the terrace and its use. The appeals also fail, therefore, on ground (a).

The appeals on ground (f)

15. An appeal on this ground needs to be made on the basis that the requirements of the notice are excessive and that lesser requirements would overcome any harm caused.

16. In this case, I consider that the requirements as set out are appropriate and necessary in order remedy the injury to amenity which has been caused by the breach. I have found that the terrace is harmful to the character and appearance of the area as well as to peoples' living conditions. The carrying out of the requirements would remedy the harm caused. The appeal also fails, therefore, on ground (f).

17. Again I have noted the reference to the need for the door as a fire escape. But this is not a matter before me. If the property is being used unlawfully as two units and the upper unit does indeed require such an exit then this is a matter for the appellants who will need to liaise with the Council's Planning and Building Control sections.

Other Matters

18. In reaching my conclusions, I have taken into account all of the other matters raised by the Council and by the Appellant. These include the initial grounds of appeal and facts; the respective statements and the final comments. I have also noted the issues relating to the appeal property being accessed by thieves via the adjoining surgery walls and roof. However, none of these factors alters any of my

conclusions on the grounds of appeal and nor is any other matter of such significance so as to change my decision.

Formal Decision

19. The appeals are 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 Town and Country Planning Act 1990 as amended.

Anthony J Wharton

Inspector