
Appeal Decision

Hearing held on 31 May 2017

Site visit made on the same date

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: 12 June 2017

Appeal Ref: APP/H5390/C/16/3163005
74 Stamford Brook Road, London, W6 0XN

- 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 Daniel Fulton against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
- The enforcement notice, reference 2015/01656/CONDS, was issued on 3 October 2016.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension to the side of the back addition to a height in excess of 2.5m and contrary to planning permission ref: 2013/04277/FUL.
- The requirements of the notice are to reduce the height of the single storey extension to the side and rear of the existing back addition to a height of 2.5m in accordance with planning permission ref: 2013/04277/FUL (approved drag. Nos.391.5C and 391.6B attached).
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) of the Town and Country Planning Act 1990 as amended.

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

Application for costs

1. At the Hearing an application for costs was made by the Appellant against the Council. This application is the subject of a separate Decision.

The appeal property

2. The appeal site comprises a substantial, three-storey, detached dwellinghouse built in 1901 and located on the northern side of Stamford Brook Road, close to its junction with Emlyn Road. The property has an original three-storey rear projection. Prior to the development referred to in the enforcement notice, the property had a ground floor lean-to extension to the rear projection and a tall infill conservatory extension to the side return, along the boundary with the neighbouring property at No 76. The property is not listed but lies within the Ravenscourt and Starch Green Conservation Area.

Planning history

3. In January 2007, the Council granted permission for the erection of a single storey extension to the side and rear of the existing back addition¹, the design

¹ Ref: 2006/03071/FUL

of which was very similar to the structure currently built on site but this permission was not implemented and has expired.

4. In February 2014, the Council granted planning permission for the removal of existing conservatory in connection with the erection of a single storey rear extension, to the side and rear of the existing back addition². The Appellant says that the extension has been built in accordance with the application and the approved plans whereas the Council says it has not.
5. In December 2016 permission was granted for amendments to planning application ref 2013/04277/FUL; the amendments to include retention of the rear element of the side and rear extensions and the reduction in height of part of the side extension to a height of 2.5m with a 45-degree pitched glazed roof.

The notice

6. It has been established by the Court that 'The recipient of an enforcement notice is entitled to say that he must find out from within the four corners of the document what he is required to do or abstain from doing'.³ The Appellant considers that the Notice is misleading in that, among other things, the alleged breach is reported to be 'the erection of single storey rear extension to the side of the back addition' although the remedy makes reference to the 'side and rear of the back addition'; the alleged breach is the erection of a complete structure whereas the reasons for issuing the notice refer to the 'the increased height of the single storey rear extension'; and the requirements are ambiguous and it is not clear what the Appellant is required to do.
7. A notice is a nullity if it is missing some vital element such as requirements or a date for compliance and so it is defective on its face; if a notice is a nullity there is in effect no notice. In this case the notice complies with all the requirements of s.173 of the 1990 Act and although I consider that it has some flaws I do not consider it to be so hopelessly ambiguous and uncertain so as to render it a nullity. This is because the wording of the allegation largely follows the description on the grant of planning approval and the Appellant's case on this point was largely based on his interpretation of the 2013 planning permission, which is a matter for the ground (b) and (c) appeals.
8. On the above basis I consider that the notice should be corrected to simplify the description of the breach; clarify the reasons for issuing the notice to reflect the terms of the breach; and add a further requirement as a reasonable alternative given the planning history since the notice was issued.
9. The corrections were discussed at the Hearing and the Parties had no strong objection to them, subject to the Appellant's case in the appeal that the notice should be quashed. I will therefore correct the notice accordingly as I am satisfied that no injustice will be caused to either Party by the clarification and addition of a requirement.

The appeals on grounds (b) and (c)

10. An appeal on ground (b) is on the basis that the matter alleged in the notice has not occurred as a matter of fact and in an appeal on ground (c) the

² Ref: 2013/04277/FUL

³ *Miller-Mead v MHLG* [1963] 1 A11 ER 459

Appellant is saying that the matter alleged does not constitute a breach of planning control.

11. The allegation, as corrected, is the erection of a single storey rear extension to the side and rear of the existing back addition contrary to planning permission ref: 2013/04277/FUL. The Appellant's cases on grounds (b) and (c), which included the interpretation of the planning permission granted in 2013, were so intertwined that I will consider them together.
12. The basic rule is that a permission should stand by itself and the meaning is clear within the four corners of the document. However, if the permission clearly incorporates the application and plan and there is something which is not clear, then that application and plan may be used as aids to interpretation, to define the scope of what is permitted⁴.
13. The application dated 30 September 2013 sought permission for the 'removal of existing conservatory roof and new ground and 1st floor rear extension'. Discussions and amendments must have taken place because the 2013 planning permission permitted 'the removal of existing conservatory in connection with the erection of a single storey rear extension, to the side and rear of the existing back addition'. The planning permission cites drawings Nos 391.1b; 391.3B; 391.5C and 391.6B as the approved plans⁵.
14. The relevant drawings, Nos 391.5C (existing/proposed rear/side elevation) and 391.6B (existing /proposed side elevation) are annotated with 2.5m as the only measurement of the height of the proposed extension. It is the Appellant's case that this is the internal height and that there is approval for a 3m high extension whereas the Council say that 2.5m is the external height. There is no dispute that the extension as built is somewhat higher than 2.5m; according to the Appellant 3.2m and according to the Council 3.2m at No 74 but 3.3m measured from No 76.
15. The Appellant's architect has submitted a statutory declaration in which he says that 'the 2.5m dimension was intended to show the floor to ceiling height. It would be impossible to show the 2.5m as an external dimension of the extension as the standard minimum internal dimension is 2.4m'. However, he refers to drawing No 391.5B which was not an approved drawing and I note that No 391.5B omitted the originally proposed first floor extension. Whilst I note what the architect says, given the number of the drawing to which he refers I give the statutory declaration little weight.
16. There is no other height given for the proposed extension and the figure of 2.5m is noted several times. The arrow for the proposed side elevation on both drawings indicates an eaves height of 2.5m albeit with the addition of some roof cladding. The drawings clearly say 'all dimensions to be checked on site'. It is notable that the drawings show the roof of the extension to be some distance below the sills of the windows on the first floor whereas on my visit I noted that the roof was immediately underneath those windows.
17. The Officer's report makes no mention of height and SPD Housing Policy 7 Rear Extensions criteria 4, which includes guidance that 'any extension at the side of the back addition shall not extend above a height of 2m on the boundary with the adjoining property' is addressed with the conclusion that 'the proposal

⁴ *Slough Estates v Slough BC (No 2)* [1970] 2WLR 1187

⁵ Documents in Tab 5 of the Council's bundle

would not result in a material loss of light or outlook to 76 Stamford Brook Road’.

18. In this case the Appellant appears to accept that the 2.5m height was an error⁶ and he says that the extension could not have been built to an external height of 2.5m because there would have been insufficient internal height. But the Council has to determine the application on the basis of what has been applied for. If what has been applied for would not be buildable for whatever reason that is the responsibility of the applicant, not the Council.
19. I note that the Appellant says that the external height scales from the drawings as 3m but even if it was the case that scaled measurements are those that should be taken as the applied for height rather than the height as annotated, what has been built is in excess of 3m as stated in the Appellant’s own case.
20. For the reasons given above I find that the single storey rear extension to the side and rear of the existing back addition that has been built was not built in accordance with the 2013 planning permission in that its height exceeds the permitted 2.5m as a matter of fact. Permission was granted for an extension with a height of 2.5m and that which has been built exceeds that height; no permission had been granted at the time the notice was issued for an extension that exceeded a height of 2.5m and therefore what has been built constitutes a breach of planning control.
21. The appeals on grounds (b) and (c) fail.

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

22. In the appeal on ground (a) and in the deemed planning application the Appellant is, in effect, seeking planning permission for the extension that has been built.
23. From the reasons for issuing the notice the main issue to be determined is the effect of the single storey rear extension to the side and rear of the existing back addition at No 74 on neighbours’ living conditions with regard to outlook and whether it causes a sense of enclosure.
24. The extension at No 74 fills in the space between the rear wall of the house and the three storey rear extension and extends a further 5m beyond the original extension. This has resulted in there being a solid brick wall along the common boundary with No 76 some 3.3m high for the length of the single storey extension.
25. There are patio windows/doors in the rear elevation of No 76 together with habitable room windows in the rear extension. These latter windows are some 3.4m from the boundary wall. The Appellant appears to consider that only the patio doors are affected but the notice refers to ‘habitable rooms’ and does not specify the patio doors. Given the height and length of the boundary wall it is over-powering when viewed from No 76 and results in a sense of enclosure. Whilst I accept that the outlook from the windows at No 76, being towards a further rear extension with glimpses of the garden and the boundary with No 74, is not a particularly attractive one, the excessive current height of the boundary wall is over-whelming and has a materially adverse effect on the outlook from those windows.

⁶ The Appellant’s closing statement paragraph 3

26. Planning permission has been granted, among other things, for the conversion of No 76 into two flats and for extensions to the side and rear⁷. At the time of my visit this permission had not been implemented although there was evidence that building works may be taking place. If it is implemented there would be a courtyard formed by the rear wall of the main house at No 76 and the side wall of the original rear extension; this courtyard would be some 3.4m wide and some 6.2m long with the length along the boundary comprising the 3.3m high boundary wall with No 74. Given its height and length, the wall would have an extremely oppressive impact on the courtyard to the detriment of the occupiers of No 76.
27. The Appellant has referred to a number of extensions in the area that have been approved by the Council, however, among other things the locations, designs and circumstances of these are different from the development in this appeal and they are not comparable. I am also aware of the previous permission that was not implemented but that permission was for a different design in that, among other things, it had high level windows along the boundary with No 76 and it was not as high as the current extension. The previously existing conservatory was again of a very different style and design from what has been built at No 74 and it is therefore not comparable.
28. Since the notice was issued permission has been granted for alterations to the existing extension including the reduction in height of the part of the side extension nearest the windows at No 76 to a height of 2.5m with a 45-degree pitched glazed roof. This is a material consideration to which I give significant weight as, in granting this approval, the Council has taken the view that the alteration would not result in any material adverse effect on neighbours' living conditions.
29. The alterations would result in a significantly different built development along the relevant part of the boundary with No 76. Instead of a 3.3m high brick wall there would be a wall some 2.5m high with a pitched glass roof sloping back towards No 74. The height of the brick element would not be oppressive to any significant degree and the sloping roof would not have any materially adverse impact on outlook from No 76.
30. The Appellant raised the question of light emanating from the roof having an adverse impact on No 76 but I note that the extension as built has a large roof light in this area and I therefore consider that there would be no significant material difference to No 76 from the sloping roof.
31. The provisions of s.180 and s.181 of the 1990 Act prevent this permission being the 'fallback' position. There is no ground (f) appeal but that does not preclude a consideration of any reasonable alternative to the requirements of a notice to remedy the breach or injury to amenity caused by the breach. Following discussions at the Hearing and the agreement of the Parties I will add an additional requirement to the notice to take into account the 2016 planning permission.
32. For the reasons given above and taking all other matters into account, I conclude that the single storey rear extension to the side and rear of the existing back addition at No 74 as built has a harmful effect on neighbours' living conditions with regard to outlook and that it causes a sense of enclosure.

⁷ Ref: 2015/04177/FUL Tab 10 to the Council's bundle

The development that has been built fails to comply with Policy BE1 of the Hammersmith and Fulham Core Strategy Local development Framework and Policy DM A9 of the Hammersmith and Fulham Development Management Local Plan which seek, among other things to ensure that development is of the highest standard of design which includes the protection of existing residential amenities; respects the principles of good neighbourliness; and has no detrimental impact on outlook from windows in adjoining properties.

33. The appeal on ground (a) fails and the deemed planning application is refused.

Conclusions

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

Decision

35. It is directed that the enforcement notice is corrected by:

- i) In Part 2 of the notice (the breach of planning control alleged) the deletion of 'without planning permission, the erection of a single storey rear extension to the side of the back addition to a height in excess of 2.5m and contrary to planning permission ref: 2013/04277/FUL' and the substitution therefor of 'without planning permission, the erection of a single storey rear extension to the side and rear of the existing back addition contrary to planning permission ref: 2013/04277/FUL'.
- ii) In Part 2 b. (reasons for issuing the notice) the deletion of 'the increased height of the single storey rear extension is considered unacceptable on residential amenity grounds. More particularly, the 80cm increase in height is considered to ...' and the substitution therefor of 'the height of the single storey rear extension is considered unacceptable on residential amenity grounds. More particularly, the height is considered to ...'
- iii) The addition in Part 3 (what you are required to do) of 'or amend and alter the single storey rear extension to the side and rear of the existing back addition so that it complies with planning permission ref: 2016/05216/FUL (approved drawings Nos: 407.3C; 408/1 (16.11.16); 408.3 (24.11.16) and 408.4 (16.11.16))'

Subject to these corrections 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.

Gloria McFarlane

Inspector

APPEARANCES

FOR THE APPELLANT

Mr M Gaine Planning Consultant
MA(Oxon) MSc R'DG MRTPI

Mr D Fulton The Appellant

Mrs Y Fulton The Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY

Ms C Thornton Team Leader
HNC Built Environment

Ms A Omoregie Planning Solicitor

Mr L Eastwood Planning Enforcement Officer

DOCUMENTS SUBMITTED AT THE HEARING

Bundle of Documents from the Council comprising Tabs 1 -10

The Appellant's closing statement