
Appeal Decisions

Site visit made on 19 June 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: 29 June 2017

Appeal Ref: APP/Q5300/C/17/3171761, 3171762, 3171763, 3171764 and 3171765

85 Wynchgate, London, N14 6RJ

- 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 Dr Q M Rahman, Mrs Zahanara Akhter Rahman, Ms Nasrin Rahman, Ms Qazi Nargis Rahman and Ms Qazi Farah Rahman against an enforcement notice issued by the Council of the London Borough of Enfield.
- The enforcement notice, numbered ENF/16/1046, was issued on 16 February 2017.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a single storey extension (outlined in blue on the plan attached to the notice for identification purposes); raised platform and steps (outlined in green on the plan for identification purposes); raised hardstanding (outlined in orange on the plan for identification purposes); and boundary wall (identified in yellow on the plan for identification purposes) to the rear of the premises.
- The requirements of the notice are:
 1. Remove the single storey rear extension to original ground level (outlined in blue on the plan for identification purposes).
 2. Remove the raised platform and steps to original ground level (outlined in green on the plan for identification purposes).
 3. Reduce the height of the boundary wall (identified in yellow on the plan for identification purposes) to a maximum height of 2 metres from original ground level in order to comply with Part 2, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 4. Reduce the height of the rear garden (outlined in orange on the attached plan for identification purposes) to that of original ground level or reduce the height of the rear garden (outlined in orange on the plan for identification purposes) to a maximum height of 300 millimetres from original ground level in order to comply with the parameters set out in Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015.
 5. Remove all resulting materials from the premises.
- The period for compliance with the requirements is four months.
- Appeal 3171761 is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act. Appeals 3171762, 3171763, 3171764 and 3171765 are proceeding on the grounds set out in section 174(2)(f) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period for Appeals 3171762, 3171763, 3171764 and 3171765 the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to those appeals have lapsed.

Summary of Decision: The appeals are dismissed and the enforcement notice upheld.

Preliminary Matters

1. The Appellants raised questions relating to the date of the delegated report in relation to the date of the notice; a notice which did not have stated on it the date on which it is to take effect; and the Officer who signed the notice¹. These matters were explained in an email from the Council to the Appellants dated 17 March 2017². The Appellants have not raised these questions again and I have no reason to consider that the notice was not properly issued in accordance with the Council's powers.

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

2. In an appeal on ground (a) the Appellant is saying that planning permission ought to be granted for the matters alleged in the notice and the deemed planning application is for the same developments.
3. From the reasons for issuing the notice the main issue is the effect of the single storey rear extension, the raised platform, the rear boundary wall and the raising of the garden on the living conditions of the occupiers of 87 and 83 Wynchgate with regard to, among other things, overlooking, privacy and outlook.
4. The appeal property comprises a two storey detached house on the northern side of Wynchgate. It has a large front driveway and a deep rear garden. There is a significant slope on the site with the level dropping from the front to the back. The surrounding area is residential with dwellings of similar 1920s design.
5. Planning permission was granted for alterations to the roof of an existing extension, a raised platform and a patio area in May 2013³ but this permission has not been implemented and it has expired. In September 2014 an application for prior approval was submitted for a single storey rear extension 8m deep by 3m high (to the eaves) but an objection was received and approval was refused⁴. A subsequent application for an additional rear extension of 2m to the existing 3m extension with a height of 3.5m at the farthest point from the rear wall of the house was refused in October 2015⁵. In the opinion of Officers the plans were incorrect with regard to the proposed depth and height given the ground level⁶.
6. Planning permission was granted in May 2016 for a single storey rear extension⁷ with a total depth of 5m to a height of 3.5m; the plans also showed a raised area approximately 0.8m from ground level directly behind the rear extension with steps leading down into the garden.
7. The development that is currently on the site is not complete as a temporary stop notice was served in November 2016. There is no apparent dispute that before the works that are the subject of the notice were undertaken there was a 3m brick built single storey extension at the rear of the house; doors led to a paved area before dropping down to a terraced garden. Although terracing is

¹ Paragraph 6.1 of the Appellants' statement

² Appendix 5 to the Council's statement dated 17 March 2017

³ P13-00781PLA

⁴ 14/03728/PRH

⁵ 15/03835/HOU

⁶ Paragraph 3.6 of the Council's statement

⁷ 15/05635/HOU

not clear to me in an aerial photograph⁸ other photographs⁹ show that the back garden was terraced with low terraces.

8. The Appellant has acknowledged that what has been built is not in accordance with the approved plans and he has sought to compare what has been built with various elements of what had existed before the current works were done and the various planning permissions. However, whilst I take these matters into account, I have to determine this appeal and deemed application on the basis of what has been built and what I saw on my visit.
9. The development that has been undertaken at No 85 has involved a considerable amount of concrete being laid over a significant amount of the rear garden. Given the slope of the land the depth of the concrete varies and it is not possible to determine the original level of the ground, to this extent it seems to me that any measurements taken cannot reflect the true height of the various elements of the development.
10. Bearing that in mind, the rear extension has been measured as some 5m high and some 5m deep. It extends across the whole width of the house to the common boundary with No 87 for a depth of 3m and it is then set in and it is set in from the boundary with No 83. It is a massive and bulky structure that is out of scale with the host building and it dominates the rear of the house. The side walls of the extension, because of their location, height and depth, have a detrimental effect on the outlook of the occupiers' of the neighbouring dwellings.
11. In addition to the glass doors in the rear elevation of the extension there is a window in the rear elevation of the extension at the 3m point which, given its position and height, provides clear views into virtually the whole of the back garden of No 87 resulting in a significant loss of privacy to the occupiers of that property. A window on the side elevation has been glazed with obscure glass so that there are no views from it into No 87 but given its position and the possibility of a change in glazing I consider it to be an unfortunate element of the design.
12. From the platform beyond the extension it is possible to look straight into the gardens of Nos 83 and 87. The loss of privacy to those dwellings is enhanced in that there are views onto the patio areas closest to the dwellings which are generally those parts of garden most often used. When looking back from the platform towards the extension there are views into the habitable room windows, kitchen and living room, of No 87¹⁰.
13. Seven steps extend across the width of the platform and link the platform with the garden. The steps are a further dominant feature of the development. The steps provide further views into the gardens of Nos 83 and 87 and back towards the rear elevations of those houses when climbing them.
14. The boundary wall with No 87 has been built of red brick. It has been built onto the concrete platform and measures some 2.8m from the platform without

⁸ Appendix 2 to Appellants' statement

⁹ Appendix 7 to the Appellant's statement

¹⁰ Although not referred to in the reasons for issuing the notice, representations have been made by the occupiers of a property at the rear of No 85 about views from the platform into habitable rear windows at that property. I noted that it was possible to see into those windows from the platform and the highest steps resulting in a loss of privacy to the occupiers of that property

any capping. When viewed from No 87 it is an overpowering and oppressive structure because of its height and length.

15. The level of the garden has been raised by concrete terraces. There is some dispute about the original level of the land and their height but the height of the platforms and walkways is such that it is possible to look into the gardens either side and back towards the rear elevations of the neighbours with no significant difficulty resulting in a further loss of privacy for those properties.

Conditions

16. The Appellant has suggested the imposition of planning conditions for the erection of railings, a trellis and planting to screen or restrict views and to prevent use of the whole of platform¹¹; he also suggested that planting along the boundaries could fulfil a similar purpose. Railings or trellis may restrict the use of the platform and possibly the steps but they would not restrict views in the neighbouring properties and any planting would take some time to grow and may not be permanent. The conditions would only have an impact on the platform and steps and would not mitigate views from the raised walkways and terraced garden and any additional height on the boundaries would be oppressive and overpowering.
17. I do not consider that the imposition of conditions would make the development acceptable.

Other matters

18. I have been referred to a number of planning permissions in the area granted for rear extensions, some including raised platforms and terraces. I note that some these were dated 2007 and others are more recent. However, the locations, design and dimensions of these are different from what has been built at No 85. They are not therefore comparable and in any event all appeals have to be treated on their own merits.
19. Whilst I have to consider alternatives in the ground (f) appeal below I note that the fallback position would be the implementation of the planning permission granted in 2016 which is still extant and which has been considered by the Council to be acceptable.

Conclusions

20. I therefore conclude that the single storey rear extension, the raised platform, the rear boundary wall and the raising of the garden have a harmful effect on the living conditions of the occupiers of 87 and 83 Wynchgate with regard to, among other things, overlooking, privacy and outlook. I further conclude that the development as a whole does not accord with Policies DMD11 and DMD37 of the Council's Development Management Document; Policy CP30 of the Council's Core Strategy Local Plan; and Policy 7.4 of the London Plan which, among other things, seek to ensure that all development achieves a high quality of design, maintains and improves the quality of the built environment and has no impact on the amenities of neighbouring properties.
21. The appeal on ground (a) fails and the deemed planning application is refused.

¹¹ Paragraph 6.13 of the Appellant's statement

The appeals on ground (f)

22. In appeals on ground (f) the Appellants are saying that the steps required by the notice exceed what is necessary to remedy the breach. I have to consider any reasonable alternatives and this case the Appellants have provided a number of plans and steps which they assert would remedy the breach. These include:
23. The removal of 2m from the depth of the extension so that it reverts to the original 3m deep extension. But the original extension has been demolished and no longer exists and therefore there can be no reversion to it. The current extension is significantly higher than the previous one and even if the roof lantern was removed and the height of the roof was slightly reduced the extension would remain as an over-dominant feature causing harm to the outlook of the neighbours. Views into the rear gardens of the neighbours from the rear elevation of the extension because of glass doors would remain.
24. The Appellants suggest that a screening wall should be built on the platform with planters to screen views out from it and restrict useage. But the suggested screening wall would be some 1.8m high and would result in further loss of outlook for the neighbours. Reduction in the width of the steps would not reduce the loss of privacy to the neighbours as the height would remain. There are no proposals with regard to the raised walkways in the garden.
25. A reduction in the height of the boundary wall by four brick courses is proposed but a capping would be put on the top resulting in an insignificant reduction in height.
26. If they were acceptable the proposals put forward by the Appellants would result in a grant of planning permission for a completely different scheme from that granted previously and from what has been built. None of the proposals would, to my mind, reduce the harm that currently exists for neighbours' living conditions. The purpose of the requirements is to remedy the breach by restoring the land to its condition before the breach took place¹². The alternative steps would not remedy the breach of planning control and they would therefore not fulfil the statutory purpose.
27. With regard to the boundary wall the Council accept that in the extant planning permission a wall 2m tall from the patio level was approved and the Council therefore accept a wall height of 2.3m at its highest point¹³. However, it is not clear to me what 'the patio level' is given the changes in land levels and concrete that has been laid at the appeal site. I therefore consider that any variation of the requirements would not meet the required degree of precision and specificity.
28. The requirement to remove all resulting materials from the premises is a usual requirement to prevent untidy sites. I have no reason to believe that the Appellants would leave their home in an untidy manner for any longer than is necessary and I am conscious that they could apply for other developments, or indeed implement the extant permission, once the requirements have been complied with. In those circumstances it may well be that some of the materials could be re-used but it is not possible to specify with any detail which these might be and therefore a requirement cannot be drafted with the

¹² S.173(4) of the 1990 Act

¹³ Paragraphs 5.41 and 5.42 of the Council's statement

required degree of certainty. I therefore do not consider it unreasonable to require material to be removed but depending on the circumstances I remind the Council of its powers in s.173A(1)(b) of the 1990 Act to relax any requirement of a notice.

29. The appeals on ground (f) fail.

The appeals on ground (g)

30. Appeals on ground (g) are on the basis that the period specified in the notice falls short of what should reasonably be allowed. In this ground of appeal the Appellants largely repeat their alternative steps and say that they could submit a planning application for them which would take time to resolve and the Appellants ask for six months. Although it is not a determination of any application I note that the Council, in its response to the appeal, has provided its comments and objections to the proposed alternative steps.

31. The time for compliance relates to the time required to undertake the steps set out in the notice and I do not consider that four months is an unreasonable period of time in which those works could be undertaken. I accept that other applications could be made and that time may be needed in that respect. I therefore again remind the Council of its powers in s.173A(1)(b) to extend any period of time for compliance.

32. The appeal on ground (g) fails.

Conclusions

33. 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.

Decision

34. 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.

Gloria McFarlane

Inspector