
Appeal Decision

Site visit made on 26 July 2017

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 23 August 2017

Appeal Ref: APP/A5840/C/16/3161308

Land lying to the west and south of 7 John Maurice Close, London SE17 1PY

- The appeal is made by Sajid Ismail under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 15/EN/0236) issued by the Council of the London Borough of Southwark on 14 September 2016.
- The breach of planning control alleged in the notice is "the erection of a three storey semi-detached building comprising two planning units (1 x 6 bedroom unit and 1 x 5 bedroom unit) against the gable wall of 7 John Maurice Close".
- The requirements of the notice are as follows: -

"EITHER

(i) Demolish the Unauthorised Development from the Land; and

(ii) Remove from the Land all materials and debris resulting from compliance with requirement (i) above.

OR

(iii) Carry out works to the Unauthorised Development so that the Unauthorised Development accords with planning permission 10/AP/3760 dated 10 August 2011 and the following approval of details permissions 12/AP/1387 dated 16 November 2012; 12/AP/1385 dated 20 August 2012; 12/AP/1343 dated 3 August 2012; 12/AP/1384 dated 28 June 2012 and 13/AP/3792 30 April 2014; and

(iv) Remove from the Land all materials and debris resulting from compliance with requirement (iii) above."

- The period for compliance with each of these requirements is nine months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f).
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990.

Reasons for the decision

Ground (a)

2. Planning permission 10-AP-3760 was granted on 10 August 2011 for development on what were then parking spaces in front of 1-6 John Maurice
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Close. The permission was for "the erection of a three storey semi detached building comprising 2 x 3 bedroom residential units against the gable wall of 7 John Maurice Close, with associated waste and cycle storage".

3. The permission was subject to fifteen conditions. These included conditions requiring the development to be carried out in accordance with the approved plans, the provision of refuse storage facilities, a "green" roof and landscaping, the second-floor windows on the western elevation to be obscure-glazed and fixed shut and a prohibition on the carrying out of extensions, enlargements or other alterations without the Council's consent.
4. The Council allege that there have been several breaches of these conditions, details of which are set out in sub-paragraphs (a) to (f) of paragraph 4 of the notice. The appellant, in his grounds of appeal, has agreed to take action in respect of some of these details, but disputes sub-paragraphs (b), (e) and (f) and seeks planning permission in respect of these matters. The main issue under ground (a) is whether permission should be granted for these matters, having regard to the effect this could have upon the appearance of the building and its surroundings and the amenities of neighbours.
5. Sub-paragraph (b) states "The Unauthorised Development is incongruous and detrimental to the character of the area and the streetscape by virtue of its size, design and the materials used in its construction". The appellant maintains that "in general the size of the building and materials used relate to the approved drawings" and that the development is not therefore as alleged in sub-paragraph (b).
6. Sub-paragraph (e) states, "In order to comply with the condition 9 of planning permission 10/AP/3760 the windows on the western elevation of the Unauthorised Development should be non-opening and obscure glazed to preserve amenity and privacy of neighbouring properties. They are not. Therefore, this has a harmful effect on neighbouring privacy and amenity". The appellant states: "The second floor windows on the south west elevation are not opaque and are openable. In view of the fact that the windows on this floor are set back from the face of the building by approximately 1.3m such that they are approximately 15.0m from the houses opposite. It is questionable whether or not it should be necessary to have opaque non opening windows in this location. (However, in view of the fact that this was a planning requirement this matter could be addressed)."
7. Sub-paragraph (f) states "The size of the Unauthorised Development exceeds the approved height by approximately 1 metre and so exceeds the height of the eaves of the neighbouring building. The approved depth is exceeded by 3.48 metres. This significantly reduces the amount of sunlight and daylight received by neighbouring residential buildings and increase overlooking into neighbouring properties and has a harmful effect on neighbouring amenity". The appellant considers that planning permission should be granted since the depth of the building is as approved and the building is only marginally higher than that shown on the approved drawings. He responds as follows: -

"An as built dimensional survey has been carried out and the dimensions are included on the drawings in Appendix C.

It can be seen from this that the as built depth is approximately 6.825m compared with a planning dimension of 6.820m and the overall length of the building is approximately 24.212m compared with 24.800m on the planning drawings such that it is approximately 0.58m shorter than the planning drawings. The approved depth is not exceeded by 3.48m as stated in the enforcement notice. This reduction was made in the link/corridor amenity space in order to provide adequate access between the end of the building and the rear garden of the adjoining flats.

With respect to the height of the building this is approximately 8.35m compared with a height of 8.0m on the planning drawings. The storey heights are approximately 2.35m to 2.4m as generally considered acceptable for this type of property. The construction is below the ridge of the roof to the flats and is approximately 0.5m above the roof lines at the eaves at the front and rear. Whilst it is marginally higher than that shown visually on the elevations on the planning drawings it is not 1.0m higher as stated in the enforcement notice."

8. I deal first with sub-paragraphs (b) and (f) together. The parties have checked the measurements during the course of the appeal and it has been established that the approved depth of the building has not been exceeded by 3.48 metres, as stated in the notice. There are some minor differences in the parties' measurements of the building's footprint but in general the as-built footprint is as it was approved.
9. The parties have not reached agreement on the height of the building, but they have agreed that the building is higher than it should be. The Council have re-measured the approved height at 7.75m and the as-built height at 8.50m – a difference of 0.75m, some 0.25m less than what is stated in the notice. As indicated above, the appellant's corresponding measurements are 8.00m and 8.35m – a difference of 0.35m.
10. The height of the building is important because the building has been erected against the gable wall of the adjoining flats. The approved plans show that the top of the flat roof of the building should be at the same height as the bottom of the plane of the pitched roofs of the flats. The appellant concedes that it is about 0.5m above the eaves of the flats. As a result the building looks very much at odds with the flats, which is damaging to the appearance of both the building and the flats and to the streetscape. For this reason, I do not consider that planning permission should be granted so as to allow the building to be retained at its as-built height.
11. I turn now to sub-paragraph (e). The second-floor windows on the south-west elevation are, as the appellant states, set back from the face of the building, which means they are further away from the row of houses, 1-6 John Maurice Close, than the face of the building. However, these windows are high up and, in spite of the set back, there is a view from them looking down into the bedroom windows of Nos 1-6. These considerations indicate that, if the windows were not obscure-glazed and fixed-shut, a greater separation distance would be necessary in order to protect the privacy of the occupiers of the houses adequately.

12. In these circumstances, I consider that the condition requiring the second-floor windows on the south-west elevation to be obscure-glazed and fixed shut is reasonable. I have therefore decided not to grant planning permission so as to allow these windows to be clear-glazed or openable.

13. For the above reasons, the appeal on ground (a) has failed.

Ground (f)

14. The steps required to be taken by the notice are steps normally required in circumstances such as these. Their purpose is to remedy the breach of planning control either by restoring the land to its condition before the breach took place or by making the development comply with the terms of the planning permission.

15. I have considered the grounds on which the appellant has submitted his appeal on ground (f). He has indicated that the footprint of the building is in general as approved – a matter I have dealt with in paragraph 8 above – and he states that he will address the issues of the “green” roof, the sub-division of the accommodation and the provision for bins and cycles. There are, however, other matters that require attention in order to make the development comply with the terms of the planning permission; the appellant’s proposals would therefore not remedy the breach of planning control.

16. For the above reasons, the appeal on ground (f) has failed.

D.A.Hainsworth

INSPECTOR