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## Appeal Decision

Inquiry Held on 3 August 2017

Site visit made on 3 August 2017

**by Simon N Hand MA**

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

**Decision date: 24 August 2017**

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### **Appeal Ref: APP/Y5420/C/16/3165163 72 Elm Park Avenue, London, N15 6UY**

- 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 Y M Rothschild against an enforcement notice issued by the Council of the London Borough of Haringey.
  - The enforcement notice was issued on 4 November 2016.
  - The breach of planning control as alleged in the notice is the unauthorised erection of a first floor rear extension.
  - The requirements of the notice are 1) remove the first floor rear extension in its entirety; 2) remove all resultant debris.
  - The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (g) of the Town and Country Planning Act 1990 as amended.
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### **Decision**

1. The enforcement notice is varied by deleting "4 months" from the Time for Compliance and replacing it with "6 months". Subject to this variation 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.

### **Background to the appeal**

2. The appellants live in the South Tottenham area and are part of a religious community which has two consequences for this appeal. Firstly there is a cultural tendency towards large families and secondly they observe, amongst other things, a particular festival, Sukkah, which traditionally takes place in a structure specifically designed for the purpose.
3. Planning permission was granted for various works including a single storey rear extension in 2005. Work was completed on that, it seems by 2008, but at the same time the builder added 16 or 17 course of brickwork at first floor level to the rear and 7 courses to the sides to partially form a Sukkah room. In 2009 it seems a temporary structure was installed for the Sukkah festival which was altered and made more permanent in the autumn of 2010 when the final version had wooden walls and green plastic roof to create a weather proof structure. In 2013 this was either refurbished, according to the appellant or rebuilt as the Council say to create an entirely brick or concrete structure with

a new roof. This structure is as it stands today and is split internally into 2 bedrooms, but still used as a Sukkah room when occasion demands.

4. The dates for the various works were agreed in a statement of common ground produced during the Inquiry, and there did not seem to be any dispute as to the nature and extent of the work. It was also accepted by the appellant that no part of the structure had ever received or benefitted from planning permission.

### **The appeal on Grounds (c) and (d)**

5. Although both parties described the ground (c) appeal as “parasitic” on the ground (d) in my view there can be no ground (c) appeal. This ground is that the works benefit from planning permission which they clearly do not and any appeal on ground (c) must fail.
6. The Ground (d) appeal is that the works are immune from enforcement action due to the passage of time, in this case a 4 year period before the issue of the notice on 4 November 2016. From the agreed dates mentioned above it is clear the appeal turns on whether the works in 2013 amounted to development so that in effect a new structure was created as a separate act of development. If that is the case then the four year period begins again in 2013 and so neither the 2010 nor the 2013 structure were in place for the required 4 years and the appeal will fail. The appellant argues the 2013 works were merely alterations that fall within the scope of s55(2)(a) and so are not development. If they are not development then there could not have been a separate act of development and the 4 years can be dated back to 2010 when the structure was substantially completed.
7. Section 55(2) says that operations are not development if they are “(a) *the carrying out for the maintenance, improvement or other alteration of any building or works which – (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building*”. The appellant argues the works do not materially affect the external appearance of the building and so they are not development.
8. There is good photographic evidence as to what the 2010 structure looked like and it was described at the Inquiry. I was able to see the 2013 structure as it is in place and unaltered today. In 2010 there were the layers of brickwork as described above on the rear and sides and on top (or more likely fastened to the insides) wooden panels forming walls about a third higher than the brickwork. On the outside of the panels were metal rods supporting a green plastic roof which overhung the brickwork. The roof was monopitch and designed so that it could be folded or concertinaed to one side. There was a single window in the rear wall allowing views down the garden.
9. The structure as it stands today has had the wooden walls and green roof removed and the brick walls built up and the whole rendered and painted. A roof with a pitched central element has been constructed on top, with two parapets to either side. There are now two windows in the rear wall. It seems to me unarguable that this structure is entirely different from that which existed in 2010. It looks completely different; it is made of different materials, has different windows and has a different roof which is a different shape. The central pitched section of the roof is also higher than the old flat roof.

10. The appellant suggested a local person, who was not a planner, wandering by and seeing the structure would not notice any difference, but in my view it does not take any expertise in planning to see the structure has been radically altered. The appellant also argued that the phrase “materially affect” in s55(2)(a)(ii) means a significant change and one for the worse. I cannot agree with this definition and it unsupported by any evidence. I accept, as the appellant argued, there is no requirement that alterations must be in the same materials but that does not mean that the type and visual impact of the materials should be ignored. The appellant also argued the bulk and dimensions of the structure remained the same. I am not sure this is true, as the roof definitely looks taller, but even if I take it as accurate that does not mean that it logically follows the works have not materially affected the external appearance of the building. The test is quite simple and should be understood in layman’s terms, has there been a noticeable change to the external appearance of the building, whether for better or worse? The answer is unequivocally yes. The works in 2013 clearly materially affected the external appearance of the building and amounted to the construction of a new structure which has, as a consequence, not been substantially completed for 4 years or more and the appeal on ground (d) fails.

### **The Appeal on Ground (a)**

11. There is no objection from the Council on overlooking or neighbours amenity issues and the sole issue is the effect of the structure on the character and appearance of the area and the host building.
12. The Council’s policies are contained in the Local Plan, adopted in 2013 and the Development Management DPD, adopted in July this year. SPL11 from the local plan requires new development to enrich Haringey’s built environment and that it should respect local context and character. DM1 of the DPD requires development to relate positively to the form scale and massing prevailing around the site. Other policies in the DPD and the London Plan were referred to but these add little to the main thrust of the policies described above. However of equal importance is the Supplementary Planning Document, *House Extensions in South Tottenham*. This has been through various iterations and the most up to date was adopted in 2013. Because of the demands of large families in the area the Council have taken the pragmatic view to encourage certain types of extension and discourage others. The streets of the area seem to consist predominantly of terraces of late Georgian or Victorian date, generally two stories in height. The SPD encourages the addition of a third storey and I saw this advice has been taken up enthusiastically in the area. However, while ground floor rear extensions are acceptable larger ones are not and the document warns that the Council will enforce against the construction of any two storey rear extensions that are not permitted development.
13. The appellant argues the area is a “hotch-potch” of development, with many houses benefitting from large extensions. The appeal structure simply fits into the streetscene. No 72 already benefits from a complete third storey addition. As I saw on my site visit there had been a lot of development in the area, and some was still going on, with at least one upper floor extension under construction visible from the appeal site and an entire building which had been demolished and was being rebuilt on a site across the road. Many of the houses in the terraces around had already been extended upwards, and the

rear view of these extensions was indeed a hotch-potch. However, I was also able to see that rear extensions were an entirely different matter. The only other first floor rear extension I could see from the appeal site was in Gladesmore Road. This was a much smaller extension that had been subject to enforcement action but escaped as it had become immune from enforcement due to the passage of time. Otherwise the rear of the terrace in Elm Park Drive and the eastern branch of Gladesmore Road appeared to have no other first floor rear extensions. I was also able to see behind the terraces on other parts of Gladesmore Road, the opposite side of Elm Park Avenue and down parts of Lealand Road and again no first floor rear extensions were visible. It thus seems the Council has been successful in defending its policy preferences.

14. The first floor rear extension is bulky and out of place. The small back garden is already very crowded and the extension adds to the dominance already created by the third storey added to No 72. The extension is visible from Gladesmore Road from where it appears to be an unsympathetic addition that harms the character and appearance of the area and the host building. In my view therefore the extension is contrary to the Councils policies SP11 and DM1 as well as the SPD. As such the presumption in favour of sustainable development in paragraph 14 of the NPPF is not triggered.
15. I was referred to a recent appeal decision at 82 Elm Park Avenue<sup>1</sup> for a similar rear extension which was dismissed for similar reasons that the extension was incongruous and unsympathetic. Another decision in nearby Wellington Avenue<sup>2</sup> was also referred to. In this case a rear first floor extension was allowed on appeal. However, the Inspector noted the rear of the properties in Wellington Avenue comprised a range of rear extensions that lacked any coherence and so there had been a major change to the character of the area. In addition the extension was not visible from public realm. Neither is the case in the current appeal.
16. I am also aware of a considerable number of letters of support from neighbours. It was suggested that as they are the people who will have to live with the extension their views should outweigh the Council's officers' who do not live locally and to go against local opinion is in some way undemocratic. However, planning decisions are not referenda, and concerted local opposition or support will not necessarily carry the day. The appellant was professionally represented and his agent is well aware the views of local people should always be given appropriate weight, but that the starting point for any planning decision is the development plan and as the courts regularly point out, consistency is an important element in decision making. In this case the development is contrary to policy and harms the character and appearance of the area. This harm is not outweighed by the fact that local people are happy to live with it. No personal circumstances of any substance were advanced. The appellant will still have a substantial house and there was no suggestion they would be forced to move home, or would be unable to practice their religious observances. A condition was suggested to remove the parapets but this would not overcome the harm I have identified. Consequently for all the reasons given above the ground (a) appeal should fail.

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<sup>1</sup> APP/Y5420/D/16/3163073 Issued 19 December 2016

<sup>2</sup> APP/Y5420/D/15/3141463 Issued 6 May 2016

### **The Appeal on Ground (f)**

17. This ground was raised at the Inquiry. The appellant argued the various course of bricks that had been laid in 2008 were an operation in their own right. They had been laid with the express intention of forming a Sukkah room and had become immune from enforcement due to the passage of time. It was therefore excessive to require their removal.
18. In my view this argument cannot be sustained. The brick walls did not form a completed structure they were merely part of what later became a Sukkah room which was substantially completed in October 2010 as agreed in the Statement of Common Ground. The notice is directed against a first floor rear extension, and that extension was not substantially complete until 2010. It was then altered in 2013 to such an extent that it comprised a new development as discussed above in the ground (d) appeal. As no part of the structure has ever been lawful it is entirely reasonable to require its complete removal. The appeal on ground (f) fails.

### **The Appeal on Ground (g)**

19. This ground was advanced on the premise that four months was insufficient time to allow alternative arrangements to be found for the children currently sleeping in the extension and that it would take more than four months to secure a builder to carry out the works.
20. It was clear from the evidence at the Inquiry that the house without the extension has 7 bedrooms and that the family has 10 children, so even with the extra 2 bedrooms in the extension a number of children have to double up. In order to access the extension a bedroom on the second floor was lost, and turned partly into a bathroom as it no longer had a window. Once the extension is removed this room will once again become available to use as a bedroom, if the bathroom is removed. The works to remove the extension will thus need to take into account what happens to this room. In my view 4 months is not a long time to decide what to do, and then employ a builder to carry out what might be more complex than simply removing the extension and making good the new external wall. I shall extend the compliance period to 6 months.

*Simon Hand*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Edward Grant of Counsel

He called

Alan Macpherson

London Borough of Haringey

### FOR THE LOCAL PLANNING AUTHORITY:

E M Pick BTP MRTPI

He called

Himself

Mrs B Rothschild

acting as agent

Appellant's wife

## **DOCUMENTS**

- 1 Council's opening statement
- 2 Statement of Common Ground
- 3 Notification of the Inquiry
- 4 Summary of Somak travel
- 5 Transcript of Kestrel Hydro