



Appeal Decision

Site visit made on 20 October 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 15 November 2017

Appeal Ref: APP/H5390/C/17/3180594

Land at 53 Mendora Road, SW6 7ND

- 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 Ms Felicity Murdoch against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
- The enforcement notice was issued on 9 June 2017.
- The breach of planning control as alleged in the notice is:
 - a. without planning permission, alterations to the existing rear roof extension including raising the ridge height by 250mm; erection of an extension on top of the back addition at second floor level and an extension to the rear of the back addition at first floor level.
 - b. Installation of a clear glazed casement window in the rear elevation of the extended back addition at first floor level, in breach of Condition 07 of planning permission ref: 2016/03954/FUL.
- The development to which the permission relates is "Erection of a rear extension at first floor level, on top of the existing back addition; replacement of existing window to rear roof extension French doors and a Juliette balcony; replace existing door in rear roof extension with a window." The condition in question is No 7 which states that "7) The new window in the rear elevation of the extension at first floor level hereby approved shall be obscure glazed to a height of 1.7 metres and fixed shut. The extension shall not be occupied until a sample of the obscure glazing has been submitted to, and approved in writing by, the local authority and thereafter installed in accordance with the agreed details." The notice alleges that the condition has not been complied with in that instead a clear glazed casement window has been installed which is not fixed shut.
- The requirements of the notice are:
 - a. Demolish the rear extension on top of the back addition at second floor level and remove all associated materials from the land;AND EITHER
 - (i) Reinstate the rear roof slope and the roof to the back addition to its original condition prior to the unauthorised works as shown on drawing Elevation as existing No. 2157-S02 of planning application ref: 2017/01103/FUL (attached to this notice);OR
 - (ii) Carry out remedial works in accordance with Certificate of Lawful Proposed Development dated 13th October 2016 ref: 2016/03919/CLP as per approved drawing nos. 2157 – PO1, PO2 and PO3 (attached to this notice);AND
 - b. Remove the casement window to the rear elevation of the back addition at first floor level and install the timber frame sash window, fixed shut, with obscure glass to a height of 1.7m, as per approved drawing no 2157 – PO2 of planning permission ref: 2016/03954/FUL (attached to this notice), to be permanently retained in this form thereafter.
- The periods for compliance with the requirements are:
 - a. The steps specified in paragraphs 4a, (i) and (ii) of this notice must be completed within six months.

- b. The steps specified in paragraph 4b of this notice must be completed within one month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Formal Decision

1. The appeal is allowed and the enforcement notice is quashed.
2. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the alterations to the existing rear roof extension including raising the ridge height by 250mm; erection of an extension on top of the back addition at second floor level and an extension to the rear of the back addition at first floor level on land at 53 Mendora Road, SW6 7ND referred to in the notice, subject to the following condition:
 1. The flat roof/s hereby approved shall not be used as a roof terrace or other form of open amenity space. No alterations shall be carried out; nor planters or other chattels placed on the roof of the two storey back addition and extension hereby approved in connection with its use as a roof terrace or other form of open amenity space. No railings or other means of enclosure shall be erected on the roofs, and no alterations shall be carried out to the rear elevation of the application property, including the rear roof extension hereby approved, to form access onto these roofs.
3. Also, in accordance with section 177(1) (b) of the 1990 Act as amended, the condition No 7, attached to planning permission dated 13 October 2016, Ref: 2016/03954/FUL, granted by the London Borough of Hammersmith & Fulham Council is discharged.
4. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a rear extension at first floor level, on top of the existing back addition; replacement of existing window to rear roof extension French doors and a Juliette balcony; replace existing door in rear roof extension with a window, without complying with the said condition but subject to the other conditions attached to that permission.

The Site and its Planning History

5. The appeal site is a mid-terrace property located on the north side of Mendora Road. Typically properties in this road are set across two storeys and a loft space separated by parapet walls. There is a variation in ridge height along this stretch of Mendora Road due to alterations or extensions to a number of properties. Some of these extensions/alterations although not readily visible from the highway are visible from a number of neighbouring properties and show some diversity in design and materials.
6. The planning history includes a Certificate of Lawfulness of Proposed Use or Development (CLUED) ref: 2016/03919/CLP for the 'erection of a rear extension at second floor level, on top of existing back addition'.

7. In September 2016 planning permission ref: 2016/03954/FUL was granted for the 'erection of a rear extension at first floor level, on top of the existing back addition; replacement of existing window to rear roof extension French doors and a Juliette balcony, replace existing door in rear roof extension with window'.
8. In May 2017 planning permission ref: 2017/01103/FUL was refused for the 'retention of alterations to the existing rear roof extension including raising the ridge height by 250mm; replace existing window to rear elevation at roof level with double French doors and Juliette balcony; erection of a rear extension at first and second floor levels, on top of the existing back addition'.
9. The height of the rear extension at second floor level has been constructed higher than that specified on Drawing No 2157 – PO2 submitted with the CLUED. In addition, whilst the 2017 application was refused, the height of the main ridge of the dwelling has been increased in line with the refused drawings. Whilst there is a dispute between the parties regarding the exact measurement of the increases, there is no dispute that there has been an increase in the height of the rear extension at second floor level and the party walls have been raised by four courses of bricks. Thus, the development has not been built in accordance with the terms of the CLUED.
10. Moreover, the window inserted in the rear elevation of the rear extension at first floor level, on top of the existing back addition (referred to in allegation b. paragraph 3 in the enforcement notice) is not in accordance with approved drawing No 2157 – PO2 which indicates a 'painted timber sash window', namely it is a clear glazed opening casement window which is not obscure glazed to a height of 1.7 metres and fixed shut as required by condition 7 of planning permission ref: 2016/03954/FUL.

The Appeal on ground (a)

Main Issues

11. The main issues are the effect of the development on (i) the character and appearance of the area; and (ii) the living conditions of nearby residents having particular regard to outlook and privacy.

Character and appearance

12. Policy BE1 of the Hammersmith and Fulham Core Strategy (2011) (CS) states that development should be of the highest standard of design that respects local context and character.
13. Policy DM G3 of the Hammersmith and Fulham Development Management Local Plan (2013) (Local Plan) requires a high standard of design in all alterations and extensions to existing buildings. Alterations and extensions should be successfully integrated into the architectural design of the existing building.
14. The Council considers that by reason of its size, design and prominent siting the rear extension on top of the back addition at second floor level is an inappropriate and over dominant feature.
15. I note from the Officer's Report in connection with the 2017 planning refusal that it considered that the increase in the ridge height of the main roof

- extension to be modest, similar in scale to other increases in the surrounding area and that its visual impact on the front of the property and the street scene was not sufficient to refuse consent.
16. It is accepted by both parties that there is a difference between the CLUED and the 'as built' development in that the roof height of the rear extension on top of the back addition at second floor level is higher than shown on the drawings due to an increase in the ridge height of the main roof extension. The Council considers that the development is not subordinate to the main dwelling because it has a near vertical rear wall and is not set down.
 17. Whilst I am required to determine ground (a) in accordance with the provisions of the development plan unless material considerations indicate otherwise, it is realistic to assume in this instance that the appellant would choose to modify the development in line with the CLUED rather than reinstate the building to its original condition as shown on drawing No 2157-SO2¹. In any event this realistic fallback is expressly envisaged in requirement 4.a ii) of the Notice. My assessment therefore must have regard to that fallback and thus a comparison between the "as built" development and that specified in the CLUED is a relevant material consideration. This is particularly so given the likelihood of the fallback being implemented if the notice were to be upheld. I therefore give this matter significant weight.
 18. It has been put to me that the alternative step contained in paragraph 4. a. ii) of the notice which allows for its modification so that the development complies with the terms and conditions of the CLUED, would result in a rear extension on top of the back addition at second floor level that is not set down but at the same height as the main dwelling. I agree.
 19. My attention has been drawn by both parties to a number of dwellings in Mendora Road which have rear extensions some of which have resulted in an increase in the original ridge height and are similar in size and scale to the appeal development. I was able to see some of these at my site visit. Due to the size and scale of the main dwelling, the rear extension at second floor level at the same height as the main ridge, although not set down, does not appear overly dominant and does not look out of place or appear at odds with the rear of other properties along this stretch of the street which is the context in which it will be viewed. Moreover, taking into account what could be built as indicated by the drawings submitted with the CLUED; the appeal scheme does not unacceptably disrupt the character of the area or result in an enlarged property whose design and form appear incongruous.
 20. I therefore consider that the development does not conflict with CS Policy BE1, or Local Plan Policy DM G3 which require all alterations and extensions to existing buildings to be compatible with the scale and character of existing development.

Living conditions

21. In seeking to respect the principles of good neighbourliness, Policy DM A9 of the Local Plan requires proposals for extensions to have no detrimental impact on the privacy of adjoining neighbours and outlook from windows in adjoining properties. To this end the policy refers to the Council's Planning Guidance

¹ Planning application ref: 2017/01103/FUL.

Supplementary Planning Document (2013) (SPD) which advises that rear extensions should not result in infringing an angle of 45° to the rear boundary at a height of 2 metres and should enable an unobstructed angle of 45° to be achieved to any window to a room on the ground floor of the opposing back addition if that forms the sole window to that room. Also, the outlook from any rear window of a habitable room in the main part of the building should not be significantly worsened as a result of any proposed extension built at a higher level than the level of the floor containing the affected window. In addition, the SPD states that new windows should normally be positioned so that the distance of any residential windows is not less than 18 metres as measured by an arc of 60 degrees taken from the centre of the proposed new window. In that the appeal development goes beyond these suggested restrictions in the Council's SPD there is conflict with Local Plan Policy DM A9.

22. Local Plan Policy DM G3 states that the Council will take into account the relationship to existing buildings, spaces between buildings and gardens and good neighbourliness.
23. The Council considers that the rear extension on top of the back addition at second floor level is overbearing and causes undue loss of outlook and an increased sense of enclosure. In addition, due to its elevated position, size and close proximity to Nos 18-21 Delaford Street, the clear glazed casement window which has been inserted in to the rear elevation of the rear extension at first floor level, on top of the existing back addition has a harmful effect on the outlook and privacy of neighbouring properties.
24. My site visit included viewing the development from inside No 22 Delaford Street. From my own observations I accept that the development does impact to a degree on the outlook from a number of properties in Delaford Street. However, whilst the development exceeds the SPD restrictions, given that the depth of the rear extension on top of the back addition at second floor level can be retained as built and that all that is required is a reduction in its height, in my view that would make no material difference to the impact on neighbouring properties in terms of outlook. I understand the wishes of the neighbouring residents for their present view to remain unchanged; however this has no significant bearing on the planning merits of the proposal.
25. Turning to the casement window, the Council considers that the distance between the appeal window and those in Nos 18-21 Delaford Street is approximately 15 metres. Thus, the development does not meet the 18 metres separation distance as indicated in the SPD. However, I note there exists a number of first floor rear windows in the rear elevations of a number of properties along the terrace some of which are similar in style, size and at a similar distance in their relationship to neighbouring windows as the appeal window. From all I have seen and read, and given that there is usually a degree of overlooking of neighbouring terraced properties in any event, I am not convinced that the existing casement window affects the privacy of neighbouring residents to a harmful degree in terms of privacy such that dismissal of the appeal scheme would be warranted.
26. Therefore, and having regard to the fallback position, I am satisfied that the development, as constructed is not materially harmful to the living conditions of nearby residents in terms of outlook and privacy. As such, the development

complies with the aims of Policies DM G3 and DM A9 of the Local Plan in terms of the effect on the living conditions of nearby residents.

Other matters

27. Concerns have been expressed by the Council and local residents that allowing the development will set a precedent. Whilst I fully understand the point made, the fear of precedent, in itself, is rarely a good reason to withhold permission for an otherwise acceptable development. I have therefore, as required, determined the appeal on its own merits.
28. My attention has been drawn by both parties to a number of developments and apparent breaches of planning control in Mendora Road. Whilst I have been provided with some evidence, I have not been provided with the full details of the circumstances that led to these developments and so I cannot be sure they are directly comparable to the appeal development. Moreover, although I have determined the appeal before me on its own merits, from what I saw on site, I consider that the resultant development in this particular case is not unduly harmful.
29. I understand the local residents' concerns about the appellant's apparent disregard of the planning process but I have to consider the development on its individual planning merits and enforcement action is intended to be remedial and not punitive.

Conditions

30. The development is complete so the need for conditions is limited. I consider that it is necessary in the interest of the amenity of neighbouring occupiers to restrict the roof(s) being used as amenity space. In light of my findings above the Council's suggested condition regarding the rear window being obscure glazed and fixed shut is not necessary.

Conclusion

31. For the reasons given above, and having regard to all other matters raised, I conclude that in the appeal should succeed on ground (a) and planning permission will be granted. The enforcement notice will be quashed.
32. Also, I propose to discharge the condition the subject of the notice, and to grant planning permission, on the application deemed to have been made, for the erection of a rear extension at first floor level, on top of the existing back addition; replacement of existing window to rear roof extension French doors and a Juliette balcony; replace existing door in rear roof extension with a window, without complying with the condition enforced against.
33. The appeal on grounds (f) and (g) does not therefore need to be considered.

Elizabeth Jones

INSPECTOR