
Appeal Decision

Site visit made on 13 March 2018

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 22 March 2018

Appeal Ref: APP/A5840/C/3179536

55 Lyndhurst Way, London SE15 4PT

- 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 Mohammed Munir against an enforcement notice issued by the London Borough of Southwark (the LPA).
 - The enforcement notice, ref: LEG/RP/PL/RR080/50/KC was issued on 24 May 2017.
 - The breach of planning control as alleged in the notice is the erection of an extension to the rear of the property (the unauthorised development).
 - The requirements of the notice are set in in part 5 of the notice and are as follows:
 - 5.1 Remove the unauthorised development from the property.
 - 5.2 Reinstate the boundary wall including the swan neck detail as originally constructed in accordance with the picture attached to the notice.
 - 5.3 Remove from the Property any material and debris arising from compliance with the requirements 5.1 and 5.2 above.
 - The period for compliance with the requirements is 3 months.
 - The appeal was initially made on ground (d) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. There was no appeal on ground (a) but, since the prescribed fee was eventually paid, the application for planning permission deemed to have been made under section 177(5) of the Act still subsists and must be considered (see below).
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Decision

1. The appeal is dismissed. See formal decision below.

Matters of clarification

2. On the appeal form only box (d) was ticked and thus no other grounds, including ground (a), were pleaded. The appellant requested that the appeal be determined by the written representations procedure and, following the Council's agreement to this procedure, the case officer at The Planning Inspectorate confirmed the procedure and starting date by letter dated 22 November 2017. On the same date the case officer wrote to the appellant seeking clarification regarding a ground (a) appeal and the necessary payment of the appropriate fee.

3. On 29 November 2017 the agent, acting on behalf of the appellant, confirmed to the case officer that the appellant wished the merits of the case to be considered. The agent and appellant were then notified of the fee amount (to be paid to the LPA) and the due date was extended to 6 December 2017. The deadline was not met but the letter from the case officer, dated 20 December 2017, to the agent, indicated that the LPA had confirmed that the relevant fee had been paid. Thus, even though there was no ground (a) appeal, the deemed application still subsists and must be considered on its merits. This was confirmed to the parties by e-mail dated 5 March 2018 and they were given until 12 March 2018 to comment.

4. No comments were received and so I have considered the appeal on the basis of the submissions before me. As well as the ground (d) arguments I have considered the merits of the case in relation to the deemed application. I am satisfied that this course of action will not cause injustice to any party or interested person.

Background information

5. The appeal property is a two storey, end of terrace, corner house located on the east side of Lyndhurst Way at its junction with Holly Grove. It is a single dwelling house with its entrance door on the side elevation at Holly Grove. The building is not listed but it does lie within the Holly Grove Conservation Area (HGCA). The surrounding streets are characterised by similar terraced properties.

6. The HGCA was designated in October 1973 and is situated in the centre of Peckham to the south of Peckham Road. The area contains some of the oldest parts of Peckham and is a planned residential development that started to grow in size in the first half of the C19. By the early C20 the level of development was much denser but there was a consistent palette of building materials including yellow London stock bricks, decorated brick banding details, stucco dressings and pitched, slate roofs falling to eaves parapets. Although many buildings have been altered over the years, many original late C19 and early C20 details and features of the area have survived.

7. In terms of the planning history of the property an enforcement notice was issued in 2009. The Council indicates that this case was closed and that it related to a different structure to the one now being enforced against. In 2012 a similar extension to the current one was constructed. This sat behind the former '*swan neck*' boundary wall. Between 2015 and 2016 the boundary wall was removed and the current extension was built.

The appeal on ground (d)

8. To be successful on this ground of appeal the onus is on the appellant to show, on the balance of probabilities, that the extension now being enforced against was substantially completed on or before 24 May 2013. I refer to this as the '*relevant date*' which is 4 years prior to the date of issue of the notice.

9. In support of the contention that it was completed by the '*relevant date*' it is submitted that the extension was built in accordance with the Building Regulations 2000 (as amended), under a notice served on the London Borough of Southwark on 31 October 2008. A copy of the notice, together with a copy of a letter (dated 22 June 2017) to the appellant's agent from the Council's Building Control section was submitted with the appeal form.

10. In response the Council refers to the previous extension which was built in 2012. It is indicated that this was built behind the '*swan neck*' boundary wall. The Council goes on to state that between 2015 and 2016 the entire boundary wall was removed and alterations/rebuilding of the extension took place to create the current extension, the subject of the enforcement action. The Council states that a site visit was carried out on 22 March 2016 and works were taking place to the rear extension. From a further site visit on 19 May 2016 the Council noted that the original flank wall had been removed and that the extension had been altered.

11. A Google Street View (GSV) shows that the '*swan neck*' wall was in place in April 2015 and a further GSV in April 2016 showed the flank wall had been removed with the current extension having been incorporated into the boundary wall of the property. This extension is higher than the earlier one and sits directly on the

boundary. The Council contends, therefore, that it amounts to a new extension as opposed to the earlier one to which the Building Control document referred.

12. Having visited the site and the surrounding area and having considered all of the submissions, particularly the GSV photographs, I agree with the Council that what has been enforced against could not possibly have been completed 4 years prior to the issue of the notice. The evidence overwhelmingly shows that the '*swan neck*' flank wall was still in place over two years after the *relevant date*'. The current extension is also higher than the previous one. The appellant has not shown the opposite to be the case.

13. It follows that, on the balance of probabilities, the extension (and flank wall) now the subject of the enforcement notice were not substantially completed on or before 24 May 2013. The appeal must fail, therefore, on ground (d).

The deemed application

14. The main issue is the effects that the extension and the works to the flank wall have had on the character and appearance of the HGCA.

15. The relevant development plan policies comprise Policies 7.4 (Local character) and 7.6 (Architecture) of the London Plan (LP); Strategic Policies 12 (Design and conservation) and 13 (High environmental standards) of The Southwark Core Strategy (CS) and saved Policies 3.2 (Protection of Amenity), 3.12 (Quality in Design), 3.13 (Urban design), 3.15 (Conservation of the historic environment) and 3.16 (Conservation areas) of the Southwark Plan 2007 (SP). Southwark's Residential Design Standards SPD 2011 (RDSSDP) is a material consideration.

16. The development plan policies are up-to-date with the National Planning Policy Framework (NPPF) which is also a material consideration. In reaching my decision I have had regard, amongst other things, to the core principles set out in the NPPF; to paragraph 207 and to section 7 (Requiring good design). I have also had regard to the relevant sections in Planning Practice Guidance (PPG) relating to our heritage assets. Because the property lies within the HGCA, I have paid special attention to the requirements of section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCAA).

17. Having viewed the extension and the flank wall (the latter from both near and distant viewpoints), I share the Council's and others' concerns about the effect of these unauthorised works on the character and appearance of this part of the HGCA. Having walked around the area it is evident that there are other unsympathetic examples of alterations to the housing stock which have impacted negatively on the streetscene. These have started to erode the special qualities of the conservation area.

18. During my site visit I was informed that the curved '*swan neck*' boundary wall was not original, having been built by the appellant. Nevertheless, from the submitted photographs, I consider that it was an elegant architectural feature which complemented the characteristics of, and appearance of, this part of Southwark. It was at an appropriate height and did not dominate the streetscene.

19. Its demolition and replacement by the much higher flank wall has resulted in harm being caused to the character and appearance of the HGCA. Whilst acknowledging that the harm is less than substantial, there are no public benefits which outweigh the harm. The only benefits appear to relate to the ease and convenience for the appellant in not having to replicate the form of the wall.

20. Of more concern, however, is the height, form and scale of the extension itself. When seen against the neighbouring properties it is perceived as a bulky and

completely out-of-scale addition to this modest terraced house. Furthermore the sloping roof and the overall height are distinctly noticeable when viewed from the east in Holly Grove. Again, whilst the harm may be less than substantial, there are no public benefits which outweigh the harm.

21. In conclusion, therefore, on the merits of the unauthorised works carried out, I do not consider that planning permission should be granted on the deemed application, for this particularly poorly designed extension and the works carried out to the flank wall. I find them contrary to Policies 7.4 and 7.6 of the LP; to Strategic Policies 12 and 13 of the CS and to saved Policies 3.2, 3.12, 3.13, 3.15 and 3.16 of SP. I also find them contrary to the RDSSDP and to policies within section 7 of the NPPF.

22. Paragraph 64 of the NPPF indicates that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Planning permission will not, therefore, be granted in relation to the deemed application made under section 177(5) of the Act. The appeal also fails, therefore, with regard to this part of the appellant's case.

Other Matters

23. In reaching my conclusions I have taken into account all of the other matters raised by the main parties and by interested persons who made submissions in relation to this appeal. These include the planning history, all policy and guidance matters and the photographic evidence. However, none of these carries sufficient weight to alter my conclusions on the ground (d) appeal and the deemed application matters. Nor is any other factor of such significance so as to change my decision that the appeal should be dismissed.

24. I sympathise with the predicament in which the appellant now finds himself and my decision has not been affected by the fact that the works are unauthorised. The extension and flank wall are simply out-of-scale with the other built form and harmful to the character and appearance of the HGCA. To allow these inappropriate works to remain could, in my view, set an unfortunate precedent, whereby the Council would have difficulty in resisting for further insensitive additions to dwellings in the area.

Formal Decision

25. 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 Act.

Anthony J Wharton

Inspector