



Appeal Decision

Site visit made on 6 August 2019

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 6 September 2019

Appeal Ref: APP/Y5420/C/18/3207093

11 Franklin Street, London N15 6QH

- 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 N Bransdorfer against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 7 June 2018.
 - The breach of planning control as alleged in the notice is the erection of a part single, part two storey rear extension; the erection of a part single, part two storey side extension; the excavation of basement extensions with associated lightwells and access staircases/wells at the front and rear of the property, the unauthorised use of the larger basement as 2 self-contained flats; the erection of a single storey wooden structure attached to the rear of a side extension and the use of the smaller basement and the side extension as a mixed use comprising a synagogue/place of worship and religious establishment.
 - The requirements of the notice are 1) to demolish the part single part two storey rear extension in its entirety and return the property back to its form before the unauthorised works were undertaken, or modify the development so that it accords with drawing number DP210(P)12/F associated with planning permission HGY/2015/1800, granted by the Council on 4 September 2015; 2). to demolish the part single part two storey side extension in its entirety and return the property back to its form before the unauthorised works were undertaken, or modify the development so that it accords with drawing number DP210(P)12/F associated with planning permission HGY/2015/1800, granted by the Council on 4 September 2015; 3) remove the basement extension, including the lightwells and access staircases/wells, in their entirety and return the land that has been excavated at the property to its condition prior to undertaking the unauthorised works; 4) remove the single storey wooden structure attached to the rear of a side extension in its entirety; 5) cease the use of the side extension and smaller basement as a mixed use comprising a synagogue/place of worship and religious establishment and 6) remove from the land any debris resulting from the carrying out of steps 1 -5.
 - The period for compliance with the requirements is 5 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Procedural Matters

1. Some work has been undertaken at the appeal site since the enforcement notice was issued. The single storey wooden structure (requirement 4) has been removed and the side extension now is only single storey.

Decision

2. The enforcement notice is to be corrected by removal of the word synagogue from the allegation and requirements. The appeal is allowed insofar as it

relates to the part single and part two storey rear extension and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the part single and part two storey rear extension, subject to the same conditions that remain applicable in the planning permission HGY/2015/1800.

3. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the erection of a part single, part two storey side extension; the excavation of basement extensions with associated lightwells and access staircases/wells at the front and rear of the property, the unauthorised use of the larger basement as 2 self-contained flats; the erection of a single storey wooden structure attached to the rear of a side extension and the use of the smaller basement and the side extension as a mixed use comprising a place of worship and religious establishment and planning permission is refused in respect of the erection of a part single, part two storey side extension; the excavation of basement extensions with associated lightwells and access staircases/wells at the front and rear of the property, the unauthorised use of the larger basement as 2 self-contained flats; the erection of a single storey wooden structure attached to the rear of a side extension and the use of the smaller basement and the side extension as a mixed use comprising a place of worship and religious establishment on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Grounds (b) and (c)

4. The appellant maintains that the side extension is the appellant's own library and study where people come to study with the appellant, and is used for prayers three times a day, when local neighbours join the appellant. There is no payment associated with this. It is a traditional arrangement known as a 'Shtiebel' – a place used for communal Jewish prayer. In contrast to a formal Synagogue, a shtiebel is smaller and approached more casually. There is a need for a local place of prayer accessible on foot as there are no nearby synagogues.
5. While I acknowledge the principle of the use, whether or not it can be considered as an incidental use to the residential dwelling will be a matter of fact and degree. In this case, it is clear that this is not a minor use. There are many tables laid out in the ground floor part of the extension and at basement level there is the traditional mikvah, a ritual bath used by the appellant daily before praying. However, it is clear that this is also a significant communal facility, with two rows of benches for changing, many coat hooks and two adjacent wcs.
6. Overall, a provision of this size is an obvious communal facility with neighbours invited up to 3 times a day and, on the balance of probability, the use resulting cannot be considered as an incidental use to the dwelling and it therefore requires planning permission for the mixed use that results. I acknowledge that this is not a synagogue, but is as alleged a place of worship. I will correct the notice by removal of the reference to synagogue.
7. The appeal on grounds (b) and (c) fails.

Ground (a)

8. The development plan includes the London Plan [LP], the Haringey Development Management Development Plan Document [DP] and the Haringey Local Plan Strategic Policies [HLP].
9. LP Policy 7.4 notes that buildings, streets and open spaces should provide a high quality design that has regard to the pattern and grain of the existing spaces and street in orientation, scale, proportion and mass.
10. LP Policy 7.6 requires that buildings should be of the highest architectural quality and shall not cause unacceptable harm to the amenity of the surrounding land and buildings.
11. DP Policy DM1 requires all new development to achieve a high standard of design and contribute to the distinctive character and amenity of the area. It should improve the character and quality of the area. Development must ensure a high standard of privacy and amenity for the development's users and neighbours.
12. DP Policy DM12 requires new housing and residential extensions to be of a high quality. Notes indicate that it is expected that residential extensions and alterations are well designed to create a good quality living environment, whilst protecting the amenity of adjoining neighbours and the integrity of the residential character.
13. LP Policy SP2 relates to housing where the Council will aim to provide homes to meet Haringey's housing needs and to make full use of Haringey's capacity for housing by maximising the supply of additional housing to meet and exceed targets. Excellence in design quality and sustainability will be required for all new homes.
14. HLP Policy SP11 notes all new development should enhance and enrich Haringey's built environment and create places and buildings that are high quality, attractive, sustainable, safe and easy to use. They should be of the highest standard of design that respects local context and character.
15. The main issues are:
 - The effect on the character and appearance of the surrounding area.
 - The effect on the living conditions of neighbouring occupiers.
 - The effect of the development on the living conditions of the occupiers of the basement accommodation with regard to light and outlook and on the living conditions of the neighbouring occupiers with regard to noise and disturbance.
 - The effect of the development in relation to structural integrity and flooding.

Character and Appearance

First Floor Extension

16. The rear extension has generally been constructed on the same footprint as that granted planning permission. However, the extension has been made higher than permitted. In particular, the eaves level of the first floor is considerably raised up above the original eaves line of the main house, although the ridge of the extension is not above the main house ridge.

17. While it is considerably taller than permitted, the first floor part of the extension is towards the middle of the house at the rear. It therefore is not particularly prominent in views from the street. It is also noticeable that a number of the houses have had large 'box' type dormers constructed at the rear, which are much poorer designs and more prominent. The first floor extension is well designed and fits in with the design of the original building and character of the area generally and does not harm the character and appearance of the area. It accords with LP Policies 7.4 & 7.6, DP Policies DM1 & DM12 and LP Policies SP2 and SP11.

Side Extension including basement below

18. The side extension appears to be under construction and not complete. This may well be due in part to the recent removal of the first floor. What is completed at the moment is of a utilitarian appearance and not in keeping with the neighbourhood or existing building. I accept that the appearance could be improved, but there are no details of any proposals sufficient to know what is proposed or how the extension would look when complete. This is unacceptably imprecise in terms of enforcement and what is constructed visually unacceptably harms the character and appearance of the area.
19. The introduction of the 'shtiebel' with neighbours coming about 3 times a day to join in prayer and use the Mikvah is introducing a significant communal use into an area that is currently a quiet residential street. The comings and goings, even if only on foot, would be considerable and also out of character with the area and cause harm.

Main Basement

20. Visually the main basement has little effect on the character and appearance of the area. The new lightwell at the rear is not visually intrusive. The lightwells at the front can be seen, but they are small and I do not consider they have a material impact in terms of character and appearance.
21. Overall, I conclude that the side extension and its use have an unacceptable impact on the character and appearance of the area and conflicts with LP Policies 7.4 & 7.6, DP Policies DM1 & DM12 and LP Policies SP2 and SP11.

Living Conditions of Neighbours

First Floor Extension

22. The first floor rear extension is constructed towards the middle of the house and is a considerable way from properties at the rear and so does not interfere with neighbours' outlook either at the side or rear. While there is an 'attic' room, this only has a velux window that would give limited outlook and in any case would not have a considerably greater impact in terms of overlooking of neighbours' gardens than the first floor windows. I consider that the rear extension is acceptable in terms of the living conditions of neighbouring occupiers and accords with LP Policy 7.6 and DP Policy DM12.

Side Extension

23. As noted under character and appearance, the use of the side extension is likely to generate considerable activity with neighbours attending prayers up to 3 times per day. While I would not expect there to be considerable noise from

the movements, particularly when most are likely to attend on foot, the mere activity of such comings and goings would have a considerable disturbing impact on the neighbours' living conditions. This type of activity is not what can be expected in a normal residential area and with usual domestic use, even accepting that some people can have more visitors than others. There is an expectation that use of a domestic dwelling will remain at a reasonable level of activity. It does not accord with LP Policy 7.6 and DP Policy DM12.

Living Conditions of Basement Occupiers

24. The basement has been poorly designed, with limited windows, particularly to the bedrooms. The windows that have been provided look out towards the wall of the lightwell. To the rear the light well wall is a little further away from the window than those at the front. The walls are blank and provide an extremely poor outlook for the occupiers, providing low daylight levels and this is of an unacceptable design quality. It does not accord with LP Policies 7.4 & 7.6, DP Policies DM1 & DM12 and LP Policies SP2 and SP11.

Adequacy of Information related to Structural Integrity and Flooding

25. DM Policy DM18 indicates that householder extensions to existing basements or the construction of new basements in existing dwellings will only be permitted where it can be demonstrated that the proposal will not adversely affect the structural stability of the application building, neighbouring buildings and other infrastructure, including the adjoining highway, having regard to local geological conditions and also does not increase flood risk to the property and nearby properties from any source. It should also not adversely impact the amenity of adjoining properties by reason of noise or increased levels of internal or external activity.
26. There has been very little information provided in relation to the structural integrity of the work that has been undertaken. The appellant appears to be relying on the fact that the work has been completed and there has been no movement, together with a brief description of the way the work was undertaken. While the fact that there has been no movement demonstrates that things are stable at the moment, it does not demonstrate that movement is not going to occur in the future. Ground movement and building movement can occur well after interventions have occurred.
27. It is a reasonable function of planning to want to know that something can be built safely before granting planning permission. In this case the work has been done and to my mind, the responsible authority for deciding whether what has been done is adequate for Building Control. So, while I acknowledge that appropriate information should have been provided, in terms of planning permission it is now too late, so in this decision the lack of it carries limited weight.
28. DP Policy DM24 relates to flood risk. The Council will ensure that all proposals for new development avoid and reduce the risk of flooding to future occupants and do not increase the risk of flooding. It is also reasonable that the risk of flooding is investigated as people will be sleeping at basement level. This information has not been provided. DP Policy DM24 requires certain actions if the development is within Flood Zones 2 and 3a to provide sufficient evidence for the Council to assess whether the requirements of a sequential test and

exceptions test are required. With the limited information provided I am not able to conclude on this matter.

29. The development has not been constructed in accordance with the requirements of DP Policy DM18 and DM24.

The Public Sector Equalities Duty

30. The Public Sector Equality Duty contained in the Equality Act 2010 [PSED] indicates that a public authority must, in the exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
31. The PSED requires that there is a need to remove or minimise disadvantages suffered by persons who share a relevant protected characteristic, take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it and to encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
32. The duty is not a positive duty to eliminate discrimination, advance opportunity or foster good relations, rather it is a duty to ensure that any decision which may have a negative/positive impact on equality is taken from a fully informed position, having given careful consideration to alternative less-harmful ways of making the decision. It is a duty to consider, rather than a duty to achieve any particular outcome.
33. I accept that there will be an impact on those persons coming to the appeal site to further their religious practices and that to find an alternative location close by would be difficult. However, this has to be balanced with the impact that the proposal has on the area and neighbouring occupiers.
34. Having regard to the three aims of the PSED, I consider that refusal of parts of the development and use will not have a disproportionate impact on those people with protected characteristics, particularly in relation to religious needs.
35. In terms of the Human Rights Act 1998, Article 1 of the First Protocol notes that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. Upholding the appeal will cause some interference with the appellant's human rights, but this needs to be balanced against the impact of the development.
36. I have also had regard to Articles 9 and 14, which provide for religious freedom and the prohibition of discrimination. However, Article 9 is a qualified right, and Article 14 does not infer any free-standing rights. The appellant's submissions must be weighed against the public interest in this case. Overall, I consider that refusal of aspects of the appeal and associated interference is proportionate to the harm caused and is justified in the public interest.

37. Overall, I conclude on ground (a) that the part single and part two storey rear extension should receive planning permission. While the basement extensions do not have an unacceptable effect in terms of character and appearance, because of the harm to living conditions they are unacceptable. The side extension is unacceptable in terms of character and appearance and the impact of its use in terms of the living conditions of neighbouring occupiers.
38. Correct procedures have not been followed in relation to stability and flooding and some information is required, but even if satisfactorily resolved the basement and side extensions would remain unacceptable because of the impact on the character and appearance of the area and living conditions of neighbouring occupiers.

Ground (f)

39. The appellant suggests that further details could be provided in relation to the completion of the works. I have considered this matter under ground (a).
40. The requirements of the notice are proportionate to the breach of planning control that has occurred, and it is reasonable that the work that has been unlawfully completed shall be removed.

Graham Dudley

Planning Inspector