



Appeal Decision

Site visit made on 29 August 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 1 November 2019

Appeal Ref: APP/G5750/C/18/3218540

67 Lichfield Road, East Ham, London E6 3LQ

- 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 M Pokrovsky against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 16 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a dormer. Without planning permission the erection of a ground and first floor rear extension.
 - The requirements of the notice are to:
 1. Demolish the ground and first floor rear extension (as showed in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1), and return the rear elevation of the property to its form prior to the unauthorised works.
 2. Demolish the dormer (as shown edged in green on the photograph attached at Appendix 1.
 3. On completion of steps 1 and 2 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is three months from the date this notice takes effect.
 - 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 the prescribed fees have been paid within the specified period, the application for planning permission deemed to made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. The enforcement notice is corrected as follows:

Delete Requirements 1 and 2 and replace them with the following:

"Requirement 1

Either: Demolish the first floor rear extension and the dormer, and return the rear elevation of the property to its form prior to the unauthorised works;

Or:

- a) Carry out remedial works to the first floor rear extension so that it complies with the terms and conditions of planning permission 17/01817/HH; and
- b) Demolish the dormer and return the rear main roof form of 67 Lichfield Road to its form prior to the unauthorised construction of the dormer."

Delete requirement 3 and replace with:

"Requirement 2

On completion of Requirement 1, remove from the site all materials and debris arising from compliance with Requirement 1."

2. The enforcement notice is varied as follows:

Delete the period for compliance and replace it with "six months from the date this notice takes effect."

3. The appeal is allowed insofar as it relates to the erection of a single-storey extension and dormer extension, and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended, for the erection of a single-storey extension and dormer extension at 67 Lichfield Road, East Ham, London E6 3LQ, subject to the following condition:

- 1) The dormer hereby permitted shall be demolished and all materials resulting from the demolition shall be removed and the rear roof plane restored to its original profile within 20 weeks of the date of the failure to meet any of the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme for the dormer to be tile hung, and details of the tiles to be used on the dormer's external surfaces, shall have been submitted for the written approval of the local planning authority, and the scheme shall include a timetable for its implementation.
 - ii) within 11 months of the date of this decision, if the local planning authority refuse to approve the said scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.
 - iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme or details shall have been approved by the Secretary of State.
 - iv) The approved scheme or details shall have been carried out and completed in accordance with the approved timetable.

Procedural Matter

4. In December 2018 subsequent to the enforcement notice being issued Newham Council adopted its Local Plan (NLP). The LP combines and updates the Borough's previous Core Strategy, 2012 and Detailed Sites & Policies DPD, 2016. However, although the enforcement notice refers to the earlier submission version of the LP the relevant policies cited retain their respective references in the final adopted version.

Background

5. Planning permission (ref 17/01817/HH) was granted in July 2017 for a partial width first floor rear extension to this mid-terrace dwelling. The approved plans show the extension to be brick built and overlying the then ground floor projection. A Certificate of Lawful Development (ref 18/00730/CLP) was then issued in April 2018 for a proposed additional 3m deep single-storey extension

along with a 3m deep side infill ground floor addition running close to the common boundary with No 69. The Certificate (CLD) issued confirmed that the proposed extension would represent permitted development by way of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

6. It would appear that both the above extensions were subsequently built as a single operation. The single-storey L-shaped addition was built to a slightly increased total depth and the side infill some 0.3m deeper than shown on the CLD plans. The first floor extension has a shallower roof pitch than that shown on the approved plans, and a much smaller rear facing window. Further, although both the extensions were shown to be brick-faced they have been rendered with a cream coloured finish.
7. A dormer extension to the dwelling's rear roof plane has also been erected and, as it does not satisfy the provisos of Schedule 2, Part 1, Class B of the GPDO, this extension is also unauthorised.
8. An application was subsequently submitted in an attempt to secure planning permission for the retention of the single-storey and first floor rear extensions but planning permission was refused in October 2018; the reason indicating the Council's view that the development represented unsympathetic additions to the property, citing also the differing angles of roof pitch and the render finish used.
9. The enforcement notice was then issued with the Council choosing to enforce against all three elements and requiring that the extensions be removed in their entirety.

The Appeal on ground (a) and the Deemed Planning Application

Main Issue

10. This is the effect of the development on the character and appearance of the area.
11. At my site visit I observed that many of the nearby dwellings visible from the appeal property's rear garden have been altered and made larger by extensions at various levels and with a multitude of designs and finishes. In effect, although the street scene has largely retained its appearance, the changes to dwellings' rear elevations have had a profound effect on local character by significantly altering their original physical details and features.
12. In illustration, the immediate neighbour, No 69, has both ground and first floor extensions and it appears that No 65 has also been extended with a single-storey addition. The appeal dwelling's ground floor extension has been built to a greater depth, but its flat roof is of moderate height and, in its contextual setting, this extension does not look out of place. Save for its roof profile, the first floor extension has seemingly been built roughly to the dimensions as was previously approved.
13. Rear dormer extensions are common locally and, in terms of size and bulk, that erected at the appeal dwelling does not create visual harm. It is set up from the eaves and, if the roof's ridge height has been raised to accommodate the dormer, then this is very marginal. I particularly noted that any ridge height

- increase is not easily discernible from the street. Only the front roof lights are evident.
14. Given the above factors I do not share the Council's concerns as to the extensions' bulk and massing. Instead, my concerns relate to their appearance. All have been finished with the same cream coloured render which hides the dwelling's traditional brickwork. Cumulatively, this gives the development a somewhat overbearing appearance and exacerbates their visual impact which needs to be tempered.
 15. Although there are visible examples of rendered single-storey rear extensions in the immediate locality, a transitionary upwards approach in terms of facing materials would have made for a better physical arrangement. Accordingly, it would be more appropriate for the first floor extension to be brick-faced, as was approved, and for the dormer's external surfaces to be tile hung, ideally matching the main roof tiles. The latter can be secured by planning condition.
 16. I have had regard to the representations received from interested parties whereby objections have been raised regarding the effect on light entry to No 69's kitchen and also the loss of sunlight to its rear garden. However, I note that the dwellings' rear elevations face almost due north. Also, as No 69's kitchen extension has no side windows, and the single storey extension at appeal covers only a slightly larger footprint than could have been built under permitted development, I do not consider that No 69 has been affected to any significant degree.
 17. The Council's Supplementary Planning Document 'Altering and Extending Your Home' (SPD) provides guidance on neighbourly and well designed householder development. With particular relevance to this appeal, it advises that roof pitches and slopes on new extensions should match the original house, where practicable. The first floor extension, in situ, is at odds with this advice.
 18. In summary, I consider that the single storey and dormer extensions are not harmful to the character and appearance of the area, and there would be no material conflict with the general aims and design objectives of the policies most applicable to the development, namely NLP policies SP2, SP3, SP8 and H1, policies 7.1, 7.4 and 7.6 of the London Plan (2016), policy D1 of the Draft London Plan (2017) and also relevant advice within the Council's SPD. The first floor extension is not acceptable in this regard.
 19. Given the above, on this ground, I will make a split decision, allowing two elements of the development whilst dismissing the other. The appeal is, therefore, successful in part.

Conditions

20. Both main parties have indicated that they would be agreeable to the dormer extension being tile-hung. Therefore, in the interests of visual amenity and to ensure that the development integrates better I will impose a condition requiring that the dormer be treated, accordingly. The condition is worded so as to ensure that this be subject to an agreed timetable. It also provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved either by the Council or by the Secretary of State on appeal, and then implemented in accordance with an approved timetable.

Should the requirements of the condition not be met in line with the strict timetable, then the planning permission will fall away.

The appeal on ground (f)

21. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. S173(4)(a) and (b) of the 1990 Act as amended provides that the purposes of an enforcement notice can be (a) to remedy the breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the breach.
22. It is necessary to first establish what the Council is seeking to achieve by the notice. The enforcement notice refers to 'un-neighbourly development' but the steps required by the notice, stipulating the complete removal of the extensions and restoration of the property to its original form, indicate that its aim is to remedy the breach of planning control in accordance with s173(4)(a) of the Act. In such circumstances what must be considered is whether the requirements exceed what is necessary to achieve that objective.
23. Under ground (a) I have found that planning permission should be granted for the single-storey and dormer extensions so it is not necessary for me to consider the appeal on ground (f) in relation to these elements.
24. The appellant has indicated a willingness to make alterations to the first floor extension to comply with the development approved under planning permission ref 17/01817/HH. This permission currently remains extant, expiring in July 2020. As such, there is an obvious fallback position which would allow for the first floor extension to be physically modified and the approved brick-faced extension built with a more appropriate roof form and a more proportionate rear facing window. This would also achieve an appropriate visual transition between the three extensions.
25. However, on the basis that the ground floor and first floor extensions were likely built as a single operation the Council makes the point that the former would need to be removed in order for the planning permission to be implemented. I have no direct evidence that this would necessarily be the case but, to address such an eventuality, I am correcting the enforcement notice so as to require that the first floor extension be either modified as approved or, alternatively, demolished.
26. The appeal on ground (f) therefore succeeds insofar as it proves practicable and viable to implement the approved scheme.

The Appeal on Ground (g)

27. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant considers that a three month period is too short and believes that a more reasonable period for compliance would be twelve months.
28. The three month period originally concerned the demolition of all three extensions, and the varied enforcement notice now requires only lesser works to take place. However, given the inevitable disruption that will occur to the

occupiers from these works, I consider that three months would be an unreasonably short period to allow for the required works to be completed.

29. I conclude that the appeal on ground (g) should succeed to that extent and I will vary the terms of the notice to allow a compliance period of six months from the date the notice takes effect.

Conclusion

30. For the reasons given I conclude that the appeal should succeed in part only, and I will grant planning permission for two of the three elements in the enforcement notice, but otherwise I will uphold the notice with a correction and a variation and refuse to grant planning permission for the third element. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Timothy C King

INSPECTOR