



Appeal Decisions

Site visit made on 5 September 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 22 November 2019

Appeal A: APP/U5360/C/18/3214543

122 Somerford Grove Estate, Hackney, London N16 7TN

- 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 Isak Kara against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 19 September 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a double storey rear extension and the erection of a full width rear roof extension.
 - The requirements of the notice are:
 1. Demolish the double storey rear extension;
 2. Remove the rear roof extension;
 3. Reinstate the roof to its condition prior to the construction of the roof extension;
 4. Make good all damage to the Property resulting from the removal of the unauthorised works;
 5. Remove from the Property all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice.
 - The period for compliance with the requirements is 5 (five) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in sections 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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Appeal B: APP/U5360/C/18/3214546

123 Somerford Grove Estate, Hackney, London N16 7TN

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 5. Remove from the Property all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice.

- The period for compliance with the requirements is 5 (five) months after this notice takes effect;
 - The appeal is proceeding on the grounds set out in sections 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 Decisions

Appeal A

1. The enforcement notice is corrected as follows:

Delete Requirement 1 and replace it with the following:

"Requirement 1

Either: Demolish the double storey rear extension;

Or:

- a) Carry out remedial works to the double storey rear extension so that it complies with the terms and conditions of planning permission 2016/3932, dated 19 December 2016."

2. The enforcement notice is varied as follows:

Delete the period for compliance and replace it with "12 (twelve) months after this notice takes effect."

Appeal B:

3. The enforcement notice is corrected as follows:

Delete Requirement 1 and replace it with the following:

"Requirement 1

Either: Demolish the double storey rear extension;

Or:

- b) Carry out remedial works to the double storey rear extension so that it complies with the terms and conditions of planning permission 2016/3932, dated 19 December 2016."

4. The enforcement notice is varied as follows:

Delete the period for compliance and replace it with "12 (twelve) months after this notice takes effect."

5. Subject to these corrections and variations the appeals are dismissed and the enforcement notices are upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

6. In December 2016 planning permission (ref 2016/3932) was granted for the erection of part single, part two-storey rear extensions at ground and first floor

to Nos 121-124 Somerford Grove. This would have involved four dwellings out of a terrace of seven post-war residential properties being similarly extended.

7. Development at Nos 122 and 123 thereafter went ahead, but was not implemented in accordance with the approved plans. A retrospective planning application was subsequently refused planning permission. The Council then issued an enforcement notice in respect of the works undertaken.

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

Main Issues

8. The main issues are:

- 1) the effect of the development on the character and appearance of the host dwellings and the surrounding area; and;
- 2) the effect on the living conditions of neighbouring occupiers.

Character and appearance

9. The development, seemingly identical at both dwellings has involved the erection of a two-storey rear extension spanning their full width, and also a full width dormer across their rear elevation, rising to ridge height. The prominent two-storey extension is heavily massed, without articulation and has, along with the dormer, effectively resulted in a flat-roofed, close stepped effect.
10. The form and extent of the development bears no relationship to the dwellings as originally built. Not only does the development lack subordination - an important characteristic of domestic extensions - its totality is dominant. This runs contrary to the advice provided in the Council's Supplementary Planning Document 'Hackney Residential Extensions and Alterations' (SPD) and relevant local planning policies which require, amongst other things, a high standard of design that has regard to local character and the prevailing pattern of development.
11. I accept the appellant's point that the addition of bedroom space is a way of increasing the supply of larger dwellings in the borough, but this should not be at the expense of an appropriate design. In this instance the size, form and bulk of the development flies in the face of planning policies and relevant guidance which, in serving to achieve a satisfactory appearance, outweighs the advantages of the additional accommodation provided by the development carried out here. Increased floorspace could be provided in a much more modest fashion. Other examples of domestic extensions in the immediate locality were also brought to my attention, but each case must be considered on its own individual merits and impacts, with regard to the particular circumstances involved. As such, direct parallels are not easily drawn.
12. On this main issue I conclude that the development is harmful to the character and appearance of the host dwellings and their surrounding area, and is in material conflict with policy 24 of the Hackney Local Development Framework Core Strategy (CS), policy DM1 of the Hackney Development Management Local Plan (HLP), the Council's SPD, policies 7.4 and 7.6 of the London Plan (LP) and general design guidance within the National Planning Policy Framework (the Framework).

Living conditions

13. I have had regard to the representations from the freehold owner of No 121, who raises no objections to the development. I also acknowledge the north facing orientation of the terrace's rear elevation. However, no daylight assessment nor light shadow diagrams, for instance, have been provided in support of the scheme, and from my site visit observations I am not wholly convinced that the size and extent of the development has not brought about, or would not bring about, overshadowing or visual detriment to the occupiers of Nos 121 and 124. Besides, occupation and property ownership changes over time.
14. On this main issue I conclude that the development is harmful to the living conditions of neighbouring occupiers, and is in material conflict with CS policy 24, HLP policy DM2, the Council's SPD, LP policies 7.4 and 7.6 and general design and amenity guidance within the Framework.

Conclusion on ground (a)

15. I have found harm on both main issues, which is compelling. The appeals on this ground, therefore, do not succeed.

The Appeals on ground (f)

16. The appeals on ground (f) are that the requirements of the notices 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.
17. Firstly, the Council, in its representations, says that it is considered that the works undertaken at Nos 122 and 123 are a major deviation from the approved documentation. I agree, but planning permission 2016/3932 involved development across four properties, and at my site visit I noted that construction works were now underway at No 121, presumably implementing its part of the scheme. Indeed, a Witness Statement from the freehold owner of this property has been provided which states an intention to complete the works during 2019.
18. On this basis I am satisfied that, despite the failure to comply with the approved plans in the works undertaken at Nos 122 and 123, the scheme has been implemented within its three year time limitation period and remains capable of adaptation with a view to its eventual completion in accordance with the approved plans. The appellant has also indicated a willingness to carry out remedial works to comply with the approved scheme.
19. It is necessary to establish what the Council is seeking to achieve by the notices. Although the notices say that the two storey rear extensions adversely affect the amenity of the neighbouring property the steps required, stipulating the complete removal of the extensions and restoration of the properties to their original form, indicate that their primary aims are 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.

20. Given there is an obvious fallback position available I am therefore correcting the enforcement notices so as to require that the double storey rear extensions are either modified as approved or, alternatively, demolished. However, this option applies only to the two-storey additions as no alternative scheme has been put forward in respect of reduction or modification works to the dormer extension.
21. The appeals on ground (f) therefore succeed to this extent.

The Appeals on ground (g)

22. The appeals on ground (g) are that the periods for compliance with the notices fall short of what is reasonable. The appellant considers that a 5 month period is too short and believes that a more reasonable period for compliance would be 12 months.
23. Notwithstanding the demolition of the double storey rear extensions or, alternatively, remedial works thereto, from the appellant's representations I am mindful of the likelihood of negotiations taking place between the main parties as to possible modifications to the dormer. In such circumstances, for a suitable scheme to be arrived at, and then to allow a period for its consideration, and so as to avoid the need to reinstate the previous roof form, as required by the notice, only to alter it again in the event of implementing a revised scheme, I consider that it would be reasonable to extend the periods for compliance to 12 months. Such a period should allow for the necessary reconfigurations and cover the inevitable disruption brought about.
24. I conclude that the appeals on ground (g) should succeed to that extent and I will vary the terms of the notices to allow a compliance period of twelve months from the date the notice takes effect.

Conclusion

25. For the reasons given above, and having had regard to all matters raised, I conclude that the appeals on ground (a) should fail, whereas the appeals on grounds (f) and (g) are allowed, subject to the enforcement notices' correction and variation.

Timothy C King

INSPECTOR