
Appeal Decision

Site visit made on 8 October 2019

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2019

Appeal Ref: APP/G5750/C/19/3220093

15 Calverton Road, East Ham, London E6 2NS

- 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 Ramalingam Sukumar against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 7 December 2018.
- The breach of planning control as alleged in the notice is without planning permission the erection of an extension.
- The requirements of the notice are:
 1. Demolish the extension (as shown in the approximate location edged in blue on the attached plan).
 2. On completion of step 1 above, remove all materials and debris from the site.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary Matters

1. I note that the draft Newham Local Plan and the draft London Plan have been submitted for examination. However, I am not aware of the exact stage they have reached and the extent of outstanding objections or whether the policies concerned will be considered as consistent with the National Planning Policy Framework. Consequently, I am only able to give them limited weight in my decision.

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

Main issues

2. The main issues are:
 - the effect of the extension on the character and appearance of the surrounding area; and
 - the effect of the extension on the living conditions of neighbouring occupiers of 17 Calverton Road with particular regard to outlook.

Reasons

Character and appearance

3. The extension subject of the enforcement notice is located to the rear of 15 Calverton Road. It comprises a single storey extension with parapet walls to the side and flat roof over the main part of the extension. It is visible in limited views from surrounding gardens, particularly those to either side.
4. The height and substantial depth of the extension results in a bulky extension. Combined with the light coloured rendered walls, the extension is prominent in views from surrounding gardens such that it appears dominant and incongruous within the area.
5. For these reasons, I conclude that the extension harms the character and appearance of the surrounding area. As such, it is contrary to Policies 7.4 and 7.6 of the London Plan, Policies S6, SP1, SP2 and SP3 of the Newham Local Plan Core Strategy (CS) and the Framework that seek high quality development that respond to local character and improve housing quality. In addition, it does not comply with advice within the Altering and Extending Your Home Supplementary Planning Document (SPD) that seeks high quality design.
6. My attention has also been drawn to Policy SC4 of the CS that relates to biodiversity. However, it is unclear what effect the extension would have on biodiversity.

Living conditions

7. The extension is located adjacent to the side boundaries of the property, with parapet roofs to the side elevation with 17 Calverton Road. Given the height and depth of the extension so close to the windows of ground floor rooms of no. 17, it dominates those rooms and the modest rear garden.
8. For these reasons, I conclude the extension harms the living conditions of neighbouring occupiers of 17 Calverton Road with particular regard to outlook. As such, it is contrary to Policies 7.4 and 7.6 of the London Plan, Policies S6, SP1, SP2, SP3 and H1 of the CS, Policy SP8 of the Local Plan: Detailed Sites and Policies Development Plan Document and the Framework that seek high quality design that does not cause unacceptable harm to living conditions of neighbouring occupiers. The extension also conflicts with advice contained within the Altering and Extending Your Home SPD that seeks to ensure extensions do not harmfully compromise the outlook of occupiers of neighbouring properties.

Other matters

9. My attention has been drawn to an alternative form of extension that was granted planning permission under reference 18/01377/HH, but that was of a substantially different design to that constructed. I also note that an appeal was dismissed under reference APP/G5750/D/18/3217676 for the extension constructed.

Conclusion

10. For the reasons set out above, I conclude that on balance the proposed development would not accord with the development plan. The development in its current position and form is therefore unacceptable.

Alternative design solutions

11. The ground (a) appeal and deemed planning application is in respect of the matters stated in the enforcement notice as constituting the breach of planning control (Section 177(5) (s177(5)) of the Town and Country Planning Act 1990 as amended (the Act)). There is power when determining an appeal under s174 for the Inspector to grant planning permission in respect of the matters stated in the enforcement notice as constituting the breach of planning control, whether in relation to the whole or any part of those matters (s177(1)).
12. The appellant refers to two alternative design schemes under the ground (f) appeal. However, I consider it is appropriate to consider them here. Planning permission was granted under reference 18/01377/HH that the appellant describes as an extension with a pitched roof with eaves at 2.5m in height, which hasn't been disputed by the Council. That scheme was not put forward as an alternative in the appeal documentation and drawings have not been supplied. However, a fully worked up alternative scheme with flat roof design at 2.5m in height has been submitted with the ground (f) appeal.
13. Well established case law confirms that the enforcement procedure is intended to be remedial rather than punitive. In this regard, where it appears there is an 'obvious alternative' which would overcome the planning difficulties with less cost and disruption, an Inspector should consider it. The key question therefore is whether the submitted alternative scheme can be regarded as 'part' of the as-built development.
14. The scheme submitted with the ground (f) appeal has the same footprint and would be of the same description as the scheme as built, although is lower in height. Consequently, it is 'part' of the as-built development. As such, I have taken it into account and will deal with it against the same main issues set out above.

Character and appearance

15. I have concluded that the existing development results in a bulky extension due to its height and substantial depth. However, the revised proposals would significantly reduce the height of the extension. Although retaining the rendered walls, that would mean it is less visible in views from surrounding gardens such that it would reduce its prominence. It would also be less prominent than with a pitched roof extension, such as permitted under reference 18/01377/HH, albeit the appearance of a pitched roof would be more attractive.
16. Taking all these factors into account, on balance I conclude that the extension would not result in material harm to the character and appearance of the surrounding area. As such, it complies with Policies 7.4 and 7.6 of the London Plan, Policies S6, SP1, SP2 and SP3 of the Newham Local Plan Core Strategy (CS) and the Framework.

Living conditions

17. It is the height and depth of the extension so close to the windows of ground floor rooms of no. 17 that means the existing extension dominates those rooms and the modest rear garden. However, as the height has been significantly reduced, that would mitigate that impact to a large extent. I note that the planning permission granted for an alternative scheme would have eaves at the

same level, albeit with a pitched roof. Consequently, the proposed alterations would not have a greater effect on the outlook of neighbouring occupiers than that granted planning permission.

18. For these reasons, I conclude the extension would not cause material harm to the living conditions of neighbouring occupiers of 17 Calverton Road with particular regard to outlook. As such, it complies with Policies 7.4 and 7.6 of the London Plan, Policies S6, SP1, SP2, SP3 and H1 of the CS, Policy SP8 of the Local Plan: Detailed Sites and Policies Development Plan Document and the Framework.

Other matters

19. I note that the render on the sides of the extension has not been completed. It has been suggested that the shadow of the extension reduces the light to the rear rooms and garden of 17 Calverley Road. However, the reduction in height of the extension would allow more light into those areas than at present.

Conclusion

20. For the reasons set out above, I conclude that on balance the existing development would not accord with the development plan. Nevertheless, the alternative scheme put forward by the appellant would not cause material harm to the character and appearance of the area, nor the living conditions of neighbouring occupiers and would comply with the development plan. Consequently, the appeal on ground (a) therefore succeeds and I will grant planning permission for the extension detailed alternative scheme submitted with the appeal.
21. I shall impose conditions on the resulting planning permission for the following reasons. I have imposed a condition specifying the relevant drawings as this provides certainty. A condition is necessary for materials to be in accordance with those set out in the application form and approved drawings to maintain the character and appearance of the area.

The Appeal on Ground (f)

22. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek demolition of the as-built extension and thus the purpose of the notice is to remedy the breach of planning control. Clearly demolition would do no more than remove and hence remedy the breach of planning control. It is not therefore an excessive requirement. As such, to this extent the appeal fails on ground (f).
23. However, as set out in the ground (a) appeal, I have decided to grant planning permission for an alternative scheme with a lower flat roof than that constructed. That scheme would also remedy the breach of planning control with less cost and disruption than total demolition.
24. For these reasons I will issue a split decision which grants planning permission on the deemed application for part of the as-built development (the revised scheme). The requirement in the enforcement notice to demolish will remain,

however the effect of s180 of the Act is that the requirement now only relates to that part of the development that does not benefit from the planning permission granted on the deemed application.

Formal Decision

25. The appeal is allowed insofar as it relates to the land in the approximate location edged in edged blue on the plan at 15 Calverton Road, East Ham, London E6 2NS and the erection of an 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 erection of an extension up to 2.5m in height at 15 Calverton Road, East Ham, London E6 2NS and subject to the conditions set out in the schedule at the end of this decision.
26. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the land edged red on the plan at 15 Calverton Road, East Ham, London E6 2NS and planning permission is refused in respect of the extension at 15 Calverton Road, East Ham, London E6 2NS on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

AJ Steen

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following plans submitted with the appeal: ZAAVIA/15CR/303 issue A, ZAAVIA/15CR/304 issue A and ZAAVIA/15CR/306 issue A.
- 2) The facing materials to be used in the construction of the building shall be those specified on the application form and drawings ZAAVIA/15CR/303 issue A, ZAAVIA/15CR/304 issue A and ZAAVIA/15CR/306 issue A and shall thereafter be retained as such.