



Appeal Decision

Site visit made on 16 December 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2020

Appeal Ref: APP/U5360/C/19/3228941

Land at Flat A, 8 Dunsmure Road, Hackney, London N16 5PW

- 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 Abraham Rosenberg against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 24 April 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the excavation of rear garden and construction of a lower ground floor garden building and the installation of balustrade, walls and fencing on the roof of the garden building.
 - The requirements of the notice are: (1) Remove the lower ground floor garden building from the property, and remove the balustrade, fencing, concrete walls and brick walls from the roof of the lower ground floor garden building from the property. (2) Restore the rear garden area to the previous level before the development took place and reinstate the garden area as before the unauthorised development was constructed. (3) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is: Three (3) months.
 - 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 appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a variation.

The ground (a) appeal

Main Issues

2. The main issues are the effect of the development on the character and appearance of the area and the living conditions of neighbouring residents having regard to privacy.

Reasons

3. Dunsmure Road comprises a range of mainly terraced properties and forms part of an area of similar residential streets. The appeal property occupies the lower ground and ground-floor of a four-storey mid terraced house divided into flats. It is bordered by Nos 6 and 10 Dunsmure Road on either side and the garden to No 9 Colberg Place to the rear.

4. The development enforced against comprises the excavation of the rear garden and the construction of a lower ground floor area/room, accessed from the lower ground-floor of the appeal property, above which is a concrete garden deck area, which is accessed from the ground-floor.
5. Planning permission was refused and an appeal subsequently dismissed¹ in July 2019 for the erection of a none habitable store, home office and playroom below a concrete garden deck. This essentially related to the same development that has been enforced against, albeit reflecting a completed scheme. That Inspector concluded the development '*unacceptably harms the character and appearance of the surrounding area*' and that the '*potential to overlook would give rise to a loss of privacy and would not be resolved by the full implementation of the proposed boundary measures.*'
6. The ground (a) appeal before me only relates to the works that have been undertaken at the site and which I subsequently observed during my site visit. Whilst I appreciate that suitably worded planning conditions could improve the appearance of the development and the impact on neighbouring occupiers, such as fencing away from the boundary line, I have little in the way of substantive evidence to persuade me to differ from the conclusions of the previous Inspector who considered the appellant's intended completed scheme.
7. Whilst the development cannot be seen from the public realm, it is a discordant feature given its solid appearance and use of materials; it is therefore not of high-quality design. It also fails to reflect the pattern of development in the immediate area and so is out of character. Furthermore, the concrete garden deck area is higher than the previous garden which results in overlooking and the loss of privacy of adjacent neighbouring residents, in particular Nos. 6 and 10 Dunsmure Road, which on the basis of the proposed measures cannot be adequately ameliorated.
8. I have had regard to the spatial needs of the Charedi community and the number of occupants living at the appeal property giving rise to a need for more space to improve their living conditions. I appreciate that the development does not result in the loss of outside space or loss of outlook or daylight and that there has been a considerable level of support received to retain the development. I also appreciate the appellant is aggrieved by how he feels the Council considered his planning application. However, whilst I have considerable sympathy for the appellant, I do not find that these matters outweigh the harm identified to the character and appearance of the area and the living conditions of neighbouring occupants.
9. I conclude that the development is harmful to the character and appearance of the area and the living conditions of neighbouring residents having regard to privacy. It therefore contravenes Policies 7.4 and 7.6 of The London Plan 2016 which requires development to be of the highest quality both internally and externally as well as Policy 24 of the Hackney Local Development Framework Core Strategy 2010 and Policies DM1 and DM2 of the Hackney Development Management Local Plan 2015. These policies require, amongst other things, for development to be of high-quality design and designed to ensure that it will not result in significant adverse impacts on the amenity of occupiers and neighbours.

¹ APP/U5360/W/19/3228928

The ground (f) appeal

10. The purpose of the enforcement notice is to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose lesser alternatives.
11. However, aside from fencing to mitigate the impact on the occupiers of No. 10, which I have accordingly considered under the ground (a) appeal, the appellant does not propose alternative or lesser requirements that would remedy the breach of planning control.
12. As I have little further evidence to consider, the appeal on ground (f) must fail.

The ground (g) appeal

13. The enforcement notice affords a period of three months to comply with its requirements. I however appreciate the appellant will need to employ suitable builders and that significant works, with limited access, will likely need to be undertaken to restore the garden area to its previous level.
14. Furthermore, I have considerable sympathy for the appellant and so a period of additional time could also enable other options to be explored, which may also meet the needs of the family occupying the appeal property.
15. I am however not persuaded on the evidence before me that a period of one year is necessary and so consider that a period of eight months strikes an appropriate balance so that the breach of planning control is not unduly perpetuated.
16. To this extent the appeal on ground (g) therefore succeeds.

Overall Conclusion

17. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Formal Decision

18. It is directed that the enforcement notice be varied by:
 - substituting "*Eight (8) months*" as the period for compliance
19. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR