



Appeal Decision

Site visit made on 30 October 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 29 February 2020

Appeal Ref: APP/U5360/C/18/3212211

34 Sach Road, Hackney, London E5 9LJ

- 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 Boruch Roth 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 ground floor rear extension.
 - The requirements of the notice are:
 1. Demolish the ground floor rear extension;
 2. Make good all damage to the Property resulting from the works ensuring that all materials used match the host building
 3. 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 3 (three) months after 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 an 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 as amended, and falls to be considered.
-

Formal decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. At a late stage in the appeal process, following my site visit, the appellant submitted a new plan (Drawing No 276-E03 Rev A) titled 'Proposed Elevations' in support of the Ground F appeal lodged. However, the rear elevation depicted does not correspond with that shown on the plan which preceded it (Drawing No 276-E03) termed 'Existing Elevations' in that an additional level is incorporated. Further, this inaccuracy means that the amended plan's proposed rear and side elevations do not tally.
3. Given the fact that no floorplans were provided to complement the elevational plan I am concerned at the imprecision and ambiguity that has potentially arisen. Further, notwithstanding the inaccuracies, as the drawing was submitted at such a late stage it has not been subject to any formal consultation whereby interested parties might have wished to make representations. Accordingly, having taken these factors into account, and although the Council was given the chance to comment on the amended plan

but chose not to, I cannot accept the amendment for consideration in this appeal.

4. At the site visit I observed that, in addition to the rendered single storey extension enforced against, an adjoining timber framed structure had been constructed which appears to have added further depth to the original dwellinghouse. However, my remit is limited to the assessment of the extension the subject of the enforcement notice.

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

Background and Main Issue

5. When the notice was issued in September 2018, a similar extension at the neighbouring property, No 32 was also subject to an enforcement notice which required for its removal. A subsequent appeal against the notice was successful and this extension remains in situ.
6. The Council, in its reasons for issuing the current enforcement notice refers, amongst other things, to its size and positioning, and its effect on the character of the building and surrounding area, and the detrimental impact on the amenity of the occupiers of "the property". However, policy DM2 'Development and Amenity' of the Hackney Development Management Local Plan (DMLP) is concerned with the effect of development on neighbouring occupiers. Also, as the accompanying case report and the Council's Statement of Case discuss the impact on No 36 in terms of amenities/living conditions and a loss of light thereto due to the extension's depth, I am satisfied that "the property" should instead refer to the neighbouring property.
7. As regards the extension's character and appearance, given the extension at No 32, and its location to the property's rear, I consider that the main issue more involves the extension's depth and, as a result, the development's effect on the living conditions at No 36.

Reasons

8. The rear extension at No 32 looks similar in form, design and appearance although I was unable to view it closely as regards its physical relationship with No 30. Nonetheless, there is a marked difference in the case of the current appeal and No 34's relationship with No 36 in that the appeal property sits due west of No 36. This is a more critical relationship in terms of the effect on light entry than is the case between Nos 30 and 32. Also, I note that the appellant instructed a consultant to undertake a daylight/sunlight assessment to ascertain whether the development has an adverse effect upon both daylight and sunlight entry to No 36. However, this particular report was not received in accordance with the specified appeal timescale and was therefore not accepted as being in time for consideration. An e-mail trail is evidence of such and the appellant would have been aware that this document could not be taken into account for the purposes of the current appeal.
9. The Council asserts that the ground floor rear extension extends to a depth of approximately 7m from the rear wall of the original dwelling building, faring unfavourably against the advice within the Council's Supplementary Planning Document 'Residential Extensions and Alterations' (SPD) which indicates that single storey extensions on terraced properties would be permissible to no greater than a depth of 3m. Although, in this respect, I acknowledge the now

permitted extension at No 32 its relationship with No 30 involves a different orientation and, in the current case, I am mindful of the depth adversely affecting light entry to No 36's side facing, ground floor windows along its tunnel-back, and also the recessed, rear facing ground floor window in the dwelling's main part.

10. I conclude that the development is harmful to the living conditions at No 36 and is thereby in conflict with the requirements of policy DMLP policy DM2, policy 7.6 of the London Plan and also the Council's SPD. For the reasons given above, and having regard to all matters raised permission is refused for the deemed planning application made and the ground (a) appeal fails in this regard.

The Appeal on Ground (f)

11. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear that the Council's aim is to remedy the breach by restoring the property to its condition prior to the current breach.
12. Under ground (a) I have found that planning permission should not be granted for retention of the extension in situ. As I have mentioned, a revised plan was submitted which shows the extension's roof chamfered adjacent to the property's eastern boundary, and the removal of the side parapet. Whilst this modification might slightly ameliorate the impact on the living conditions at No 36, even if I had accepted the amended drawing for consideration, the factors which I have already described would mean that there would not be an obvious and articulated alternative whereby the notice could have been varied under ground (f) with the necessary degree of precision.
13. Likewise, the appellant's initial proposal that the external alterations be of matching materials is somewhat nebulous although, to this end, I accept the now lawful retention of a similarly rendered extension at No 32 due to a recent successful appeal. Accordingly, I note that the Council has subsequently withdrawn its objection to the use of white render.
14. Given the circumstances, the appeal on ground (f) fails.

The Appeal on Ground (g)

15. The appeal on ground (g) is that the stated time period for compliance falls short of what is reasonable in the circumstances. In advancing an appeal on this ground the appellant is indicating that the period of three months for compliance should be extended. However, no alternative period, nor why it would be considered necessary, has been put forward.
16. Notwithstanding my decision not to accept the revised plan, its submission, along with the commissioning of a daylight/sunlight assessment, would tend to indicate that the appellant is likely seeking to enter into negotiations as to exploring the possibilities of an alternative solution. In such circumstances the Council hold powers to extend the time period for complying with the requirements of an enforcement notice in effect, but this is at the authority's discretion.

17. In the absence of any specific details or information in support of this particular issue, the appeal on ground (g) cannot succeed.

Overall Conclusion

18. 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.

Timothy C King

INSPECTOR