



Appeal Decision

Site visit made on 18 February 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2020

Appeal Ref: APP/U5360/C/19/3233596 83 Lordship Road, London N16 0QY

- 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 Gluck against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 12 June 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a side extension to the property.
 - The requirements of the notice are:
 - (1) Remove the unauthorised side extension.
 - (2) Make good all damage to the Property resulting from the removal of the unauthorised works 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 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) 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.
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Decision

1. It is directed that the enforcement notice be:
 - varied by deleting the words "4 months" within schedule 5 (Time for Compliance) and their replacement with "6 months".
2. 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.

Preliminary Matter

3. The appeal on ground (f) was formally withdrawn by the appellant.

The appeal on Ground (c)

4. This ground of appeal is that the development enforced against did not constitute a breach of planning control. The burden of providing relevant facts in this appeal rests with the appellant, and the test of the evidence is the balance of probability.

5. The appeal property is an end of terrace three storey house. The single storey extension has been carried on the side elevation of the dwelling which is the subject of this appeal. The appellant has provided a number of reasons under ground (c), why they consider that the matters do not constitute a breach of planning control.
6. Firstly, it is stated that an earlier planning permission for the erection of two storey side extension and single storey rear extension at ground floor level¹ has been implemented. In an attempt to support this claim, a number of documents have been submitted with the appeal which include the approved drawings from this 2012 planning permission, an initial notice by London Building Control served on the London Borough of Hackney building control department, and a letter from K S Construction dated 31 March 2015, which requests further payment from the appellant and states that the foundations of the side extension will be completed on Friday 3 April 2015.
7. However, the documents show some intention to commence that development but provide no substantive evidence to show what works were actually carried out and if they were by what date. Conversely the Council has provided images which show that the pre-existing single storey side extension, built over the same footprint as the approved scheme, was still in existence in August 2015, June 2016 and March 2018. This evidence does not support the appellant's case that the approved scheme was implemented by April 2015. Furthermore, the current unauthorised works for a single storey timber built side extension, does not resemble the previously approved two storey brick built side extension.
8. Even if that previously approved development had been materially commenced, it is not clearly demonstrated by the submissions, what significance this has to the development as alleged on the notice. It appears from the submitted evidence, as matter of fact and degree, that a building being used as part of the dwelling, due to its current use, construction and permanence, is not clearly a temporary structure.
9. The appellant also states that the side extension is permitted development falling within Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) as a building constructed within the curtilage of a dwellinghouse that is required for a purpose incidental to the enjoyment of the dwellinghouse. As the side extension is attached to the house, it cannot be considered to be permitted development under Class E. There is no dispute that the extension is not permitted under the terms of Part 1, Class A which relates to the enlargement, improvement or other alteration of a dwellinghouse.
10. The appellant further states that the side extension is for temporary occupation during renovation of the principal house. As such it is suggested that there has been no breach of planning control as the operations alleged in the notice are permitted by GPDO, Part 4 of Class A, 'temporary buildings and structures' which allows for "*the provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land*". In particular, the appellant states that the extension is for temporary occupation during renovation of the main house.

¹ Council Ref: 2012/0477 approved on 10 April 2012.

11. I have already stated that there is little to indicate that the extension is temporary. Furthermore, it is unclear how the existing unauthorised single storey side extension can be used for temporary occupation during the renovation works of the house, since the previously approved two storey side extension, which the appellant suggests they are seeking to implement, would be built over the same footprint as the existing unauthorised side extension. Therefore, the unauthorised works would need to be demolished to allow the approved two storey side extension to be implemented. As such, the building does not comply with Part 4 of Class A of Schedule 2 of the GDPO.
12. Planning permission is required for the side extension. There is none in place and the extension is not permitted development. There has therefore been a breach of planning control and the appellant has not discharged the onus on him to demonstrate otherwise.
13. Accordingly, the appeal fails on ground (c).

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

Main Issue

14. The main issue is the effect of the development upon the character and appearance of the host building and the area.

Reasons

Character and appearance

15. The appeal site relates to an end of terrace dwelling, made from yellow bricks, in a predominantly residential location characterised by houses and apartment buildings. The host building is also situated adjacent to a children's and family centre.
16. The design and materials of the side extension comprising solid timber, painted black, is in stark contrast to the traditional brick material used in the construction of the host building, and those of neighbouring properties. The development contains no windows to either the front or side elevation. Owing to the extensions prominent position facing towards the street, and clearly visible from the neighbouring children's and family centre, it forms an obtrusive and incongruous feature in the streetscene which is at odds with the host building and the prevailing character of the area.
17. I note that the evidence indicates that there was a previous side extension prior to the current construction. However, it is clear that the current structure is taller than the pre-existing one and is therefore visually more intrusive than the pre-existing structure. Therefore, I do not consider that the pre-existing structure lends support for the current development.
18. I conclude that the development harms the character and appearance of the host building and the area, in conflict with Policy DM1 of the London Borough of Hackney Development Management Local Plan, 2015 (LP), Policy 24 of the London Borough of Hackney Core Strategy, 2010 (CS) and Policies 7.4, and 7.6 of the London Plan, 2016. Amongst other things these require that all developments: should seek to enrich and enhance Hackney's built environment and create a sense of place and local distinctiveness that is attractive; are of high quality design, and respect the visual integrity and established scale,

massing and rhythm of the building, frontages, group of buildings or street scene; and should incorporate the highest quality materials and design appropriate to its context.

Other matters

19. The appellant states that an alternative extension could be constructed as permitted development. However, such an extension would be smaller and would need to have any exterior work of a similar appearance to those used in the exterior of the existing dwellinghouse. The potential fall-back development would therefore have a substantially less significant impact and I give this alternative little weight
20. The appellant's reasons for wishing to retain the extension for a temporary period of 3 years to ensure a continuous supply of Kosher food for the Tomchei Cholin Trust² and to allow sufficient time to raise funds to construct the previously approved scheme. The development may therefore relate to relevant protected characteristics for the purposes of the Equality Act 2010. I am required to have due regard to the Public Sector Equality Duty as required by that legislation.
21. However, whilst I give moderate weight to these needs, they do not outweigh the harm that I have identified in relation to the main issues and the non-compliance with the LP, CS and the London Plan. Furthermore, I consider that that even a temporary permission for a three year period would be excessive and would not overcome the harm that I have identified.

Conclusion on Ground (a) and the Deemed Planning Application

22. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (g)

23. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from four to six months, given the extension is used for the preparation of food for the charity.
24. I have identified under ground (a) that the development results in harm to the character and appearance of the surrounding area. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, the six months requested by the appellant would strike a more reasonable and proportionate balance in these circumstances in order to ensure that the appellant can consider alternative options for the charitable work he carries out, and obtain quotations, appoint a contractor and carry out the works. I shall therefore extend the period from three to six months for compliance with the notice.
25. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

² Tomchei Cholin Trust are a charity that provide Kosher food for Hospitals, Care homes, the sick and the infirm.

Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR