



Appeal Decisions

Site visit made on 29 July 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2020

Appeal A Ref: APP/U5360/C/19/3243016

17 Ritson Road, Hackney, London E8 1DE

- 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 Jacob Kjeldgaard against an enforcement notice issued by the Council of the London Borough of Hackney.
- The enforcement notice was issued on 27 November 2019.
- The breach of planning control as alleged in the notice is: *Without planning permission, the erection of a single storey rear and side extension.*
- The requirements of the notice are:
 1. Remove the single storey rear and side extension.
 2. Upon completion of the above step 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 3 (three) months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought under ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act

Summary decision: The appeal is dismissed and the enforcement notice upheld with variations.

Appeal B Ref: APP/U5360/W/19/3241925

17 Ritson Road, Hackney, London E8 1DE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Jacob Kjeldgaard against the decision of the Council of the London Borough of Hackney.
- The application Ref 2019/2169, dated 12 June 2019, was refused by notice dated 1 November 2019.
- The application sought planning permission for a single storey side/rear extension; 2no. rear roof extensions; 2no. rooflights on existing two storey outrigger; basement excavation, without complying with condition 2 of planning application 2018/1849 dated 13 September 2018.
- The condition in dispute is No.2 which states that: *The Development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details.*
- The reason given for the condition is: *To ensure that the development hereby permitted is carried out in full accordance with the plans hereby approved.*

Summary decision: The appeal is dismissed.

Application for costs

1. An application for costs was made by Mr Jacob Kjeldgaard against the Council of the London Borough of Hackney for both Appeals A and B. These applications will be the subject of a separate Decision.

Preliminary Matters

2. In this decision I consider the grounds of appeal in logical, not alphabetical order. The logic is that if an appeal against an enforcement notice succeeds on ground (c), the notice is quashed and the other grounds become redundant; the same applies to ground (a), (f) and (g) in that sequence.
3. In Appeal A, the appellant has appealed the enforcement notice on ground (a) that planning permission ought to be granted for the matters alleged in the enforcement notice. Appeal B seeks a variation of condition to planning permission ref: 2018/1849, such that if granted it would bring about what has been built in accordance with revised plans. The appellant wants to replace the approved drawings: 012.P01, 012.P02, 012.P03, 012.P04 rev C, 012.P05 rev C, 012.SK01A, and Design and Access Statement, with revised drawings (in accordance with agreed adjoining owner Party Wall Award modifications and as built survey information): 012.P03 Rev A, 012.P04 Rev D, 012.P05 Rev D, 012.SK01B. As both appeals are for the same development and the planning considerations are the same I will deal with the planning merits of both appeals together.

Background

4. Planning permission 2018/1849¹ (the 'approved scheme') was granted for a single storey side/rear extension; 2no. rear roof extensions; 2no. rooflights on existing two storey outrigger; basement excavation. However, the single storey side/rear extension has not been built in full accordance with the approved plans.
5. A planning application 2019/2169² (the 'appealed application') was submitted retrospectively for the changes to the single storey extension, which involve setting back the side wall of the extension from the shared party wall with the adjoining property 15 Ritson Road (No.15) so that it sits inside the appellant's boundary, changes to the design of the upstand parapet wall, and changes in the height of the side elevation wall of the extension along the party wall with No.15, i.e. what is there now.
6. Both the enforcement and planning appeals relate only to changes to the single storey extension.

Appeal on ground (c)

7. Ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. It is a legal ground of appeal, distinct from any planning merits. The onus of proof lies with the appellant and the test of the evidence is on the balance of probability.

¹ Granted 13 September 2018

² Refused 1 November 2019

8. The key question is whether 'development' has taken place which requires planning permission and, if so, whether planning permission is granted or the development is otherwise deemed to be lawful.
9. The appellant states that the extension has been moved away slightly from the neighbour at No.15 and a slight redesign of the parapet at the top of the side wall, both at the request of the occupiers of No.15 and their surveyor. As a result, there is also an increase in the height of the outer leaf of the parapet by just under two bricks, or 150mm. The appellant regards these changes to be very modest in scale and impact as to be '*de minimis*' and do not to require planning permission. To consider this, there needs to be some discussion and comparison of the plans for the approved scheme and those submitted for the appealed application.
10. In its Delegated report for the approved scheme, the Council described the single storey extension as being 2.5 metres in height. However, when looking at the approved plans³ the 2500mm (or 2.5 metres) height is clearly annotated with a line and written dimensions indicating the distance between an internal 'existing ground floor' and the top of the extension along the boundary. This internal 'existing ground floor level' runs approximately level with the bottom of the patio door frame at No.15, and is not the external ground level of the patio. Image 9 of the appellant's Photo Verified Site Survey (PVSS) annotates the various levels and heights and shows that when exiting the patio doors at No.15 one would have to step down onto the patio itself. Therefore the height of the side wall of the extension along the boundary, and which the occupiers of No.15 would see from their external patio area, would be greater than 2.5 metres in height if built in accordance with the approved plans. Hence the height of the side wall of the extension was incorrectly described in the officer's Delegated report. However, I find the plans were not helpful as they could have been as they did not show the height of the wall that occupiers of No.15 would in fact see.
11. Notwithstanding this, the approved drawing 012.SK01A clearly shows that the top of the side wall of the extension along the boundary would be some distance *lower* than the top of the patio door frame at No.15. In my view, it is very likely that both the Council and the occupiers of No.15 used this plan to visually aide their understanding of the finished height of the extension in relation to their property and its likely impact on them. I note that the height differences between the patio doors at the appeal property and those at No.15 are evident in the Council's photographs included in its Delegated report for the approved scheme.
12. The appellant has sought to show the differences in height between the approved and appealed schemes by helpfully showing the outline of the approved extension superimposed on updated drawings 012.P05D and 012.SK01B (extracts of which are also included as figures 1, 2 and 4 in the appellant's planning appeal statement). The appellant states that the as-built extension in the appealed scheme is only about two bricks taller than the approved scheme. This would indeed appear to be the case when looking at Image 9 of the appellant's PVSS, which shows the annotated as-built extension viewed from the patio of No.15.

³ In particular drawings 012.P05 Rev C and 012.SK01A

13. But the superimposed profile of the approved extension shows the top of the side extension wall approximately *level* with the top of No.15's patio doors, even with the slight change to the profile of the parapet at the top of the wall. This alignment is at odds with the line of the top of approved extension shown on approved drawing 012.SK01A, which is clearly *lower* than the top of the patio door. Both cannot be right.
14. There is no dispute between the parties that the plans submitted for the appealed scheme represent the single storey extension as-built and which I saw on my site visit. The appellant also confirms that the plans submitted for the appealed application are the result of a full measured survey and hence are accurate. This would indicate to me that the approved plans were not entirely accurate and were mis-leading, particularly with regards to the height of the top of the extension in relation to the patio doors at No.15.
15. The occupiers of No.15 would have understood from the approved plans, and drawing 012.SK01A in particular, that the top of the extension wall along the boundary would be *lower* than the top of their patio door. Now the extension as-built, and shown on updated drawing 012.SK01B, is *higher* than the top of the patio door. This difference in height, when looking at the plans and Image 9 of the appellant's PVSS amounts to more than two bricks, or 150mm.
16. In my view this change alone to the increase in height of the wall along the boundary with No.15, so as to now extend beyond the top of their patio door, and the resulting impact on the amenity of occupiers of No.15, is not modest in scale and impact and hence is not *de minimis*. Furthermore, the changes are compounded by the set back of the extension from the boundary wall, whilst at the request of the neighbour, and the redesign to the top of the parapet. As a result, in excising my planning judgement, I find that the combined resultant changes are not *de minimis* and require planning permission.
17. The changes do not benefit from planning permission because they were not part of the approved planning application and were refused in the appealed application. Neither party has claimed that the changes are 'permitted development'.
18. For the reasons above and on the balance of probability I find the changes that have taken place require planning permission. Planning permission has not been granted and the development is not otherwise deemed to be lawful. Therefore, there has been a breach of planning control.
19. Accordingly, the appeal on ground (c) fails.

Appeal A on Ground (a) and the Deemed Application and Appeal B.

Main Issue

20. Notwithstanding the above discussion and any actual numerical increase in height of the side wall of the extension, the main issue is the effect of the increase in height of the side wall of the extension on the living conditions of existing occupiers of No.15, with particular regard to outlook and light.

Reasons

21. The appeal concerns a two storey mid-terraced Victorian property in a predominantly residential area. The terrace displays relative uniformity, but in

the wider area there are properties of varying styles and design. The appeal property, and those adjacent, have a two storey outrigger at the rear. The outrigger is set in from the side of the house to create a small patio area adjacent to the shared boundary garden wall No.15. These features are characteristic of the Graham Road and Mapledene Conservation Area within which the property sits.

22. With the approved scheme, the top of the extension would be lower than the top of the patio doors at No.15, giving the occupiers a more open visual outlook and perspective. With the appeal scheme, the height of the extension wall now extends up and beyond the top of the patio doors. This increase in height, coupled with the substantial length of the extension at over 7m along the boundary, represents a substantial solid blank elevation, which increases the sense of enclosure, especially as the outside patio area is relatively confined. Furthermore, from the two windows that directly face the extension wall, an increased expanse of brickwork is visible. Coupled with the close proximity of the wall this reduces outlook from these windows. Whilst the extension wall has been built approximately 125mm away from the shared boundary wall, this is not, in my view, sufficient mitigation.
23. I therefore find the increase in height of the wall has an unduly unneighbourly, dominant and overbearing effect that creates a significantly oppressive living environment for occupiers of No.15. This is endorsed by the photographs submitted by them in their written objection. As such, I find harm to the living conditions of occupiers of No.15 with regard to outlook.
24. With regards light, the rear of No.15 is north facing. The increase in height of the wall in such close proximity to, and taller than, the patio doors and side-facing windows will reduce light levels to these rooms, regardless of whether the rooms are dual aspect or served by other windows. This is endorsed by representations and photographs submitted by the occupiers of No.15 stating that they have observed a reduction in light to these rooms.
25. The appellant has provided a '45 degree rule survey' in drawing 012.SK01B to show that the patio doors and the windows directly facing the extension wall are not breached. The Council has not provided any substantive evidence to demonstrate that light levels to these rooms, whether it be daylight or sunlight, have been reduced to a significant and unacceptable degree. Whilst I have no doubt there will be some reduction in light, without substantive evidence to the contrary I am unable to conclude there would be unacceptable harm to the living conditions of the occupiers of No.15 with regards to light.
26. Drawing all the above points together, I find the alleged development and what has been built does not have a materially harmful effect upon living conditions of occupiers of No.15 with regards to light, but it does with regard to outlook.
27. I therefore conclude that the appeals should be dismissed. Accordingly the proposal is contrary to Policy 24 of the Hackney Core Strategy; Policies DM1 and DM2 of the Hackney Development Management Local Plan; and Policies 7.4 and 7.6 of The London Plan 2016. These collectively seek to ensure development is of a high quality design appropriate for its context. It would be contrary to the submitted extract of the Residential Extensions and Alterations Supplementary Planning Document.

28. I acknowledge the concerns of the occupiers of No.15 about the planning process and the Council's handling of the application, but in reaching my decision I have been concerned only with the planning merits of the case.

Conclusion on ground (a), the deemed planning application and planning appeal

29. For the reasons given above, and having regard to the matters raised, I find the alleged development is contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly Appeal A fails on ground (a) and planning permission is refused for the deemed application. Appeal B and the request to vary condition 2 to allow what has been built is dismissed for the same reasons.

Appeal on ground (f)

30. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control, or to remedy any injury to amenity, which has been caused by any such breach.
31. The notice requires the removal of the single storey rear and side extension. Therefore the purpose of the notice is to remedy the alleged breach. For an appeal on ground (f) to succeed the appellant must show that the requirements of the notice are excessive to remedy the breach and that 'lesser steps' would achieve the same end.
32. The appellant considers that complete demolition is excessive when there is an extant planning permission for a similar but lower extension under planning application reference 2018/1849.
33. This is an obvious alternative. As it would be smaller than what has been built, it would still relate to the 'whole or part' of the alleged breach in the notice. This alternative would likely be less costly and cause less disruption than total demolition as the appellant would only need to remodel the extension to carry out the already granted scheme. Therefore there are lesser steps that can be taken. The Council concedes that the already approved scheme could be carried out as a lesser step.
34. Therefore, under s176(b) of the Act, I will vary the notice to require *either* the complete removal of the single storey side and rear extension, or to adjust the single storey side and rear extension in accordance with the extant planning permission reference 2018/1849.
35. The appeal on ground (f) therefore succeeds in part to that extent.

The appeal on ground (g)

36. Ground (g) is that the period specified for compliance with the notice falls short of what is reasonable. In all cases the test remains whether the compliance period is reasonable, which needs consideration of what must be done in practice to carry out the remedial steps and how much time is reasonable to allow for that purpose.
37. The notice gives 3 months for the single storey extension to be removed. The appellant requests 12 months taking into account the need to secure a new party wall award, arrange builders, and take down an extension that has been fully integrated into the rest of the property. However the appellant has not

submitted any substantive evidence, for example a schedule of works or a timetable of the various demolition stages, to demonstrate that 12 months will be needed. I find 12 months excessive.

38. In light of the variation I have agreed for the appeal on ground (f), the extension need only be amended in accordance with the extant planning permission reference 2018/1849, and need not be demolished. This would involve less work. The appellant has not suggested a different compliance period in the event his appeal on ground (f) succeeds.
39. As I find 12 months excessive for the total removal of the extension, 12 months would also be excessive to carry out the 'lesser step' and amend the extension in accordance with the extant planning permission. In the absence of any other substantive evidence to the contrary and for the reasons above, I find the 3 month compliance period is a reasonable time with which to comply with the notice, when balancing the need to address the harm caused by the alleged breach. The appeal on ground (g) therefore fails.

Conclusion

40. 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 deemed application under Appeal A and dismiss planning Appeal B.

Formal Decision

Appeal A: APP/U5360/C/19/3243016

41. It is directed that the enforcement notice be varied by:-

- At the beginning of Step 1 *insert* the word "Either".
- At the end of Step 1 *insert* the word "or remodel the single storey side and rear extension in accordance with the terms and conditions of the extant planning permission reference 2018/1849."
- In Step 2 after "Upon completion of" *insert* "either of" and make "step" plural to read "steps".

Subject to these variations 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.

Appeal B: APP/U5360/W/19/3241925

42. For the reasons set out above, having regard to the matters raised, I conclude that the appeal should be dismissed.

K. Stephens
INSPECTOR