



Appeal Decision

Site visit made on 26 July 2020

by K Stephens BSc (Hons), MTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2020

Appeal Ref: APP/U5360/C/18/3217466

40 Braydon Road, London N16 6QB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr H Stroh against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 26 October 2018.
 - The breach of planning control as alleged in the notice is: *Without planning permission the erection of a rear extension at first floor level and the erection of a rear roof extension.*
 - The requirements of the notice are:
 - 1) Remove the rear extension at first floor level.
 - 2) Remove the rear dormer extension.
 - 3) Make good all damage to the property resulting from compliance with the other requirements of the notice.
 - 4) Remove all waste, materials, equipment and debris from the property resulting from compliance with the requirements of this notice.
 - The period for compliance with the requirements is four (4) 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. 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. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

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

Main Issues

2. I consider the main issues are:-
 - the effect of the alleged development on the character and appearance of the host dwelling and surrounding area, and
 - whether any harm arising in relation to the first main issue is justified by the appellant's circumstances.

Reasons

Character and Appearance

3. The appeal concerns a two-storey terraced dwellinghouse with period styling and a pitched roof. There is an original two-storey outrigger at the rear, which

- is lower than the main part of the roof, and which adjoins the outrigger at 38 Braydon Road.
4. The appeal house lies second from the end of the terrace with the adjoining house at 42 Braydon Road, which stands on the corner of Kyverdale Road. The rear elevations of a number of nearby dwellings on Braydon Road are clearly visible from a gap in Kyverdale Road looking above the fence to the back yard at No.42. It is apparent from there that these dwellings have all been substantially extended at the rear.
 5. At No.42 there is a two-storey, flat roofed extension built onto the outrigger and a single storey flat roof extension beyond this. Both extensions extend the full width of the property. There is also a full-width flat roofed box dormer on the main rear roof slope, which extends part way down the roof slope, and whose elevations are clad in red brown vertical hanging tiles. At 38 Braydon Road, which is in use as a synagogue, there are also various first floor extensions including a wooden structure. There was also what appeared to be rear roof dormer with red cladding.
 6. The Council does not suggest that any of the extensions described are unlawful, or that further extensions to the appeal house should be rejected in principle. By contrast, the Council granted planning permission in 2011¹ for a rear loft extension and first floor extension at the appeal house. While that permission has lapsed, I will consider the impact of the alleged extensions on the character of the area in the context of these nearby dwellings being much altered and enlarged.
 7. The alleged first floor flat roofed extension is built on top of the existing single storey extension and projects out to the same depth. It is built of brick similar to both the dwelling and nearby extensions. Whilst it does not span the whole width of the house, unlike the first floor extension at No.42, it is considerably longer than the adjacent rear extensions. Its prominence is exacerbated by the white roof lights projecting up beyond the flat roof plain.
 8. By reason of its depth, height and design, I find that the first floor extension detracts from the character and appearance of the appeal house or host dwelling and appears obtrusive from Kyverdale Road. That it is located some 13m from the flank wall at 172 Kyverdale Road and seen alongside other extensions is not enough to overcome the harm.
 9. The alleged roof extension takes the form of an L-shaped dormer. One part serves to extend part of the rear-facing slope of the main roof of the house. The other part extends forward of the roof slope and across the width of the appeal house and across the roof of the outrigger. It is considerably bigger than the dormer at No.42, and higher than the outrigger or any extension to Nos.38-42.
 10. It also has grey cladding, which is out of keeping with the original red brick of the terrace, and nearby extensions and roof slopes, and is in stark contrast to the immediately adjacent red/brown cladding on the adjacent roof extensions. The grey cladding and forward projection of the dormer combine to give it an unsightly portacabin-like appearance. Even when viewed alongside the dormer at 42 Braydon Road, I find the alleged roof extension, by reason of its size,

¹ Planning permission ref: 2011/0436 was granted on 10 May 2011

design and materials, is an unacceptably insensitive, incongruous and conspicuous form of development that harms the character and appearance of the host dwelling and the surrounding area.

11. The appellant has drawn my attention to other nearby extensions, which I saw on my site visit. 49 Braydon Road has a large box-shaped roof extension which covers the main rear and outrigger roofs and is attached to a flat roofed two-storey extension. These extensions are large, prominent and not in keeping with the original style of No.49, but they at least appear as a unified whole and are clad in a single material, albeit non-original buff coloured brick. The synagogue at 22 Braydon Road has a dormer on the rear roof slope that is visible from Firsby Road. But it is attached only to the main roof of No.22 and does not have the bulk, massing or obtrusive appearance of the appeal roof extension. Whilst it is clad in grey material, like the appeal extension, it is located at the opposite end of the terrace and hence is not read in the same context or roofscape as the appeal roof extension.
12. Moreover, I do not know the circumstances in which any nearby extensions or dormers were built, and so they cannot set a precedent for the development before me. Looking at the appeal extensions on their merits and in their context, I find that they both cause unacceptable harm to the character and appearance of the host dwelling and surrounding area.
13. It is now necessary to consider whether there is some alternative scheme which would either justify permitting the alleged extensions or which could itself be permitted through this ground (a) appeal.
14. The previously approved extensions do not represent a fallback position for the appellant because, irrespective of whether planning policies have changed or not, the 2011 permission has lapsed and cannot be implemented lawfully.
15. The appellant has alluded, albeit in relation to the ground (f) appeal, to the fact that planning permission is granted under Article 3 and Classes A and B of Part 1 to Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (GPDO) for extensions to the rear and roof of the dwelling. However, there is no dispute that the alleged extensions are not 'permitted development' (PD) because of their size. The existence of PD rights could not justify a grant of permission for the extensions as they are.
16. I have the power to grant planning permission for 'part of the matters' alleged and that term could be applied to a smaller dormer and/or first floor extension. However, I could not tie any permission granted through this appeal to the previously approved plans because the deemed planning application before me relates to what is alleged and has been built.
17. Where it would be possible to modify development so as to remedy harm that it causes, permission may be granted for what is alleged subject to a condition that a scheme of works is submitted to the Council, approved and implemented. In this case, it would not be possible to word such a condition with the necessary precision because no scheme has been described to me that would make the alleged first floor or roof extensions acceptable.
18. Therefore there is no alternative scheme which would either justify permitting the alleged extensions or which could itself be permitted through this ground (a) appeal.

19. I conclude that the appeal extensions cause unacceptable harm to the character and appearance of the host dwelling and surrounding area. They conflict with Policy 24 of the Hackney Local Development Framework 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), and with guidance in the Hackney Residential Extensions and Alterations Supplementary Planning Document 2009. These collectively seek to ensure that development respects the form and design of the property and the area.

The Appellant's Circumstances and Other Matters

20. The appellant lives at the appeal dwelling with his eleven children, who range in ages from 2 to 21 years, so there is a need to accommodate his large family. In addition, the appellant is the Grand Rabbi of the Tchabe Synagogue and he must carry out some of his rabbinical duties in his home², which include meeting members of his congregation in a confidential setting. When these meetings occur his children cannot use the ground floor rooms of the house. I also note the appellant needs to live, in accordance with his faith, within walking distance of the Tchabe Synagogue, which is some 100m from the site and which I walked to on my visit. This would indicate to me that he may not be able to readily move to a larger house.
21. The appellant is a trustee for the College for Higher Rabbinical Studies, a charity that is the freeholder of the appeal property and also the holding charity for the Tchabe Synagogue. The appellant states that the finances of the College have been severely depleted from the Covid-19. I deduce that they would find it difficult to fund the works required to comply with the enforcement notice.
22. A point not made in the appellant's statement, but which I observed on my visit, is that the white roof on the first floor extension appears to be a sukkah roof, designed to be opened up during the Jewish festival of Sukkot. If that is correct, then plainly the extension has a religious as well as a housing purpose.
23. Taking all of this evidence into account, I accept that the appellant has a clear and multi-layered need for extensions to the appeal house. I attach significant weight to his and his family's circumstances. I also note that the appellant's neighbours at 172 Kyverdale Road support the appeal and are concerned at the prospect of disturbance, if and when the extensions must be removed. I understand and am sympathetic to that anxiety.
24. However, the Planning Practice Guidance (PPG) reiterates the well-established principle that planning permission runs with the land³. Where development would not normally be permitted, it *may* be justified on the basis of who would benefit from the permission, but only in exceptional circumstances.
25. In my view the appellant's evidence does not show that his and his family's circumstances are exceptional, or that the house could only be extended in the way that it has been. That omission is significant, because the Council has granted permission for smaller extensions to the appeal house in the past and other designs of extensions to other dwellings in the area.

² I accept this evidence for the purpose of this appeal while assuming also, given the appellant's evidence on the GPDO, that the property is in use as a single dwellinghouse only.

³ PPG paragraph ref ID: 21a-015-20140306

26. The alleged extensions cause unacceptable harm to the character and appearance of the host dwelling and surrounding area. They are permanent structures, which can be expected to remain in place long after the appellant and his children's circumstances have changed. I therefore find that the needs of the appellant and concerns of his neighbour do not outweigh the harm caused by the extensions or justify a grant of permission.

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

27. I have had regard to all other matters raised, including the lack of objections from any local residents to the alleged development. I have found that the rear extension at first floor level and rear roof extension cause unacceptable harm to the character and appearance of the host dwelling and surrounding area, in conflict with the development plan, and the harm is not outweighed or justified by the appellant's and/or other people's circumstances.
28. I am bound by the Public Sector Equality Duty (PSED) contained in s149 of the Equality Act 2010, which sets out the need to have due regard to the three aims to eliminate unlawful discrimination, harassment and victimisation; to advance equality of opportunity and to foster good relations between people who share a protected characteristic and people who do not share it.
29. The appellant and his family are Jewish and therefore persons who share a protected characteristic for the purposes of the PSED. The appeal extensions were built to meet the accommodation and religious needs of the appellant's family, as well as the appellant's rabbinical work. Thus, the PSED is engaged in this appeal. But the duty does not mean that the appeal must succeed.
30. The Council acknowledge in its statement of case that planning permission has been granted for extensions to the appeal house and nearby properties in Braydon Road in the past. There is evidence that the appellant needs to enlarge his house, but not that there is no alternative to retention of the alleged extensions.
31. For this reason, it follows that his and his family's circumstances cannot be the decisive consideration in this case. I find that dismissing this appeal would not amount to unlawful discrimination, and a refusal of permission for this unacceptable development would be essential to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.
32. Similarly, I have considered the rights of the appellant and his family under Article 8 of the Human Rights Act 1998 (HRA98), which affords the right to respect for private and family life, home and correspondence. This is a qualified right and interference may be justified in the public interest, but the concept of proportionality is crucial.
33. A refusal of permission would interfere with the appellant's rights under Article 8. But the interference would be in accordance with the law and in pursuance of a well-established and legitimate aim, namely the protection of the character and appearance of the area. I find the interference would be proportionate and necessary, and it would not amount to a violation of the appellant's rights. The PSED and HRA98 add weight to my conclusion that the appeal on ground (a) should fail and the deemed planning application should be refused.

The Appeal on Ground (f)

34. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control or injury to amenity. The notice requires that both alleged extensions are removed, and so the purpose of the notice is to remedy the alleged breach. For that reason, and since I have already considered the planning merits of the extensions on ground (a), there is no scope for me to consider amenity issues afresh, including whether some alternative form of development would remedy the injury to amenity in this ground (f) appeal⁴.
35. Accordingly, this appeal on ground (f) could only succeed if the appellant can show that the requirements of the notice are excessive to remedy the breach and 'lesser steps' would achieve the same end.
36. The appellant states that the breach could be remedied by requiring that the bulk of the alleged extensions is reduced to match the approved plans. That would be possible if the 2011 permission was still extant. However, as noted above, the permission has lapsed and so it can no longer be implemented lawfully.
37. The appellant has also referred, as noted above, to the fact that the house could be extended under PD rights. However, the notice could not be varied to require that the extensions are modified in line with the limitations to PD, because the GPDO does not grant permission retrospectively and so the breach of planning control would not be remedied.
38. Moreover, the GPDO permits extensions of different sizes, up to maximum limits, and with different designs. I could not vary the notice so as to simply require that the extensions are modified within PD parameters, because that would be too vague. Every enforcement notice should tell the appellant clearly what he must do in order to comply.
39. I find, therefore, that the appellant has not proposed any lesser steps that would remedy the breach of planning control. To that end, it is essential and not excessive to require that the unauthorised extensions are removed and the property is made good. The appeal on ground (f) therefore fails.

The Period for Compliance with the Notice

40. The appellant has not made an appeal on ground (g), which is that the period for compliance with the notice falls short of what is necessary. However, in light of the appellant's circumstances cited above, both parties were asked to comment on the period for compliance. Both parties have confirmed that they regard 4 months to be sufficient time. I am therefore satisfied that the compliance period strikes a proportionate and reasonable balance between the public and private interests in this case. Section 173A(1)(b) of the Act provides that local planning authorities may extend any period specified in accordance with s173(9). That would be entirely a matter for the Council, subject to normal procedures for reviewing the decisions of an administrative body.

⁴ *Ioannou v SSCLG* [2014] EWCA Civ 1432

Overall Conclusion

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

K Stephens
INSPECTOR