
Appeal Decision

Site visit made on 1 September 2020

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2020

Appeal Ref: APP/C5690/C/19/3234004

Land at 174 Verdant Lane, London SE6 1LJ

- 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 B Roth against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 21 June 2019.
 - The breach of planning control as alleged in the notice is Without planning permission, the installation of a basement extension and the construction of a ground floor rear extension.
 - The requirements of the notice are:
 - 1) Remove the ground floor rear extension
 - 2) Remove the basement and backfill the excavated land
 - 3) Remove all materials, debris, waste and equipment resulting from compliance with Requirement 1 from the Property and its premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (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.
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DECISION

1. It is directed that the enforcement notice be corrected in paragraph 2 by the deletion of the word 'black' and the substitution of the word 'red'. Subject to this correction the appeal is dismissed, 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.

REASONS

The site

2. 174 Verdant Lane is at the northern end of a short residential terrace and there is access down the side to the rear garden. The building is set back from and is at a higher level than the highway and steps provide access up to the front door. It was originally built as a two storey dwelling with a pitched roof, front bay windows and detailing to the surrounds of the front door, windows and eaves line.
3. The plan attached to the enforcement notice identifies the Land by edging and hatching the property in red. However, the text of the notice states the Land is shown edged black and hatched. This minor typographical error is able to be

corrected without injustice to either the appellant or the Council because the Land to which the notice relates is clear.

Appeal on ground (d)

4. The issue is whether the operations to form (i) the basement extension and (ii) the ground floor rear extension were substantially completed four years or more before the issue date of the enforcement notice. The onus is on the appellant to prove his case and the standard of proof is the balance of probability.
5. The appellant stated that the extensions have been in place for four years. No additional evidence was provided to support the statement.
6. The Council's statement included information gathered from site visits to the property. The Council's observations of the major refurbishment works have not been challenged by the appellant. They are taken from notes made at the time and are reasonably detailed descriptions of the type of operations being carried out and seen on the visits.
7. On the basis of this chronology of events, excavation works to form a basement had commenced by March 2015 and were ongoing in November 2015. The Council's photographs of the basement taken in August 2016 show a kitchen area was taking shape but that further work was required to complete the newly formed space. The rear extension was commenced some time after April 2015 and the indication from the Council's evidence is that work was continuing on the extension in May 2016.
8. There is no reason to question the reliability of the site visit reports in the Council's evidence. By contrast the appellant's case is not substantiated at all. The key date for the purpose of the ground (d) appeal is 21 June 2015. On the balance of probability the basement and the ground floor rear extension were not substantially complete by this date. The developments are not immune from enforcement action by reason of the passage of time. The appeal on ground (d) fails.

Appeal on ground (a)/deemed planning application

Planning policy

9. The development plan includes Lewisham's Core Strategy adopted in 2011 and the Development Management Local Plan adopted in 2014. Material considerations are the National Planning Policy Framework (the Framework), National Planning Practice Guidance and the Council's Supplementary Planning Document – Alterations and Extensions April 2019 (the SPD).
10. A policy objective of the development plan is to secure the highest quality design, which is consistent with the Framework. The recently adopted SPD provides detailed guidance within the context of the residential character of the Borough.

Basement extension

11. The main issue is the effect of the basement extension on the living conditions of residents of the property, having particular regard to outlook, daylight and sunlight.

12. The SPD recognises that basement extensions can successfully create new accommodation but to be acceptable they must provide a good standard of accommodation. One of the general principles is that habitable rooms must be of a good standard in terms of outlook, daylight, sunlight and ventilation.
13. As stated in the SPD, a basement generally will be reliant on a lightwell for achieving outlook, daylight, sunlight and ventilation. I observed on the site visit that the sloping area between the front boundary wall to the property and the front wall of the building is filled in with soil. A small rectangular grille was the only visible indication that there may be a basement. At the back, the single storey addition extends from the rear wall of the principal building and across its full width. No significant lightwell was visible to the front, back or side to enable any meaningful penetration of natural light or sunlight into the basement and to provide a glimpse outside.
14. The Council's photographs of the basement (2016) indicate that the space would be used for habitable accommodation and a single opening in one of the walls is visible. In 2019 the Council reported access was thought to be by means of a door under the main stairwell. The appellant has not sought to contest the Council's evidence with detailed information or plans and has not explained why he considers the extension to be acceptable.
15. In his ground (f) appeal the appellant has suggested reducing the scale of the basement. However, this proposal, in the absence of a lightwell or other appropriate measure, would not overcome the harm identified to the living conditions of residents of the property. Even if details of additional works to improve outlook, daylight and sunlight had been submitted the probability is that they would involve new development and not fall within the scope of the deemed application.
16. I conclude that the living accommodation in the basement extension is unacceptable by reason of the lack of daylight, sunlight and outlook. In this respect the extension does not comply with DM Policy 32 (criteria 1 and 4) and a general design principle and a detailed design principle in the SPD. Likewise, the extension fails to offer a high standard of amenity for existing and future users and in this way is contrary to paragraphs 124 and 127 of the Framework.

Rear extension

17. Number 174 was originally a two storey building. According to the Council's records a rear dormer extension was being constructed in March/April 2015 and appears now to be completed, forming a large full width addition at upper level. The ground floor addition extends across the full width of the property. It is of a basic design with a flat roof, a pebble dash finish and no obvious attention to detail in terms of doors or windows. No specific dimensions have been provided by either party but the Council's estimation of 6 metres (m) plus probably is in the right order.
18. The SPD explains the importance of careful design for a rear extension in order to avoid a dominant and insensitive rear addition which can diminish the appearance of the host building. For terrace or semi-detached dwellings rear extensions should generally not be more than 3 m deep and no more

than 3 m high on the boundary. Certainly in terms of depth the addition is well in excess of the guidance. The expanse of flat roof is out of character with the original pitch roof form. As a result of its overall size the extension is an over-dominant addition out of proportion with the host building. The harm is emphasised because it is seen in combination with the large roof extension.

19. I conclude that the rear extension is not of a high design quality that respects the architectural characteristics and detailing of the original building. The development is contrary to Core Strategy Policy 15 (criterion 1a), DM Policy 30 (general principle 1) and DM Policy 31 (criterion 1) and guidance in the SPD on rear extensions.
20. The appellant noted that the Council approved the construction of a single storey rear extension of the original dwelling by 6 m to a maximum height of 3.047 m (DC/14/087340). The extension was said to be a material consideration in the design process, although no further explanation is provided in support of the appellant's case. The Council's summary of the relevant site history provides a little more information in that a decision 'approval was not required' was issued in May 2014.
21. This decision by the Council pre-dated the current Town and Country Planning (General Permitted Development) (England) Order 2015. In brief, under the previous 1995 GPDO (as amended) an enlargement of a dwellinghouse was permitted development if the enlarged part of the dwelling did not extend beyond the rear wall of the original dwellinghouse by more than 8 m in the case of a detached house or 6 m in the case of any other dwellinghouse. This provision was until 30 May 2016 and was subject to a prior approval process under specified circumstances. It appears that the Council decided no prior approval was needed. The GPDO required the development to be completed by 30 May 2016 and the local planning authority was to be notified of the completion. No evidence has been provided by the appellant to show that this condition was met and the Council's site visit records do not confirm a date of completion of the extension. The probability is that this fallback no longer exists and the appellant makes no claim under a ground (c) appeal that the ground floor extension was authorised by the May 2014 decision.
22. Nevertheless, the 2015 GPDO grants planning permission under article 3 Schedule 2 Part 1 Class A for the enlargement, improvement or other alteration of a dwellinghouse. With reference to A.1 a single storey rear extension not exceeding 3 m in depth is permitted or an extension not exceeding 6 m depth subject to a prior approval process¹. The permitted development rights under Part 1 of Schedule 2 apply only to development within the curtilage of a dwellinghouse. The Council's investigations indicate that the property was being used as two flats in 2015 and subsequently for multiple occupation, not as a dwellinghouse. For the purposes of Part 1, a dwellinghouse does not include a building containing one or more flats.
23. All matters considered permitted development rights have little weight in the circumstances of this case.
24. In conclusion, the ground floor rear extension fails to comply with the development plan. Permitted development rights for householders are not of

¹ Larger extensions may be permitted for detached dwellinghouses.

sufficient weight to overcome the direction provided by the development plan. The extension is unacceptable.

Overall conclusion on ground (a)

25. The fundamental objections I have identified to the form of the developments are not able to be satisfactorily addressed by planning conditions. The appeal on ground (a) fails.

Appeal on ground (f)

26. The issue is whether the requirements are excessive, having regard to the purpose of the enforcement notice.
27. The reasons for issuing the notice are based on policy objections, which indicate that the Council is seeking to remedy the breaches of planning control. The requirements to remove the extensions do no more than achieve that purpose and are not excessive.
28. The lesser step suggested by the appellant is to reduce the scale of the basement to remedy the harm to the immediate location and surroundings. No lesser step was put forward for the rear extension. However, as explained above, the identified harm associated with the basement is to the living conditions, not to the character and appearance of the street.
29. The appeal on ground (f) fails.

Appeal on ground (g)

30. The issue is whether the compliance period of six months is reasonable and proportionate.
31. The appellant asked that nine months be allowed to empty the property and allow the tenants to find alternative accommodation.
32. It would appear from my site visit that the property is occupied in some form. The officer report² shows that the Council took into consideration the effect on tenants but balanced this against the need to ensure adequate standards of accommodation are provided for residents in the Borough. It was understood at the time that occupants were housed on a temporary, short term basis with little security of tenure.
33. The removal of the extensions and more particularly the basement would require the property to be empty. Once vacant, time would be required to carry out the works to remove the unauthorised extensions. The appellant has not submitted information on the number of occupiers or the type and length of tenancies, nor has he sought to correct the information from the Council. On that information the position of the occupants probably would be no worse with a six month compliance period than with the existing situation. No reason was suggested why arrangements to carry out the remedial works could not be progressed whilst vacant possession is secured. I agree with the Council that the unacceptable living conditions should not be allowed to continue for longer than is reasonably necessary.

² A report dated 20 June 2019 seeking authorisation for enforcement action

34. Taking all matters into account a compliance period of six months strikes an appropriate balance and is reasonable. Any interference with the human rights of the occupants would be necessary and proportionate in the public interest. The appeal on ground (g) does not succeed.

Conclusion

35. For the reasons given above the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Diane Lewis

Inspector