



Appeal Decision

Site visit made on 25 August 2020

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal Ref: APP/G5750/C/19/3241121

Land at 54 Donald Road, Upton Park, London E13 0QE

- 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 Belal Miah against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice was issued on 16 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a rear extension.
 - The requirements of the notice are:
 1. Demolish the rear extension (as shown in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1),
 2. Remove all resultant materials and debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied at section '5' by:
 - By the insertion of the word "Either:" before requirement (1);
 - By the insertion of the word "Or" after requirement (2);and
 - By the insertion of a new requirement (3) worded as follows: "To alter the development to make it comply with the terms including conditions and limitations of planning permission Ref 18/00631/HH dated 22 May 2018 as well as the plans approved therewith and then remove all resultant materials and debris from the site ."
2. Subject to the variations 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.

The Appeal on ground (b)

3. To succeed on this ground, the onus is upon the appellant to demonstrate that the alleged breach has not occurred, as a matter of fact.

4. The appellant does not deny that a rear extension exists, only that the differences between what has been built compared to what was previously approved, are not material. Those matters relate to whether the building requires planning permission and will be considered under ground (c).
5. The development as described on the notice exists and the appeal on ground (b) must therefore fail.

The Appeal on ground (c)

6. The appeal on this ground is that what is alleged does not constitute a breach of planning control.
7. The appellant acknowledges that the extension is not precisely the same as the extension that has previously received planning permission (18/00631/HH). Their argument under this ground is that what has been constructed is not materially different.
8. The appellant refers to the differences including the parapet wall alongside the boundary with the neighbouring property at No 52 and that the extension is "slightly higher" than as approved. The Council refers to height of the wall on the boundary being 3.5m to the top of the parapet wall and on the rear facing elevation being 3m to top of the roof at that point. The appellant has not disputed these measurements or the reference by the Council to the approved design measuring 2.6m to the eaves of the roof.
9. The parapet wall is significantly higher than the side wall of the extension shown on the approved planning permission drawings. It adds height and bulk to the form of the building which I could see when looking from the rear of the extension. It is unclear from the evidence supplied whether the external top-surface of the roof is also higher than what was approved. From what I could see by eye, there appears to be a proportionately greater distance between the top of the windows and doors to the top of the roof surface. Less significant but nevertheless other differences include a thicker roof verge at the rear and different windows and doors in the rear elevation. In my opinion the development overall materially differs from the form and appearance of the building as was approved. The development does not adhere to the plans that were given planning permission by the Council through application ref 18/00631/HH.
10. There is no suggestion by the appellant that what has been constructed would constitute permitted development under the provisions of Article 3, Schedule 2, of the General Permitted Development Order¹. Given the depth and height of the structure as constructed, it exceeds the limitations of Class A.1. (f) and (i) as described by the Council and is not therefore permitted development.
11. The development as alleged does constitute a breach of planning control and the ground (e) appeal therefore fails.

The Appeal on ground (a) and the deemed planning application

Main issue

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

12. The main issue is the effect of the development on living conditions at the adjoining property, No 52, with particular reference to the effect on light and outlook.

Reasons

13. The appeal site is a traditional terraced dwelling within a tight knit urban area. This and the adjoining dwellings have modestly sized, narrow rear gardens many of which incorporate garden buildings and rear extensions. Many of the dwellings retain rear outrigger projections which do not extend across the full width of the rear elevations. Due to these rear projections, there are narrow external alleyways at the backs of those dwellings such as that at the rear of the neighbouring property at No 52.
14. The external alleyway at the rear of No 52 is alongside the rear extension at the appeal site and so is tightly enclosed by it. The wall of the development, according to the Council's measurements, is 3.5m at its highest point, reducing to 3m at the rear-most point. I could not view the development from inside the adjoining dwelling or the garden of No 52 but I could get a reasonable view across the boundary wall and I have been provided with photographs taken from No 52. The narrow external space along the boundary is tightly enclosed by and also dominated by the high structure which looms over the area.
15. Furthermore, there are windows within the ground floor rear and side elevations of the dwelling at No 52. From evidence submitted it appears that the extension is in a position and is of such a height, that it interferes with the daylight reaching that external area. It must therefore affect the daylight received into those windows as well as dominating the outlook from them.
16. In relation to the main issue, the development has a harmful effect on living conditions reducing the quality of the environment for those at the adjoining property, No 52 with particular reference to the effect on light, outlook and therefore amenity. As such the development does not comply with Newham Local Plan 2018 Policy SP8 and London Plan Policies 7.1 and 7.6. The aims of the Supplementary Planning Document² would also not be met.

Other matters

17. The fact that planning permission has been given for an extension of similar depth to what has been constructed is a material consideration in this ground of appeal. The planning permission remains capable of being implemented and it is a fallback position. The window and door changes in the rear elevation make no difference to the impact of the building. However, on the basis of the evidence submitted and what I saw, I consider that the increase in the height of the wall directly on the boundary will cause even less light to reach the adjoining property compared with the previously approved extension. There is also a greater impact upon outlook from the ground floor windows within No 52 as well as making the rear external corridor feel more hemmed in. These impacts are also greater than would have been the case prior to the development taking place.
18. I am told that there is an approved extension relating to No 52 that would fill the gap along the side boundary utilising the side wall of the unauthorised extension. However, I am not provided with any mechanism that could ensure

² Altering and Extending your Home, Supplementary Planning Document, adopted February 2018

the implementation of the development and it is the neighbouring occupier's choice whether or not to build it. I have insufficient evidence to indicate that there is any reasonable prospect of it being built and thereby overcoming the harm caused by the unauthorised development.

19. According to the appellant, the parapet wall improves the fire safety between Nos 54 and 52. However, I have limited evidence about how significant that improvement has been or how crucial it is for their safety.

Conclusion on ground (a)

20. These other matters do not outweigh the harm that I have identified in relation to the main issue. The appeal on ground (a) and the application for deemed planning permission fail.

The Appeal on ground (f)

21. The appeal on this ground is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary.
22. Compliance with the notice would not prevent the appellant from subsequently carrying out an extant planning permission that the Council does not dispute can still be implemented. There is a degree of similarity between the extension as constructed and granted planning permission with reference 18/00631/HH and the fact that the permission was issued within the last 3 years, indicates that it is a relevant extant planning permission.
23. Section 173(4) of the Act sets out the purposes of enforcement notices. The Council has required demolition of the entire extension which would therefore have the purpose of remedying the breach of planning control. That is provided for within section 173(4)(a). The Council is following the third part of that section by requiring that the breach is remedied "by restoring the land to its condition before the breach took place". However, that section also sets out that the purpose of remedying the breach can be achieved "by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land".
24. As well as requiring the removal of the extension another alternative could therefore be to require compliance with the terms of an extant planning permission. It has been held that where there is a valid fall-back position such as in this case, the complete removal of an unauthorised structure may not ultimately achieve anything. After all, the enforcement regime is not meant to be punitive.
25. I can therefore vary the notice as long as it would not cause injustice to either party. Incorporating an alternative requirement of complying with the terms and conditions of the planning permission would merely allow the appellant to remove parts of the development that are inconsistent with it and continue in compliance from that point. This may prevent unnecessary demolition and expense. This would not cause injustice to the appellant or the Council as that alternative form of development could already be undertaken.
26. The appellant also suggests that the development could be altered by the removal of the parapet wall adjoining No 52. It is not clear from the submitted evidence that the difference in height between what was approved and what has been built is only related to the addition of the parapet wall. Removing the

addition of the parapet wall may not therefore be an obvious alternative step that would achieve the purpose of the notice and neither would it clearly overcome the harm to amenity for the adjoining residents.

27. I therefore find that the appeal on ground (f) should succeed only to the extent that I shall vary the notice by adding a new requirement, in the alternative. This will allow for the extension to be altered so that it conforms to the plans and terms including conditions and limitations of planning permission 18/00631/HH.

Conclusion

28. 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.

A Harwood

INSPECTOR