
Appeal Decisions

Site visit made on 1 September 2020

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 November 2020

Appeal A Ref: APP/G5750/C/19/3240879

Land at 332-338 High Street North, Manor Park, London E12 6PH

- 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 Giretharan Thangarajah against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, Ref 19/00028/ENFC, was issued on 11 October 2019.
- The breach of planning control as alleged in the notice is without planning permission the erection of an extension at first floor level.
- The requirements of the notice are:
 1. Demolish the extension at first floor level (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. On completion of step 1 and 2 above, remove all 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), (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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction.

Appeal B Ref: APP/G5750/W/19/3240421

332-338 High Street North, Manor Park, London E12 6PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Giretharan Thangarajah against the decision of the Council of the London Borough of Newham.
- The application Ref 19/02202/FUL, dated 9 August 2019, was refused by notice dated 7 October 2019.
- The development proposed is the erection of first floor rear extension in connection with existing A1 unit. Creation of rear roof terrace at first floor level in connection with existing residential unit.

Summary of Decision: The appeal is dismissed.

Appeal C Ref: APP/G5750/W/19/3240433

332-338 High Street North and Alley Rear of 328-338 High Street North, Manor Park, London E12 6PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Giretharan Thangarajah against the decision of the Council of the London Borough of Newham.
- The application Ref 19/02185/FUL, dated 9 August 2019, was refused by notice dated

7 October 2019.

- The development proposed is erection of rear ground floor extension in connection with existing A1 unit.

Summary of Decision: The appeal is dismissed.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected by:
 - Deleting 'and 2' from step 2 of the requirements.
2. Subject to the 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.

Appeals B and C

3. The appeals are dismissed

Preliminary Matters

4. The appeal site relates to a supermarket on the ground floor with residential properties at first floor level. The rear part of the supermarket is single storey with a flat roof. There is an alleyway to the rear that provides access to the rear of the property, as well as to first floor flats above the shop via two external staircases. The first part of the alleyway provides access to three rear facing two storey residential properties on land to the rear of 328, 330 and 332 High Street North. These front directly onto the alleyway.
5. A first floor extension has been built above part of the single storey rear part of the ground floor supermarket, and this is the subject of the enforcement notice and Appeal A.
6. A planning application has been refused for a first floor rear extension to replace the unauthorised addition with a similar extension, and the creation of a roof terrace between the structure and the first floor flats at the front of the building. This is the subject of Appeal B. Further revised drawings have been provided with the appeal, which include a reduction in the size of the roof terrace, relocation of the emergency door to the side of the first floor extension so that it opens onto the external access staircase rather than the roof terrace, and increased landscaping (planting) to the roof terrace.
7. Appeal C relates to a proposed ground floor rear extension which would enclose part of the rear alleyway. This would replace unauthorised works which include a roller shutter door, with a fully contained ancillary shop area. Amended drawings have been provided with the appeal. The main change is to remove an external staircase which was shown on the refused drawings as being retained for maintenance/inspection purposes only. There is an enforcement notice¹ effective in relation to the unauthorised works to the rear of the property at ground floor level.

¹ Enforcement notice reference 19/00028/ENFC

8. My consideration of the amended plans submitted with Appeals B and C would deny those who would have been consulted through the planning application process the opportunity of such consultation. I have therefore determined Appeals B and C on the basis of the plans submitted to and determined by the Council.
9. The policies in the draft London Plan are referred to in the reasons for issuing the enforcement notice and the reasons for refusal for the two planning applications. The emerging London Plan is at an advanced stage of preparation. Following the Examination in Public a consolidated version of the Plan incorporating all suggested changes was produced in July 2019 (Consolidated LP). The Report of the Examination in Public was published on 21 October 2019. The Mayor of London issued his response to these recommendations and the plan he intended to publish on 9 December 2019 (Intend to Publish LP). The Secretary of State wrote to the Mayor on 13 March 2020 and issued an Annex containing directions.
10. The Council has provided details of the relevant policies and I have sought the views of the parties on the implications for these appeals of the Intend to Publish LP and the Annex. A modification to Policy D3 is required by the Annex to remedy national policy inconsistency in relation to site capacity. While Policy D11 is cited in the reason for refusal for Appeal C, I note that it has been renumbered as D12 in the Intend to Publish LP and I have cited it as such in my decision.
11. As there is some overlap between the main issues for the ground (a) appeal and the Section 78 appeals I have dealt with them together where appropriate.

Matters concerning the notice

12. The second requirement of the enforcement notice refers to the completion of 'steps 1 and 2 above'. This appears to be an error as there is only step 1 above. My understanding of the notice is not affected by this error and nothing within the appellant's submissions indicates to me that it has been misunderstood by them. Therefore, I consider that a minor correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

The ground (a) appeal and the Section 78 appeals

13. Having regard to the reasons for issuing the enforcement notice and the reasons for refusal, the main issues are:
 - Whether the development ensures a satisfactory means of escape for the occupiers of 334A, 336A and 338A High Street North **(Appeal C)**.
 - The effect of the development on the character and appearance of the area **(Appeals A and C)**;
 - The effect of the development on the living conditions of neighbouring occupiers with regard to outlook, privacy, **(Appeals A and B)** noise and disturbance **(Appeals A, B and C)**;
 - Whether the extension represents a sustainable design with reference to biodiversity **(Appeal A)**;

- Whether the site is a suitable location for the development, having regard to the provisions of the development plan and the National Planning Policy Framework (NPPF) (**Appeal C**).

Means of Escape (Appeal C)

14. The alleyway to the rear of the shop provides a private means of access to neighbouring dwellings, including flats at Nos 334A, 336A and 338A, at first floor level above the ground floor retail unit. There are currently two external staircases which provide access to the roof level of the ground floor retain unit, and the rear facing front doors of the first floor flats across walkways.
15. The proposed extension would result in the entrance to the staircase closest to No 338A being enclosed within the extension, so that it would no longer provide a means of escape for the flats. The staircase would be retained for maintenance/inspection purposes only. As a result, the residents of the first floor flats would have only one means of access or escape.
16. The Team Leader of Fire Safety Regulation for Tower Hamlets and Newham of the London Fire Brigade has raised concerns that the 'redundant' staircase is in fact a viable access route for flats Nos 336A and 338A, as well as providing an alternative access route for the flat at No 334A. This would worsen the existing situation by removing an escape route and extending the travel distances for flats at Nos 336A and 338A.
17. The appellant states that the staircase is not used by residents as it leads directly into the area behind the shop that has been in use for purposes ancillary to the A1 unit and is a longer route to take in an emergency. Be that as it may, the proposal would result in those flats having no alternative means of escape in an emergency. The appellant has not put forward any proposal to provide an alternative secondary means of escape for the occupiers of the flats, nor has it been demonstrated that an alternative means of escape is not required.
18. I therefore conclude that the **Appeal C** development would not ensure a satisfactory means of escape for the occupiers of residential units at Nos 334A, 336A and 338A on High Street North. It is therefore in conflict with Policy D12 of the Intend to Publish LP which seeks, amongst other matters, to ensure that development achieves the highest standards of fire safety and provides suitable and convenient means of escape for all building users.

Character and appearance (Appeals A and C)

19. The appeal site is a mid-terrace two storey building in a commercial part of High Street North. It comprises three mid-terrace properties which have been amalgamated on the ground floor to form a supermarket, with separate residential flats above. The building extends up to the rear access alleyway at ground floor single storey level. Beyond the alleyway and perpendicular to it are further terraced houses which front onto Shelley Avenue and Rosebery Avenue. The rear of the building is visible from surrounding properties, and in glimpsed views from the entrance to the alleyway from the Avenues at either end. The alleyways are characteristic of the pattern of development in the area, although some of the them have been partially built over.
20. The area to the rear of the buildings is characterised by single storey flat roofed buildings and some two storey buildings, notably at the entrance to the

alleyway to the rear of Nos 328-332. There is a variety of materials in the area, with natural render, light coloured painted render, various brick finishes, slate and concrete roof tiles. A degree of coherence stems from the palette of materials, the two storey frontage buildings, with generally single storey flat roofed buildings to the rear, interspersed with the taller two storey rear elements, that are generally finished in render with mono-pitch tiled roofs.

21. The first floor extension, the subject of **Appeal A**, has resulted in a flat roofed addition, with two sides finished in blockwork and the front and rear clad in white boarding. The roof is covered with roofing felt. It is prominent in views from surrounding properties and public viewpoints, due to its siting and height in relation to the adjoining built form. Due to its external finish, it appears at odds with the prevailing external materials. This gives it an incongruous appearance that detracts from the character and appearance of the surrounding area.
22. The appellant considers that the cladding could be removed and the building could be finished in white render. Indeed, the alternative proposal the subject of Appeal B, would be finished with white render with roof coping and was not refused due to harm to character and appearance. However, the terms of the deemed application are defined by the alleged breach of planning control and it has not been made clear that the extension as built could be finished in the manner suggested.
23. In terms of **Appeal C**, the single storey addition would infill the gap between the single storey rear part of the property and the garden of the neighbouring property on Shelley Avenue, and would thereby infill part of the rear alleyway. It would mainly be visible from the south, towards the end of the alleyway visible from Shelley Avenue, and also from some of the surrounding residential properties.
24. The extension would have a simple and functional appearance when seen from Shelley Avenue, with a brick elevation with coping, containing a narrow metal gate and wider roller shuttering. The roof would be finished in felt with two roof lights. Due to its small scale, single storey height and infill position, there is little opportunity for the extension to enhance the appearance of the area. Brick colouring and texture to match the neighbouring brick work could be secured through a condition, if I were minded to allow the appeal.
25. It would dominate this part of the rear alleyway and shorten it, but there are several examples in the area of similar development, including a flat roofed structure immediately to the rear of the extension. The plan form of the area with the rear alleyway would still be readily apparent in views from Shelley Avenue and the surrounding area. I do not therefore agree that the extension would be harmful to the character and appearance of the site and surrounding area. That the incorporation of the external staircase leading to the upper floor flats would create a fragmented internal layout is a matter for the occupier.
26. The Council refers to a dismissed appeal² in relation to an enforcement notice served on an apparently similar development, in which the Inspector found that the extension was harmful to the character and appearance of the area. However, I note that in that case the extension was makeshift in its appearance, being largely constructed from corrugated tin and timber, which

² APP/G5750/C/18/3210001

resulted in a poor quality design with materials which were not reflective of the area. That clearly differs from this development, which would be finished in brick, details of which could be secured through a planning condition.

27. I therefore conclude that the **Appeal A** development is harmful to the character and appearance of the area. It is therefore in conflict with Policies 7.1, 7.4 and 7.6 of the London Plan 2016 (LP), Intend to Publish LP Policies D1, D2 and D3, and Newham Local Plan 2018 (NLP) Policies S1, S2, SP1, SP2 and SP3, which seek, amongst other matters, to ensure that new development achieves a high quality of urban design and comprises details and materials that complement local character.
28. For the reasons set out above, the **Appeal C** development would not harm the character and appearance of the area, and so would accord with the policies listed in the preceding paragraph.

Living conditions

Outlook

29. The first floor flats above the retail unit at Nos 334-338 have windows and doors on their rear elevations, with outlook towards the first floor extension which is the subject of **Appeals A and B**. The flats have a 'dog leg' form so that the rearmost element is set close to the extension. The drawings provided with Appeal B indicate that the nearest window to the appeal site is a secondary window to the kitchen of Flat 338A. The drawings indicate that it has a further principal window on the side elevation, while other principal rooms are set within the front of the building, further away from the extension.
30. The extension is designed with a flat roof, and therefore a relatively low height in relation to the secondary kitchen window. As a result, although the extension would be close, any harmful effect on outlook would not be significant. All other windows to the flats are further away and therefore less directly affected.
31. Due to the siting and the relatively low height of the extension with its flat roof, neither the existing extension in **Appeal A** nor its proposed replacement in **Appeal B** would dominate the outlook from the flat, or result in a sense of enclosure.
32. The nearest properties at 59 Shelley Avenue and 1 Rosebery Avenue also look towards the appeal site and the extension is visible in the outlook from their rear windows. However, due to the distances involved and the angle of views towards the extension, I am satisfied that this is not significantly harmful to their living conditions in terms of outlook.

Privacy

33. In terms of **Appeal A**, there is an existing door in the first floor extension which opens directly onto the small area of flat roof between the extension and the flat at No 338A. The flat roof is stated to be used informally as a roof terrace by the occupiers of No 338A. The extension provides ancillary floorspace for the ground floor shop. As built, the only access to the extension is via the external staircase and staff accessing the first floor extension have to pass across part of the roof terrace. Due to the proximity to the access to the flat and the informal use of the flat roof as an outdoor amenity space, it results

in a blurring of the distinction between commercial and residential uses which is an intrusion into the privacy of the occupiers of the flats.

As part of **Appeal B**, an internal staircase is proposed to give direct access to the first floor extension from the ground floor shop, which would avoid the need for external access across the roof terrace. However, the external door from a new decked roof terrace for No 338A is shown to be retained for emergency access only. If it were used more frequently or left open for ventilation this would be harmful to the privacy of those using the roof terrace.

Noise and disturbance

34. Both the ground floor extension proposed by **Appeal C** and the first floor extension the subject of **Appeal A** increase the floor area of the retail unit. However, due to its location at first floor level the additional floorspace the subject of **Appeal A** does not lend itself to being used as part of the retail area open to customers, and is therefore more likely to be used as an ancillary office or storage area, as suggested by the appellant. Given that the site is within an identified Local Centre to which retail units are directed by the spatial strategy, I have seen no firm evidence that the additional floorspace is likely to cause noise and disturbance that would adversely affect the living conditions neighbouring residents.
35. In terms of the **Appeal C** development, I saw on my site visit that the rear alleyway is currently used for deliveries and storage. I observed that this involves vehicles, staff and delivery trolleys passing in close proximity to residential uses at Nos 328, 330 and 332 Rear of High Street North, which have front doors and windows facing directly onto the rear alleyway. I have sympathy with residents who may be disturbed by the current level of activity taking place. However, I am mindful that the supermarket is existing, and the proposal would enclose an area that is currently used for unloading and storage. I have seen no evidence that fully enclosing the area would cause additional noise and disturbance to local residents when compared with the existing situation.
36. The **Appeal B** development would result in a formalised roof terrace being created. Although the flat roof area can currently be used as an outdoor amenity space by the occupiers of the flat No 338A, it would be provided with decking and fencing to enclose it and provide a more useable and defined external area. This would be in close proximity to other residential uses, but it would not be dissimilar to residential gardens in close proximity to each other, and I do not therefore agree that the proposal would be significantly harmful to the living conditions of neighbouring occupiers.

Conclusion in relation to living conditions

37. For the reasons set out above, I conclude that the developments the subject of **Appeals A** and **B** are/would be harmful to living conditions of neighbouring residents in relation to privacy. There is therefore conflict with LP policies 3.5, 7.1, 7.2 and 7.15, Intend to Publish LP Policies D1, D3 and D7, and NLP Policies SP1, SP2, SP3, SP6, SP8 and S6, insofar as they seek to ensure that new development achieves good neighbourliness and minimises loss of privacy and overbearing impacts, and the guidance in the NPPF.

38. The developments the subject of **Appeals A and B** are not/would not be harmful to the living conditions of neighbouring residents in relation to outlook. The developments the subject of **Appeals A, B or C** are not/would not be harmful to living conditions in relation to noise and disturbance. They are therefore not in conflict with the relevant policies.

Biodiversity

39. The **Appeal A** development relates to the erection of the first floor extension. The Council is concerned that opportunities have not been taken to maximise the benefits of sustainable design, such as enhancing the biodiversity value of the site, and it is stated that the development has resulted in the loss of a significant amount of garden space. However, the extension is built on top of an existing building and the appellant argues that the site is within a built up area and has no impact on biodiversity. Nonetheless, it has not been demonstrated that opportunities to maximise the benefits of sustainable design, including enhancing the biodiversity value of the site, have been adequately explored.
40. If I were minded to allow the appeal, a scheme to enhance the biodiversity of the site could be required by a condition. Subject to this, the development would represent sustainable design with regard to biodiversity and would be in accordance with LP Policies 5.3 and 7.19 and NLP Policies SC1 and SC4, which seek, amongst other things, to ensure that new development addresses environmental resilience, sustainable design and demonstrates that opportunities to enhance biodiversity benefits have been maximised.

Suitable Location (Appeal C)

41. The proposal would extend the ground floor of the building over the rear alleyway, replacing the existing unauthorised roller shutter. It would provide additional ancillary floorspace for the retail unit in the front of the buildings.
42. LP Policy 2.15 states that planning decisions will sustain and enhance the vitality and viability of the centre, while Policy 4.7 states that retail developments should be focused on sites within town centres. Policy 4.8 is supportive of convenience retail, particularly in District, Neighbourhood and local centres.
43. Policy SD6 of the Intend to Publish LP seeks to promote and enhance the vitality and viability of London's town centres, including by ensuring that they are the primary locations for commercial activity beyond the Central Activities Zone and Policy E9 (BA4) requires that boroughs should support convenience retail in all town centres.
44. Policy S1 of the NLP sets out the spatial strategy for the Borough and seeks to focus development in Town and Local Centres. NLP Policies SP6 and SP7 seek to consolidate commercial uses within their boundaries and within Key Movement Corridors and Linear Gateways such as High Street North. NLP Policy INF5(k) and (l) state that town centre uses will be directed to Town and Local Centres first as appropriate to their scale, and the consolidation of existing commercial and community uses into defined centres of an appropriate scale will be encouraged.

45. The NPPF in Chapter 7 states that planning decisions should support the role that town centres play at the heart of local communities, by taking a positive approach to their growth, management and adaptation.
46. The Proposals Map for the NLP identifies the extent of Local Centre 3 (LC3). The appellant has provided an extract from the Proposals map which indicates the extent of the designation with a thick blue line. From the extract provided it appears that the designation includes the supermarket and adjacent properties on the short stretch of High Street North between Shelley Avenue and Rosebery Avenue, and a small section of the high street frontage on the opposite side of the road. When the extract is enlarged, the thickness of the line is such that it covers the entire appeal site. I note that the Council states that the rear yard is outside the LC3 designation and has provided a different map extract with a thinner blue line which excludes the rear yard from the designation.
47. In any event, the proposal would create additional ancillary retail floorspace to serve the main floorspace of the shop, which is entirely within the local centre. It seems to me therefore that the proposal would consolidate a commercial use that is largely located within the local centre, and does not conflict with the spatial strategy. The site is well contained and forms part of the rear access to the site for deliveries. I do not therefore agree that it erodes the boundary of commercial and residential uses in this instance.
48. I therefore conclude that the site is a suitable location for the proposed development, having regard to the provisions of the development plan and NPPF. It is therefore not in conflict with NLP Policies S1, SP6, SP7 and INF5, London Plan Policies 2.15, 4.7 and 4.8, or Intend to Publish LP policies SD6 and E9. These policies seek, amongst other matters, to direct town centre uses to town and local centres. It is also not in conflict with the guidance in the NPPF.

Conclusions in relation to the ground (a) appeal and the Section 78 Appeals

49. The **Appeal A** development is not harmful to living conditions in terms of outlook, noise and disturbance and could enhance biodiversity, but this does not override the harm that is caused to the privacy of neighbouring occupiers, and the character and appearance of the area. The appeal on ground (a) therefore fails and planning permission is refused for the application that is deemed to have been made.
50. The **Appeal B** development would not be harmful to the living conditions of neighbouring occupiers with regard to outlook, noise and disturbance, but the harm to the living conditions of the occupiers of the adjacent flat in terms of privacy is sufficient to justify withholding planning permission.
51. Even though the **Appeal C** development is in a suitable location, is not harmful to the character and appearance of the area or the living conditions of neighbouring occupiers with regard to noise and disturbance, it would fail to safeguard an appropriate means of escape for the occupiers of the flats at Nos 334A, 336A and 338A in an emergency and would thereby fail to accord with the high standards of fire safety required by the policy. This is sufficient to justify dismissing the appeal and refusing planning permission.

Appeal A ground (f)

52. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control. The appellant requests that the requirement to demolish the first floor extension is substituted by a requirement to remove the soffit cladding only and to apply white render to all external walls. I have considered whether this could be achieved through a planning condition in relation to the ground (a) appeal.
53. As the notice requires the extension to be removed in its entirety, the purpose of the notice is to remedy the breach of planning control. The suggested steps would not remedy the breach. The appeal on ground (f) therefore fails.

Appeal A ground (g)

54. The ground of appeal is that the period specified in the notice falls short of what should reasonably be allowed. The period specified in the notice is three months. The appellant requests a period of six months as the original three month period coincided with cold weather and the impending holiday season. It seems to me that three months is sufficient to demolish the extension. The appeal on ground (g) therefore fails.

N Thomas

INSPECTOR