
Appeal Decisions

Site visit made on 2 September 2020

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Appeal A Ref: APP/U5360/C/19/3241457

Land at 40 Jessam Avenue, Hackney, London E5 9DU

- 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 (also known as Yacob Ostreicher) against an enforcement notice issued by the Council of the London Borough of Hackney
- The enforcement notice was issued on 9 October 2019.
- The breach of planning control as alleged in the notice is: *Without planning permission the erection of an external staircase on the side elevation from ground floor to first floor level with metal balcony and erection of roof terrace on the rear roof of the property.*
- The requirements of the notice are:
 - 1) Remove the metal balcony and external staircase from the side elevation.
 - 2) Remove the rear roof terrace and associated timber decking from the rear roof area at first floor level.
 - 3) Make good all damage to the Property resulting from the removal of the unauthorised works and restore the relevant parts of the Property to the condition they were before the unauthorised extensions were constructed.
 - 4) 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 one (1) month.
- 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 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.

Appeal B Ref: APP/U5360/W/19/3239327

40 Jessam Avenue, London E5 9DU

- 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 Y Ostreicher against the decision of the Council of the London Borough of Hackney.
- The application Ref 2019/2170, dated 24 June 2019, was refused by notice dated 20 August 2019
- The development proposed is described as 'Erection of external staircase to the side elevation with balcony and obscure balustrades (retrospective application).'

Summary decision: The appeal is dismissed.

Preliminary Matters

1. I saw that the metal staircase and balcony described in the enforcement notice and proposed under the planning appeal are in place, although the 'balcony' with its metal railings is functionally more like a landing at the top of the stairs. The balustrades proposed under Appeal B are not in place but they would screen the alleged roof terrace, which is in situ to the extent that decking has been laid upon part of the roof of a pre-existing single storey extension to the appeal house. In substance, both appeals relate to the same development.
2. The lawful use of the appeal building is as a single dwellinghouse, but the Council has raised concerns that the appeal staircase, balcony and terrace could facilitate the subdivision of the appeal building into separate residential units. However, the enforcement notice does not allege that there has been, and the planning application includes no proposal for, any change of use of the property. My remit is therefore limited to consideration of the alleged and proposed operational development.

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

Main Issues

3. The main issues are:
 - The effect of the appeal development on the character and appearance of the host dwelling and surrounding area,
 - The effect of the appeal development on the living conditions of existing occupiers of 42 Jessam Avenue (No.42) with regard to noise and disturbance and overlooking, and
 - Whether any harm arising in relation to the main issues is justified by the appellant's circumstances.

Reasons

Character and appearance

4. The appeal concerns a semi-detached two-storey red brick dwelling with an extension to its roof as well as rear elevation. The single-storey rear extension at the back spans the width of the house, and has a flat roof with a sukkah rooflight. The alleged metal staircase is erected on the side elevation of the appeal house and it leads to the roof of the extension. It is accessed from a shared passageway between the appeal house and No.42 and is screened from the street by timber gates at the front of the passageway. The staircase and balcony are both made of black metal with vertical metal railings. The metal balcony encloses only two sides of the top landing of the staircase. Consequently the staircase and metal balcony appear lightweight and unobtrusive and do not cause unacceptable harm to the character and appearance of the dwelling or surrounding area.
5. When I visited the site I saw that several neighbouring properties have flat-roofed rear extensions, but few have roof terraces. The Council's Residential Extension and Alterations Supplementary Planning Document (the 'SPD')

states that roof terraces and balconies are not characteristic features of the traditional residential housing stock of the Borough, and that observation appears applicable to this side of Jessam Avenue.

6. The submitted plans with Appeal B propose obscure glass balustrades, like screens, that would be erected to enclose the balcony at the top of the staircase and the area of timber decking, but not the entire flat roof. The proposed balustrades are intended to provide privacy for people using the staircase and accessing the first floor door from the roof terrace into the upper floor of the property.
7. The balustrades would be approximately 1.5m in height, and the appellant would be willing to increase them to 1.8m to further improve privacy and reduce overlooking. The balustrades would be made of glass and semi-transparent. Even if 1.5m or 1.8m in height they would create an elevated glass box of substantial size and height on part of the roof. The resultant semi-enclosed structure would be a visually incongruous and discordant feature in relation to the host dwelling. And where there is a notable absence of roof terraces and enclosed elevated structures, it would also be out of keeping and cause unacceptable harm to the character and appearance to the surrounding area, even though not visible from the street.
8. The appellant would agree to a condition requiring details of the screening materials to be submitted to and approved by the Council. No suggestions of alternative materials have been put to me. However, as I find the balustrades would look unacceptable made of glass, any other material is likely to make the structure look bulkier and even more obtrusive. Therefore a condition would not overcome my concerns or make the scheme acceptable.
9. The appellant has referred to examples of other external staircases that have been approved (for example at No.28). However, neither party has furnished me with any details of their design or purpose, so I am unable to conclude that they are comparable to the appeal scheme before me. Moreover, I am obliged to consider the appeal on its own merits.
10. Whilst I find the metal staircase and metal railing balcony at the top of the staircase do not cause unacceptable harm to the character and appearance of the host dwelling and surrounding area, I find the roof terrace and proposed balustrades do. Accordingly it would be contrary to Policies 7.4 and 7.6 of the London Plan 2016, Policy 24 of the Core Strategy 2016 (the 'Core Strategy'), and Policies DM1 and DM2 of the Development Management Local Plan 2015 (the 'Local Plan'). These collectively seek, amongst other things, to ensure that development is of an appropriate design and form that respects the character of the surrounding area. It would also be contrary to the design guidance in the SPD, as already outlined above.

Living conditions

11. There are windows in the side elevations of the appeal property and No.42 that face each other across the narrow passageway. Consequently the external staircase is in close proximity to the side windows of No.42. It was apparent from my visit, when going up and down the external staircase, that users of it are able to look into No.42. And from inside No.42 I was able to stand in the kitchen and see the external staircase straight ahead. I find there would be an unacceptable degree of intrusion and overlooking into the

neighbour's kitchen, which is a habitable room, that would affect their privacy and harm their living conditions.

12. The appellant has suggested, as part of his ground (f) appeal, that 1.8m high obscure glass balustrades could be erected to the external staircase itself to provide screening. I accept that this would reduce overlooking of No.42. However, erecting a glass wall of substantial height up the staircase would create a semi-enclosed structure, that would be more substantial and less lightweight and visually more obtrusive. In my view this would cause harm to the character and appearance of the host property and area.
13. Similarly, the tall glass balustrading that would be erected around the balcony at the top of the staircase and around the roof terrace would reduce overlooking, but I have already found this would harm the character and appearance of the host property and area.
14. With regards noise and disturbance, I saw that there were rubber mats on each of the stair treads. The appellant is willing to have these made a requirement of a condition and I accept this would reduce the noise from people using the staircase to some degree. However, in the narrow passageway sound is likely to be amplified, and with the staircase in close proximity to the windows of No.42 and rising to an elevated position, I am not persuaded there would not be unacceptable noise and disturbance from comings and goings beyond what the neighbouring occupiers could reasonably be expected to endure, and who have raised concerns about the noise created when the staircase is being used.
15. Furthermore, in the absence of any substantial evidence, I am not persuaded that adding a 1.8m high glazed balustrade screen to the side of the staircase would satisfactorily mitigate against the noise and disturbance arising from people using the staircase.
16. The balcony area is small and the roof terrace would not be large enough to sit out on. In addition these areas are not directly above the outside rear garden of No.42 as they do not extend to the edge of the roof. Consequently, I find the balcony and roof terrace are unlikely to cause undue noise and disturbance. The proposed glazed screens would further help.
17. For the reasons above, I conclude that the staircase would harm the living conditions of the occupiers of No.42. The absence of harm from the balcony and roof terrace carries neutral weight in my consideration. Accordingly, the appeal development it would be contrary to Policies 7.4 and 7.6 of the London Plan, Policy 24 of the Core Strategy and Policy DM2 of the Local Plan. These policies collectively seek, amongst other things, to ensure that development is appropriate for its context to avoid significant adverse impacts on the amenity of neighbours.

Personal Circumstances

18. The appellant and his wife are members of the Charedi Jewish community and are frail and elderly Holocaust survivors. They erected the alleged staircase, balcony and terrace in order that, as explained in their appeal statement, they can "use one of their bedrooms for therapeutic treatment and that the physiotherapist can access the room without having to go through the house (this is desired for religious reasons)". I am sympathetic to the needs of the

appellant and his wife for sensitive and private care, and I note that one of their neighbours supports the appeals.

19. However, where permanent built structures would cause unacceptable harm in planning terms, a grant of permission can rarely be justified on the basis of personal circumstances, since they can change during the lifetime of the development, and any planning permission runs with the land. That being the case, my difficulty is that the appellant has not explained why his religious beliefs would prohibit his health care visitors from using the front door, or the ground floor side door; whether the treatment room could not be provided elsewhere inside the large house, or how he and his wife would access therapeutic support if there was no option for a separate entrance. I do not dispute that the development benefits the appellant but he has not shown that it fulfils an essential need which should be the decisive consideration in this appeal.

Other Matters and Conclusion

20. The appellant objects that the notice was issued before the s78 appeal was decided. This is a matter outside the remit of this appeal. Nonetheless I have considered the planning and enforcement appeals together.
21. I have had regard to all other matters raised. I have found that the alleged roof terrace and balcony with the proposed balustrades would cause unacceptable harm to the character and appearance of the host dwelling and surrounding area, and the appeal staircase would cause unacceptable harm to the living conditions of the existing occupiers of No.42 from noise and overlooking. I find these objections compelling because the appellant has not shown that his need for the development can justify or outweigh the harm.
22. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The appellant and his family are part of the Orthodox Charedi Jewish community who are persons who share a protected characteristic for the purposes of the PSED. The appeal development is intended to meet the welfare and religious needs of the appellant and his family. But the PSED duty does not mean that the appeal must succeed.
23. As noted above, the appellant has not explained how or why it is essential to allow the appeal development in order for him and his wife to receive therapeutic treatment in accordance with their beliefs. I find that dismissing this appeal would not amount to unlawful discrimination, and a refusal of planning 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.
24. 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, whereby interference may be justified if it is in the public

interest; the concept of proportionality is crucial. 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 well-established and legitimate public interest aims of protecting the character and appearance of the area plus living conditions in the house at No.42. I therefore find in this case the interference would be proportionate and necessary, and it would not amount to a violation of the appellant's rights.

25. The PSED and HRA98 add weight to my conclusion that the appeal on ground (a) should fail, the deemed planning application should be refused, and planning permission should be refused under Appeal B.

The Appeal on Ground (f)

26. 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, which has been caused by any such breach, as the case may be.
27. The enforcement notice alleges the erection of an external staircase with metal balcony and a roof terrace. The notice requires these to be removed. Therefore the purpose of the notice is to remedy the alleged breach.
28. The appellant suggests that the requirements of the notice are excessive because any harm caused by the alleged development could be overcome by adding balustrades to the staircase and balcony and increasing the height of the balustrades to the terrace so that adjacent occupiers suffer no disturbance or loss of privacy. I have already considered these arguments in relation to ground (a) and found that planning permission ought to be refused as these would not make the development acceptable. There is no scope for me to revisit that conclusion or any other aspect of the planning merits through ground (f).
29. The retention of any part of the development, with or without additional screening or other mitigation measures, would not remedy the breach of planning control. To that end, it is essential and not excessive to require that the metal balcony, external staircase and rear roof terrace and associated timber decking are removed and the property is made good.
30. The appeal on ground (f) therefore fails.

Formal Decisions

Appeal A: The Enforcement Appeal

31. 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: The Planning Appeal

32. The appeal is dismissed.

K. Stephens
INSPECTOR