



Appeal Decision

by B.S.Rogers BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 February 2021

Appeal Ref: APP/U5360/C/16/3163711

70 Durley Road, Hackney, London N16 5JS

- 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 H Grunhut against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 4 November 2016.
 - The breach of planning control as alleged in the notice is unauthorised single-storey ground floor rear extension.
 - The requirements of the notice are:
 1. Completely remove the unauthorised single-storey ground floor rear extension
 2. Make good all damage to the property
 3. 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 three (3) months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended.
 - This decision supersedes that issued on 13 July 2017. That decision on the appeal was remitted for re-hearing and determination by order of the High Court.
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Formal Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of single-storey ground floor rear extension on land at 70 Durley Road, Hackney, London, N16 5JS referred to in the notice, subject to the following condition:

The permission hereby granted relates to the development identified in the enforcement notice, as subsequently modified and depicted in drawing no.16-1250-03C.3 Rev.A, dated 31.08.17. The height of the extension abutting the boundary with no.72 Durley Road shall not exceed a height of 3m, measured from the ground level of no.72 and there shall be no external air conditioning equipment sited on the roof of the extension.

Preliminary matters

2. Since the original decision was issued the appeal on ground (c) has been withdrawn.
3. It was not necessary for me to conduct a site visit in this case for reasons which will become apparent below.

The appeal on ground (a) and the deemed application

4. No 70 Durley Road is a terraced house. On 8 July 2013, the Council was notified of a proposed rear extension, in the form of an application for a certificate of lawfulness of proposed development, with plans and a covering letter. Having regard to the provisions of Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended, the Council consulted adjacent neighbours on the “erection of a single storey rear extension extending from the rear wall of the original dwelling house by 4.35., height 3.6m.” Having received no representations, the Council decided that no prior approval was required for the development, as specified in the Schedule to its notice of 19 August 2013. The Schedule specified plan Ref no. 13-1090-01C, which showed the design and dimensions of the proposal.
5. As originally built, the extension differed materially from that shown in the above plan. Most significantly, the flat roof did not step down toward the adjacent house, no.72, there was an added raised parapet wall adjacent to no.72, it had substantial air conditioning apparatus on the roof and it had a large lantern roof, known as a “Succah”, extending above the flat roof. This was the development identified in the enforcement notice and which was existing at the time of the first determination of this appeal in July 2017.
6. The development before me in a deemed planning application is that which is specified in the notice as the alleged breach. This development was considered unacceptable by the first Inspector for two reasons. The first was on the grounds of being unduly over-bearing and of incongruous design, contrary to Policy 24 of the Council’s Core Strategy and Policies 7.4 and 7.6 of the London Plan: Spatial Development Strategy for London. The second was on the grounds of unduly harming the living conditions of the occupants of no.72, Durley Road, contrary to the aims of Policy DM2. Having viewed the drawings and photographs of that scheme, I have seen no reason to disagree with my colleague’s conclusions on these matters.
7. There has, however, been a significant change in circumstances since the appeal was first determined. On 28 November 2017, the Council approved a planning application for the “erection of single storey rear extension (retrospective)” (ref: 2017/3453). This approval did not include the retention of the lantern roof or the air conditioning and included a modification to the parapet so that it did not exceed a height of 3m, measured from the ground level of no.72.
8. On 1 November 2018, the Council approved a further planning application “to erect a Succah rooflight on the single storey rear extension to replace the existing one” (ref: 2018/3248). The approved rooflight is virtually identical to that already in place, apart from being some 20cm lower.
9. The air conditioning units have now been removed and the parapet adjacent to no.72 has been lowered to the permitted 3m height. Therefore, planning permission has been granted for the extension as it now exists, save for the additional 20cm height of the rooflight. However, following a site inspection on 1 February 2021, the Council has now stated that it has no objection to the entirety of the development as it now exists, and which is depicted in the appellant’s drawing no.16-1250-03C.3 Rev.A.

10. I have had regard to the fact that all the development that is now present on site has the benefit of planning permission or (in the case of the Succah rooflight) is not objectionable to the Council. There have been no other issues raised and therefore I see no reason to object to the development as it now stands.
11. S177(1) of the Act gives the power to grant planning permission in relation to the whole or any part of matters stated in the enforcement notice as constituting a breach of planning control. The modified scheme appears to me to fall within the scope of this provision and to address the planning objections to the original scheme. Therefore, in allowing the appeal on ground (a) and granting planning permission on the deemed application, it is necessary to impose a planning condition limiting the extent of the permission to accord with the modified scheme.

B.S. Rogers

Inspector