



Appeal Decision

Site visit made on 9 March 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 March 2021

Appeal Ref: APP/U5360/C/20/3256726

113A Green Lanes, Hackney, London N16 9DA

- 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 Ben Haberfield against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 26 June 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of side and rear dormers and the erection of an extraction system.
 - The requirements of the notice are:
 1. Remove the dormers from side and rear roof slopes of the Property;
 2. Remove the extraction system from the rear elevation of the Property;
 3. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 4. Upon completion of the above step, 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 6 months.
 - 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 on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the extraction system and planning permission is refused in respect of the extraction system, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
2. 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 side and rear dormers at 113A Green Lanes, Hackney, London N16 9DA referred to in the notice.

Preliminary and Background Matters

3. Planning permission was granted for the "erection of a side and rear roof extension"¹ A further revised application for alterations to the existing roof form to form a crown roof and erection of side and rear extensions was also approved². The appellant also advised that the existing extractor flue was

¹ Council ref: 2015/1552 approved on 27 July 2015.

² Council ref: 2016/2564. Approved on 14 September 2016.

extended upwards to ensure that it would not discharge next to his new windows within the dormers. The appellant accepts that the development was not built in accordance with these approvals, which resulted in the serving of the enforcement notice. I shall therefore deal with the unauthorised works, as alleged within the notice, below.

4. During the course of this appeal, the London Borough of Hackney's Core Strategy (2010) and Development Management Local Plan (2015), and policies contained within it, have been replaced with the Hackney Local Plan 2033 Strategic Planning (Local Plan), which was adopted on 22 July 2020. Therefore, this must now be given full weight in the decision making process. The Council have provided copies of the relevant recently adopted Local Plan policies and the appellant has been given the opportunity to respond, and so has not been prejudiced. I have therefore not assessed the development against the policies of the superseded Core Strategy (2010) and Development Management Local Plan (2015).
5. During the course of this appeal, the London Plan, 2016, and policies contained within it, has been replaced with the London Plan 2021, which was adopted on 2 March 2021. Therefore, this must now be given full weight in the decision making process. The Council has provided copies of the relevant recently adopted London Plan, 2021 policies and the appellant has been given the opportunity to respond, and so has not been prejudiced. I have therefore not assessed the development against the policies of the superseded London Plan 2016.

Ground (a) appeal and the Deemed Planning Application (DPA)

Main Issues

6. The main issues are the effect of the development on:
 - the character and appearance of the host building and the area; and
 - the living conditions for the neighbouring occupiers on Green Lanes with particular regard to cooking odours, noise, and disturbance.

Reasons

Character and appearance

7. The appeal site comprises a three-storey, end of terrace Victorian building in use as a restaurant at ground floor, with a residential unit (the subject of this appeal) on the upper floors. The appeal property shares many of the features of the terrace, which is characterised by London stock bricks, slate roofs, prominent chimney stacks, timber framed sash windows with plasterwork detailing around the windows.

Side and rear dormers

8. As noted above, the Council previously granted planning permission for the erection of a rear and side rear dormer. More Recently the Council approved planning permission for "alterations to roof form to increase height of crown roof; alteration to rear dormer and retention of side dormer³". In light of this the main issue to consider is whether the dormers as built are more harmful

³ Council ref: 2020/3485 approved on 10 February 2021.

than this fallback position, which the appellant can lawfully implement. Details of this recently approved scheme have been submitted with this appeal.

9. The side dormer window is similar in design, size and scale to the approved schemes and constructed in slate tiles to match the existing. Although the rear dormer has been built slightly larger than the approved scheme, the dormer nevertheless, is contained within the hip roof, and sits below the ridge line. I also note that both dormers have also been constructed in slates to match the existing roof material of the host building and adjacent buildings such that they harmonise with their surroundings. Overall, I consider the differences between the 'as built' development and the approved scheme are minimal.
10. I also observed during the site visit that a number of properties in the immediate vicinity of the appeal site have been extended at roof level with either dormers or mansard roof extensions, such that these form part of the existing character and appearance of the area. Therefore, the side and rear dormers do not harm the character and appearance of the host building or surrounding area.

Extract System

11. The extract system (flue) is positioned proud of the building and extends above and over the new roof extension. Furthermore, the extract flue appears to be positioned 'proud' of the rear elevation of the building, which when combined with its height, scale, and prominence, forms a large, obtrusive, and incongruous feature which fails to harmonise with its surroundings.

Conclusion on the Character and Appearance

12. I therefore conclude that the extraction system harms the character and appearance of the host building and the area. In this respect the development conflict with policy LP1 of the Hackney Local Plan 2033 Adoption, 2020 (LP), which amongst other things requires that all new development must be of the highest architectural and urban design quality; And that development must thoughtfully and efficiently integrate building services equipment and avoid compromising the appearance of the building, including the appearance from long views.
13. However, the side and rear dormers do not have a harmful impact upon the character and appearance of the host building and area, in accordance with policy LP1 of the LP, which seek the aforementioned aims.

Living conditions for neighbouring occupiers on Green Lanes with particular regard to cooking odours, noise, and disturbance

14. Whilst the appellant states that the upper floors of the appeal site are occupied by the appellant, the newly extended extraction flue is also sited close to neighbouring residential windows. Extraction flues have the potential to affect the living conditions of neighbouring occupiers by way of vibrations, noise, fumes, and odour. No noise assessment, noise mitigation measures, or details of odour abatement technologies or anti-vibrations devices have been submitted with this appeal to demonstrate that neighbouring occupiers of the site would not be affected by the new extract flue.
15. For the above reasons, I am unable to conclude that extraction system does not harm the living conditions for neighbouring occupiers on Green Lanes with

regard to cooking odours, noise, and disturbance. In this respect, I cannot conclude that the extraction system does not conflict with the Policy LP2 of the LP which requires that all new development must be appropriate to its location and should be designed to ensure there are no significant adverse impacts on the amenity of occupiers and neighbours.

Other Matters

16. I appreciate that there has been a restaurant and a pre-existing extract flue at this address for some time and that the appellant states that the existing extract flue was extended so that it cleared the new windows in the dormers. However, no details of the pre-existing extract flue have been submitted for comparison, and no substantive evidence has been submitted to explain why the extract flue is required to be positioned 'proud' of the building or why it is essential to extend over the main roof of the building for some considerable distance, which in my opinion, increases its prominence.
17. I also acknowledge that Green Lanes is a street with a mix of both commercial and residential uses and that the rear of the building has a more utilitarian character, where there are a number of other extract flues in the area. Nevertheless, the existence of these does not justify the harm identified above.

Conclusion on ground (a) and the DPA

18. For all of the above reasons, I conclude that the side and rear dormers do not harm the character and appearance of the host building and area. On the other hand, the extraction system results in harm to the character and appearance of the host building and the area and in the absence of any substantive evidence, I am unable to conclude that the extraction system does not harm the living conditions for neighbouring occupiers on Green Lanes with regard to cooking odours, noise and disturbance.
19. Following on from these conclusions, I intend to allow the side and rear dormers only. As these dormers are physically and functionally severable from the extraction system, I consider a split decision would be a logical outcome.

Split decision - the effect of Section 180 of the 1990 Act

20. S180 provides that where, after the service of a notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as it is inconsistent with that permission. In this case, the appeal on ground (a) will be allowed in part. If the requirements of the notice were varied to exclude that part of the development for which planning permission is being granted, then this could give rise to two inconsistent permissions, one being granted under S173(11) of the 1990 Act as a variation of cutting down the requirements. To avoid this possibility the requirements of the notice will not be varied in this way and reliance will be placed on S180 of the 1990 Act to mitigate the effect of the notice in so far as it is inconsistent with the permission.

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 to remedy any breach of planning control which may be constituted by those

- matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
22. Planning permission will be granted for the side and rear dormer because that part of the alleged operational development does not have an unacceptable effect on the character and appearance of the building and area. As such, there is no need to consider the ground (f) appeal in relation to the side and rear dormers.
23. For the extraction system the requirement is to remove the extraction system from the premises together with removal of all materials resulting from this requirement. Therefore, the purpose of the notice is to remedy the breach of planning control, and the requirements do not exceed what is necessary to achieve that purpose.
24. On this basis, the Ground (f) appeal fails.

Conclusion

25. For the reasons given above and having considered all other matters, I conclude that the appeal on ground (f) fails. Ground (a) should succeed in part only, and I will grant planning permission for one part of the matter the subject of the notice, but otherwise uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission that I will grant by virtue of S180 of the 1990 Act.

R. Satheesan

INSPECTOR