



Appeal Decision

Site visit made on 3 June 2021

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 15 June 2021

Appeal Ref: APP/U5360/C/20/3252113

59 Kyverdale Road, Hackney, London N16 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 Lloyd Robinson against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 26 March 2020.
 - The breach of planning control as alleged in the notice is: Operational development comprising the installation of a low retaining wall with railings & steps and engineering operations involving the raising of the rear garden level by in excess of 80cm
 - The requirements of the notice are
 - 1.Reduce ground level in the rear garden area, as labelled on photo 1 & plan 1 (appendix 1) by at least 80cm by removing all necessary topsoil; construction waste and other materials.
 - 2.Remove the low retaining wall, railings and stairs located in the rear garden area, as labelled in photo 1 & plan 1 (appendix 1)
 - 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 operational development and engineering operations took place.
 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 9 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (the Act) as amended. Since the prescribed fee has been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be decided.
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Decision

1. The appeal is dismissed and planning permission is refused on the application deemed to have been made under S177(5) of the Act as amended and the enforcement notice is upheld.

Procedural Matters

2. Since the issue of the notice, there have been policy changes and Policy D3 of the London Plan 2021 that was adopted on the 2 March 2021 and Policy LP2 of the Hackney Local Plan 2033 which was adopted in July 2020 which both refer to privacy and amenity are now relevant and supersede the similar policies previously referred to.
3. The reasons for the issue of the notice refer to the development effecting the amenity of neighbouring properties due to the loss of privacy and the increase

in overlooking. The Council's evidence however also refers to overlooking by occupiers of Ark Court upon the users of the garden of the appeal property which is a different issue. However, given that the appellant has addressed the relationship between the development and Ark Court in his evidence, I have been able to include this matter in my decision without causing procedural unfairness.

The appeal under ground (a) and the deemed planning application(DPA)

Main Issues

4. The main issues are

- The effect of the development with regard to loss of privacy and overlooking upon the living conditions of the occupiers of Ark Court and also upon the living conditions of the occupiers of the appeal property from Ark Court
 - The effect of the development upon the living conditions of the occupiers of No 61 Kyverdale Road with particular regard to loss of privacy and overlooking
5. The appeal property is an end terrace property made up of flats with a garden to the rear with a school to one side of it. No 61 Kyverdale Road (No 61) shares a side boundary to the other side of the appeal property. Ark Court is an apartment block to the rear of the appeal garden with a private car park between the Ark Court building and the rear wall of the appeal site.
6. The development consists of the raising the majority of the rear garden at the appeal site by around 80cm and constructing a low retaining wall with railings which enclose the raised garden together with steps for access. The Council indicates that prior to the development taking place the garden level was the same as No 61 next door and that the garden works appear to have been undertaken following building works to convert the appeal property to flats which included basement and excavation works. The Council and neighbouring residents indicate that the excavated earth was used to form the development. A retaining wall with railings and steps now provides access and encloses the elevated garden area.

Ark Court

7. Ark Court consists of a substantial building with at least 4 floors. The building is positioned partly behind the appeal site and partly behind the school. Of the windows that can be seen from the appeal garden, the views are not clear enough to establish if the two windows to the centre of the building are to habitable rooms. A larger arched window is partially visible from the development and is to the side of the central windows and has a number of small window panes. Given the position and design of these windows, the buffer of the car park to the rear and the height of the rear boundary wall and the significant difference in height between the appeal garden and the windows, I do not consider that occupiers of Ark Court are likely to experience overlooking or loss of privacy as a result of the development. For similar reasons, occupiers of the appeal property are unlikely to experience any greater loss of privacy or overlooking from occupiers of Ark Court as a result of the development than existed prior to the development being carried out.

8. With regard to overlooking and loss of privacy of the development from occupiers of Ark Court and for occupiers of Ark Court from the appeal site, the development is therefore not in conflict with Policy LP2 of the Hackney Local Plan 2033 Adopted July 2020 and Policy D3 of the London Plan 2021 which, amongst other things, collectively refer to development considering privacy and overlooking.

No 61

9. The occupier of No 61 puts the shared boundary wall height at around 1.42 metres at her side. The Council assesses the increase in garden levels at the appeal garden at around 80cm which in relation to the original wall height is not insignificant. Photographs of the garden after the development has taken place show the extent of the original wall to the modest patio area which is line with the rear of the appeal building. Whilst I agree that drawings used in connection with the last planning application are not the same as a full survey with regard to garden levels, nevertheless, the appellant does not dispute that development has taken place but considers that the ground level has been slightly raised and is "not significant enough to cause a significant loss of privacy". Previously, with the respective gardens at the same level, there would have been some views but not to the extent that now occurs as a result of the development. The garden level at the appeal property is also not uniform as levels appear to increase towards the rear boundary which also increases overlooking.
10. There is very limited evidence of any screening on the development side of the boundary wall. Whilst there is more screening shown in the photographs provided within the garden of No 61 than at the time of my site visit, the extent to which any vegetation limits views would be seasonal although you would generally expect to see more vegetation in the summer. There is more vegetation and tree screening to either end of the boundary wall in the garden at No 61 as well as a wooden structure but nevertheless there are clear views into a large part of the garden at No 61. The increased garden levels and the resulting reduction of wall height means that occupiers using the garden at the appeal property have extensive views into the garden of No 61 which does adversely impact the living conditions of the occupiers of No 61 with regard to loss of privacy and overlooking.
11. The appellant has no objection to a condition to provide further screening in the form of planting or close boarded fencing along the common boundary with No 61, where necessary. However, with no details of length, height, type or height of screening, there is insufficient information for me to be satisfied that a condition could mitigate the harm that I have found. It is also the case that in seeking to address overlooking issues, screening may have an overbearing impact for the adjoining occupiers particularly when their garden is now at a lower level.
12. The appellant states that prior to the development taking place, the garden was significantly overgrown and that the garden clearance removed existing screening to make the garden usable. Nevertheless, no explanation is provided as to why the garden could not have been cleared without increasing the garden levels and adding the railings, the low wall, and steps as a means to retain and divide the different levels. Whilst the appellant considers the development as a whole to be modest, it is the effect of the development upon

living conditions which needs to be assessed not its character and appearance. The appellant states that the railings do not impact upon overlooking. However, the steps with an integral retaining wall with railings on top of the wall are a single feature which provide means to access and enclose the higher garden level and are part of the development.

13. As I do consider that the development does adversely effect the living conditions of occupiers of No 61 with regard to loss of privacy and overlooking, the development is therefore contrary to LP2 of the Hackney Local Plan 2033 Adopted July 2020 and Policy D3 of the London Plan 2021 which, amongst other things, collectively refer to development considering privacy and overlooking.
14. The Council has referred to the Supplementary Planning Document Residential Extensions and Alterations April 2009 (the SPD). Although Garden Amenity Provisions are addressed in paragraphs 4.17 and 4.18 of this document and include references to loss of privacy, these paragraphs relate to the impact that built development namely extensions have upon neighbouring garden space including loss of privacy. However, in this case, the issue relates to the alterations to the garden not the erection of the extension itself and I do not therefore find the SPD to be particularly relevant.
15. Whilst I have found that the development does not harm the living conditions of the occupiers of Ark Court or the occupiers of the appeal site, I do consider that the development does have a significant adverse impact on the living conditions of occupiers of No 61 due to overlooking and loss of privacy.

Conclusion

16. For the reasons stated, I conclude that the enforcement notice is upheld and the appeal is dismissed. I shall refuse to grant planning permission on the planning application deemed to have been made under S177(5) of the 1990 Act.

E. Griffin

INSPECTOR