



Appeal Decision

Site visit made on 2 November 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2021

Appeal Ref: APP/U5360/C/20/3256423

38 Knightland Road, Hackney, London E5 9HS

- 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 Nechy Benedikt 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 a side and rear extension at ground floor level.
 - The requirements of the notice are:
 1. Demolish the ground floor side and rear extension from the Property; OR
 2. Construct the rear wrap around extension at ground floor level to the design and specification obtained in planning approval 2019/0490 as shown on drawings PR01 (Rev.A), PR02 (Rev.A), PR03 (Rev.A), PR04 (Rev.A), PR05 (Rev.A) attached as Appendix A; AND
 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 steps, 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 10 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, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. During the course of this appeal, the Hackney Core Strategy, 2010 (CS), and the Hackney Development Management Local Plan, 2015 (DMLP), and policies contained within it, have been replaced with the London Borough of Hackney Local Plan 2033 (LP), which was adopted on 22 July 2020. This must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on the new LP, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded CS and DMLP.

3. Furthermore, during the course of this appeal, the London Plan, 2016, and policies contained within it, has been replaced with the London Plan 2021 (London Plan), which was adopted on 2 March 2021. This must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on the new London Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded London Plan 2016.
4. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.

Appeal A on ground (a), the deemed planning application

Main Issues

5. The main issues are the effect of the development on:
 - the character and appearance of the host building and area; and
 - the living conditions of neighbouring occupiers of Nos 36 and 40 Knightland Road, with particular regard to privacy and noise and disturbance.

Reasons

Character and appearance

6. The appeal site is in a residential terrace characterised by three storey residential properties. The appeal property has been previously added to with an extension above the original back addition. The unauthorised works, the subject of this enforcement notice, comprise a single storey rear extension to the side and rear of the original back addition, together with timber fencing around the roof of the extension.
7. The single storey rear extension extends the original property considerably, such that it is no longer a sub-ordinate feature of the original traditional building. Furthermore, the timber fencing on top of the extension, given its additional height and prominence, and poor quality material, forms a tall and obtrusive feature which results in additional visual clutter, visible in public views at the rear of the site. In this regard, the size, scale, bulk, and design of the extension introduces an overly dominant and visually discordant feature, with consequent harm to the character and appearance of the building and surrounding area.
8. Whilst there are a number of properties within the local area, which benefit from rear extensions (including one at No 34 Knightland Road), none appear to extend to the same depth and height as the appeal development before me. As such the existence of these other extensions is not directly comparable to the current unauthorised development and does not justify the harm identified above. In any event, I have assessed the appeal development on its own merits.
9. Under the ground (a) and (f) appeal, the appellant suggest that the terrace screening can be appropriately dealt with through a condition requiring full details to be submitted to and approved in writing by the Council. However, I

do not consider that the harm identified above could be overcome by a condition, since it is the overall excessive size, scale, and bulk of the extension, which is particularly discordant.

10. Therefore, in relation to the first main issue, the development has a harmful effect upon the character and appearance of the host building and the area. The development is therefore contrary to Policy LP1 of the LP, and Policies D3 and D4 of the London Plan. Amongst other things, these seek to deliver good design and state that all new development must be of the highest architectural and urban design quality, with architecture that pays attention to detail. Finally, the development does not meet the aims of part 12 of the Framework, which requires development to be sympathetic to local character and history.

The living conditions for the occupiers of Nos 36 and 40 Knightland Road:

Privacy

11. The installation of fencing/balustrade around the roof of the rear extension facilitates the creation of a roof terrace at first floor level. I acknowledge that the existing gardens at Nos 36 and 40 would have been overlooked already by the existing windows in the rear elevation of properties on Knightland Road. However, the use of the flat roof as a roof terrace coupled with the lack of sufficient screening, of an appropriate height, results in additional intrusive overlooking into the neighbouring windows at first floor level and the rear gardens of Nos 36 and 40. This results in loss of privacy for these neighbouring occupiers.
12. The appellant states that they would have no objection to a condition which requires full details of the terrace screening to be submitted and approved by the Council in order to protect the living condition for both neighbouring occupiers. It is also suggested that etched glass/Perspex screen could be installed of a sufficient size to prevent direct overlooking of neighbours.
13. However, the Planning Practice Guidance on the use of planning conditions¹ states that *"If a detail in a proposed development, or the lack of it, is unacceptable in planning terms the best course of action will often be for the applicant to be invited to revise the application. Where this involves significant changes, this may result in the need for a fresh planning application"*. It goes on to state that *"It would not be appropriate to modify the development in a way that makes it substantially different from that set out in the application."*
14. In order to ensure sufficient screening of views at all times of the year are maintained a physical boundary treatment of a sufficient height (above eye level) would be required. That screening could modify the existing unauthorised development substantially with regard to the character and appearance of the property and its impact the living conditions of the adjoining occupiers. As such, I consider that a condition requiring those details would not be reasonable in this case.
15. Consequently, the development has a harmful effect on the living conditions of the occupiers of neighbouring occupiers at Nos 36 and 40 with regard to privacy.

¹ Paragraph: 012 Reference ID: 21a-012-20140306

Noise and disturbance

16. The timber fencing facilitates the use of the flat roof of the ground floor rear extension as a terrace, which is in close proximity to neighbouring windows and rooms at Nos 36 and 40 which are both in use as residential properties. I have no conclusive evidence before me indicating the layouts of the rooms at Nos 36 and 40. If some of the nearest affected windows serve habitable rooms and bedrooms, neighbouring occupiers of these adjacent properties may be exposed to increased levels noise and disturbance, from people using the terrace area and conversing outside, particularly late at night when neighbours should reasonably expect peace and quiet. Noise and disturbance may be particularly noticeable during summer months when neighbouring occupiers are more likely to have windows open for ventilation, and I have no evidence that neighbouring occupiers of Nos 36 and 40 would be protected from such disturbance. I therefore conclude that there is an unacceptable risk that the development causes harm to the living conditions of the occupiers of Nos 36 and 40 with regard to noise and disturbance.

Conclusion on living conditions for the occupiers of Nos 36 and 40 Knightland Road

17. I therefore conclude that the development fails to provide acceptable living conditions for occupiers of Nos 36 and 40, with regards to privacy and noise and disturbance. Accordingly, the development is contrary to Policy LP2 of the LP. Amongst other things, this states that all new development must be appropriate to its location and designed to ensure there are no significant adverse impacts on the amenity of occupiers and neighbours.

Other Matters

18. The appellant states that they have a child with ADHD, and thus a larger family dwelling is required to meet their family needs. However, I note that the previous planning approval² permitted an alternative rear extension, which does not harm the character and appearance of the area and the living conditions of neighbouring occupiers. Furthermore, the notice allows this alternative development to be implemented, and no substantive evidence has been provided to explain why this alternative development would not satisfy their needs.
19. The appellant also makes reference to a previous prior notification permission³ at this site, in support of the current development. However, the Council explain that this application has since expired and thus cannot be implemented. In addition, the appellant's own appeal statement explains that the current unauthorised development is larger than that permitted scheme. In this respect the current unauthorised development is more substantial and results in greater harm than this previous approval. As such, the previous prior approval application does not lend support for the current unauthorised works.
20. The appellant further states that the previous extant planning permission (Council ref: 2019/0490) permitted a larger two storey rear extension. Details and drawings of this extant permission have been provided, and the approved drawings do not show any extension at first floor level. Furthermore, the Council have clarified that the decision notice referring to a first floor extension is an error. Therefore, I do not consider that this error justifies the harms

² Council ref: 2019/0490.

³ Council ref: 2017/1598.

identified above. Nor am I convinced that conditions would be sufficient to overcome the harms identified above.

Conclusion on Ground (a) and the Deemed Planning Application

21. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

22. 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".
23. The enforcement notice requires the demolition of the unauthorised development or to construct the extension in accordance with planning approval Council ref: 2019/0490. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
24. The appellant states that the terrace could be removed and that the existing step 1 requiring the demolition of the ground floor rear and side extension could be replaced with the following:
- "1. Remove the erection of fencing atop the roof of the extension to facilitate the creation of a roof terrace."*
25. I have found under ground a) that the unauthorised development as built, including both the extension and the fencing above, are harmful to the character and appearance of the building and the area, and to the living conditions for the occupiers of Nos 36 and 40 with regard to privacy and noise and disturbance. Therefore, the requirements of the enforcement notice are not excessive, and do not go beyond what is appropriate to remedy the breach of planning control. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice, and there are no obvious alternatives which would remedy the breach.
26. Therefore, the appeal on ground (f) fails.

Conclusion

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR