



Appeal Decision

Site visit made on 12 January 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 21 January 2022

Appeal Ref: APP/U5360/C/20/3265401

144 Holmleigh Road, Hackney, LONDON, N16 5PY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jonathon Bleier against an enforcement notice issued by London Borough of Hackney.
 - The notice, reference 2019/0310/ENF, was issued on 26 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Property to two self-contained flats, erection of a rear roof extension on the main roof slope and roof extension on the outrigger roof slope and the erection of a single storey rear extension with associated facilitation on the roof as a roof terrace.
 - The requirements of the notice are to: 1. Cease the use of the Property as self-contained flats; 2. Remove all internal partitions, doors, bathroom & kitchen fixtures and fittings that facilitate the use of the Property as self-contained flats; 3. Remove the rear extension; 4. Remove the rear roof extensions; 5. 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), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of requirement No4 and the substitution of requirement No3 with "Remove the roof terrace from the rear extension, block up the access to and make good the roof of the extension". Subject to these variations, the appeal is dismissed and the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Background to the Appeal

2. Holmleigh Road is lined by terraces of substantial houses. They are mostly typical late nineteenth/early twentieth century terraced houses with two-storey outriggers and modest back gardens. A single storey extension has been added to the back with a roof terrace while a large dormer has been added to the rear roof slope, extending over the roof of the outrigger. No144 has also been subdivided into two flats.

The Appeal on Ground (c)

3. The appeal on ground (c) is that the rear extension and dormers are permitted development as they were completed while the property was a single dwellinghouse and so fall within the properties' permitted development rights.

Evidence has been provided to support the dates of construction and conversion. However, regardless of when the works were carried out the Council point out they are not permitted development in the first place. The extension is 3.3m deep and would therefore only be permitted development if accompanied by a prior approval application. As no such application was made it is not permitted development. The dormers also increase the volume of the roof by 75 cubic metres and the maximum increase for a terraced house is 40 cubic metres, so again they are not permitted development. No evidence has been provided to suggest these calculations are incorrect, and as the Council are otherwise correct in their interpretation of the General Permitted Development (England) Order 2015, then it follows neither the extension nor dormers are permitted development. The appeal on ground (c) fails.

The Appeal on Ground (a)

4. I shall consider here the issue of the principle of the creation of the two flats. The reasons for issuing the notice state the accommodation is substandard because of layout, outlook and lack of waste facilities. It is also contrary to policy as no contributions to affordable housing and zero carbon mitigation have been made and no provision for bird boxes and cycle facilities have been provided.
5. As to the size and outlook of the flats the Council accept the room sizes are acceptable and their outlook issue is limited to the basement bedroom. I noticed that many of the houses in this part of Holmleigh Road had what appeared to be identical basement rooms with narrow (although not unusually so) lightwells. Given the ground floor flat has good light and outlook to the other habitable rooms the poor outlook from one bedroom, which is not unusual for basement rooms, is not harmful.
6. The ground floor flat has access to the rear garden, but for private amenity space the first floor flat relies on the roof terrace provided above the rear extension. As the Council point out this enables direct overlooking of the neighbours' gardens on both sides of the property and views into the back of the neighbours' rear windows. This is seriously injurious to their privacy. The appellant suggests privacy screens of 1.8m can be provided which would certainly prevent overlooking but would also create the appearance of a small walled-in box on top of the extension which would both be out of place and harmful to good design of the host building but also not provide suitable outdoor space for the occupants of the flat. The roof terrace is harmful and should be removed as required by the notice. As a consequence no private outdoor space can be provided for the first floor flat which is contrary to the London Plan Housing SPG.
7. It would seem to me the lack of waste facilities can be dealt with by condition as there is space in the front garden area for bins – as appears to be the case for the majority of the houses in the Road. Policy LP42 of the local Plan requires 4 cycle spaces for the two flats and I doubt there would be room for them as well as the bins. They would have to be accommodated within the flats themselves (or in the garden for the ground floor flat), no details of how this would be achieved have been provided but again I doubt it is an insurmountable problem and could be dealt with by a condition as could the lack of bird boxes.

8. Of greater concern is the requirement for a contribution to affordable housing (policy LP13) and a climate change mitigation payment (LP55). Neither have been provided and no s106 obligation has been suggested. The appellant claims the Council refuse to negotiate but that would not stop them producing the necessary legal agreement to make the payments. The appellant also argues that LP55 is not applicable to existing developments. In fact there is a section of LP55 which deals with extensions to existing buildings, but it would seem to me the subdivision of house into 2 flats is a new form of development and provides the opportunity for carbon reductions as envisaged in the main part of LP55, so there is no reason why the policy should not apply. I do not see how these payments could lawfully be required by a condition. The fact that the development is contrary to these policies is sufficient on its own to warrant a refusal.

The Appeal on Ground (f)

9. This concerns the retention of the built elements referred to in the notice. I have already concluded the roof terrace is harmful, and the rear extension and dormers are not permitted development. However, it is clear from the evidence the rear extension and the dormers were completed before the subdivision of the house, and it seems for a short period the house was let as a single unit. I do not think it can be argued these extensions were added solely to facilitate the material change of use and so the question remains whether, considered on their own merits, they are harmful and should be removed.
10. It was possible to get a good view of the back of the terrace on this side of Holmleigh Road from the access road to the sorting office that sits behind the back gardens. It is clear there has been a lot of development on the backs of the houses, including several single storey extensions similar to that at No144 and a lot of rear dormers that link the main roof to the roof of the outrigger, as is the case here. Indeed so many of the roofs have been altered that large dormers would seem to be characteristic of the area. The rear extension is only slightly longer than that allowed under permitted development and is the same depth as the extension on the immediate neighbour to the east. It is separated from the opposite neighbour by the width of the remaining rear garden and so is not overdominant. The rear windows of the houses are north facing and so do not receive any direct sunlight and the loss of any daylight would be marginal. It is difficult to see how these extensions in the context of the rear of this side of Holmleigh Road could be said to be so out of place as to be harmful or contrary to policies on design and character. To this extent the appeal on ground (f) succeeds.

The Appeal on Ground (g)

11. The two families in the unlawful flats will need to relocate but the notice gives them 6 months to do so. It is not clear why this should not be a reasonable length of time to find alternative accommodation. The appeal on ground (g) fails.

Conclusion

12. I shall uphold the notice to cease the use as two flats but vary the requirements by deleting No4 to allow the roof extensions to remain. As the roof terrace would have been removed along with the rear extension, I shall

vary No3 to allow the extension to remain but remove the roof terrace and make good the roof.

Simon Hand

INSPECTOR