
Appeal Decisions

Date of Hearing 13 and 26 April 2021

Site visit made on 17 June 2021

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

an Inspector appointed by the Secretary of State

Decision date: 03 March 2022

Appeal A: APP/Y5420/C/20/3247317

Land and buildings known as 57-59 West Green Road, London N15 5DA

- 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 Taj Partners LLP against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The notice was issued on 4 February 2020.
 - The breach of planning control as alleged in the notice is: without planning permission
 - I. The unauthorised change of use of the second floor level to 4 flats from 3 flats;
 - II. The erection of a second floor extension;
 - III. The erection of a two-storey rear/side extension with a parapet wall to forming a balcony/terrace.
 - IV. The erection of a single-storey rear ground floor extension.
 - The requirements of the notice are:
 1. Cease use of the second floor level of the property other than as 3 flats.
 2. Demolish the second floor rear extension in its entirety;
OR
modify it to accord with planning permission HGY/2013/1343 by:
 - a) Reconfiguring the second floor to match the floor plan in drawing number 576/03A.
 - b) Reducing the depth of the second floor rear extension to match the depth of the original first floor rear extension outrigger, to accord with drawing number 576/04.
 - c) Insert two windows on the rear elevation of the rear extension at second floor level and match the overall fenestration to accord with drawing number 576/04.
 - d) Remove the door on the side elevation on the second floor rear extension.
 3. Demolish the two-storey rear/side extension (with a parapet wall facilitating a balcony) in its entirety
OR
reduce it to the size and design it was prior to the unauthorised enlargement i.e. a height lower than the first floor window by 60cm and no windows on the side elevation and no parapet wall facilitating a balcony.
 4. Remove the single-storey ground floor rear extension in its entirety.
 5. Remove from the land all debris as a result of compliance with the above requirements
 - The period for compliance with the requirements is: six (6) months after the notice takes effect
 - The appeal is proceeding on the ground set out in section 174(2)(a)(d)(f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as set out below in the Formal Decision.

Appeal B: APP/Y5420/W/20/3247316

57-59 West Green Road, Seven Sisters, London N15 4DA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Taj Partners LLP against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2018/3249, dated 16 October 2018, was refused by notice dated 27 January 2020.
- The development proposed is retention of rear second floor one-bed flat.

Summary of Decision: The appeal is dismissed.

Appeal A on ground (d)

1. For success on this ground the appellant company must demonstrate on the balance of probability that the development the subject of the enforcement notice is immune from enforcement action. The relevant period of immunity for the developments attacked by the notice is 4 years.
2. The appellant states it does not own the ground floor of this property and is only responsible for the upper residential floors, therefore it cannot be held responsible for works undertaken on the ground floor. Control over what occurs on the site is a matter that goes to eventual liability should the notice be upheld and not be complied with. Of more relevance here is the evidence as to when the works in question were undertaken.
3. The appellant's case is that only the single-storey rear ground floor extension is immune, therefore it has to provide evidence to show it has been substantially completed as such and in situ for a period of 4 or more years preceding the issue of the enforcement notice, that is at least from February 2016. The onus is on an appellant to demonstrate his case on this ground on the balance of probability, using evidence that is precise and unambiguous.
4. The appellant states that it has been in situ since 1982. A smaller single storey rear extension is shown in the first of three photographs at exhibit AF1 to the Council's statement, dated 4 April 2011 and in the second and third, dated 4 and 8 June 2015 respectively. It is not the same extension as that targeted in the notice which is shown in the image dated 3 January 2018 at exhibit AF2. This is evident, for example, from the comparative height of the lower window of the rear elevation of the adjoining property. It appears likely that the existing extension was substantially reconfigured and has resulted in what is to all intents and purposes a new extension with a roof terrace. In addition Google street images in the Council's report appear to show that the development did not exist in 2016.
5. From these images, the previous extension did not occupy the whole rear space of 57-59 West Green Road, and I find it likely that this was removed and a new one built with different materials and dimensions. In addition I note that the Council's officer made an external site visit on 3 January 2018, at which it was observed a new rear single-storey extension was being built, resulting in a larger new development in terms of the height and the space it occupies –

extending into the open space that is in the yellow line in the images in exhibits AF1 and AF2.

6. On the basis of the submitted evidence, it has not been shown to be more probable than not that the erection of the single-storey rear ground floor extension had been substantially completed for a period of four years prior to the notice being issued. As such, when the notice was issued enforcement action could have been taken in respect of the breach of planning control alleged.
7. The appeal on ground (d) fails.

Appeals A on ground (a) and Appeal B

Background and preliminary matters

8. The appeal site is a three-storey mid-terrace property on the southern side of West Green Road, close to the junction with Brunswick Road. It consists of a retail unit at ground level and flats at first and second floor level. The surrounding area is a mix of commercial and residential properties and part of the Clyde Circus Conservation Area (CA). The area is characterised by three-storey properties with retail uses on the ground floors and residential uses on the upper floors.
9. Since the appeals before me were made, the appellant made a separate appeal against the refusal of planning permission to retain the single-storey rear extension, which was allowed on 15 October 2021 (First Appeal Decision)¹. Thus planning permission exists for the single-storey element of the development enforced against.
10. The appellant also appealed against a refusal of planning permission in respect of the premises for alterations in connection with conversion of three flats into four. That appeal was dismissed on 15 October 2021 (Second Appeal Decision)². It was determined on the basis of the description in the decision notice and appeal form, namely "*External and internal alterations in connection with conversion of unauthorised change of use of the second floor level from three flats into four flats, including second floor rear extension with a parapet wall to forming a balcony terrace*".
11. The application form in Appeal B described the proposal as the retention of a rear second floor one-bed flat. For clarity I will determine the appeal on the basis of the Council's decision notice and the appeal form: "*Material change of use of second floor level from 3 to 4 flats, including the use of the flat roof as a terrace.*" The development in effect is subsumed within the scope of the enforcement notice in Appeal A, therefore I will deal with the planning merits of the s78 appeal proposal and deemed application in ground (a) together.

Main issues

12. The main issues are the effects of the developments on:
 1. the character and appearance of the area including the Clyde Conservation Area (CA);

¹ APP/Y5420/W/21/3268380

² APP/Y5420/W/21/3267332

2. living conditions of occupants with reference to adequacy of size, floorspace and layout; and
 3. living conditions of neighbouring occupiers with respect to any overlooking and loss of privacy.
13. The First and Second Appeal Decisions are material considerations to which I attach significant weight.

Character and appearance and CA

14. The essential elements of the CA include West Green Road, described in the CA Appraisal as a busy commercial street lined by three-storey late Victorian properties. At section 8.12 it states that there may be a pressure to enlarge and extend existing dwellings to the rear or into the roof space and careful consideration should be given to the effect of rear dormers and extensions in locations where there are views across rear elevations from nearby streets. I agree with the Inspector in the Second Appeal Decision that the appeal property conforms to this general character and contributes to the importance of the CA as a designated heritage asset.
15. I agree with the analysis in the Second Appeal Decision of the impacts of the design of the upper section of the lean-to extension at the rear of the three-storey projection. Also, from my own site inspection I agree it is an incongruous and uncharacteristic addition to the building, readily visible on Brunswick Road and likely to be prominent in views from neighbouring properties. Despite the use of white render, fenestration and other matters canvassed by the appellant, the alterations to the terrace and permitted extensions to the host building do not adequately mitigate the harm caused by the erosion of the character and appearance of the CA.
16. Planning permission Ref HGY/2013/1343, referred to in the enforcement notice, granted permission for Erection of second storey rear extension to convert two existing studio flats into 1-bedroom flats. The permitted configuration of the second floor is shown in the floor plan in drawing number 576/03A and permitted depth of the second-floor rear extension in drawing number 576/04.
17. I find that the second-floor extension has a depth and size that is excessive in relation to the host property and its original first floor rear extension outrigger, and those of its neighbours. It is an unacceptably incongruous and visually intrusive addition as viewed from those properties and in public views. The two-storey rear/side extension with its roof terrace is of a height, scale and overall appearance, jars with the existing forms of neighbouring development such that it is equally incongruous and a visually intrusive addition viewed from adjacent properties and the public domain, failing to preserve or enhance the character or appearance of the building or CA.
18. The harms fails to preserve or enhance the character and appearance of the CA, contrary to Policies 7.4, 7.6 and 7.8 of the London Plan 2016, Policies SP11 and SP12 of the Haringey Local Plan 2017 (LP) and policies DM1, DM9 and DM12 of the Development Management Plan 2017 (DMP). These policies among other things require high quality design appropriate to local character and which protects the historic environment by preserving or enhancing the character or appearance of the CA.

19. Although in terms of the National Planning Policy Framework, the harm to the CA is less than substantial it is still serious and attracts considerable weight against the development. That the latter would make a small contribution to the supply of housing and smaller units in particular, and provide socio-economic benefits to the community, are not public benefits that outweigh the sub-standard living conditions created and the harm to the CA.

Living conditions – standard of units

20. The Council's reasons for issuing the notice include that the flats have an unacceptably small size, inadequate internal floorspace and poor layout. This is said to result in sub-standard, cramped, single aspect units with poor outlook and daylight.
21. At the hearing there was dispute as to the exact sizes of the units in question, it being argued that Flat 10 was now, at 38m² slightly above the required standard in the Mayor's supplemental planning guidance (SPG). The approved layout was 12m² for the bedroom, clearly indicating the intention that it should be seen as a two-person flat. The minimum floor area standard for such a flat is 50m². In my view a condition to restrict the number of occupants would be impractical to enforce and therefore does not represent a viable alternative.
22. As the Second Appeal Decision points out, the previous lawful development certificate (LDC) was not in regard to the same building as existing in 2013 when the LDC was issued, which has been significantly remodelled to provide an additional residential unit by re-configuring the layout of flats 7 and 9. The analysis of the Council officer report in the current appeals indicates that the gross internal area (GIA) of flat 7 is 16m² and that of flat 9 is 25m². This is in effect what was found in the Second Appeal Decision, at paragraph 13. In view of the lack of protection afforded by the LDC it is also relevant that even although Flat 8 may not have been altered it too has a sub-standard internal floor area. I agree with the Inspector's conclusion that the size of the flats at the second floor is significantly short of the minimum space standards for such dwellings, and would thereby compromise the living conditions of occupants.
23. I take account of the appellant's point that the rear facade now has windows installed. Also that the newly formed flat is not a single aspect but has windows to the east and west. I note that the Inspector in the Second Appeal Decision did not consider that outlook and daylight to flats 7 and 9 were unduly compromised. From my site inspection I am concerned that these conditions are far from ideal (not least in respect of studio flat 7 whose privacy would be affected if the screen on the balcony serving flat 10 were removed). However even if they were deemed acceptable, that factor does not outweigh the harm caused by the failure to comply with the minimum space standards which are important to uphold for the benefit of future as well as present occupants.
24. I find that the design of the flats at the second floor rear extension, including their size and layout, fails to meet minimum standards set out in the Council's supplementary planning guidance, and is contrary to the aims of LP Policy SP2, DMP Policies DM12 and DM16, and London Plan Policy 3.5.

Living conditions – overlooking/privacy and fire safety

25. I have regard to the findings of the Inspector in the Second Appeal Decision that the development is not harmful to the living conditions of neighbouring

occupiers with particular regard to privacy. I note the comments as to the balcony/terrace and I accept that its use as such could be prevented by a condition if the other aspects of the unauthorised development were approved.

26. Allegation IV of the notice alleges the erection of a single-storey rear ground floor extension. Planning permission has been granted in the First Appeal Decision for erection of a single-storey rear extension at the appeal site in accordance with the terms of the application Ref HGY/2020/2485, dated 11 August 2020. This was an application to retain the development in situ.
27. The Inspector was apparently unclear (paragraph 4) whether the single storey rear extension in situ had been built entirely in accordance with the appeal drawings, so he based his assessment of the proposal before him on the submitted drawings, however I am satisfied that there is no material difference between the two. Accordingly in the event of planning permission being granted, s180 of the Act provides that the notice shall cease to have effect so far as inconsistent with that permission.
28. The basis on which the application, appeal and hearing proceeded was clearly that the ground floor was used and was proposed to be used for retail purposes. There was some uncertainty at the site inspection as to whether part of the ground floor rear extension was now occupied residentially. The draft conditions as they pertain to this element have been considered. For certainty I will attach the same condition as is attached to the permission in the First Appeal Decision which requires adherence to the approved plans, indicating that the approved development is retained as a store room in connection with the ground floor retail use.

Conclusions on ground (a) and s78 appeal

29. The proposal conflicts with key policies of the development plan taken as a whole and causes harm to which I attach considerable weight, especially the harm to the CA. The harm is not outweighed by other considerations whether taken singly or in combination that have been advanced by the appellant in his preparatory materials and oral submissions at the hearing.
30. I will issue a split decision on Appeal A by granting planning permission for the single-storey extension but refusing permission for the other unauthorised development the subject of the notice. The notice will be upheld but cease to have effect so far as inconsistent with the permission granted. I will refuse to grant permission in respect of Appeal B.

Appeal A on ground (f)

31. On this ground the appellant considers that to permit the return of the development to that originally approved would be appropriate rather than removing the whole. However that option is already contained in the requirements of the notice. As such the requirements of the notice are no more excessive in effect than that which clearly, the appellant is content to carry out as an alternative to the other requirements set out therein.
32. Otherwise, the requirement to demolish the unauthorised development is within the scope of s173(4)(a) of the 1990 Act in that it is legitimate to remedy the breach by restoring the land to its condition before the breach took place. The alternative options also properly allow for the breach to be remedied by making the development comply with the terms (including conditions and

limitations) of any planning permission which has been granted in respect of the land.

33. Therefore, this ground of appeal does not succeed.

Appeal A on ground (g) - that the time given to comply with the notice is too short.

34. The appellants request an extension of the compliance period to 12 months stating that it would be necessary to relocate a tenant, there is a shortage of accommodation and there may need to be legal action to remove the tenant.

35. However no details of tenancy or lease agreements or particular availability problems have been supplied. From 1 October 2021, all notice periods will have returned to the pre-Covid lengths. From experience, most residential units are let under assured shorthold tenancy agreements, terminable by at least 2 months' notice by serving a Section 21 notice. Where the notice is issued on or after 1 October 2021, tenants are entitled to this notice before application to the court for a possession order. Therefore I do not see any undue difficulty with rearranging accommodation and carrying out demolition or remedial works within the compliance period of six months.

36. The appeal on ground (g) therefore fails.

Conclusion on Appeal A

37. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will 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 which I will grant, by virtue of s180 of the Act.

Conclusion on Appeal B

38. For the reasons given above I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A

39. The appeal is allowed insofar as it relates to allegation IV in the enforcement notice 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 erection of a single-storey rear ground floor extension subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; 255/01; 255/02.

40. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to allegations I, II and III, and planning permission is refused in respect of the matters specified in allegations I, II and III, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

41. The appeal is dismissed.

Grahame Kean

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Taj	Appellant
Dr Robin Hooper	Planning Specialist

FOR THE LOCAL PLANNING AUTHORITY:

John Fitzsimons	Barrister
Fortune Gumbo	Team Manager, Planning Enforcement and Appeals
Kwaku Bossman-Gyamera	Principal Planning Officer
Antony Fenner	Senior Planning Enforcement Officer –

Additional documents submitted at the hearing:

CA Appraisal

Decision notice No. HGY/2015/2630

Draft conditions and plans