



Appeal Decision

Site visit made on 14 March 2022

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

Appeal Ref: APP/U5360/C/18/3216838

73 Chatsworth Road, Hackney, London E5 0LH

- 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 Tibor Stern against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The enforcement notice was issued on 26 October 2018.
 - The breach of planning control as alleged in the notice is the material change of use to three flats (two self-contained flats at lower ground floor and one self-contained flat at ground floor level) and the unauthorised erection of a ground floor extension.
 - The requirements of the notice are 1. Cease the use of the ground floor and lower ground floor as self-contained flats, 2. Demolish the suspended ground floor rear extension in its entirety, 3. Remove all partitions, doors, facilities, fixtures and equipment that facilitate the unauthorised change of use of the property as flats and reinstate the basement level to its previous layout, 4. Make good all damage to the property resulting from compliance with the other requirements of the notice and 5. Remove all waste, materials, equipment and debris from the property resulting from compliance with the requirements in steps 1 – 4.
 - 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), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Procedural Matters

1. The Council has acknowledged that the ground floor unit is lawful and have requested that it be removed from the notice, and the appellant agrees. This would not cause any prejudice and therefore the notice will be required to be amended.
2. The Statement of Common Ground confirms that the ground (a) appeal relates only to the extension at ground floor level. The ground (c) & (d) appeals have been withdrawn.

Public Sector Equality Duty

3. In forming this decision, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. These characteristics include race and disability and I acknowledge the appellant shares these protected characteristics for the purposes of the PSED. It does not follow from the PSED that the appeal should automatically succeed, but these need to be considered when assessing matters.

Decision

4. It is directed that the enforcement notice be corrected by the deletion of the allegation and substitution with 'without planning permission, the material change of use to two self-contained flats at lower ground floor level and the unauthorised erection of a ground floor extension. Furthermore, in the requirements, Step 1, deleting 'ground floor and'.
5. The appeal is allowed insofar as it relates to the ground floor extension 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 ground floor extension.
6. The appeal is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the material change of use to two self-contained flats at lower ground floor level and planning permission is refused in respect of the material change of use to two self-contained flats at lower ground floor level on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

7. 73 Chatsworth Road is located in the Chatsworth Road Local Shopping Centre. This area is covered by a non-immediate Article 4 Direction to remove permitted development rights for change of use from A1 and A2 to C3 (dwellinghouses) normally permitted under class M of part 3 of Schedule 2 of the GDPO. This came into effect on the 15th of September 2016.

Ground (a)

8. In reaching this decision I have taken into consideration the Human Rights Act 1998 and the European Convention on Human Rights and I recognise that dismissal of the appeal could potentially interfere with rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified by the extension, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is proportionate to the situation.
9. The development plan includes the London Plan [LP], London Borough of Hackney Core Strategy [CS], the Development Management Plan [DMP].
10. CS Policy 24 relates to design and seeks that all development should enrich and enhance Hackney's built environment and create a sense of place and local distinctiveness. This should be achieved by adopting a rigorous design and impact approach to assessing height and bulk of buildings in relation to existing surroundings. They should also respect the character of the surrounding environment.
11. DMP Policy 1 also relates to design. The Council will require alterations and extensions to be of high-quality design. Proposals should address reinforcing local distinctiveness, respect visual integrity and the established scale, massing and rhythm of the building. It should improve legibility and movement through the site and repair fragmented urban form and the pattern of the block.
12. LP Policy 3.5 relates to quality and design of housing. It requires the highest quality in relation to context and the wider environment. It should enhance the quality of local spaces taking account of local character. LP Policy 7.6 relates to

architecture requiring it to make a positive contribution to a coherent public realm. It should incorporate the highest quality of materials and design appropriate to context. It should comprise details and materials that complement, not necessarily replicate, the local architectural character and not cause harm to surrounding buildings.

13. The property is at the end of a terrace of similar brick-built properties, generally with commercial uses at street level. The properties generally have two storey extensions to the rear, which are consistent, apart from the appeal building and that adjacent, which have slightly larger projections and appear a little taller, partly it seems associated with land level. These back buildings are all attached to each other with no gaps. There would have been a small gap between the appeal building and that adjacent prior to the extension, but even then there was a link, albeit not as tall.
14. I consider that the extension has been well designed and it sits well between the two existing buildings. It has a slightly lower roof and the plastic cladding sets it apart from the two brick buildings either side, maintaining their independence and character. The Council considers that brick would be appropriate. I disagree with that as the plastic cladding is a durable material and has been well installed. It creates a good separation between buildings. The overall extension is small, just housing a shower room.
15. I consider that the extension reinforces local distinctiveness, respecting the character of its surroundings, of appropriate scale and mass. The materials compliment the adjacent buildings without replicating them and it does not cause harm to the surrounding buildings.
16. I appreciate that the unit to which it is attached is well under sized, with or without the extension, but the Council acknowledge that this unit is now effectively lawful. So, while accepting the point on size, the extension itself is acceptable, and does not make the unit worse.
17. I conclude that it accords with LP Policies 3.5 and 7.6, CS Policy 24 and DMP Policy 1. The appeal succeeds on ground (a).

Ground (f)

18. The ground (f) relates to the extension, which has succeeded under ground (a) so it does not need to be considered.

Graham Dudley

Planning Inspector