



Appeal Decision

Site visit made on 5 April 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Appeal Ref: APP/U5360/C/20/3265627

261A Well Street, Hackney, London E9 6RG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Russell Bamber against an enforcement notice issued by London Borough of Hackney.
 - The notice numbered 2020/3016/ENF was issued on 10 December 2020.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a L shaped dormer.
 - The requirements of the notice are to:
 1. Remove the L shaped dormer loft conversion;
 2. Restore the roof to its condition prior to the breach of planning control occurring; and
 3. 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: Six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the Act). 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 allowed, and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of an L shaped dormer at 261A Well Street, Hackney, London E9 6RG.

Preliminary Matters

2. Since the notice was issued, the London Plan 2021 has been adopted and its policies are no longer 'draft' policies. The new plan replaces the London plan 2016, policies from which were referred to on the notice. Those policies are therefore no longer relevant and will not be referred to in my decision.
3. I note the council consider that there is a hidden appeal on grounds (b) and (c). However, from my reading of the appellant's evidence¹, although the appellant initially believed that the appeal development was permitted development, he subsequently realised that this was not the case because the building is in a mixed use, and the appeal property is a flat.
4. The council argue that the previous extension was not just extended, but completely rebuilt to create a whole new development and that the previous extension and terrace were completed without planning permission eradicating the original butterfly roof form which the unauthorised development is placed

¹ Letters dated 20 and 27 December 2020 from Russell Bamber to Planning Enforcement Officer

upon. The appellant disputes this and confirms that the recent development is an extension to "an existing single storey flat-roofed bedroom which has been in existence for ten years". It has provided 9sqm of further accommodation in the form of one bedroom and a w.c. which is shared by the appellant's young children. From the photographs provided by the appellant, it seems to me that the timber frame forms a new structure to what was the outer side elevation. Furthermore, the appellant refers to the works as refurbishment to "upgrade their bedroom to be waterproof and somewhat more soundproof".

5. Whilst the original roof top build may have been in situ for several years, I consider that the addition in its current form is a re-build of the previously existing structure plus the new extension. Consequently, the notice attacks the complete flat roof development which provides a bedroom and w.c. for the appellant's daughters, and that is what I shall consider on the ground (a) appeal.

The appeal on ground (a) and the deemed planning application

Main Issues

6. These are the effect of the development on i.) the character and appearance of the host dwelling and surrounding area, and ii.) the living conditions of occupants of neighbouring properties.

Reasons

Character and appearance

7. The appeal property (No 261A) is a residential unit over two floors atop a ground floor retail unit and flat on Wells Road, a designated 'local shopping centre'. It is situated mid-row amongst properties of similar mixed use. Within the row, many appear to have been extended or altered at roof level and whilst there is limited visibility of these alterations from the highway to the front, the rear of the appeal property and its neighbours are publicly visible from a small area of open space to the rear. Surrounding the appeal property, its neighbours and open space to the rear are blocks of five storey flats from where there will likely be some oblique views of the appeal development.
8. The appeal development projects from the rear gable end of the roof of No 261A which provides first floor living accommodation. It encompasses a flat roof area that, according to the appellant's plans, is above the kitchen/utility area. The entire space, which is L shaped, is covered by the appeal development which is a box-like timber structure clad in dark grey/black reconstituted slate roof tiles. Its flat roof sits below the ridge height of the existing building but projects beyond the existing pitch roof slopes. There is a door with restricted outward opening and Juliet balcony and a small window in the end elevation.
9. While the council consider the materials to be acceptable and space standards to have been met, in its view the development fails to respond to the existing character of the place and has total disregard of the special and valued features of the property and neighbouring properties. It explains that dormer extensions are not suitable alterations for Victorian terraced houses as outlined in the Residential Extensions and Alterations Supplementary Planning Document 2009 (the extensions SPD). However, while the extensions SPD provides guidance for the appropriate design of a rear dormer extension, the

appeal development differs significantly in the architectural context. The development is better described as a roof top extension rather than a dormer which is usually defined as a window set vertically in a structure projecting through a sloping roof. Notwithstanding this, the council also refer to a conflict with the extensions SPD due to the appeal development not being subordinate.

10. Google Earth images provided by the appellant show that the appeal property had previously benefitted from a roof top addition above the appellant's kitchen/utility room. This was similar in design and covered approximately one third of the space with the remaining roof given over to a garden terrace surrounded by a high close-boarded fence. The images also show how the terrace, once a line of properties with butterfly roofs, has developed with roof additions to some of the neighbouring properties.
11. Although the appeal development does not reflect the design of the original building, its visual impact is limited. Views of the development are confined to the rear of the property and are somewhat restricted by the mature trees within the adjoining area of open space. Nevertheless, from this vantage point the rear of the row of terraced properties presents a hotch-potch of development where some properties have been extended. There are flat, mono-pitch, butterfly and mansard roofs, parapet walls, concrete render, white uPVC fenestration, different coloured brickwork and metal extraction flues which extend beyond the rooftops of the properties. The building styles, designs, height, fenestration and use of materials display a diverse mis-match of development.
12. The appeal development may well read as an additional storey rather than an extension to the roof, but it does not extend beyond the height of the buildings in the terrace. Furthermore, the use of dark grey/black slates and black aluminium fenestration complements the dark brick and dark fenestration of its immediate neighbouring property and the dark weathered timber used on the first floor of No 261A.
13. Overall, I find the design of the appeal development and the use of materials to not detract significantly from the appearance of the host dwelling or the character of the surrounding area, which is dominated by tower blocks of flats. In this respect, the development complies with Policies LP1 and LP17 of the Hackney Local Plan 2033 (HLP) which require new development to be of high quality design and, amongst other things, to have regard to the council's extensions SPD. Policy D1 of the London Plan 2021 refers to the requirement to define an area's character to understand its capacity for growth and at D1B direction for growth requirements in the preparation of Development Plans. Policy D2 of the London Plan 2021 refers to infrastructure requirements for sustainable densities. In this respect, neither policy is relevant to the appeal development.

Living conditions

14. Although only referring to the living conditions of neighbouring occupants in the reason for issuing the notice, the council's statement briefly touches on concerns regarding the effect of the development on living conditions of the appellant and his family. The council considers that the appeal development will have an impact upon current and future occupants' loss of amenity. While this is noted as 'to a minimum' it is reported as not fully adhering with policies

at local and regional level. However, with no further explanation provided, I cannot say for sure what 'the loss of amenity' refers to.

15. Nevertheless, the council considers that the adjacent occupants at No 263 will experience some loss of daylight and overshadowing. There is a mansard roof extension to this property which is set towards the front of the building. From the photographs provided by the appellant, there appears to be two windows to the front and two windows to the rear of the neighbour's roof extension.
16. The appeal development will undoubtedly have an impact on the occupants of the immediate neighbouring property. However, the appellant's original roof extension, which appears to have been in place for some 10 years as stated by the appellant and not refuted by the council, clearly incorporated a sizeable section of the roof space with a solid presence along the boundary with No 263.
17. In these circumstances, although the occupants of No 263 will likely be affected by the appeal development, I consider that the extent of the development along the boundary, compared to what was in place previously, would not be so different as to now be considered significantly detrimental to the living conditions of the occupants of No 263. In respect of the above, the appeal development complies with Policy LP2 of the HLP which requires new development to be appropriate to its location and designed to ensure there are no significant impacts on the amenity of occupiers and neighbours. Furthermore, the development is considered to comply with Policy LP17 of the HLP which requires all extensions to, amongst other things, have regard to the council's extensions SPD whose general principles include the aim to protect residential amenity.
18. Policy D1 of the London Plan 2021 refers to the requirement to define an area's character to understand its capacity for growth and at D1B direction for growth requirements in the preparation of Development Plans. Policy D2 of the London Plan 2021 refers to infrastructure requirements for sustainable densities. In this respect, neither policy is relevant to the appeal development.

Conditions

19. The council has not provided me with any suggested conditions, and I consider that there are not any that would be deemed either reasonable or necessary.

Conclusion

20. For the reasons given above, I conclude that the appeal on ground (a) and the deemed application for planning permission succeed. Consequently, the enforcement notice is quashed, and planning permission is granted on the deemed application.

S A Hanson

INSPECTOR