



Appeal Decision

Site visit made on 9 August 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 October 2022

Appeal Ref: APP/H5960/C/21/3267284

Land at Flat A, 125 Tooting Bec Road SW17 8BW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mrs Brian Crainey of Ground Work First Limited against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The notice was issued on 10 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, the unauthorised erection of a single storey rear/side extension and roof terrace; excavation to create basement and subdivision of Flat A (1 x 2-bedroom) into 1 x 1-bedroom and 1 x 3-bedroom flats.
 - The requirements of the notice are:
 1. Remove the unauthorised single storey rear/side extension and roof terrace over rear ground floor extension;
 2. Remove from the Property any partitioning walls, fittings and fixtures associated with the subdivision of Flat A into self-contained flats; and
 3. Ensure that any remedial works to erect a single storey rear/side extension with hipped roof and basement excavation accord with the approved plans and conditions of planning permission ref: 2017/6109.
 4. Remove from the site all debris arising from compliance with steps 1-3
 - The period for compliance with the requirements is five months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f), (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 corrected and varied by:

1) Deleting the allegation in section 3 of the enforcement notice and replacing it with the following: *Without planning permission and within the last 4 years, excavations to create a self-contained basement flat and the erection of a single storey rear/side extension and roof terrace.*

2) Deleting requirements 1, 2, 3 and 4 in section 5 of the enforcement notice and replacing them with the following requirements:

1. Cease the use of the basement as a self-contained flat and remove any partitioning walls, fittings and fixtures associated with its use as a flat, and remove the unauthorised single storey rear/side extension and roof terrace over rear ground floor extension Or, Cease the use of the basement as a self-contained flat and carry out remedial works so that the basement excavations and single storey rear/side extension accord with the approved plans and conditions of planning permission reference 2017/6109.

- 2. Remove from the site all debris arising from compliance with requirement 1.*
- 3) Substituting six (6) months for five (5) months as the period for compliance.
2. Subject to these corrections and variations, the appeal is dismissed, 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.

Preliminary Matter

3. Whilst not forming part of the reasons for issuing the notice, the Council in their appeal statement referred to the effect of the extension on the living conditions of neighbouring occupiers. They also referred to the lack of cycle parking, waste storage and collection and water conservation measures. In this case, since the appellant has had the opportunity to comment, I have considered the appeal accordingly.

Background

4. On 2 January 2018, planning permission was conditionally granted (2017/6109) for the erection of a single-storey rear/side extension and excavations to create a basement. I sought views from the main parties about whether this permission had begun and therefore remained extant and a lawful fallback.
5. There is no dispute between the parties that the development was begun before the deadline for commencement. Based on their responses and the balance of probabilities, I have no reason to take a different view. It therefore remains extant and a potential fallback to which I attach significant weight.
6. On 6 November 2020 planning permission was refused (2020/2200) for alterations including the erection of a single-storey rear/side extension and excavations to create a basement to provide 1 x 1-bed and 1 x 3-bed flat.

The appeal on ground (b)

7. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
8. The appellant's case on this ground is essentially that the notice incorrectly describes the alleged breach. They contended that the development that has taken place consists of a single storey rear/side extension to an existing ground floor flat with roof terrace above, and excavations to create a two-bedroom flat at lower ground (basement) level.
9. The appellant has not sought to demonstrate that planning permission reference 2017/6109 was not begun, but states that they did not implement the permission and therefore there has been no sub-division.
10. It appears from the officer report in respect of application reference 2020/2200 that the basement excavations had begun however, there is no evidence that planning permission 2017/6109 had been implemented according to its terms.

11. Based upon the submissions it seems more probable than not, that the appellant carried out the excavations to form a self-contained flat in the basement.
12. On ground (b) I conclude that excavations have taken place to form a two-bedroom basement flat and the ground floor flat (Flat A) has been extended with a single storey side/rear extension with terrace above. Flat A has not been subdivided and the allegation is inaccurate in this respect.
13. Whilst this finding will lead to success of the appeal under ground (b) that does not mean, necessarily, that the notice must be quashed. It is open to me to correct any defect, error or misdescription in the notice. The powers of correction are wide, limited only by the proviso that no injustice shall be caused to the appellant and/or the Council.
14. As issued the notice does not require the use of the basement as a self-contained flat to cease. However, the appellant understood what the notice was directed at and made a case in respect of those developments. The allegation and requirements can, therefore, be corrected and varied to reflect that the development is excavations to create a two-bedroom basement flat and the erection of a single storey rear/side extension with roof terrace above.
15. There is no injustice to the Council since the notice sought to address the formation of an additional flat, extension and roof terrace. Since the appellant understood what the Council were attempting to address and were able to make a detailed case, there would be no injustice caused.

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

16. Based upon the above, I consider the main issues are (i) whether the basement flat provides acceptable living conditions for future occupiers, with particular regard to size, daylight matters and outlook (ii) the availability of cycle storage, waste storage and collection and water conservation measures, and (iii) the effect of the single storey extension and roof terrace on the living conditions of neighbouring occupiers with particular regard to outlook, privacy, and daylight/sunlight matters.

Basement flat

17. The appellant stated that the internal floor area of the flat is around 92sqm with 12sqm of external terrace. This is more than the 61sqm required by Policy DMH6 of the Wandsworth Local Plan Development Management Policies Document 2016 (DMPD) and that required by the Technical housing standards – nationally described space standard. Therefore, based on the submitted plans and my observations, the flat provides adequate internal living accommodation in terms of size.
18. The flat is lit by lightwells to the front, rear and side. The rear bedrooms have access to and look out onto the retaining walls of the rear lightwell. The windows and glazed doors serving the kitchen/living area are mostly submerged below pavement level and face the walls surrounding the front lightwell/terrace.
19. Given its position submerged below the pavement and proximity to and heights of external retaining structures, the lightwells would only facilitate limited

daylight to filter into the flat, resulting in a particularly gloomy living environment.

20. Moreover, this arrangement offers a particularly bleak and oppressive outlook for future occupiers and results in a poor-quality place, which is below the standard of living conditions that future occupiers could reasonably expect from a self-contained unit of accommodation.
21. Planting and decoration in the lightwells, would not materially improve the situation and is therefore a matter of little weight.
22. Planning permission reference 2017/6109, was for excavations to create a four-bedroom duplex apartment. The plans show that outlook from the rooms would have been similar however, the occupiers would have had access to the living space and garden at ground floor level, from which there would have been an acceptable level of outlook. That permission is not therefore comparable and does not provide a reason to grant permission for the appeal development.
23. Whilst there is no conflict with Policy DMH6 of the DMPD this cannot outweigh the harm in respect of outlook and daylight matters. The development is therefore contrary to the amenity protection aims of Policies DMS1 and DMH4 of the DMPD and the development plan when taken as a whole.
24. The Council referred to Policy DMH2 of the DMPD however, since there has been no conversion of an existing dwelling, this policy is not relevant.

Cycle storage, waste storage and collection and water conservation measures

25. There is no provision for cycle storage contrary to Policies DMH4 and DMT2 of the DMPD however, whilst limited, it seems to me there would be space within and outside of the property for such storage. In any event, given the short walking distance to a tube station and various bus routes, the lack of on-site cycle storage would not have been a reason alone to dismiss the appeal.
26. There would be space for waste storage within and to the front of the site, and a condition could be imposed in respect of this and water conservation methods in accordance with Policies DMS1 and DMS3 of the DMPD.

Single storey extension and roof terrace

27. I understand that the neighbouring 127 Tooting Bec Road is also in use as flats. There are windows in the side elevation at ground floor level, some of which, I assume, in the absence of contrary evidence, serve habitable rooms.
28. The single storey extension has been built on the shared boundary with No.127 and runs along the boundary for a relatively substantial distance. Because of the height, depth, and proximity to windows, the extension will have a dominant and overbearing effect upon the outlook from No.127. The effect is such that the living conditions of the occupiers of that property are harmed.
29. I note that the officer report in respect of application reference 2020/2200 found no harm in respect of the impact on outlook from No.127. Nevertheless, I have a duty to consider the impact of the development and my assessment is based on my own observations.

30. The rear of properties in the terrace face broadly north-east, and the existing outrigger already limits the sunlight/daylight to the inner and side windows at the rear of No.127. Consequently, given its single storey flat roof form and in the absence of substantive contrary evidence, I find no material harm because of loss of daylight or overshadowing.
31. The approved extension would have been set off the boundary, had a lower eaves height with a roof sloping upwards away from No.127 and would not have the same depth. As such it would not have had the same effect.
32. The roof terrace serves the first floor flat. It is surrounded by glazed privacy screening, which the appellant stated is 1.7m in height and prevented me from overlooking into neighbouring gardens.
33. The terrace at around 6.8sqm is significantly smaller than that at Flat C, subject of a separate appeal¹, and unlikely to result in large noisy gatherings of people. It is also confined to the rear of the property, set in from the sides and is not as high up on the building. Consequently, I consider there is no material harm because of loss of privacy or noise and disturbance.
34. Notwithstanding that I have found no harm in respect of the roof terrace, the extension has an unacceptably harmful impact on the outlook from No.127. The development is therefore contrary to Policy DMS1 of the DMPD which amongst other things seeks to ensure there is no harm to the amenity of nearby occupiers in respect of unsatisfactory outlook. There is also conflict with the amenity protection aims of the National Planning Policy Framework and the Council's SPD².
35. The Council referred to Policy DMH5 of the DMPD, the detailed design considerations of which are not relevant to the main issues in this case.

Overall conclusion on the ground (a) appeal and the deemed planning application

36. For the above reasons, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (f)

37. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)).
38. As the enforcement notice, as varied, requires the use of the flat to cease and the rear/side extension and roof terrace be removed or, the use of the flat to cease and the development be modified in accordance with planning permission 2017/6109, I find the purpose is to remedy the breach of planning control. No lesser steps would achieve that purpose.
39. The appellant's case on this ground relates only to the roof terrace and is that it could be removed, and a Juliet balcony formed.
40. However, the terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice. The allegation cannot

¹ APP/H5960/C/21/3267292

² Wandsworth Local Plan Supplementary Planning Document Housing Adopted November 2016

be corrected to enable a development different to that which is defined in the notice. I am therefore unable to consider granting permission for the appellant's alternative, being the formation of a Juliet balcony. It is however open to the appellant to apply for planning permission for a Juliet balcony.

41. Where planning permission has been granted but the development is not built as approved, the notice should give the recipient options to either remove/modify the unauthorised works or implement the permission in accordance with its terms and conditions. However, the appellant cannot be forced to implement any planning permission because that would exceed what is necessary to remedy the breach of planning control. Yet requirement three, in the notice as issued, is worded to that effect and is therefore excessive.
42. Since this is excessive, I shall vary the requirements accordingly. The appeal on ground (f) therefore succeeds to this limited extent.

The appeal on ground (g)

43. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
44. The appellant suggested a period of nine months to allow for further negotiations to take place with the Council for an alternative scheme. They referred to two appeal decisions where Inspectors extended compliance periods to allow time for discussions and the submission of alternative schemes.
45. The basement flat was not occupied at the time of my visit. However, Flats A and B were occupied. Undoubtedly the requirement to remove or modify the extension and roof terrace would have some impact on the occupants of the flats, A in particular, since rooms in the extension are used as bedrooms.
46. Whilst it seems to me that the compliance period is long enough for an alternative to be submitted and if approved implemented, given the potential disruption to existing occupants, I conclude that it is reasonable and proportionate to extend the period from five to six months. The ground (g) appeal succeeds to this extent.

Conclusion

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

Felicity Thompson

INSPECTOR