



Appeal Decision

Site visit made on 18 October 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal Ref: APP/A5840/C/21/3288460

Land at 63A & B Warner Road, Camberwell, London SE5 9NE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Masood Nasir against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The notice was issued on 17 November 2021.
 - The breach of planning control as alleged in the notice is:
 - 3.1 Without planning permission, the erection of a single storey flat roof side extension connected to a rear pitched roof single storey conservatory and shown for indication purposes only outlined in red on Drawing 1 attached to this Notice ("the Unauthorised Extensions").
 - 3.2 Without planning permission, the removal of the pitched roof of the 2nd storey rear outrigger and installation of a flat roof, removal of brickwork and installation of a door facilitating access to this roof as seen in Photograph 1 and Photograph 2 attached to this Notice ("the Unauthorised Roof Works").
 - 3.3 Without planning permission, the installation of a hard surface and erection of gates to the front of the Land as seen in Photograph 3 attached to this Notice ("the Front Garden Works").
 - The requirements of the notice are to:
 - 5.1 Demolish the Unauthorised Extensions and remove all fixtures and fittings associated with this unauthorised development from the Land.
 - 5.2 Remove the Unauthorised Roof Works and restore this roof back to its original condition before the unauthorised development took place and remove the door leading on to the 2nd storey rear outrigger and install a window and brickwork of similar appearance to the window and brickwork shown on Photograph A & B attached to this Notice.
 - 5.3 Remove the Front Garden Works and re-instate the front garden by planting landscaping and re-erecting a brick wall of similar appearance as shown on Photographs C&D attached to this Notice.
 - 5.4 Remove from the Land any material and debris arising from compliance with the requirements of 5.1 to 5.3 above to an authorised place of disposal.
 - The period for compliance with the requirements is: Six (6) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. 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 insofar as it relates to the removal of the pitched roof of the 2nd storey rear outrigger and installation of a flat roof and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the removal of the pitched roof of the 2nd storey rear outrigger and installation of a flat roof at 63A & B Warner Road, Camberwell, London SE5 9NE.
2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the removal of brickwork and installation of a door, erection of a

single storey flat roof side extension connected to a rear pitched roof single storey conservatory and the installation of a hard surface and erection of gates and planning permission is refused in respect of the removal of brickwork and installation of a door, erection of a single storey flat roof side extension connected to a rear pitched roof single storey conservatory and the installation of a hard surface and erection of gates on the application deemed to have been made under section 177(5) of the Act at 63A & B Warner Road, Camberwell, London SE5 9NE.

Preliminary Matters

3. Since the issue of the enforcement notice, the Council has adopted The Southwark Plan 2019-2036 (February 2022)(the SP). The plan replaces the Core Strategy and Southwark Plan 2007. The Council has provided me with a copy of those policies it considers of relevance to this appeal and the appellant has had the opportunity to comment on the implications of those policies through the appeal.
4. The appellant has requested that the appeal proceed by way of inquiry. However, given the grounds of appeal and the matters in dispute, I consider it is unnecessary to test the evidence under oath. Having reviewed the evidence, I am satisfied that the appeal can be dealt with by written representations and that neither party would be prejudiced by me determining the appeal in this way.

Ground (a)

5. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged.

Main Issues

6. The main issues of the appeal are the effect of the appeal scheme on:
 - Surface water flooding; and
 - The living conditions of the occupants of No 61, with regards to outlook; and
 - Fire safety; and
 - The living conditions of the occupants of No 61, with regards to privacy.

Reasons

Flood risk

7. The front garden has been laid with paving blocks and gates have been erected. The Council has provided an aerial photograph of the site prior to the works, which shows that much of the front garden was previously laid with grass. Policy P13 of the SP seeks to ensure principles of water sensitive urban design including surface water runoff are addressed in new development and policy P14 of the SP seeks sustainably designed development to adapt to the impacts of climate change, amongst other things. Policy SI13 of the London Plan (2021) (the LP), states that development proposals for impermeable

- surfacing should normally be resisted unless they can be shown to be unavoidable, including on small surfaces such as front gardens and driveways.
8. The Local Flood Risk Management Strategy 2015 (LFRMS) outlines the general approach to managing flood risk across the borough, highlights the problems caused by surface water flooding and recommends new development aims to achieve green field run-off rates.
 9. The appellant suggests that there is a drainage system in place and the paving has been laid to ensure all water goes into the drains. However, I have no substantive details of the drainage system and saw no obvious means of draining the frontage during my visit. The Council has provided me with a photograph, dated 21 May 2021, which appears to show the front garden laid with concrete. Although sand is visible on the photograph, which presumably has been laid between the bricks and the concrete, the concrete is likely to prevent water from draining through the gaps in the bricks.
 10. While the appeal site may have been identified by the Environment Agency as at very low risk from surface water flooding and from flooding from rivers and the sea, the paved surface is highly likely to have increased the rate of surface water run-off, which is likely to increase the risk of surface water flooding, contrary to policies P13 and P14 of the SP and policy SI13 of the LP, the requirements of which are set out above.
 11. The appellant points out that there are a number of premises along Warner Road which have paving or other hard surface to their frontages, including the bus depot opposite the appeal site. Whilst I saw various hard standings to the front of properties along Warner Road, I do not have full details of their construction. Furthermore, the Council has introduced policies P13 and P14 to try and address concerns relating to flooding. Their introduction now, and the introduction of policy SI13 of the LP, are intended to prevent further risk from surface water flooding due to impermeable surfaces.
 12. The appellant initially advised that there is an application pending to have the kerb dropped and to have a disabled bay installed at the front of the property which would allow vehicle access for a disabled resident. At the time of my visit, there was no dropped kerb and no parking on the frontage. The appellant has since advised that a disabled bay has now been installed outside the property and so the frontage is no longer used for disabled parking.
 13. While the removal of the wall to the front may enable a wheelchair user easier access to the front door, the appeal scheme is not the only means of improving disabled access to the property. I therefore afford this matter very limited weight. Whether the front garden is used for parking or not, as set out above, I consider it would increase the risk of surface water flooding and conflicts with policy.

Outlook

14. The building has been extended to the rear with a single storey flat roof side extension connected to a single storey pitched roof conservatory, which together are referred to in the enforcement notice as 'the Unauthorised Extension'. There is a wooden outbuilding in the rear garden of No 61, however, it is modest in size and the conservatory projects well beyond it.

15. The appellant suggests that an old disused side and rear outbuilding were incorporated into the conservatory. Pre-existing structures are shown on plans submitted to the Council. While their existence is disputed by the Council, from the plans provided, the conservatory appears to project significantly further than the pre-existing structures. Consequently, even if they did exist, they do not weigh in support of the appeal scheme.
16. Although the conservatory is single storey, with a pitched roof, given its substantial height and proximity to the boundary with No 61, I consider users of the rear garden of No 61 are likely to find the conservatory harmfully overbearing, contrary to policy P56 of the SP which states that development should not be permitted when it causes an unacceptable loss of amenity to present or future occupiers or users.
17. I acknowledge that the rear extension to No 59 and Elm Tree Court are taller than the appeal scheme, however, given its depth, the conservatory harmfully exacerbates a sense of enclosure which is experienced by users of the rear garden of No 61. I agree that the conservatory does not result in overlooking, since it has a solid wall facing towards the rear garden of No 61. Nevertheless, it is the conservatory's height, projection and proximity to the neighbouring boundary which results in the harm identified above.
18. The appellant states that the works have been carried out for the benefit of a disabled resident. The conservatory provides additional space which a wheelchair user may enjoy. However, the appeal scheme is not the only means of providing additional space within the property and so I afford this matter limited weight.
19. While The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) grants planning permission for certain works, including the enlargement, improvement or other alteration of a dwellinghouse under Schedule 2 Part 1, Class A, it does not grant retrospective planning permission and only permits extensions of up to 6m, subject to the submission of certain information to the local planning authority before beginning the development. The outcome of the prior approval procedure is not guaranteed. Consequently, I afford this matter very limited weight.
20. Thus, for the reasons given above, I find the Unauthorised Extension is harmful to the living conditions of the occupants of No 61, contrary to policy P56 of the SP, the requirements of which are set out above.

Fire safety

21. Policy D12 of the London Plan 2021 (LP), seeks to ensure fire safety and sets out a number of criterion against which development proposals will be assessed, including information on space provision for fire appliances and assembly points, on passive and active safety measures, on construction products and materials, means of escape and evacuation strategy and access and equipment for firefighting.
22. The extensions have already been constructed and it is not clear from the evidence, or from my inspection of the site, whether they have been designed to incorporate features which reduce the risk to life and the risk of serious

injury in the event of a fire, including passive and active fire safety measures or whether it is possible to retrofit such features.

23. From the plans submitted by the appellant to the Council in support of a planning application, it seems the layout of the first floor of the building has not significantly changed as a result of the removal of the pitched roof of the 2nd storey rear outrigger and installation of a flat roof. I therefore consider it unlikely that there would be harm to fire safety arising from the works to the outrigger and no conflict with policy D12 of the LP for this part of the breach.
24. However, with respect to the single storey rear extension and conservatory, I am not persuaded it provides a suitable and convenient means of escape, particularly for wheelchair users given the limited distance between the side elevation and boundary fence. I do not consider it would be reasonable to secure measures via condition since I cannot be sure it would not be necessary for the works to be modified or the layout to be changed. Given the extension and conservatory comprise part of the living accommodation, I consider the fire risks to its users to be unacceptable, contrary to policy D12 of the LP, the requirements of which are set out above.

Privacy

25. Works to extend the roof have been carried out, resulting in the creation of a flat roof to the rear outrigger and the insertion of double doors into the elevation above the outrigger, which would allow access to the flat roof. While planning permission may not always be required to replace a window, the works which have been carried out appear to have been done as one overall act of development and so planning permission is required.
26. The appellant disputes that he has inserted doors, rather he suggests it is a window which is not full height and has been locked and sealed up since the 'planning issue' arose. However, from my inspection of the works, I consider the term 'door' to be an accurate description of the works. The Council has provided a photograph which shows one of the doors open, allowing the photographer access onto the flat roof.
27. I was unable to access the roof during my visit as the doors were locked. Nevertheless, I was able to see the relationship between the roof and the neighbouring properties and gardens during my visit. While mature vegetation limits views to No 65, individuals accessing the roof would be able to peer into the windows of No 61 and into the rear garden below, which occupants of No 61 are likely to find intrusive.
28. I saw that other properties in the area have substantial windows in their rear elevations, including No 71 and 73 Warner Road. However, since they are windows, they are unlikely to be used to facilitate regular access to an outdoor roof space¹. The appellant has drawn my attention to a balcony which, it is asserted, was granted planning permission at No 67 Warner Road. However, it is located on the top floor, which extends well above the windows of neighbouring buildings. Furthermore, fencing appears to have been erected around the roof, which would prevent its users from being able to peer into the gardens below. This is not, therefore, comparable to the appeal scheme before me.

¹ The appellant has provided a photograph which shows one of the flat roofs being used to store a bicycle.

29. The appellant has drawn my attention to various other properties in the area, including No 69 Warner Road, which the appellant states has stairs on the first floor with a sitting area, No 67 which, it is asserted, has a garden annex being used as a flat and flats to the rear of the property. However, I do not have full details of the examples cited and consider it highly unlikely these are comparable to the appeal scheme before me. Direct views from the flats to the rear, Elmtree Court, are significantly limited by mature vegetation and whilst this may not have been the case when the flats were first constructed, I do not know how the spaces which are served by the windows are used.
30. While I note there is a degree of overlooking in the area already, I consider the loss of privacy which would be caused by the use of the doors to access the flat roof to be harmful to the living conditions of neighbouring occupants. Expecting neighbouring occupants to draw their curtains to maintain privacy is not an acceptable solution, particularly since this would limit the natural light entering a room.
31. The creation of the flat roof does not itself cause harm to the living conditions of neighbouring occupants, rather it is the way it could be used which is harmful. Although the appellant states that no-one has used the flat roof as a roof terrace, planning permission runs with the land. While the appellant may not intend to use the flat roof, the insertion of the doors facilitates access to the roof which future occupants of the premises may choose to use. This would cause harm to the living conditions of neighbouring occupants, contrary to policy P56 of the SP, which states that development should not be permitted when it causes an unacceptable loss of amenity to present or future occupiers or users.
32. I do not consider it would be reasonable to impose a condition preventing the doors from being used since a condition should not be used to nullify the benefit of a permission. Nevertheless, section 177(1) allows for a grant of planning permission for the whole or part of the matters. I consider it would be appropriate in this case to grant permission for the roof works but not the installation of the door, which is separately identified within the breach.
33. I note the Council state 'these works are out of character with the area' in its statement of case, however, the Council did not raise character and appearance of the extension in its enforcement notice. Furthermore, as pointed out by the appellant, flat roofs are not an uncommon feature of the area. The roof extension is modest and is located to the rear of the building. I saw that properties along this part of Warner Road have a variety of modifications. Consequently, even if the Council had raised such concern in its notice, I consider the roof works do not have a significant adverse effect on the character and appearance of the area.

Other Matters

34. The Council has referred me to policy D4 of the London Plan. However, this policy relates to delivering good design and sets out how this can be achieved. The Council has not identified harm to the character and appearance of the area as a reason for taking enforcement action and so I consider this policy is not directly relevant to the appeal scheme before me.
35. The appellant advises that prior to their purchase of the building, it was neglected. While the appellant may have carried out general improvements to

the building, this does not weigh in support of unauthorised works which conflict with policy.

36. The appellant advises that the owners of No 61 and 65 Warner Road do not live at the respective properties. However, there is no dispute that the properties are used, or are capable of being used as dwellings and so who resides in them is not relevant in my consideration of whether harm would arise to living conditions.

Ground (a) conclusion

37. The Public Sector Equality Duty (PSED) as set out under the Equality Act 2010 concerns 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. The appellant advises that the works have been carried out to accommodate a disabled wheelchair user, who will have protected characteristics for the purposes of the PSED.
38. Under the Human Rights Act 1998, The First Protocol, Article 1 affords the protection of property and Article 8 affords the right to respect for private and family life, home and correspondence. These are qualified rights, and interference may be justified where in the public interest.
39. Having regard to the legitimate and well-established planning policy aims to protect living conditions, prevent surface water flooding and ensure fire safety, in my view, the benefits of the appeal scheme would be outweighed by the harm I have identified. A refusal of permission would be proportionate and necessary and would not unacceptably violate the individual's rights under Articles 1 and 8. The protection of the public interest cannot be achieved by means that are less interfering of their rights.
40. For the reasons given above, I conclude that the appeal should succeed in part and planning permission should be granted for the removal of the pitched roof of the 2nd storey rear outrigger and installation of a flat roof only. The remaining elements, namely the removal of brickwork and installation of a door, erection of a single storey flat roof side extension connected to a rear pitched roof single storey conservatory and the installation of a hard surface and erection of gates conflict with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

41. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
42. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms of any planning permission, by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. It is clear from the wording of the notice, that its purpose is to remedy the breach.

43. The appellant's case under ground (f) relates to the merits of the appeal scheme, which I have considered under ground (a) above. As set out above, I consider that planning permission should be granted for the removal of the pitched roof of the 2nd storey rear outrigger and installation of a flat roof. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act and so it is unnecessary for me to delete the requirements in this regard.
44. I have found the removal of brickwork and installation of a door, erection of the single storey flat roof side extension connected to a rear pitched roof single storey conservatory and installation of the gates and the hard surface to the front of the premises are harmful and conflict with policy and shall refuse the deemed planning application for these elements. The demolition and removal of the single storey flat roof side extension connected to the rear pitched roof single storey conservatory and the reinstatement of the window and front garden would remedy the breach by restoring the land to its condition before the breach took place, in accordance with section 173(4)(a) of the Act and so would not be excessive. Consequently, the appeal under ground (f) fails.

Conclusion

45. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the removal of the pitched roof of the 2nd storey rear outrigger and installation of a flat roof, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the other part of the matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act.

M Savage

INSPECTOR