



Appeal Decision

Site visit made on 2 February 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal Ref: APP/G5750/C/21/3285675

Land at 93 Denbigh Road, East Ham, London E6 3LF

- 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 J Hearn against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 19/00722/ENFC, was issued on 29 September 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of a rear extension comprising additions at ground floor, first floor and roof level.
- The requirements of the notice are:
 1. Demolish the rear extension comprising additions at ground floor, first floor and roof level (as shown in the approximate location edged blue on the attached plan, and as shown outlined yellow on the photograph attached at Appendix 1) and return the property to its form prior to the unauthorised works being undertaken.
 2. On completion of step 1 above, remove all materials and debris from the site.
- The period for compliance with the requirements is six 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.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Reasons

Ground (a)

1. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice. Based on the reasons for issuing the notice, the main issues in the ground (a) appeal are:
 - the effect of the appeal development on the character and appearance of the area;
 - the effect of the appeal development on the living conditions of neighbouring occupiers, with particular regard to outlook, daylight and overshadowing for 91 and 95 Denbigh Road; and
 - whether the appeal development makes appropriate provision for sustainable design, including biodiversity.

Character and Appearance

2. The area is characterised by 2 storey terraced houses with pitched roofs. Some houses have a dormer extension on the rear roof slope and most have some form of single or double storey rear extension or outrigger, sitting below the eaves.
3. The appeal development is a 3 storey extension rising high above the eaves of the house. Its top floor extends far back from the main roof ridge of the house, over all of the first and second floor of the extension, such that it is flush with the rear elevation of the second floor of the extension below. As a result, the appeal development is a large, bulky and incongruous structure. At my site visit I could see no other such extension in this context.
4. My attention has been drawn to a development granted planning permission at 109 Denbigh Road, which the appellant considers is comparable. But the top floor of the development at No 109 does not extend as far back as the appeal development before me. As such, it is less bulky and so I do not find it directly comparable.
5. The appellant states that the appeal development is arguably superior in design terms compared to the approved development at No 109, as it has a more holistic appearance as a result of the matching first floor and roof level depths. Be this as it may, it makes no difference to my overall conclusion on this main issue.
6. I conclude that the appeal development harms the character and appearance of the area. In this regard, it does not comply with the design policies of the National Planning Policy Framework (the Framework), Policies SP3, SP8 or H1 of the Newham Local Plan, adopted 2018 (the Local Plan) or the Altering and Extending Your Home Supplementary Planning Document, adopted February 2018 (the SPD).
7. In respect of this main issue, my attention has also been drawn to Policy D1 and D4 of the London Plan 2021 and Policies S6 and SP1 of the Local Plan. But it has not been explained how these are directly relevant to this main issue and so I consider they weigh neither in favour of nor against the appeal development.

Living Conditions

8. The Council identifies that the appeal development has an unacceptable effect on outlook, daylight and overshadowing for 91 and 95 Denbigh Road. The enforcement notice refers to sunlight but the Council's report refers to daylight. Given the rear of the properties face broadly north, I consider the references to daylight to be correct and the references to sunlight to be erroneous.
9. Based on what I could see at my site visit and given the height, depth and width of the appeal development and its proximity to the site boundaries, I am not satisfied that it does not have the effects identified by the Council. Nothing has been provided by the appellant to lead me to a different conclusion in this regard.
10. The appellant states that the size of the first floor extensions (on No 93 and No 109) and their relationship to the surrounding properties are identical. They further state that the properties along Denbigh Road are all virtually identical

and therefore there is not considered to be any difference in site context between the appeal property and No 109.

11. But I have not been provided with evidence of the above claims and they do not reflect my own observations from my site visit. So in respect of this main issue, I am not satisfied that what has been approved at No 109 is justification for what has been built at No 93.
12. I conclude that the appeal development harms the living conditions of neighbouring occupiers, with particular regard to outlook, daylight and overshadowing for Nos 91 and 95. In this regard, it does not comply with Policy SP8 of the Local Plan, the SPD, or the design policies of the Framework in so far as they relate to amenity.
13. In respect of this main issue, my attention has also been drawn to Policy D1 and D4 of the London Plan 2021 and Policies S6, SP1, SP3 and H1 of the Local Plan. But it has not been explained how these are directly relevant to this main issue and so I consider they weigh neither in favour of nor against the appeal development.

Sustainable Design

14. The Council states that the appeal development fails to maximise the benefits of sustainable design, including the need for the development to protect and enhance the biodiversity value of the site. Specific attention has been drawn to the amount of garden space which is said to have been lost to the appeal development.
15. But no evidence of the biodiversity value of the site has been provided and in respect of this main issue, it has not been explained what the Council expects from a domestic extension, bearing in mind what the planning history indicates can be constructed on the site under permitted development rights in any event and what else the Council has granted planning permission for on this site.
16. I have carefully reviewed the biodiversity policies of the Framework and the development plan policies referred to in the notice in respect of this main issue. But taking into account their specific wording, there is nothing in these to assist me, for the purposes of this appeal.
17. Based on the limited case put to me, I conclude that the appeal development makes appropriate provision for sustainable design, including biodiversity and in this regard, I find no conflict with Policy G6 of the London Plan 2021, Policy SC1 or SC4 of the Local Plan or the Framework.

Other Matters

18. My attention has been drawn to other developments on neighbouring terraces but I have not been provided with details of how they came to exist and so I cannot be certain the circumstances in those cases are the same as those in the case before me.
19. I appreciate that there is some support for the appeal development from an interested party. But this makes no difference to my conclusions.

Conclusion on Ground (a)

20. Whilst I have not found the appeal development unacceptable in respect of sustainable design, I have found the appeal development harmful in respect of its effects on the character and appearance of the area and on living conditions. I therefore find conflict with the development plan overall and taking all of the above into account, I conclude that the appeal on ground (a) fails.

Ground (f)

21. An appeal on ground (f) is 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 the 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.
22. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
23. The notice states that the Council will seek to return the land to its former state. This is consistent with what is sought by its requirements and so I consider the purpose of the notice is to remedy the breach.
24. However, since the notice was issued, the Council has granted planning permission for an alternative scheme. The appellant has requested that I consider amending the terms of the enforcement notice to require implementation of this permission, Ref 22/02601/HH, dated 5 January 2023, rather than demolition, as is currently required by the notice.
25. The Council has raised no objection to this proposed amendment to the notice and I am satisfied that this would result in the breach being remedied. As such, the steps currently required by the notice exceed what is necessary. The ground (f) appeal succeeds to this extent and so I shall vary the notice accordingly.

Conclusion

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

Formal Decision

27. It is directed that the enforcement notice is varied by the deletion of requirement 1 in paragraph 5.1. of the notice and its substitution with:
- “Demolish the rear extension comprising additions at ground floor, first floor and roof level (as shown in the approximate location edged blue on the attached plan, and as shown outlined yellow on the photograph attached at Appendix 1) and return the property to its form prior to the unauthorised works

being undertaken, OR, alter the appeal development to comply with the terms of planning permission Ref 22/02601/HH, dated 5 January 2023, including the conditions subject to which that permission was granted.”

28. Subject to this variation, 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.

L Perkins

INSPECTOR