



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: 2 March 2023

Appeal Ref: APP/G5750/C/21/3283201

Land at 15 Olive Road, Plaistow, London E13 9PZ

- 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 Mrs H Shultana against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 20/00373/ENFC, was issued on 16 August 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a two storey extension and loft extension to the rear of the premises AND the erection of a boundary treatment comprising rendered brick and timber trellis to the rear of the premises ("the unauthorised development").
- The requirements of the notice are:
 1. Demolish the unauthorised development comprising a two storey extension and loft extension to the rear of the premises and a boundary treatment comprising rendered brick and timber trellis to the rear of the premises (as shown in yellow on the photographs attached at Appendix 1) and return the rear elevation and rear garden boundary of the property to their form prior to the unauthorised works.
 2. On completion of step 1, remove all materials and debris from the site.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) 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 allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Reasons

Ground (c)

1. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
2. It is the appellant's case that the extension to the roof of the dwellinghouse is permitted by Schedule 2, Part 1, Class B of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). This is a permitted development right which grants planning permission for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof.
3. However, Article 3(5) of the Order states that the permission granted by Schedule 2 does not apply if— (a) in the case of permission granted in

connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful.

4. The appellant states that the roof extension was completed before the part single, part two storey rear extension. But the Council has pointed to aerial photographs and a photograph in the appellant's own statement, which appear to indicate that all of the matters stated in the notice were carried out as a single building operation.
5. In light of the above photographs, on the balance of probability, I am not satisfied that the roof extension was carried out before the other works. This being the case, the dormer could not be permitted development as the building operations involved in the construction of that building are unlawful.
6. I conclude that the appeal on ground (c) fails.

Ground (a)

7. 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, light and privacy for 13 and 17 Olive Road and 34 Kingsland Road;
 - whether the appeal development makes appropriate provision for sustainable design, including biodiversity.

Character and Appearance

8. The area is characterised by two storey terraced houses with reasonable sized back gardens. Some houses have a single storey or two storey rear extension with a flat or pitched roof and some have a rear dormer roof extension. In broad terms, the extensions which have been constructed on the appeal property reflect this character and appearance.
9. From what I could see at my site visit, the dormer roof extension which has been constructed is not materially different to the many other rear dormer roof extensions I saw in the area, including that a few doors down at No 23 and others seen within the same block, notably on the terrace opposite the appeal dormer. So in this context, I do not find the appeal dormer unacceptable.
10. I note the Council's concern about the soffit on the dormer extension. But I do not find this so objectionable as to justify a refusal of planning permission for it, particularly in light of what the evidence indicates may be constructed under permitted development rights in any event. In this regard, my attention has been drawn to Appendix 2 of the Council's report. But the Council's assessment has not been explained and so it has not led me to a different conclusion on this point.
11. Planning permission has previously been granted on appeal, for a rear extension at first floor on the appeal site, Ref APP/G5750/D/17/3177532, dated

- 7 August 2017. The evidence indicates this permission has lapsed and it related to an extension of a different design to that which has been constructed. However, from the information provided, the previous approval would have provided an additional bedroom of substantially the same footprint as that which has been built.
12. New planning policies have been adopted since the date of the previous appeal decision. But there is no evidence that these policies have resulted in any specific change that would mean an extension at first floor level is now unacceptable.
 13. From all of the evidence available to me, including my observations on site, a first floor rear extension is an established way of extending houses in this block, including extensions with a flat roof, as is the case here. So in this context, I do not find the extension which has been constructed at first floor to be incongruous.
 14. I have carefully compared what has been constructed at rear ground floor level with what existed previously. This is clearly depicted in the appellant's statement. The additional bulk, over what existed previously, is in effect that seen to the left when viewing the house from the rear. Given its relatively low level position, set down substantially below the boundary treatment and at least in-part adjoining the extension next door at No 17, I do not find the additional bulk objectionable or disproportionate.
 15. In terms of materials, the dormer is tile-clad and the ground and first floor extensions are rendered and painted. In these respects, the appeal development is no different to other such extensions seen in the area and so I do not find the materials discordant.
 16. The Council identifies that the ground and first floor extensions have extended soffits. But in relative terms I do not consider this to be the case.
 17. The Council indicates that the appeal development is disjointed and fails to respect the distinct rhythm and symmetry of the host and neighbouring properties. But the Council's case in this regard is not substantiated and from what I have seen on site, symmetry and rhythm are not overriding factors for rear extensions on the houses in this area, given the variety of extensions which exist.
 18. The Council is of the view that a large parapet wall has been built adjoining the neighbouring property at No 13. But when comparing what exists now to the appellant's photograph of what existed previously, the evidence indicates this wall is in the same position as the flank wall of the previous single storey pitched roof outrigger. So I do not find it unacceptable.
 19. I appreciate that the boundary treatment which has been constructed may be higher than the type of treatment normally found in such a location. But the Council otherwise takes no issue with its design and in this case, I do not consider its height alone is reason enough to object to it under this main issue, particularly bearing in mind what the evidence indicates could otherwise be constructed under permitted development rights in any event.
 20. Taking all of the above into account, I conclude that the appeal development does not harm the character or appearance of the area. In this regard, I find no conflict with Policies GG1, D1 or D4 of the London Plan 2021, Policies SP1, SP3,

SP8 or H1 of the London Borough of Newham Local Plan 2018 (the Local Plan), the Altering and Extending Your Home Supplementary Planning Document 2018 (the SPD) or the design policies of the National Planning Policy Framework (the Framework).

Living Conditions

21. The Council's case on living conditions is confused and confusing. The enforcement notice identifies that the appeal development is overbearing and results in a loss of outlook and a reduction in the availability of sunlight to neighbouring properties, without specifying which are affected. However, the Council's report refers to daylight instead of sunlight and additionally identifies overshadowing and a loss of privacy as being discrete consequences of the development.
22. In practical terms, it seems to me that whether a development is overbearing or not is part of the assessment of its effect on outlook, ie they are not discrete concepts, as is suggested by the Council's report. The report indicates that the affected properties in this regard are 13 and 17 Olive Road, which are next door; and 34 Kingsland Road, which is to the rear.
23. From my observations on site, the dormer is too far away from neighbouring homes or gardens to affect their outlook and the ground floor extension is substantially set below the boundary treatment. Whilst the boundary treatment may be higher than the type of treatment normally found in such a location, in my judgement, it is not so high as to affect neighbours' outlook from their homes or gardens in a way which is harmful.
24. In respect of the first floor extension, the window at first floor level on the rear of No 13 is not abutting the appeal site but is set away from it. This is clear from photographs provided in the appellant's statement. So in my judgment, the outlook from this window is not unduly affected. I have the same view in respect of No 17, as the first floor extension is set away from the first floor window on this neighbouring property.
25. In terms of the effect of the appeal development on light, in the Council's report it is No 13 that is said to be affected. But the Council's assessment is not explained. From my site inspection, it could only be the first floor window which could be affected. But as set out above, this is set away from the extension. Given the orientation of the site, I am not satisfied there is any material effect of the appeal development in terms of sunlight and nothing provided has led me to any different conclusion in this regard.
26. In terms of overshadowing, there is inevitably some effect of the boundary treatment on adjoining gardens. But given the limited height of this boundary treatment above what the evidence indicates could be constructed under permitted development in any event, I am not satisfied this is a sufficient basis for refusing planning permission in this case.
27. The Council's case in respect of privacy is entirely unexplained. In my judgement, the views which are possible from what has been constructed are not materially different to what was possible previously or what remains possible from other neighbouring homes.

28. In terms of the effect of the parapet wall that my attention has been drawn to, as set out above, this part of the development is no different to what existed previously.
29. I conclude that the appeal development does not harm the living conditions of neighbouring occupiers, with particular regard to outlook, light and privacy for 13 and 17 Olive Road and 34 Kingsland Road. So in this regard, I find no conflict with Policies D1 or D4 of the London Plan, Policies S6, SP1, SP2, SP3, SP8 or H1 of the Local Plan, the SPD or the design policies of the Framework insofar as they relate to amenity.

Sustainable Design

30. 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. It is the Council's view that a large area of garden is taken up by the extension and that this has significantly restricted the scope for any substantive planting measures, compared to what would have existed or been possible previously.
31. Having carefully compared the appeal development to what the submitted evidence shows existed before, I am not satisfied that there has been any material effect on the biodiversity value of the site as a result of the appeal development. This is because there is no evidence that what existed previously presented any meaningful or significant opportunity for external planting.
32. I conclude that the appeal development makes appropriate provision for sustainable design, including biodiversity and so I find no conflict with Policy G6 of the London Plan 2021, Policy SC1, SC4 or SP8 of the Local Plan or the Framework in this regard.

Conclusion on Ground (a)

33. For the reasons given above, I conclude that the ground (a) appeal should succeed. No conditions have been suggested that I consider are necessary.

Conclusion

34. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The appeals on ground (f) and (g) do not therefore fall to be considered.

Formal Decision

35. The appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the erection of a two storey extension and loft extension to the rear of the premises and the erection of a boundary treatment comprising rendered brick and timber trellis to the rear of the premises, at 15 Olive Road, Plaistow, London E13 9PZ, as shown on the plan attached to the notice.

L Perkins

INSPECTOR