



Appeal Decision

Site visit made on 28 March 2023

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 May 2023

Appeal Ref: APP/U5930/C/21/3287747

Land at Ground Floor Flat, 12 Ashville Road, London E11 4DT

- 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 Usman Ismail against an enforcement notice issued by the London Borough of Waltham Forest Council.
- The notice was issued on 8 November 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the following works being undertaken:- a) the erection of a single storey rear ground floor extension (the approximate area of the new rear extension is shown in the aerial image attached under Appendix A, hatched in yellow); and b) the erection of a raised platform in the rear garden.
- The requirements of the notice are: 1) Demolish and remove the new rear extension (as shown in attached Photograph A and the approximate area of the which is shown in the aerial image attached under Appendix A, hatched in yellow); 2) Following the removal of the rear extension, make good any damage caused by its installation and/or removal, and restore the property to its former condition in materials and detailing to match the property prior to the unauthorised works occurring; 3) Demolish and remove the raised platform in the rear garden (as shown in attached Photograph B); 4) Following the removal of the raised platform, make good any damage caused by its installation and/or removal and restore the hard standing to its former condition; and 5) Following compliance with Steps (1)-(4), remove from the Land all resulting waste materials, rubble and general detritus.
- The period for compliance with the requirements is: Within four (4) months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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 of Decision: The appeal is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matter

1. The appellant has presented what they have referred to as 'a reduced scheme to be considered under the Wheatcroft principle'. This would comprise a single storey rear ground floor extension of shorter depth than that which currently exists, as shown on proposed side and rear elevation plans¹. I shall refer to this as the 'proposed alternative scheme'.
2. Section 177(1)(a) of the Act provides that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. Caselaw² directs that, so long as there is an appeal under

¹ Drawing numbers: PL-007 and PL-008

² Ahmed v SSCLG & Hackney LBC [2014] EWCA Civ 566

ground (a), I must consider whether the proposed alternative scheme would be 'part of the matters' stated in the enforcement notice as constituting a breach of planning control and whether it should be permitted. Whether or not the proposed alternative scheme amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker³.

3. In this particular case, the proposed alternative scheme would comprise part of the matters stated in the enforcement notice as constituting a breach of planning control. This is because the proposed alternative scheme would be easily severable from the development carried out, requiring only a replacement blank rear elevation, following demolition of a small part of one end of the existing rear extension. I shall therefore consider the proposed alternative scheme as part of the appeal under ground (a) and the deemed application for planning permission.

Ground (a) and the deemed application for planning permission

Main Issues

4. Taking the above into account, the main issues are:
 - the effect of the development and the proposed alternative scheme on the character and appearance of the area;
 - the effect of the development and the proposed alternative scheme on the living conditions of occupiers of the appeal dwelling, with particular regard to the provision of private external amenity space; and
 - the effect of the development and the proposed alternative scheme on the living conditions of occupiers of neighbouring dwellings, with particular regard to privacy and outlook.

Reasons

Character and Appearance

5. The appeal site comprises a ground floor flat within a terraced building with a 2-storey rear outrigger and small outside amenity spaces to the front and rear. The surrounding area is made up of terraced houses of similar styles as the appeal building, most of which appear to have modestly sized gardens. Many neighbouring properties appear to have been extended at ground floor level.
6. The single storey rear extension the subject of the enforcement notice covers almost the full extent of a former outside amenity space to the rear, leaving a passageway to one side and along the rear boundary. It has been finished with red brickwork in comparison to the yellow multi-stock brickwork finish of the rest of the building. The passageway comprises part of the raised platform referred to in the enforcement notice.
7. The appellant's evidence indicates that a single storey rear extension measuring 2.75 metres in depth from the rear outrigger previously existed at the appeal site. This was demolished and replaced with the unauthorised rear extension which measures approximately 6.6 metres in depth.

³ R (oao Banghard) v Bedford BC [2017] EWHC 2391 (Admin)

8. The unauthorised extension is significantly larger than the ground floor rear extensions I could see at neighbouring properties. It appears as a substantial overdevelopment of the plot, which creates a cramped site alongside modest, but much more spacious, rear garden areas. This can be appreciated from a number of neighbouring properties. Its red brickwork finish is distinctly at odds with the aged multi-stock finish of the rest of the building. Although it can only be seen from the rear of neighbouring properties, it has a harmful impact on the character and appearance of the area.
9. The proposed alternative scheme would be shorter in depth than the existing extension and would be more comparable in depth to single storey rear extensions at neighbouring properties. However, it would remain excessively large for the plot, project beyond the south-west side elevation of the rest of the building, and it would leave very little garden space. The proposed alternative scheme would therefore appear as an odd and overly cramped form of development due to its projection to the side of the rest of the building and the small size of the plot in relation to the proposed alternative scheme. This would not be comparable to extensions at neighbouring properties, which appear to have retained larger proportions of garden areas.
10. It has been suggested that a condition could require an alternative finish, such as paint or render, to be applied to the existing extension or the proposed alternative scheme. However, on account of their sizes and positions in relation to the appeal site and building, alternative finishes to the existing extension or the proposed alternative scheme would not mitigate the harm caused to the character and appearance of the area. As with the existing extension, the proposed alternative scheme would constitute poor design which would not mimic neighbouring development as claimed.
11. The single storey rear extension therefore harms the character and appearance of the area, as would the proposed alternative scheme. This conflicts with Policies CS2 and CS15 of the Council's Local Plan Core Strategy (2012) (CS), Policies DM4 and DM29 of the Council's Development Management Policies Local Plan (2013) (DMP) and Policy D3 of the London Plan (2021) (LP). These seek to achieve high quality development which responds positively to local context and character, amongst other things.
12. The raised platform referred to in the enforcement notice does not harm the character or appearance of the area on account of it not being noticeable from outside the appeal site.

Living Conditions of Occupiers of the Appeal Dwelling

13. The Council's Supplementary Planning Document⁴ (SPD) explains that 15 square metres (sqm) of useable private outside amenity space should generally be required per habitable room, when consideration is given to residential extensions. The Council has claimed that the appeal property has 4 habitable rooms, which indicates 60 sqm of private outside amenity space should be provided.
14. It is clear that the single storey rear extension does not leave sufficient private outside amenity space which would be useable for any meaningful amenity purposes. The passageway around the rear extension is accessible and could

⁴ Residential Extensions and Alterations (2010)

be used for maintaining the exterior of the building, storage, or standing/sitting out on. It would not offer reasonably comfortable private outside amenity space on account of its small and constrained size and layout.

15. The appellant has claimed that the proposed alternative scheme would ensure sufficient private outside amenity space would be provided for occupiers of the appeal dwelling. However, I have not been given details of precisely how much private outside amenity space would be provided, or a detailed site plan showing the footprint of the proposed alternative scheme in relation to the appeal site. The information before me suggests that much less than 60 sqm of private outside amenity space would be provided. I am unconvinced that the proposed alternative scheme would provide a reasonable amount of useable private outside amenity space to ensure acceptable living conditions could be afforded to occupiers of the appeal dwelling.
16. The single storey rear extension therefore fails to accord with Policy CS13 of the CS and the Council's SPD. These aim to help create and develop healthy and sustainable places and communities by ensuring satisfactory amenity is provided for occupiers, amongst other things. The proposed alternative scheme would also fail to accord with Policy CS13 and the SPD for the same reasons.
17. The Council has referred to Policy DM7 of the DMP and Policy D6 of the LP in the enforcement notice. I have not found these policies directly relevant to the single storey rear extension or the proposed alternative scheme. This is because those policies relate more to new residential developments, rather than extensions.
18. The raised platform referred to in the enforcement notice does not impact on the living conditions of occupiers of the appeal dwelling. This is because it does not unacceptably restrict access to the outside area, even if that area is not useable for meaningful private amenity purposes.

Living Conditions of Occupiers of Neighbouring Residential Dwellings

19. The single storey rear extension is set behind a passageway separating it from the boundary with 14 Ashville Road. A passageway within the plot at 14 Ashville Road separates the boundary from a single storey rear extension to that property too. The raised platform comprises part of the passageway within the appeal site and runs along the boundary shared with 14 Ashville Road.
20. I saw there were views into the rear garden area of 14 Ashville Road on account of the height difference between the raised platform, boundary treatment and that rear garden area. The rear garden area of 14 Ashville Road appears to provide useable private outside amenity space of value for its occupiers on account of its arrangement and size in relation to that property.
21. The views available from the raised platform significantly reduce the privacy of people using the rear garden area of 14 Ashville Road. I note that the raised platform is insufficiently small to provide meaningful private outside amenity space, but it remains accessible and capable of being used for storage and standing on. It is likely that occupiers of the appeal dwelling would access it occasionally, as it is the only outside space serving the dwelling other than the open front garden. The raised platform therefore has an unacceptable impact on the living conditions of occupiers of 14 Ashville Road. This would not be addressed by the proposed alternative scheme.

22. Taking the height and positions of the windows in the unauthorised extension and the boundary treatment into account, those windows do not result in unacceptable levels of overlooking into habitable rooms or amenity space at 14 Ashville Road. The separation distances between the single storey rear extension and the amenity space at 14 Ashville Road are short, but sufficient to ensure outlook from that neighbouring property is not adversely affected by the extension.
23. Rear gardens which serve residential properties along Grove Green Road back onto the appeal site. The single storey rear extension can be seen from them. The sizes of those gardens and their distances from the single storey rear extension are sufficient to ensure it does not have any adverse impacts on the living conditions of occupiers of those properties in any way.
24. Although the single storey rear extension does not harm the outlook of any occupiers of any neighbouring properties, the raised platform harms the privacy of occupiers of 14 Ashville Road. The level of that harm is unacceptable. The proposed alternative scheme would not address that harm. The development the subject of the enforcement notice therefore conflicts with Policy DM32 of the DMP. This requires, amongst other things, development including modifications to existing homes to ensure that privacy is maintained for neighbours in their gardens.

Other Matters

25. The development and the proposed alternative scheme would provide increased internal space, but it has not been demonstrated why this is 'much needed' or why I should consider assigning any significant weight to the benefits associated with increased internal space, even if work from home space is in demand. It has been claimed that the development makes the best use of land, but I have found that this has not followed a design-led approach. I therefore assign minimal weight to those benefits.
26. It has been claimed that land levels around the single storey rear extension were raised previously. It is therefore suggested that the raised platform is not at any higher level than pre-existing land levels. Limited details have been provided in this regard and the evidence indicates the raised platform has increased land levels within part of the appeal site, resulting in unacceptable impacts on the privacy of neighbouring residents. I do not therefore assign any significant weight to these claims.
27. I have been referred to the extent of development which could be permitted at the appeal site and neighbouring sites under the provisions of the GPDO⁵, if those sites comprised single dwellinghouses. As the appeal site is not a single dwellinghouse, I am unconvinced that the adverse impacts of the development or the proposed alternative scheme would be any less severe than I have found in my reasoning above. Any works which may be permitted by the GPDO nearby would not lead me to conclude the existing extension or the proposed alternative scheme would be acceptable in this case.
28. A resident of 14 Ashville Road has written a letter to confirm that they have no objection to the building work carried out at the appeal dwelling, and that they consider the single storey rear extension's depth, height and overall scale does

⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

not affect their property. I appreciate that the current resident of that property does not object to the extension, but I have found that it causes unacceptable harm to the character and appearance of the area and the living conditions of occupiers of the appeal dwelling. I have also found that the raised platform results in unacceptable levels of overlooking of the rear garden area of 14 Ashville Road and that the proposed alternative scheme would not address that harm. That harm is long-lasting and would also affect future residents of 14 Ashville Road. I therefore attach little weight to the neighbour's apparent support for the development.

Conclusion on Ground (a) and the deemed application for planning permission

29. The single storey rear extension causes unacceptable harm to the character and appearance of the area and the living conditions of occupiers of the appeal dwelling. The raised platform causes unacceptable harm to the living conditions of neighbouring residents. The proposed alternative scheme would not address the harm I have identified. The development the subject of the enforcement notice and the proposed alternative scheme therefore conflict with the development plan taken as a whole and there are no material considerations that indicate my decision under ground (a) and on the deemed planning application should be made other than in accordance with the development plan. For the reasons given, I conclude that the appeal under ground (a) should not succeed, and the deemed application for planning application should be refused.

Ground (f)

30. To be successful under this ground, the appellant would need to demonstrate that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breaches of planning control referred to by the notice, or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
31. The reasons for serving the enforcement notice and its requirements make it clear that the purpose of the enforcement notice is to remedy the breaches of planning control, rather than to remedy any injury to amenity.
32. The appellant has claimed that ground levels have not been raised to create the raised platform. The Council has claimed that the raised platform is 375 millimetres higher than the former ground levels. I noted a step within the appeal dwelling, but no appeal has been lodged under ground (b) and evidence of previous land levels is severely lacking. Undated photographs appearing to show parts of the appeal site before and during the carrying out of the unauthorised development indicate there was previously some variance in land levels at the rear of the appeal site, due to the presence of an external step. However, the extent of that previous variance in land levels is not clear.
33. The evidence indicates that land levels at the rear of the appeal site have changed as part of the unauthorised development being carried out. Any such change may have been small, but development comprising a raised platform has been carried out and the requirements of the enforcement notice do not exceed what is necessary to remedy that breach of planning control.

34. With regard to the single storey rear extension, the requirements of the enforcement notice do not exceed what is necessary to remedy that breach of planning control either.

35. The appeal under ground (f) must therefore fail.

Ground (g)

36. To succeed under this ground, the appellant would need to demonstrate that the period specified in the enforcement notice for its requirements to be complied with falls short of what should reasonably be allowed.

37. The enforcement notice specifies a period of 4 months for its requirements to be complied with. The appellant has suggested this should be varied to at least 6 months, but preferably 12 months to account for any lockdowns due to COVID-19. It is claimed that 4 months would not be sufficient to secure builders and undertake the necessary works. There is no evidence to support these claims or otherwise suggest that a period of 4 months would be insufficient to allow the enforcement notice to be complied with.

38. It is possible that pandemic related lockdowns may be imposed again in the future, but the possibility of that happening within 4 months from the date of this decision appears to be very unlikely at present. I have not been provided with detailed explanations as to why a period of 4 months falls short of what should reasonably be allowed for the enforcement notice to be complied with.

39. The appeal under ground (g) must therefore fail.

Conclusion

40. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice 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

41. 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 Douglas

INSPECTOR