The Planning Inspectorate

Appeal Decision

Site visit made on 14 June 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 August 2023

Appeal Ref: APP/G5750/C/22/3298908
Land at 113 Stokes Road, East Ham, London E6 3SF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Sajjad Miah against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice, numbered 20/001118/ENC, was issued on 13 April 2022.
- The breach of planning control as alleged in the notice is without planning permission the erection of a rear extension, including the raising of the garden ground level.
- The requirements of the notice are to:
  1. Demolish the rear extension (as shown in the approximate location edged in blue on the attached plan).
  2. Return the area of garden (as shown in the approximate location edged in green on the attached plan) to its form prior to the unauthorised works by reinstating the pre-existing ground level.
  3. 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 ground set out in section 174(2)(a) 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.

Decision

1. It is directed that the enforcement notice is varied at section 5, by:

   - Below the 3rd requirement, the insertion of the word 'OR' and below the word 'OR' the insertion of a 4th requirement, which says 'Alter the rear extension to accord with the information previously submitted to the local planning authority in support of application 19/03427/PREHH under sub-paragraph (2) of A.4., Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).'

2. Subject to the variation above 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.

Ground (a)

3. The 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.

Main Issues

4. The main issues of the appeal are the effect of the appeal scheme on:

   - The living conditions of neighbouring occupants, having particular regard to outlook and light; and

- The character and appearance of the area.

Reasons

Living conditions

5. The appeal site comprises a modest two storey terraced dwelling located in a generally residential area. I saw that a number of properties in the area have been extended with single storey rear extensions. The appellant has erected a single storey rear extension with parapet walls and a uPVC overhang to the rear of the property. The ground level has also been raised, creating a stepped area upon which the extension sits. As a result of the uPVC overhang, the extension measures well in excess of 6m in depth and is around 3.3m in height, extending well above boundary treatments.

6. Policy SP8 of the Newham Local Plan (2018)(NLP) seeks to minimise overshadowing and overbearing impact, amongst other things. The Altering and Extending your Home Supplementary Planning Document (SPD)(2018) advises that all new extensions should ensure that reasonable levels of sunlight and daylight to neighbours' rooms and outdoor garden/ amenity space are maintained and that the outlook of neighbouring amenity is not harmfully compromised. Policy D3 of the London Plan (2021)(the LP) also seeks indoor and outdoor environments that are inviting for people to use and appropriate outlook.

7. Although No 115 has a modest rear extension, it is lower in height compared with the appeal scheme and does not project as far into the rear garden. As a consequence of its substantial height and position relative to No 115, the appeal scheme is likely to significantly limit sunlight entering the window to the rear of the property and the patio area beyond, which occupants may use for sitting out and enjoying the garden. Users of the rear garden of No 115 are also likely to find the appeal scheme overbearing due to its height and proximity to the boundary. This is harmful to the living conditions of occupants of No 115.

8. While the extension at No 111 Stokes Road is lower than appeal scheme, given the depth of the existing extension and orientation of the building, which is to the east of the appeal site, the effect the appeal scheme is likely to have on outlook and sunlight for occupants of No 111 is limited. While I consider the appeal is unlikely to therefore harm the living conditions of the occupants of No 111, this is a neutral factor in my consideration of the appeal.

9. The appellant has provided me with a plan which shows the uPVC overhang and parapet walls could be removed, reducing the extension to 6m in depth and around 3m in height above natural ground level. However, an appeal under ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice. A smaller extension, in my view, does not form part of the matters stated in the notice.

10. Moreover, while removing the parapet walls and uPVC overhang would have a lesser impact than the as-built extension, I consider it would still create a harmful sense of enclosure and diminish sunlight to No 115. I note the appellant suggests such an extension would be permitted by The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO), however, it would be subject to the requirements of

condition A.4.(2) of Part 1, Class A of Schedule 2 of the GPDO, which requires the householder notify the local planning authority about the proposed extension, the outcome of which is not guaranteed.

11. The appellant has previously submitted an application, reference 19/03427/PREHH for prior notification for the construction of a single storey rear extension that would extend beyond the rear wall by 6m, with a maximum height of 2.7m and an eaves height of 2.6m. However, the structure that has been erected does not accord with the details previously submitted to the Council and so is not permitted by the GPDO. The height and depth of the appeal scheme are significantly greater than the proposal submitted under the prior notification procedure. I therefore afford this matter very limited weight.

12. I saw that a number of properties along this section of road have erected rear extensions. While I do not have full details of their erection, they are generally lower in height and do not project as far into their respective rear gardens as the appeal scheme. I do not consider them to be comparable to the appeal scheme before me.

13. The appellant suggests that due to the variation of the ground level of the garden and floor level of the dwelling, it is impossible to gain a good liveable height in the extension with a height of 2.7m at the eaves as steps would be required inside which is not suitable for disabled access. However, while I appreciate the appellant's desire to avoid the use of steps, I see no reason why it would not be possible to use a ramp to enable disabled access into the extension. I therefore afford this matter limited weight.

14. For the reasons set out above, I find that the appeal scheme harms the living conditions of the occupants of No 115 Stokes Road, contrary to policies D3 of the LP, SP8 of the NLP and the SPD, the requirements of which are set out above. It would also be contrary to policies SP2 and S6 of the NLP which both seek improved housing and policies SP1 and SP3 of the NLP and D4 of the LP which seek high quality development.

Character and appearance

15. The SPD advises that an extension should be an attractive development which complements the character and appearance of the original house and the group of buildings of which it forms a part. Although the extension is located to the rear of the property, due to its substantial height it is likely to be visible from a number of properties in the area.

16. While I saw that rear extensions are a common feature of properties along Stokes Road, the parapet walls and uPVC overhang are not characteristic of the area and increase the overall dominance and massing of the structure. As a result, the extension appears a dominant, incongruous feature which diminishes the character and appearance of the area.

17. The appellant has drawn my attention to No 105 Stokes Road, which has a rear extension. However, it does not have parapet features and appears to be more limited in depth compared with the appeal scheme. Furthermore, I do not have any details regarding its construction. I am therefore not persuaded that it is comparable to the appeal scheme.

18. Thus, I find the appeal scheme harms the character and appearance of the area, contrary to policies SP1 and SP3 of the NLP and D3 and D4 of the LP,

which seek good design, policies SP2 and S6 of the NLP which both seek improved housing and the advice contained in the SPD. It is also contrary to the design aspirations of the National Planning Policy Framework (2021), which seeks well designed places.

Other Matters

19. The Council has referred to policy D1 of the LP in its enforcement notice, however this policy sets out how boroughs should understand capacity for and plan for growth. It is therefore not determinative to the appeal scheme before me. The Council has also referred to policy H4 of the NLP, which concerns the protection of certain housing types, including affordable and specialist housing and family dwellings. Since the appeal scheme comprises the extension of an existing dwelling, the policy is not determinative to the appeal scheme before me.

Planning balance and conclusion

20. I note the concerns the appellant has raised regarding the effect complying with the notice will have on their health and financial position. However, while the appeal scheme provides more flexible living accommodation for the appellant, I have found it harms the living conditions of the occupants of No 115 Stokes Road and the character and appearance of the area. These harms outweigh the benefits arising from the appeal scheme.

21. Thus, for the reasons given above, I find the appeal scheme conflicts 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)

22. 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, or to remedy any injury to amenity which has been caused by the breach. Since the requirements require the extension to be removed and the pre-existing ground level to be reinstated, it is clear that the purpose of the notice is to remedy the breach.

23. As set out above, a prior notification application for the construction of a single storey rear extension was submitted by the appellant, reference 19/03427/PREHH, for which the Council concluded prior approval was not required. A planning permission granted by the GPDO is crystallised when, in the case of prior approval development, the Local Planning Authority has stated that prior approval is not required, or fails to make a determination within the specified period.

24. I am mindful that the enforcement regime is intended to be remedial, not punitive. Although the appellant has not appealed under ground (f), I raised with the parties whether the grant of planning permission under the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) would represent a realistic fallback position and is an obvious alternative that could be achieved with less cost and disruption than total removal. I have wide powers of correction, subject to there being no injustice to either party.

25. The Council has provided copies of its decision, dated 17 January 2020, which states that prior approval is not required for the construction of a single storey rear extension. The Council applied a series of conditions to its decision, including a time limit which requires the development to be commenced before the expiration of three years. However, the GPDO does not provide any authority for applying conditions to such a determination.

26. Furthermore, a permission granted by the Order is continuous while the Order is in force or re-enacted, and unless the permission is revoked or withdrawn. Once the appellant has complied with the requirements of the enforcement notice, it would therefore be possible for them to implement the permission granted by the GPDO.

27. The Council suggests that implementation of the works approved under application 19/03427/PREHH is unlikely to be feasible due to the difference in height between the approved scheme and the appeal scheme, which would necessitate the raised ground level to be removed or a reduction in the height, which may result in an unacceptable internal headroom height.

28. The details submitted in support of application 19/03427/PREHH show that the extension would measure around 2.6m to the eaves. I note the appellant has previously raised concern that it is 'impossible to gain a good liveable height in the extension with a height of 2.7m at the eaves' and agree it is unlikely to be desirable to reduce the roof height without a corresponding reduction to the ground level.

29. However, while I recognise the practical difficulties in complying with the approved details, I consider it may be possible to carry out works internally to reduce the floor level, thereby enabling the roof height to be lowered without compromising the accommodation provided by the development. It will be for the appellant to decide whether they wish to remove the appeal scheme in its entirety and start again, or to carry out works to comply with the approved details.

30. In my view, requiring the complete removal of the extension is unlikely to achieve anything and would therefore be excessive, because the grant of planning permission under the GPDO represents a realistic fallback position and is an obvious alternative that could be achieved with less cost and disruption. I shall therefore vary the notice to give the appellant the option of amending the development to comply with the information previously submitted to the local planning authority in support of application 19/03427/PREHH under sub-paragraph (2) of A.4., Class A, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).'

Conclusion

31. For the reasons given above, I conclude that the appeal should succeed under ground (f) only. I shall uphold the enforcement notice with 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.

M Savage

INSPECTOR