



Appeal Decision

Hearing held on 26 September 2023

Site visit made on 26 September 2023

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2023

Appeal Ref: APP/U5360/C/22/3302746

74 Linthorpe Road, Hackney, London N16 5RF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Pinnchas Deutsh against an enforcement notice issued by The Council of the London Borough of Hackney.
- The notice was issued on 27 May 2022.
- The breach of planning control as alleged in the notice is without planning permission, operational development consisting of:
 1. The erection of an elevated walkway over the lightwell located at ground and first floor levels;
 2. the erection of a part single, part two storey rear extension located at ground and first floor levels;
 4. the erection of a rear outrigger roof extension at roof level; and
 5. Alterations to the front elevation consisting of the rendering of the front façade, alterations to the pattern of fenestration; the reducing of the size of the windows openings; installation of fenestration with new frames, the increase of the height of the bay window, and the installation of a new roof above it, and the enlargement of the front roof dormer window.
- The requirements of the notice are to:

EITHER

 1. Demolish the single storey rear extension;

OR

 2. Construct the single storey rear extension in strict accordance with the approved plans of planning permission ref: 2019/0070 dated 15/03/2019 as shown on drawings PR-E001, PR-E002 and PR-P001 attached to the Notice as Appendix 1.

AND

 3. Remove the outrigger roof extension;
 4. Remove the elevated walkway over the lightwell at the rear of the Property;
 5. Reinstate the front elevation to that shown in the proposed drawings planning permission 2019/0070 dated 15/03/2019 as shown on drawings PR-E001 attached to the Notice as Appendix 1.
 6. Permanently and completely make good all damage resulting from the compliance with the other requirements of this notice;
 7. Remove all materials, debris, waste and equipment from the property and its premises resulting from compliance with the above requirements.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - 1) Deleting the words *and the enlargement of the front roof dormer window* from 5. in section 3 of the Notice.

- 2) Renumbering points 4 and 5 in section 3 of the Notice, to 3 and 4 respectively.
- 3) The deletion of four months and the substitution with six months as the time for compliance in section eight of the Notice.
2. Subject to these corrections and variation, the appeal is allowed 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 erection of an elevated walkway over the lightwell at the rear, the erection of a single storey rear extension, the increase in height of the bay window and the installation of a new roof above it, at 74 Linthorpe Road, Hackney, London N16 5RF.
3. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the outrigger roof extension, the rendering of the front façade, the alterations to the pattern of fenestration, the reducing of the size of the window openings and installation of fenestration with new frames and planning permission is refused for the outrigger roof extension, the rendering of the front façade, the alterations to the pattern of fenestration, the reducing of the size of the window openings and installation of fenestration with new frames, at 74 Linthorpe Road, Hackney, London N16 5RF on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

4. Applications for costs have been made by The Council of the London Borough of Hackney and Mr Pinnchas Deutsh. These applications are the subject of separate Decisions.

Background

5. On 15 March 2019, planning permission was conditionally granted reference 2019/0070 for the excavation and extension at lower ground floor and ground floor rear extensions including the creation of a rear lightwell at lower ground floor, a front lightwell with access step, together with the erection of an elevated garden and associated walkway over the lightwell and retaining walls (partially retrospective).
6. Although the Council in written submissions sought to suggest that the permission was no longer extant, following discussion at the Hearing, they confirmed that it remains extant. Since this matter is no longer in dispute, and as I have no reason to take a different view, the permission remains extant and a potential fallback to which I attach significant weight.
7. Even if it were no longer extant, the Council have previously granted permission for a single storey extension which would have had a broadly similar shape, form, and height. Consequently, it would have in any case been legitimate and reasonable to consider the single storey extension as built, against that which the Council previously found to be acceptable.

The appeal on ground (b)

8. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not

occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'

9. The appellant's case on this ground is that the notice incorrectly describes the alleged breach in respect of the increase in height of the bay window, and the front dormer has not been enlarged.
10. The appellant acknowledged that alterations have taken place to the bay window. Following discussion, although the appellant suggested that the notice could be corrected without prejudice, they were unable to suggest how. It was therefore agreed that the description should remain as issued.
11. It was agreed by the Council that the dormer has not been enlarged and that the allegation should be corrected to reflect this. Since such a correction would not enlarge the scope of the breach or requirements, the allegation can be corrected as set out in my decision, without injustice. The appeal on ground (b) succeeds to this extent.

The appeal on ground (c)

12. The appeal on this ground is that the matters alleged in the Notice do not constitute a breach of planning control. The burden of proof is on the appellant to demonstrate that the matters alleged in the Notice do not constitute a breach of planning control.
13. There is no dispute between the main parties that the works amount to development within the meaning of development as set out in section 55(1) of the 1990 Act, for which planning permission is required.
14. The appellant's case relates to the works to the front elevation of the property, identified in point five of the allegation in the Notice as issued. The appellant's contention is that the developments are permitted by Article 3 Schedule 2 Part 1 Class A of The Town and Country Planning (General Permitted Development) (England) (Order) 2015 (as amended) (the GPDO).
15. Article 3(5) of the GPDO provides that the planning permission granted by the Order does not apply if in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.
16. It was held in *Evans v SSCLG* [2014] EWHC 4111 (Admin) that, where the word 'building' is defined for the purposes of an Order as including 'part of a building', and the operations involved in the construction of any part of a building are unlawful, Article 3(5) serves to disapply permitted development rights granted in respect of that building.
17. There is no dispute that the extensions to the rear are a breach of planning control. Accordingly, since part of the building, has not been constructed lawfully, then the developments to the front elevation cannot constitute permitted development.
18. The appellant has failed to demonstrate that the matters alleged in the notice do not constitute a breach of planning control. The developments are not development that is permitted by any development order and there is no record of planning permission having been granted for them. The appeal on ground (c) therefore fails.

The appeal on ground (a) and the deemed planning application

Main issues

19. The main issues are the effect of the developments on (i) the character and appearance of the house and area generally and (ii) the effect of the rear extensions on the living conditions of the occupiers of 72 Linthorpe Road with particular regard to outlook, privacy and daylight/sunlight matters.

Reasons

Character and appearance

20. The appeal property is a terrace house located on a residential street characterised by Victorian terraced houses, with sash windows, many of which consist of multi-panes to the upper and single panes to the lower sash. Whilst there are a reasonable number which have been replaced with uPVC, most have a reasonably sympathetic appearance. Many houses retain the exposed red brick finish, with a number featuring painted brick and/or render. Notwithstanding some of the less sympathetic alterations, the overall traditional character and appearance of the houses remains.
21. The new windows in the front elevation appear flush with the elevation and oddly narrower than their replacements. They lack any detailing and have a distinctly modern appearance, which together with the dark finish, contrasts unfavourably with the timber and uPVC sashes seen on the front elevation of neighbouring and surrounding houses. The use of smooth render has resulted in the loss of traditional detailing including the radiating brick arch and decorative corning details.
22. The loss of the bonnet roof details above the bay is not materially harmful, given that such flat roofs are seen in the neighbouring and other houses in the street.
23. However, overall, the works to the front elevation look entirely out of place on this prominent façade and have significantly harmed the traditional appearance of the house and the streetscene.
24. At the Hearing the appellant explained what they consider to be their fallback position. This would include removing the windows, spraying them white, replacing them and then painting them. They also stated that they would remove the render and then paint the building any colour as permitted development by virtue of Part 1 Class C of the GPDO.
25. Article 3 Schedule 2 Part 1 Class A of the GPDO grants planning permission for the enlargement, improvement or other alteration of a dwellinghouse subject to conditions and limitations. Condition A.3. (a) states that *the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse*.
26. The Government's Technical Guidance¹, which is an aid to the interpretation of this condition says: *The condition above is intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises*

¹ Permitted development rights for householders Technical Guidance Ministry of Housing, Communities and Local Government September 2019

visual impact and is sympathetic to existing development. This means that the materials used should be of similar visual appearance to those in the existing house but does not mean that they need to be the same materials.

27. An example is: *it may be appropriate to replace existing windows with new uPVC double-glazed windows or include them in an extension even if there are no such windows in the existing house. What is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames.*
28. The house previously had painted brick walls to the front elevation, with white painted timber sliding sash windows to the main openings, with those in the bay window including multi-panes to the upper sash. There was a small, broadly square window above the entrance door which also appeared to have a white painted timber window, and white framed casement windows in the dormer.
29. There is no requirement that new materials should exactly match the existing. In respect of the sash windows, the replacement windows appear narrower, although maybe broadly similar in size, they are not divided horizontally, the multi-pane detailing has been lost from the ground floor windows and they are a different colour. The window above the door has been enlarged and has a vertical emphasis with the colour of the frame different to that it replaced. Those in the dormer, are broadly similar in shape and size however, they are also a different colour.
30. Consequently, the shape, except for those in the dormer, and colour of the frames is not similar to those that were in the existing house, and they do not give a similar visual appearance to those windows. Accordingly, even painted white, except for those in the dormer, the replacement windows could not constitute permitted development by virtue of Part 1 Class A of the GPDO.
31. The smooth render is significantly different to the previously existing painted brick finish. Smooth render has a characterless texture whereas, with a painted finish the impression of the bricks and architectural details remain visible. Smooth render does not therefore meet condition A.3(a) and could not constitute permitted development by virtue of Part 1 Class A of the GPDO.
32. Whilst it seems likely the appellant would paint the front elevation since it was previously painted, painting the building would not result in the loss of detailing currently covered in render, and would therefore be less harmful.
33. Overall, for these reasons the alleged fallback is a matter of little weight.
34. To the rear I observed that houses in the vicinity of the site include extensions of varying design including single storey flat roof extensions with sukkah rooflights, such that the rear elevations do not have a uniform appearance. However, whilst I noted the first-floor extension at 76 Linthorpe Road, extensions above outriggers are not characteristic of the immediate locality.
35. The single storey extension has a straightforward appearance which when viewed in this context and considered against the previously approved extension, causes no material harm to the character and appearance of the house or area generally.

36. The extension above the outrigger occupies the entire roof slope and is a sizeable addition, adding considerable bulk to the house. Moreover, the increase in the eaves height of the existing outrigger results in an awkward relationship with the outrigger at No.72. Together with its box like form, the outrigger extension appears as a dominant and incongruous addition which relates poorly to the style and character of the house. Consequently, the outrigger extension adversely affects the appearance of the house, with resultant harm to the character and appearance of the surrounding area.
37. Whilst not visible from the street, the outrigger extension will be visible from the rear windows and gardens of neighbouring and surrounding houses and in such views will appear as a significantly discordant feature.
38. The appellant referred to two previously certified schemes as examples of developments which could be carried out. One² included an extension above the outrigger that would have a box like form but would not include alterations to the eaves of and would be set back from the edges of the outrigger roof, such that the form of the existing outrigger would be evident. Consequently, whilst the design is basic, it's effect would not be the same as the appeal development.
39. The second³ would include a large dormer within the main roof slope and a smaller extension above the outrigger, both with flat roofs. However, the bulk of those extensions would be contained within the main roof slope, with a smaller extension over part of the outrigger. Consequently, whilst the design is similarly basic, it would appear materially smaller and is preferable in terms of its effect on the character and appearance of the house and surroundings, compared to the existing extension. The existence of these certificated schemes is therefore a matter of little weight.
40. For the reasons given, I find that the outrigger roof extension, the rendering of the front façade, the alterations to the pattern of fenestration, the reducing of the size of the window openings and installation of fenestration with new frames cause unacceptable harm to the character and appearance of the house and area generally. These works are therefore contrary to Policy LP1 of Hackney's Local Plan 2033 Adoption July 2020 (the Local Plan) and Policy D4 of the London Plan 2021. Together these require development to be of the highest architectural and urban design quality and to respond to local character and context, using attractive durable, high-quality materials which complement local character. There would also be conflict with the design aims of the Council's Residential Extensions and Alterations SPD 2009 and those of the National Planning Policy Framework (the Framework).
41. However, the elevated walkway over the lightwell at the rear, the single storey rear extension, the increase in height of the bay window and the installation of a new roof above it, have an acceptable effect upon the character and appearance of the house and the area generally. Therefore, there would be no conflict with the design aims of Policy LP1 of the Local Plan, D4 of the London Plan 2021, the Council's SPD or Framework.

² 2019/1465

³ 2017/3233

Living conditions

42. The outrigger extension projects no further than the outrigger at No.72. However, there is a roof window at No.72 close to the shared boundary, and which, I assume, in the absence of contrary evidence, serves a habitable room. Given the relatively small size of that window, and in the absence of evidence that there are other window/s serving that room, because of its height and depth, the extension will have a materially harmful overbearing impact on the outlook from within that room. In my estimation given the height and depth, this would be materially worse than either of the certified schemes.
43. To the rear No.72 occupies a lower ground level. The single storey extension is located on the shared boundary with No.72 in close proximity to a window which again, in the absence of contrary evidence, I assume serves a habitable room. However, whilst the extension will be visible from this window, since it does not extend along the entire length of the boundary and the outlook from this window across the garden is otherwise unobstructed, I conclude that it will not have an overbearing impact on the outlook from either within the house or garden. Moreover, the effect would not be materially different than the approved single storey extension.
44. The extensions are located broadly west of No.72. Whilst there may be some overshadowing of the area closest to the rear of the house later in the day, because of its single storey, flat roof form and as the rear of no.72 faces broadly north, I find that this would not be materially harmful. In the absence of substantive contrary evidence, the extensions will not reduce the amount of daylight No.72 receives.
45. The houses are in a suburban environment where some mutual overlooking of homes and gardens is inevitable. Whilst the outrigger extension adds to the number of overlooking upper floor windows, since it seems it was already possible to gain views from the previously existing outrigger, there is no materially harmful loss of privacy from the additional windows.
46. Although not given as a reason for issuing the Notice, the Council raised concerns about loss of privacy because of the elevated walkway. Since the appellant had the opportunity to comment I shall address this matter accordingly. It is possible to get some views of the neighbouring garden when standing on the outer edge of the walkway. However, since there is a relatively tall boundary fence between the walkway and the neighbouring garden which prevents views of the areas closest to the rear of the house, and of the garden when seated, I find there is no material harm as a result of loss of privacy.
47. For the reasons given, I find the outrigger extension will have a harmful overbearing impact on the outlook from the roof window of No.72 contrary to Policy LP2 of the Local Plan, which requires development to be designed to ensure there is no significant adverse impacts on the amenity of occupiers and neighbours in respect of outlook. There is also conflict with the aims of the Framework which seeks a high standard of amenity for existing and future users.
48. However, for the reasons given I conclude that the walkway and single storey extension cause no material harm as a result of an overbearing impact on the outlook, or in respect of privacy and daylight/sunlight matters. Therefore, there

is no conflict with the amenity protection aims of Policy LP2 of the Local Plan, the Council's SPD or Framework.

Other matters

49. Third party representations have been raised in respect of light pollution from the greater number of windows and rooflights. However, given the location of the houses within a suburban environment, and in the absence of substantive evidence, I find no harm because of light pollution and note that the Council identified no harm in this regard.

Conclusion on ground (a)

50. For the reasons given, I find that the outrigger roof extension, the rendering of the front façade, the alterations to the pattern of fenestration, the reducing of the size of the window openings and the installation of fenestration with new frames are unacceptable. However, since it appears to me that the removal of these works would resolve the harm, I consider it is appropriate to issue a split decision. I therefore intend to grant planning permission under s177(5) of the 1990 Act for the elevated walkway, the single storey rear extension and the increase in height of the bay window only.

Conditions

51. A plans condition is not necessary since the single storey extension, elevated walkway and increase in height of the bay window are complete. The Council suggested a condition restricting the use of the elevated walkway however, since I have found no harm in respect of loss of privacy such a condition is not reasonable or necessary.

The appeal on ground (g)

52. The appeal on ground (g) is that the period for compliance with the Notice falls short of what is reasonable. The appellant's case is made on the basis that they need to seek alternative accommodation whilst the required works are undertaken, source a builder and carry out the necessary works. They seek a period of 12 months.
53. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be removed. The appellant's submissions largely relate to the time before the works can commence.
54. The appellant explained that he already has children, and his wife is currently expecting. Whilst it may be possible to carry out the required works in four months, they are relatively significant. Such works, whilst ongoing would undoubtedly have an impact on family life and I have some sympathy with the appellant in this regard.
55. I am satisfied that having regard to these circumstances, in particular in the interests of minimising disruption to the appellant and their family, that even if account is taken of the need to remedy the harm, the Notice does not afford the appellant reasonable time to comply with the requirements. Looking at the case in the round, the requirements to undertake all the works within four months would place a disproportionate burden on the appellant.
56. At the Hearing the Council confirmed, bearing in mind the appellant's circumstances they would be willing to accept a period of six months. Taking

this and all other matters into account I conclude that the period for compliance should be extended to six months rather than the 12 sought. A period of six months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to resolve the breach of planning control and the interests of the appellant and their family. To this extent, the appeal on ground (g) succeeds.

Conclusion

57. For the reasons given above, I conclude that the appeal should succeed in part only, and I will grant planning permission for the elevated walkway, the single storey rear extension and the increase in height of the bay window, at 74 Linthorpe Road, Hackney, London N16 5RF, but otherwise I will uphold the notice with corrections and a variation and refuse to grant planning permission in respect of the outrigger roof extension, the rendering of the front façade, the alterations to the pattern of fenestration, the reducing of the size of the window openings and installation of fenestration with new frames at 74 Linthorpe Road, Hackney, London N16 5RF. 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 s180 of the Act.

Felicity Thompson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Joe Henry	Henry Planning Limited
Mr Pinnchas Deutsh	

FOR THE LOCAL PLANNING AUTHORITY:

Angus Cunningham	Planning Enforcement Officer
Nick Kirk	Deputy Enforcement Team Leader

INTERESTED PARTIES:

Mr Paul Ravenscroft