



Appeal Decision

Site visit made on 21 September 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 22 November 2023

Appeal Ref: APP/G5750/C/22/3312424

157 Boundary Road, Plaistow, London, E13 9QF

- 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 Nasar Ahmad against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice, numbered 21/00496/ENFC, was issued on 4 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a ground and first floor rear extension.
 - The requirements of the notice are to:
 1. demolish the ground and 1st floor rear extension (as shown in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1), and return the affected elevations 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: four months from the date of the notice.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) of the Act. 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.
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Decision

1. 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 Act.

Preliminary Matters

2. Whilst the appeal form indicated that the appeal was being pursued solely under ground (a), the appellant's statement of case also indicated that the appeal was being made under ground (d). The appellant has confirmed the appeal is proceeding on the grounds set out in (a) and (d) of the Act. The Council have been given the opportunity of providing their comments on this matter.

Ground (d)

3. An appeal on this ground is that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters because what is alleged is immune from enforcement action due to the works being substantially completed more than four years before the enforcement action was taken. The relevant date in this instance is the 4 November 2018. The test in this regard is the balance of probability and the burden of proof is on the appellant. In this instance, an appellant's case should be accepted if there is no evidence to contradict or

otherwise make his version of events less than probable, provided that his evidence is sufficiently precise and unambiguous.

4. It is the appellant's case that the matters referred to in the notice were erected in a two-step process with a ground floor and first floor extension being added to the appeal dwelling in 2013 (the 2013 Works). The submitted aerial photographs from Google Earth show works that may be what the appellant describes as the 2013 Works being in situ from July 2013 and thereafter in 2015, 2017 and 2020, respectively. The appellant goes on to state that the 2013 Works were subsequently enlarged in 2021 and therefore only the later additions should be the subject of the enforcement notice. The Council disagree and consider that the 2013 Works were demolished and replaced with the works specified within the notice.
5. Whilst I note the submitted evidence purports to show the 2013 Works at various periods in time between 2013 and 2020, there is little evidence or explanation provided by the appellant to show exactly what he says he built in 2013 and that it was substantially completed on or before the 4 November 2018, nor has the appellant shown how the 2013 Works were retained as part of a scheme of enlargement. No planning or building control records have been produced for the 2013 Works, nor any builder's invoices or receipts for materials. Furthermore, the Google Earth photograph dated March 2020 shows the roof covering of the first floor extension to be formed of a light grey coloured material, whereas the photograph from February 2021 does not show that the previous roof covering was retained. In its' place, the roof of the entire first floor extension is shown to be covered by one continuous roof covering. As such, I consider that the evidence does not support the appellant's contention that enlargements were made to the pre-existing extension.
6. At the time of the site visit, I observed that the external facades of the ground floor and first floor extensions were mainly constructed in large and continuous pieces of corrugated metal of light and dark colours and with some areas of light-coloured rendering to the sides. There was no obvious differentiation between any old and new elements of the extension and, as a result, the external finish of the exterior walls lends further support to the pre-existing 2013 Works having been removed rather than being retained as part of an enlarged development.
7. There is ambiguity within the evidence by reason of the appellants' submitted householder planning application¹ (December 2022) for a development described as '*retrospective planning application for the already built ground and first-floor rear extensions*'. The works are stated to have commenced on the 2 November 2020. No reference is made within that application to any part of the extension having been carried out at an earlier date nor of it, or any part of it, being retained as part of an enlarged scheme.
8. Accordingly, I consider that the appellant's evidence is ill-defined and ambiguous and it therefore fails to demonstrate that part of the works captured within the enforcement notice are immune from enforcement action. It therefore follows that the Council could take enforcement action in respect of the entire ground and first floor rear extension on the date the notice was issued. For this reason, the appeal on ground (d) fails.

¹ Planning Reference: 22/02841/HH

Ground (a)

9. The ground of appeal is that planning permission should be granted for the breach of planning control stated in the notice. Having regard to the reasons for issuing the notice, the main issues are the effect of the development on:-
- i) the character and appearance of the host dwelling, terrace and surrounding area;
 - ii) the living conditions of occupants of neighbouring dwellings having particular regard to outlook and privacy; and
 - iii) the biodiversity value of the appeal site.

Character and appearance

10. The appeal site is located within a predominantly residential area that is largely comprised of rows of two storey terraced properties of similar appearance and age. This uniformity in scale and appearance provides a cohesive and distinctive character which extends to the rear elevations of properties, particularly insofar as where they are visible in public views. Whilst there have been some alterations to the rear facades of some dwellings within the terraced row and the surrounding area, these extensions are generally of a modest height and scale and utilise a sympathetic palette of materials in keeping with their host dwellings and as such, a number of these altered houses nonetheless maintain uniformity and rhythm to the design and layout of the dwellings. Rear extensions that extend across the full width of the host dwelling are not characteristic of the area.
11. Albeit the front façade of the appeal dwelling shares the common characteristics of the host terrace and wider area, its rear elevation is plainly at odds with the established character and appearance of the area. By reason of extending across the full width of the dwelling it is at odds with the established pattern of development which for the most part consists of small projecting extensions that extend only partially across the width of their dwelling and maintain a gap to the shared boundary.
12. Given its excessive depth of some 12 metres and 6 metres from the original rear wall, at both ground and first floor level respectively, taking the Council's measurements, which have not been disputed by the appellant, this excessive depth together with its significant height and bulk results in the appeal scheme appearing as a dominant and disproportionate addition that overwhelms the rear of the host dwelling and is a discordant addition to the terrace and wider area.
13. Notwithstanding the presence of some flat roof extensions nearby, the majority of roof forms are pitched. The inclusion of a partly flat and partly angled roof structure serves to further increase its discordance within the terrace. The use of a mix of materials comprised of corrugated metal, render and uneven overlapping felt roof shingles adds further incongruent elements and serves to increase the prominence of the scheme. It is clearly visible in views from the public domain including from Clacton Road and Blenheim Road from where the appeal scheme is read as an inharmonious and unduly strident addition to the host dwelling and terrace.

14. Accordingly, I conclude that the appeal scheme is unduly harmful to the character and appearance of the host dwelling, terrace and the surrounding area. It would conflict with Policies SP1, SP3, SP8, S6 and H1 of the London Borough of Newham Local Plan (2018)(NLP) and Policies D1 and D4 of the London Plan (LP)(2021). Among other things, these policies require a high quality development that respects and enhances local distinctiveness. In addition, the appeal scheme fails to accord with the aims of the National Planning Policy Framework (2023)(the Framework) insofar as it seeks to secure a high quality design that is visually attractive as a result of good architecture and is sympathetic to local character including the surrounding built environment.

Living conditions

15. By reason of being a mid-terrace property, the host dwelling is bounded to each side by similar terraced dwellings and their modestly sized rear gardens. Given that the unauthorised extension fills the entire width of the rear garden, it has resulted in the ground and first floor side elevations of the unauthorised development being positioned along the common boundaries with Nos. 155 and 159 Boundary Road (the neighbouring properties).
16. A number of windows are positioned within the rear elevations of the neighbouring properties including a large projecting bay window that is positioned within the side elevation of the projecting rear outrigger extension of 159 Boundary Road (No.159). Albeit there is little information before me regarding the rooms that these windows serve, a number of the windows including the bay window are clear glazed and to my mind, a number are likely to serve habitable rooms. The unauthorised development is substantially taller than the existing boundary treatment and by reason of its significant depth and height together with its close proximity to the neighbouring properties, it would unduly dominate views when looking out from these windows and from the garden and patio areas closest to the neighbouring properties.
17. Given the presence of the rear outrigger on the neighbouring property, the height and depth of the extension and its position on the common boundary would result in a tunnelling effect and a significant sense of enclosure to the rear of No. 159 which would be to the detriment of the outlook of neighbouring occupiers and materially compromise their living conditions. This is not offset by the edge of the unauthorised roof being angled to pitch away from the common boundary.
18. The consequence for the residents of the neighbouring properties is a very overbearing development. The sense of enclosure and intrusion into their outlook is severe and to my mind, it has caused serious harm to the enjoyment of their properties and gardens. To this extent, the appeal scheme fails to accord with the guidance of the Council's Supplementary Planning Document 'Altering and Extending Your Home' (2018)(SPD) which sets out that neighbours have a right to enjoy their home without intrusion from inappropriate development at adjoining properties and requires extensions to be designed to be respectful of neighbouring privacy and outlook.
19. Furthermore, the inclusion of a number of windows within the side elevations of the unauthorised development results in an arrangement of windows that face directly into the gardens of the neighbouring properties. Notwithstanding that they are non-opening and are mostly comprised of frosted glass, there remains

the potential for actual and perceived overlooking of the private rear garden areas and this would unduly compromise the privacy of neighbouring occupants and materially impact their living conditions.

20. Although the reasoning for issuing the notice refers to '*light to adjoining properties*', the accompanying enforcement report of the Council sets out that the development does not result in any unacceptable loss of daylight or sunlight to the adjoining properties and I see no reason to take a different view.
21. I therefore conclude that the unauthorised development is unduly harmful to the living conditions of neighbouring occupiers with regards to their outlook and privacy. Consequently, the unauthorised development conflicts with NLP Policy SP8 and the guidance of the SPD insofar as these require development proposals to take into account 'neighbourliness' and minimise overlooking and loss of privacy and overbearing impact. In addition, the unauthorised development fails to accord with the Framework insofar as it requires development of a high standard of amenity for existing and future users and which does not undermine quality of life.

Biodiversity value

22. NLP Policies SC1 and SC4 seek to protect and enhance biodiversity with all development contributing to the achievement of net gain, and where compatible, improvements to access to nature. The supporting text to Policy SC4 sets out that despite Newham's urban structure and proximity to central London, it supports a diverse array of wildlife, including species that have adapted their behaviours to urban environments. It goes on to state that development brings opportunities to enhance biodiversity and address past degradation, including that which has arisen from, among other things, the tendency to pave over gardens. Sites not necessarily recognised for their biodiversity offer, such as brownfield land, may include habitats and species of value. LP Policy G6 has similar aims and sets out that development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain.
23. Although the Council concedes that the garden was previously paved prior to the unauthorised development, individual gardens can nonetheless make an important positive contribution to biodiversity in terms of the plant and animal life that it is capable of supporting. Whilst the space taken up by the unauthorised building is large, a sizeable garden area is retained and, in my view, it is capable of supporting some limited biodiversity enhancements.
24. In the absence of any evidence to demonstrate that biodiversity enhancements are not capable of being achieved within the appeal site, the appeal scheme fails to secure a biodiversity enhancement and therefore the scheme is contrary to NLP Policies SC1, SC4 and LP Policy G6, the requirements of which are set out above. In addition, there would be conflict with the Framework which aims to improve biodiversity in and around developments.
25. However, I am mindful that an appropriately worded planning condition could be imposed on a grant of planning permission to secure a scheme of landscaping which would deliver biodiversity enhancements. To this extent, the appeal scheme would therefore comply with the requirements of the Policies cited above and the Framework and the harm would be adequately mitigated.

Other Matters

26. A number of other similar ground and first floor rear extensions along Boundary Road and Blenheim Road have been drawn to my attention. I have had regard to the submitted photographs and observed a number of these at the time of my visit. However, there is little information before me regarding the circumstances that led to these developments and moreover, based upon my observations, I note that these extensions were different to the appeal scheme in terms of their scale, mass and materials and as such they are not directly analogous to the appeal scheme. A comparison is of little relevance in this instance and I have considered the appeal before me on its individual planning merits.

Conclusion on ground (a)

27. For the reasons given above, whilst a planning condition could be used to secure adequate biodiversity enhancements to an extent that there would be no conflict with policies of the development plan in this regard, the scheme nonetheless causes harm to the character and appearance of the host property, terrace and surrounding area together with harm to the living conditions of neighbouring occupiers. This is a matter to which I attribute substantial weight. The appeal scheme fails to accord with the development plan and the material considerations in this instance do not justify a decision otherwise than in accordance with the development plan. For the reasons given above, I conclude that the appeal should not succeed on ground (a).

Overall Conclusion

28. 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 Act.

E Brownless

INSPECTOR