



Appeal Decisions

Site visit made on 31 October 2023

by Peter White BA(Hons) MA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal A Ref: APP/J1535/C/22/3301953

Appeal B Ref: APP/J1535/C/22/3301954

Land at 32 Starling Close, Buckhurst Hill, Essex IG9 5TN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Dean Nagib (Appeal A) and Mrs Lucy-Jay Fox-Nagib (Appeal B) against an enforcement notice issued by Epping Forest District Council.
- The notice was issued on 15 June 2022.
- The breach of planning control as alleged in the notice is: Without planning permission: The erection of a raised terrace and side walls onto the rear elevation.
- The requirements of the notice are:
 1. Remove the raised terrace and side walls from the land shown hatched black on the attached plan.
 2. Remove all resultant debris from the land as a result of compliance with step 1.
- The period for compliance with the requirements is: One (1) month.
- Appeals A and B are proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. Since appeals have been brought on ground (a), applications for planning permission (DPAs) are deemed to have been made under section 177(5) of the Act.

Summary of decisions: Appeal A is dismissed. Appeal B is dismissed.

Preliminary Matters

1. The Epping Forest District Local Plan 2011-2033 (2023) (EFDLP) was adopted in March 2023. The appellants and the Council have been given opportunity to comment on this change.

Appeals A and B on ground (a) and the DPAs

2. Appeals on ground (a) are made on the basis that planning permission ought to be granted for the alleged breach of planning control.

Main issue

3. The main issue is the effect of the development on the living conditions of neighbouring occupiers, with particular regard to privacy and outlook.

Reasons

4. The land comprises a semi-detached dwelling, recently extended to the side and rear with planning permission¹ in a residential area. Land levels fall to the rear, and to a lesser degree towards the neighbouring detached property 31 Starling Close (No 31), which the appellants advise is around 1m lower.
5. Accommodating the sloping land in this area has been met in a number of ways. In the vicinity of the appeal site, garden boundary fencing generally falls

¹ Planning permission reference: EPF/2822/21

with the land. Vegetation provides some additional screening, and trees reduce intervisibility between the rear of houses. Raised patios also stand to the rear of some properties.

6. The development is a raised patio, or platform as described in the Notice, extending 2.7m beyond the rear extension, allowing occupiers of the dwelling to exit the rear extension at a similar level. Blockwork walls either side rise around 1.45m above the level of the raised patio. At its far end the raised patio is around 1.4m above the ground, and lightweight timber steps currently provide access down to the garden.
7. The adjoining dwelling, 33 Starling Close (No 33) has raised decking, of a similar elevation to that on the appeal site. It also has timber fencing either side of a comparable height to the blockwork walls on the appeal site. However, No 33 has not been extended at the rear, and its decked area extends only marginally beyond the rear extension on the appeal site. No 31 also has a level patio at its rear, but at a lower height.
8. In relation to outlook from No 31, at the boundary between the properties, the blockwork wall stands approximately 2.3m above No 31's patio and extends 4m beyond the rear wall of No 31 (1.3m of that being the rear extension). Although enclosure in this manner may be found in urban areas, the scale, height and overall bulk of the structure, and its blockwork construction, conflicts with the relatively open suburban garden context.
9. No 31's garden is lower, and the side wall above the raised patio is over-dominant and stands in sharp contrast to the fencing which follows the relative land levels. I note the appellants' assertion that a 2m structure could be erected along the boundary, but the wall does not reduce in height following falling ground levels. In any event, a 2m structure would be lower and less harmful than the development before me, and the possibility of such a structure does not justify the harm arising from the development.
10. From No 33's rear rooms and raised decking, the side wall above the raised patio will be visible but not oppressive, although it will be seen as a solid urban feature in the context of greener garden surroundings. However, from the garden, the side wall stands significantly higher than other boundary features, and despite vegetation softening its effects in some perspectives, it is a dominant feature in others.
11. Overall, the development is therefore harmful to outlook for occupiers of No's 31 and 33, and its effects are not mitigated by the width and depth of the plots.
12. In relation to privacy, relatively low boundary fencing exists between the gardens, which follows the falling ground levels. There is therefore some expectation of overlooking of gardens from the rear of dwellings. Mitigation, where occupiers require it, tends to be provided by vegetation, which is softer in its appearance.
13. The rear extension has a wide glazed area facing the rear. Removal of the side walls above the raised patio would therefore increase intervisibility between the extension and the central parts of the gardens at No's 31 and 33.
14. Nevertheless, the raised patio also provides further views of those gardens, particularly that of No 31. Although the side walls reduce the degree of

overlooking from users standing in the middle section of the raised patio, at 1.45m in height, they have little effect either side.

15. Near the boundary on each side, the raised patio also affords users the ability to look directly into the rooms of the neighbouring dwellings. It's location beyond the rear extension increases these effects by allowing users to look back into neighbouring properties in a way that would not have been the case with a patio immediately outside the original dwelling.
16. No 33's raised decking is of a similar height, but is set back closer to the house where the land levels are higher, and has no greater effect on privacy than the rear extension on the appeal site. The raised patio extends significantly into the garden and, at its height above ground levels at the rear, results in an intrusive development.
17. The development therefore unacceptably reduces the privacy of occupiers of No's 31 and 33.
18. In conclusion, the development is harmful to the living conditions of nearby residential occupiers, with particular regard to privacy and outlook. It is contrary to the relevant aspects of EFDLP Policy DM9, which requires development to take account of the privacy and amenity of neighbours. I have not found conflict with EFDLP Policy DM10, which refers to specific aspects of housing design and quality. The Council have also referred to the National Planning Policy Framework generally, but I have not been directed to any specific guidance relevant to this appeal.

Other Matters

19. The appellants suggest a planning condition could require the finishes of the walls to be rendered to match the existing dwelling. In addition, no harm is identified by the Council in relation to the design and appearance of the raised patio and side walls. The absence of harm weighs neutrally in the planning balance.
20. The appellants advise the development has had modest economic and social benefits for local builders and by improving the quality of the housing stock. However, the works have already been carried out, and these benefits would not outweigh the harm I identify in relation to the main issue.
21. Interested parties have also raised other matters, including the appearance of the raised patio and side walls, and loss of light for the occupiers of No 31. However, having found harm in relation to the main issue, these matters would not change my decision.

Conclusion

22. For the reasons above, I conclude the development would conflict with the development plan as a whole, and there are no other material considerations that require a decision to be made other than in accordance with the development plan. The appeals on ground (a) therefore fail, and the DPA is refused.
23. I shall uphold the enforcement notice and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals A and B on ground (g)

24. Appeals on ground (g) are made on the basis that the time for compliance with the requirements of the notice is too short. The appellants consider one month would be insufficient to carry out its requirements.
25. The purpose of the notice is to remedy the breach of planning control, and requires the removal of the raised terrace and side walls and resulting debris.
26. The appellants refer to shortages of building materials and labour and to the “substantial nature” of the works required. But there is no requirement in the notice for additional or replacement works, and I have not seen a convincing case that the works required are substantial, such that they could not be completed within 1 month. The garden is also currently accessed from a timber ladder, and I have not seen evidence of an immediate need for additional works in that respect.
27. Furthermore, if additional time is required, and can be evidenced, then the Council has the power to extend the time for compliance with the notice.
28. The appeals on ground (g) therefore fail.

Overall conclusion

29. For the reasons given above, I conclude the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Decisions

30. Appeal A 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.
31. Appeal B 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.

Peter White

INSPECTOR