



Appeal Decision

Site visit made on 10 November 2023

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2024

Appeal Ref: APP/X5210/C/22/3313568

Land at: 4 Copperbeech Close, London NW3 5RB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Jonathan Gould against an enforcement notice issued by the Council of the London Borough of Camden.
- The enforcement notice was issued on 8 November 2022.
- The breach of planning control as alleged in the notice is: Without planning permission: The erection of an extension at the rear.
- The requirements of the notice are:
 1. Completely remove the single storey rear extension;
 2. Make good the exposed elevations in materials to match the pre-existing situation; and
 3. Remove any resultant debris from the premises as a result of the above works.
- The period for compliance with the requirements is three (3) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (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 Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

The Notice

1. The appellant states that the extension is formed by a roof over established boundary and garden walls. This is consistent with my observations at my site visit where I saw that the external brickwork for the extension appears to be of a comparable age as that of the original dwelling.
2. In its evidence, the Council accepts that the extension has been built within the existing garden walls. As such, given the way the notice has been drafted, the allegation requires correction. Consequentially, requirement 1 of the notice must also be corrected.
3. Properly considered, this is a hidden ground (b) appeal, ie that the matters stated in the notice have not occurred. Correcting the notice in this regard is important in this case because grounds (d) and (f) must be assessed against the allegation and the terms of the deemed planning application are also derived from the allegation.
4. Given the way in which the parties have argued their cases and the Council's acceptance noted above, I am satisfied that I may correct the notice, pursuant to my powers under section 176(1) of the 1990 Act, without causing injustice to any party.

Reasons

Ground (d)

5. An appeal on ground (d) is that it was too late for the Council to take enforcement action due to the time limits set out in section 171B of the 1990 Act.
6. In a ground (d) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities and the decision must be made on the evidence provided. If there is no evidence to contradict the appellant's version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
7. Section 171B(1) of the 1990 Act provides that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.
8. The appellant states that the wall that encloses the southern (side) and western (rear) walls of the extension exist from when the house was originally built and that the replacement roof structure (in the same form and position as the previous one) existed by July 2018, ie more than 4 years before the notice was issued. In respect of the walls, this is a matter for the hidden ground (b) appeal, addressed above.
9. In respect of the roof, the appellant's case is contradicted by photographs provided by the Council and obtained as part of their enforcement investigation. Taken together, these photographs show the extension in a state when it was clearly not substantially complete and indicate that works to the roof of the extension (which I saw incorporates a substantial rooflight) were ongoing in 2020.
10. My attention has been drawn to an email dated 21 December 2022, referred to as Document 2, regarding a Building Control application for the site, registered on 8 December 2017, for internal works. According to the appellant, this indicates that the works were internal only, as the existing structure was in place before the application, including the rear area, what is now the kitchen and its roof structure.
11. But this application is imprecise and unambiguous as it only demonstrates that internal works were applied for, rather than being evidence that the extension already existed. In any event, I give this email less weight than the photographs provided by the Council, given that it is unsworn and appears to have been prepared for the specific purposes of this appeal, rather than contemporaneously.
12. Under ground (d), it makes no difference whether the new roof structure is in the same form and position as a previous roof as, from the information provided, what has occurred is either a building operation or a rebuilding operation, for the purposes of section 55 of the 1990 Act, rather than a repair.
13. Taking all of the above into account, I conclude on the balance of probabilities that it was not too late for the Council to take enforcement action when the notice was issued. Accordingly, I conclude that the appeal on ground (d) fails.

Ground (a)

14. An appeal on ground (a) is that planning permission ought to be granted for the breach of planning control stated in the notice (as corrected).
15. Based on the cases put to me, the main issues in the ground (a) appeal are:
 - the effect of the appeal development on the living conditions of occupants of the appeal building; and
 - the effect of the appeal development on the character and appearance of the area, including the Fitzjohns/Netherhall Conservation Area.

Living Conditions

16. Amongst other things, Policy D1 of the Camden Local Plan requires that development preserves gardens and other open spaces and incorporates outdoor amenity space. The supporting text of this policy makes clear that private outdoor amenity space, including gardens, can add significantly to residents' quality of life. In this regard, my attention has also been drawn to Camden's Home Improvements Planning Guidance, dated January 2021, which states that rear extensions should allow for the retention of a reasonably sized garden.
17. The appeal development occupies the entire rear garden of the appeal property, such that the garden for the house has been completely lost. As a consequence, the amenity value of the garden for occupants has been removed in its entirety. This is harmful to the living conditions of occupants of the appeal property. I realise that the appeal development has resulted in a larger home for occupants but I am not satisfied this outweighs the harm in this regard.
18. According to the appellant's statutory declaration of 20 December 2022, the garden space was already roofed over with timber beams, overlaid with wired glass panels when he acquired the property on 15 September 2017. This being the case, it would be a material consideration for this main issue. However, in this regard, the appellant's version of events is contradicted by his own email to the Council of 29 April 2022, where he describes the roof as corrugated opaque plastic and it is further contradicted by photographs submitted by the Council.
19. Taken together, these photographs indicate the pre-existing situation was a garden area with no roof, open to the sky, occupied by garden furniture and vegetation. No explanation has been provided by the appellant for the aerial photograph provided by the Council of the pre-existing situation.
20. Regarding the Philip Arnold photograph of the garden, said to be from 2017, there is no explanation for why the auctioneer would have or use that photograph, if that space were already roofed over and laid out as described by the appellant in his statutory declaration (with a fridge freezer, fitted kitchen cabinet and sink) when the property was sold to the appellant.
21. Taking into account the above, I am not satisfied that prior to the appeal development being carried out, any roof previously existed over the rear garden, for this to be taken into account as a material consideration for this main issue.

22. I conclude that the appeal development harms the living conditions of occupants of the appeal building due to the loss of the garden and nothing has been provided to lead me to a different conclusion. In this regard, the appeal development does not comply with Policy D1 of the Camden Local Plan, adopted 2017.

Character and Appearance

23. The appeal building is within the Fitzjohns/Netherhall Conservation Area. So it constitutes part of a designated heritage asset and there is a statutory duty upon me under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
24. My attention has been drawn to The Fitzjohns/Netherhall Conservation Area Statement, March 2001 and the Fitzjohns/Netherhall Conservation Area Character Appraisal & Management Plan, December 2022. Whilst the 2022 document logically supersedes the 2001 document, the 2001 document still contains information relevant to the character and appearance of the area.
25. Drawing on the above sources, the area is characterised by large detached or semi-detached dwellings, set back behind small front gardens with generous back gardens. These, together with gaps between buildings and vegetation, contribute to a green and leafy appearance for the area.
26. Buildings are stylistically diverse but predominantly draw on Queen Anne Revival and Arts and Crafts influences and were constructed in the late 19th and the first half of the 20th century. Building scales vary from 2 stories to 6 stories or more. I consider the significance of the heritage asset is derived from the above character and appearance.
27. The appeal building is markedly different from the above. It is one in a group of 4 small houses of 2 stories in brick with mono-pitched roofs. The group was built on a triangular site, sited at an oblique angle to the road and approved in 1968, according to the 2001 document. This describes the scale and design of the group as sitting well in the townscape and both documents identify the group as making a positive contribution to the character and appearance of the area. I have no reason to disagree with these assessments.
28. The Council is concerned about the depth and width of the extension and the 'bulk' it adds to the appeal building. But at my site visit I saw that the extension is not visible from anywhere outside the appeal site, except in private views from a few upper floor windows on homes to the rear, on Daleham Gardens. Even then, as I saw from the first floor of the appeal building, the extension is set down within existing garden walls and screened by them, such that its only physical manifestation is its flat roof and rooflight.
29. On the basis of the above, I do not consider the depth or width of the extension to be excessive. Nor do I consider it to be bulky. Based on the cases put to me, there is no specific evidence that the extension has any specific effect on the significance of the conservation area as a heritage asset.

30. I conclude that the appeal development does not harm the character or appearance of the area, including the Fitzjohns/Netherhall Conservation Area, or its significance as a designated heritage asset. Instead, the appeal development preserves the area's character and appearance and nothing has been provided to lead me to a different conclusion. As such, in this regard, I find no conflict with Policies D1 or D2 of the Camden Local Plan, adopted 2017.

Other Matters

31. The appellant states that there is no conflict with matters of residential amenity, impact on neighbours, ecology or highway safety. In respect of residential amenity, this is inextricably linked with the living conditions issue addressed above, where I have found harm. In respect of the other matters, these are neutral points and so they do not alter my conclusions on ground (a), in light of the harm identified above.
32. According to the appellant, the Council indicated that the enforcement investigation was likely to be concluded without any enforcement action by the Council. But from the information provided, that course of action was contingent upon the provision of evidence to satisfy the Council that the extension was immune from enforcement action.

Conclusion on Ground (a)

33. Whilst I have found that the appeal development does not harm the character or appearance of the area, I have found the appeal development harmful to the living conditions of occupants of the appeal building. As a matter of my planning judgement, significant weight should be ascribed to this main issue, in light of the importance of gardens to residents' quality of life. So I consider there is conflict with the development plan overall and I conclude that the ground (a) appeal should be dismissed and planning permission should be refused.

Ground (f)

34. An appeal on ground (f) is 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 the breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
35. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
36. Based on the requirements of the notice, the purpose of the notice is to remedy the breach. In effect, the appellant's concern in respect of ground (f) is that the notice (prior to correction) required the removal of existing garden walls. As I have found above, the extension has been built within the existing garden walls and so they do not need to be removed to achieve the purpose of the notice.

37. The appeal on ground (f) succeeds to this extent. However, this matter has already been addressed by the corrections to the notice, pursuant to the hidden ground (b) appeal, above.

Ground (g)

38. An appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.

39. The Council raises no objection to extending the timeframe for compliance to 6 months. I have no reason to disagree with the Council's new position in this regard and so the appeal on ground (g) succeeds and I shall extend the period for compliance accordingly.

Conclusion

40. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation 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. It is directed that the enforcement notice is corrected and varied by:

- the deletion of the allegation in paragraph 3 of the notice and its substitution with: "The erection of an extension at the rear within the existing garden walls";
- the deletion of 3 months as the period for compliance in paragraph 5 of the notice and its substitution with 6 months;
- the deletion of requirement 1 in paragraph 5 of the notice and its substitution with: "Completely remove the extension at the rear within the existing garden walls".

42. Subject to the corrections and variation, 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 Perkins

INSPECTOR