



Appeal Decision

Site visit made on 10 January 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05th February 2024

Appeal Ref: APP/A5840/C/23/3318616

44 Wansey Street, London SE17 1JP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Ms Alice Adetola Ekerin against an enforcement notice issued by the Council of the London Borough of Southwark.
- The notice was issued on 13 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from a single dwellinghouse to 2 self-contained flats including the erection of a two storey rear extension ("the Unauthorised Development").
- The requirements of the notice are: Cease the use of the Land as more than ONE dwelling. Remove all kitchens and cooking facilities except ONE from the Land. Remove the two storey rear extension and remove all materials and debris as a result of these works from the Land. Reinstate the internal stairwell between the ground & first floor to reflect the layout prior to the Unauthorised Development taking place (As shown on the attached Plan A).
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), and (g) 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.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. The Government published a revised National Planning Policy Framework (the Framework) after appeal submissions had been made. I have not considered it necessary to consult parties on those revisions, but have taken the Framework, as revised, into account when reaching my decision.
2. The Council submitted its Hearing Statement after the deadline stated in the appeal start letter had passed. It was not therefore accepted by The Planning Inspectorate, and I have not been provided with a copy of that document.

Grounds (a)/(f) and the deemed application for planning permission

3. There is no dispute that the development fails to accord with the development plan on account of the unacceptable living conditions created for occupiers of the land, with regard to internal space standards, and the failure to secure a financial contribution towards the provision of off-site affordable housing. The appellant therefore concedes that planning permission should not be granted for the use of the land as 2 self-contained flats. This is because it conflicts with Policies P1, P3, and P15 of the Southwark Plan 2022 (SP), and the Council's

Supplementary Planning Documents¹ and the Mayor of London's Supplementary Planning Guidance² relating to affordable housing contributions. I see no reason to reach different conclusions on these matters.

4. However, it is claimed that the 2-storey rear extension, on its own, is acceptable in planning terms. Section 177(1)(a) of the Act provides that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. The 2-storey rear extension comprises part of those matters, and it is severable from the material change of use. I shall therefore consider the planning merits of the 2 storey rear extension separate from the material change of use as part of the appeal under grounds (a) and (f) and the deemed application for planning permission.

Main Issue

5. Based on everything I have read and seen, the main issue is the effect of the 2-storey rear extension on the character and appearance of the area, with particular regard to the Larcom Street Conservation Area (CA).

Reasons

6. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA. So far as relevant to this appeal, the significance of the CA appears to lie in its tight-knit arrangement of 19th century terraced houses with consistent front elevations and small rear gardens.
7. The appeal site is a mid-terrace 3-storey dwelling which the main parties have referred to as having ground, first, and second floor levels. The rear elevation of the terrace includes 3-storey outriggers alongside various styles of single and 2-storey in-fill extensions.
8. The 2-storey rear extension is seen from neighbouring properties, in the context of other rear extensions which have a range of sizes, roof forms and finishes. Although the 2-storey rear extension has a buff rendered finish which is inconsistent with the brickwork of the upper floors of the appeal building, it is not experienced as an uncharacteristic feature within the CA. The same applies to its flat roof, which has a similar appearance to others nearby.
9. The 2-storey rear extension preserves the character and appearance of the CA and does not cause any harm to its significance. In these regards, the 2-storey rear extension accords with Policy P15 of the SP, the Council's Residential Design Standards³, and the Framework. These require, amongst other things, the context of development to be taken into consideration, and development to harmonise with the character of the area and integrate with its surroundings.

Conditions

10. The plans⁴ show the ground floor room within the 2-storey rear extension is served by a clear glazed openable window on its rear elevation and a window

¹ Affordable Housing (2008) and Section 106 Planning Obligations and Community Infrastructure Levy (2015)

² Homes for Londoners: Affordable Housing and Viability (2017)

³ Supplementary Planning Document: 2015 Technical Update to the Residential Design Standards (2011)

⁴ The appellant's Appendix 3: Drawing numbers 02 and 03

on its side elevation. The side elevation window has the potential to cause privacy concerns for residents of 42 Wansey Street. It would be reasonable and necessary to require that window to remain obscure glazed and fixed shut to prevent unacceptable harm to the living conditions of those neighbouring residents. This can be secured by a condition. As there are no details before me as to the glazing and any opening method of the side elevation window, these would need to be approved within a specific period, otherwise the window would need to be removed and infilled.

11. It would also be reasonable and necessary to attach conditions prohibiting the installation of any other windows and the use of the flat roof of the extension for any purpose other than as a means of escape or for maintenance works. This would protect the privacy of, and ensure acceptable living conditions for, neighbouring residents.

Conclusion on the appeal under grounds (a) and (f) and the deemed application for planning permission

12. The material change of use of the Land from a single dwellinghouse to 2 self-contained flats is in conflict with the development plan and there are no material considerations which indicate planning permission should be granted for that part of the breach of planning control. The 2-storey rear extension complies with the development plan and there are no material considerations which indicate planning permission should be refused for that part of the breach of planning control. For the reasons given above, I conclude that the appeal succeeds on grounds (a) and (f) in respect of the 2-storey rear extension only. I shall grant planning permission for that part of the breach of planning control as described in the notice, subject to conditions.

Ground (g)

13. As I have found that planning permission should be granted for only part of the breach of planning control, the notice will be upheld. It therefore remains necessary for me to consider the appeal under ground (g). To succeed under this ground of appeal, the appellant would need to demonstrate that the period specified in the notice for its requirements to be complied with falls short of what should reasonably be allowed.
14. Under the provisions of section 180 of the Act, the notice will cease to have effect so far as inconsistent with the planning permission being granted. The third step at section 5 of the notice will not therefore need to be complied with, leaving the first, second and fourth steps to be complied with within 6 months of the date of this decision. This is a reasonable period to carry out those actions/works, which do not involve the demolition of the 2-storey rear extension. No information has been provided to persuade me otherwise.
15. The appeal under ground (g) therefore fails.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the 2-storey rear extension, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the material change of use of the Land from a single dwellinghouse to 2 self-contained flats. 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 section 180 of the Act.

Formal Decision

17. The appeal is allowed insofar as it relates to the 2-storey rear extension and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the 2-storey rear extension at 44 Wansey Street, London SE17 1JP, subject to the following conditions:
- 1) (i) Unless within 2 months of the date of this decision details of the obscured glazing and method of opening of the ground floor side elevation window of the 2-storey rear extension hereby permitted are submitted in writing to the local planning authority for approval, and unless the approved details are implemented within 2 months of the local planning authority's approval, the ground floor side elevation window shall be removed and infilled with rendered brickwork, the external finish of which shall match the external walls of the 2-storey rear extension, until such time as those details are approved and implemented.
(ii) If no details in accordance with this condition are approved within 5 months of the date of this decision, the ground floor side elevation window shall be removed and infilled with rendered brickwork, the external finish of which shall match the external walls of the 2-storey rear extension, until such time as details approved by the local planning authority are implemented.
(iii) Upon implementation of the approved details specified in this condition, those details shall thereafter be retained.
(iv) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no additional windows shall be constructed on the 2-storey rear extension hereby permitted.
 - 3) The roof of the 2-storey rear extension hereby permitted shall not be used for any purpose other than as a means of escape during an emergency or for maintenance purposes. The roof shall not be used as a terrace, balcony, or similar amenity area.
18. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the material change of use of the Land from a single dwellinghouse to 2 self-contained flats and planning permission is refused in respect of the material change of use of the Land from a single dwellinghouse to 2 self-contained flats at 44 Wansey Street, London SE17 1JP on the application deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR