



Appeal Decisions

Site visit made on 21 November 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 February 2024

Appeal A Ref: APP/A5840/C/22/3308666

Appeal B Ref: APP/A5840/C/22/3308667

Appeal C Ref: APP/A5840/C/22/3308668

Appeal D Ref: APP/A5840/C/22/3308669

Appeal E Ref: APP/A5840/C/22/3308670

23 Wood Vale, Forest Hill, London SE23 3DS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by London Borough of Southwark.
- The appeals are made by:
 - Appeal A: Mrs Emma Jane Clay
 - Appeal B: Mr Bradley Clay
 - Appeal C: Mrs Gail Barbara Bottomley
 - Appeal D: Mr Dominic Lucius Gill
 - Appeal E: Mr Alexander James Travers Edgington
- The notice, numbered 21/EN/0037, was issued on 9 September 2022.
- The breach of planning control as alleged in the notice is:
 - 3.1. Without planning permission, the excavation and laying of concrete hardstanding on the front forecourt of the Land; and the construction of a concrete boundary wall and an external concrete ramp and spiral staircase to the lower ground floor level in the front forecourt, as shown in Photographs 1 and 2 attached ("Unauthorised Development 1").
 - 3.2. Without planning permission, the construction of a timber utility meter housing to the side of the property in the approximate location shown in Photograph 3 attached and shown in the approximate location outlined in yellow on Plan 2 attached ("Unauthorised Development 2").
 - 3.3. Without planning permission, the installation of railings around the perimeter of the flat roof rear extension at upper ground floor level shown in Photograph 4 attached and shown in the approximate location outlined in green on Plan 2 attached ("Unauthorised Development 3").
 - 3.4. Without planning permission, the removal of the original rear bay window at upper ground floor level and replacement with a contemporary bay window shown in Photograph 5 attached and shown in the approximate location outlined in blue on Plan 2 attached ("Unauthorised Development 4").
- The requirements of the notice are to:
 - 5.1 Remove the unauthorised concrete hardstanding, boundary wall, ramp and spiral staircase to the front and side of the Property and provide the layout approved under planning permission referenced 18/AP/1978 including the bin store and cycle storage, using permeable materials for any hardstanding, as shown on approved plans WV-PL-GA-01-RevB and WV-PL-GA-02-RevB;
 - 5.2 Remove the railings around the perimeter of the flat roof of the flat roof rear extension at upper ground floor level;
 - 5.3 Install a sedum roof on the terrace as per the approved plan WV-PL-GA-02-Rev B;
 - 5.4 Remove the timber utility meter housing to the side of the property;
 - 5.5 Remove the rear bay window at upper ground floor level and reinstate the original rear bay window that existed before the breach occurred; and
 - 5.6 Remove any material and debris resulting from the carrying out of steps 5.1

- to 5.5 from the Land.
 - The periods for compliance with the requirements are:
 - 6.1 In respect of requirement 5.2 one month from the date this Notice takes effect.
 - 6.2 In respect of requirements 5.1, 5.3, 5.4, 5.5 and 5.6, six months from the date this Notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a) [Appeal A only], (f), (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.
-

Decision

1. It is directed that the enforcement notice is corrected by: the deletion of the word '*spiral*' from Sections 3.1 and 5.1 and its replacement with '*curved*'.
2. Subject to the correction, Appeal A is allowed insofar as it relates to the concrete hardstanding, the concrete boundary wall, the concrete ramp, the curved staircase, the timber utility meter housing and the bay window 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 excavation and laying of concrete hardstanding on the front forecourt of the Land, the construction of a concrete boundary wall and an external concrete ramp and curved staircase to the lower ground floor level in the front forecourt, the construction of a timber utility meter housing to the side of the property and the removal of the original rear bay window at upper ground floor level and replacement with a contemporary bay window at 23 Wood Vale, Forest Hill, London SE23 3DS.
3. Appeal A is dismissed and the enforcement notice is upheld insofar as it relates to the railings and planning permission is refused in respect of the installation of railings around the perimeter of the flat roof rear extension at upper ground floor level at 23 Wood Vale, Forest Hill, London SE23 3DS on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
4. Appeals B, C, D and E are dismissed.

The Notice

5. The staircase is described on the enforcement notice as being spiral, however it would be more accurately described as being curved. Therefore, I shall correct the notice in that respect. I am satisfied that this minor change can be undertaken without causing injustice to any party.

Preliminary Matters

6. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts of the Framework most relevant to this appeal have not substantively changed from the previous iteration and, consequently, it has not been necessary for me to seek the further comments of the main parties in this respect. I have determined the appeal accordingly.
7. With their appeal submission the appellant provided a copy of the enforcement notice which was dated 7 September 2022, whereas the Council provided what they refer to as a 'corrected' copy dated 9 September 2022. Having given the opportunity for the parties to comment on this discrepancy, the Council has provided evidence to suggest that the 7 September 2022 notice was withdrawn

at the time the 9 September 2022 notice was issued. This has not been disputed by the appellant. I have proceeded on the basis that the appeals are made against the 9 September 2022 enforcement notice and no objection has been raised by either party to my taking this course of action.

8. The appellant has provided drawings which are referred to as 'appeal scheme'. With respect to the site forecourt, the meter housing, the railings and the bay window to the rear these show the development generally as constructed. They also show two external bin stores which had not been constructed at the time of my site visit, and one external cycle store which had been. The suggested provision of these in alternative locations is related to matters arising from the development that has been undertaken. The plans also show additional screening that it is intended to be provided to the flat roof rear extension, and I was provided with further information in that respect after my site visit which clarifies the design of the intended screen.
9. However, an appeal made under Section 174(2)(a) of the Town and Country Planning Act 1990 as amended (The Act) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The matters stated in the notice do not include the provision of external bin or cycle stores in the locations suggested or the installation of screening above the flat roof rear extension. Instead, those proposals are development in their own right which could have significant planning impacts and I have not been made aware that they do not require planning permission for any reason. In my judgement they go beyond the matters stated in the notice and I am therefore unable to consider their intended retention or provision in my determination of this appeal.

Reasons

Ground (a)/the deemed application for planning permission

10. Planning permission¹ was granted in October 2018 for the *creation of a basement area and single storey rear extension to enlarge the existing two bed lower ground floor flat to a three bed flat; single storey side/rear extension to existing two bed flat at upper ground floor level; creation of an enlarged hardstanding area; provision of combined refuse and cycle storage; construction of front boundary wall with railings; provision of new vehicular access*. The enforcement notice refers to four separate elements of development that it is alleged have not taken place in accordance with the plans approved for that permission (identified as unauthorised developments 1-4).
11. There is some inconsistency between the alleged developments, the reasons for issuing the notice and the requirements necessary in order to remedy the breaches with regard to unauthorised development 1 and 2. However my interpretation of the main issues that arise in this appeal are:
 - (i) The effect of the concrete hardstanding, the concrete boundary wall, the external concrete ramp and curved staircase upon on-site parking and manoeuvrability and upon surface water run off and drainage

¹ 18/AP/1978

- (ii) The effect of the timber utility meter housing, the concrete ramp and the curved staircase on the ability to provide the approved bin and cycle storage
- (iii) The effect of the installation of the railings around the perimeter of the flat roof rear extension on the living conditions of the occupiers of adjacent properties, with particular reference to facilitating overlooking, loss of privacy and noise and disturbance
- (iv) The effect of the removal of the rear bay window at upper ground floor level and replacement with a contemporary bay window on the character and appearance of the host property

On-site parking, manoeuvrability, surface water run-off and drainage

12. The plans approved under planning permission reference 18/AP/1978 show three cars accommodated on the frontage forecourt of the appeal site. Whilst swept path tracking is shown on those plans for vehicles entering and leaving the frontage, it does not demonstrate clearly how those vehicles would or could manoeuvre within the appeal site so to be able to enter and leave in a forward gear. The plans submitted with the appeal show that three vehicles can still be accommodated with the boundary wall, concrete ramp and curved staircase in place as constructed. The same swept path is shown only in terms of vehicles entering and leaving the site. It is not evident therefore that what has been constructed in any way adversely affects parking or manoeuvrability in comparison to what was granted planning permission.
13. Furthermore, I am mindful of the baseline situation that existed before the approved planning permission was granted for the extensions to the lower ground floor flat and the upper ground floor flat. This is evidenced on the photograph provided by the appellant dated 2017, which shows that cars were parked perpendicular to the road. This arrangement did not allow any manoeuvrability within the site and meant that vehicles either had to reverse onto the site or reverse off it. Such an arrangement would have been consistent with that found on the frontages of other properties on Wood Vale. In comparison to the previous parking layout at the site, what has been constructed offers the potential of on-site turning, and thus is a betterment.
14. Whilst the notice also refers to surface water run-off and drainage, the Council does not substantiate its position in this respect. Nor is there any reference to such concerns in the representations made by interested parties. It was evident at my site visit that channel drainage is in place in the middle of the hard surfaced area, with a similar channel at the bottom of the concrete ramp. In the absence of anything to suggest that these arrangements are not adequate, I conclude that there is no harm arising from surface water run-off or drainage as a result of the development to the frontage of the appeal site that has taken place. Although the relevant development plan policies refer to a drainage hierarchy, the Council has not shown that what has been put in place in this instance is unsatisfactory.
15. In conclusion on this main issue, the excavation and laying of a concrete hardstanding on the front forecourt of the land, the construction of a concrete boundary wall and the external concrete ramp and curved staircase to the lower ground floor level have not adversely impacted upon manoeuvrability or

parking as compared to the previous approved or baseline positions, and they have not caused harm with respect to surface water run-off and drainage. Consequently, there is no conflict with Policies D3, T6 and T6.1 of the London Plan 2021 (LP) and Policy P50 of the Southwark Plan 2022 (SP) where they relate to parking and highway safety matters or Policies SI 12 and SI 13 of the LP and Policy P68 of the SP where they seek to promote sustainable drainage and reduce flood risk.

Provision of the approved bin and cycle store

16. The bottom of the external concrete ramp ends approximately at the point where the combined bin and cycle store approved under planning permission reference 18/AP/1978 would be positioned. The timber utility meter housing reduces the width between the side elevation of the property and what would be the opening side of the cycle store, albeit the meter(s) themselves would affect the width to some degree. The presence of the curved staircase means that the ramp that has been installed can only be of a restricted width, such that people needing to use the ramp would be impeded if the cycle store was in place. Collectively, these are significant impediments to the cycle store being implemented as approved.
17. Policy D3 of the LP encourages the provision of cycle parking in new development proposals, and both Policy T5 of the LP and Policy P53 of the SP set specific numbers of cycle parking spaces to be provided on a new development and set out that these should be secure and weatherproof. The Council has not stated how many cycle spaces it considers would be required in this instance, but there is provision for cycle storage within the confines of the lower ground floor flat. The upper ground floor flat was extended, but its number of bedrooms was not increased. The flats on the upper two floors were not subject to the approved planning permission and not altered as a result.
18. In the context of no new dwellings having been created and the upper ground floor flat not having significantly increased in size, and in the absence of the Council demonstrating why there is any policy conflict or indeed harm arising from the non-provision of the approved external cycle store, I am not persuaded that an insistence on its provision is necessary. Consequently, I find that there would be no harm arising from the retention of the ramp, curved staircase and timber utility meter housing in that respect and no conflict with Policies D3 and T5 of the LP and Policy P53 of the SP in terms of the cycle parking requirements.
19. The ramp, curved staircase and timber utility meter housing do not physically prevent the approved bin storage arrangements being put in place. The bin store could reasonably be constructed as approved even in the absence of the cycle store and this element of the approved scheme would be unaffected by my granting of planning permission for those elements of the development subject to the notice.

Railings

20. The approved planning permission allowed for a limited area of the rear extension to be used as an external amenity area. Railings have instead been positioned close to the edges of the flat roof and they have facilitated the use of a much larger area for amenity purposes than was permitted. It is possible

from this extended area to take close views of the rear elevations of the two adjacent properties, with particularly intrusive overlooking being possible towards the windows of an adjacent flat at the adjoining 21 Wood Vale, which sits at the same level as the flat roof of the rear extension.

21. Whilst the appellant has suggested that this overlooking could be overcome by the implementation of screening and the Council makes reference to the potential imposition of a planning condition in that regard, I have set out why this could not be secured if the appeal were to be successful, as it is not a matter referred to on the notice. But, in any event, whilst there would be a lesser impact to the other sides of the roof, the provision of screening in such close proximity to the window of the flat at 21 Wood Vale would have a significantly adverse impact on the outlook from that window, resulting in harm by virtue of its overbearing impact.
22. The notice also refers to the impact from noise and disturbance resulting from the outdoor amenity area being larger than what was approved. However, the approved plans allowed for use of part of the roof and the overall use of the property is residential. I am not persuaded that noise and disturbance expected to be generated by a residential use, even on the larger roof area, would give rise to an unacceptable impact on the living conditions of the occupiers of adjacent dwellings. In this respect, there is no conflict with Policy D14 of the LP or Policies P56 and P66 of the SP where they relate to noise and disturbance.
23. However, for the reasons I have set out, I conclude that the railings have facilitated harm being caused to the living conditions of the occupiers of the adjoining dwellings through overlooking and a loss of privacy. Their retention would therefore fail to accord with Policy P56 of the SP, where it seeks to protect against harm to living conditions from overlooking and a loss of privacy.

Rear bay window

24. The replacement rear bay window has a square form as opposed to the more tapered bay window style previously present on the host property and still evident on the rear elevations of other properties. However, it must be noted that the rear of the host property has already undergone significant change as a result of the planning permission that has been granted and undertaken. The square, flat roofed, bay that has been installed is in keeping with the general style and form of the extensions to the host property, which themselves are of a square form with flat roofs. In this context there has been no harm caused to the character and appearance of the host property.
25. I acknowledge that original bay windows remain at other properties in the vicinity, including at the adjoining property at 21 Wood Vale. But equally they have been lost from some other properties, most notably from nearby 17 and 19 Wood Vale where a large rear extension has recently been constructed. Furthermore, the bay windows are to the rear of the properties and, given the size of the rear gardens and because they do not back directly onto the public domain, the impact they have on the character and on the appearance of the surrounding area is limited.
26. For these reasons, I conclude that the rear bay window as constructed has not caused harm to the character and appearance of the host dwelling or the

surrounding area. Consequently, the development accords with the aims of Policies D3 of the LP and Policies P13, P14 and P15 of the SP, which seek to promote good design and protect character and appearance.

Other Matters

27. A number of third party representations have been submitted, and I have considered these in my determination of the appeal where they raise matters of planning merit relevant to the matters set out in the enforcement notice. Whilst they also raise a number of other matters including those in relation to the previous construction works that have taken place at the appeal site, the accuracy of plans submitted with a previous planning application, the removal of trees, the right to be able to park on the frontage of the appeal site and design changes on other parts of the property that are said to have taken place, these do not relate to the matters targeted by the notice.
28. Reference is made by an interested party to the visual impact that the concrete wall has when viewed from their property. However, the exposed concrete of the wall is for the most part of a low height when seen from 25 Wood Vale and it does not run the full length of the common boundary. Its visual impact is limited considerably by those factors, and also because of the fact that it is partially screened by vegetation on the neighbouring side. Therefore, whilst there is some impact because the concrete has been left exposed to view, this impact does not alone justify the refusal of planning permission to retain the wall.
29. Although cars parked on the frontage of the appeal property are slightly elevated above the ground level of No 25, the timber fencing that has been erected provides a physical boundary at the edge of the parking area. I am not persuaded that there is any inherent danger that vehicles might inadvertently drive over the boundary and fall from the higher ground level onto the neighbouring property.

Conditions

30. The development has already been undertaken and therefore it is not necessary to include a condition referring to approved plans. In light of my findings with respect to the cycle store it is not necessary to impose the condition that the Council suggests requiring details of an alternative cycle store.
31. The Council has suggested that a condition should be imposed requiring a bin store to be provided. However, the Framework advises that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. The Council has not given me any clear indication to justify a requirement to provide a bin store in this instance, in which no new residential unit has been created. As I have already indicated, the development specified on the notice does not physically prevent the bin store previously approved from being built. Accordingly, I am not persuaded that a condition requiring the provision of a bin store is necessary.

Conclusion on ground (a)

32. For the reasons given above I conclude that Appeal A should succeed in part on ground (a), and I will grant planning permission for the concrete hardstanding, the concrete boundary wall, the concrete ramp, the curved staircase, the timber utility meter housing and the bay window, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the railings. 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.

Ground (f)

33. Section 173(4) of the Act sets out that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the removal of the operational development. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a).
34. Appeals under s174(2)(f) of The Act are made on the basis that the requirements of the notice are excessive. The appellant has not set out any reasons as to why they consider any of the requirements of the notice to be excessive, or what lesser requirements might be appropriate. However, I have granted planning permission for all of the development to the front of the site to which the notice relates, and for the bay window to the rear. Section 180 of The Act sets out that the notice shall cease to have effect so far as inconsistent with any subsequent planning permission, such as the permission I have granted here. It is not therefore necessary to change the requirements where they relate to what I have approved. The requirements to remove the railings and install a sedum roof are necessary to remedy the breach of planning control that has occurred and which I have found not to be acceptable, and as such are not excessive. Therefore, the appeals on ground (f) fail.

Ground (g)

35. The compliance period is one month to remove the railings and six months to meet all other requirements. Again, the compliance periods will no longer be relevant for those elements of development for which I have granted planning permission. As with the ground (f) appeal, the appellant has not set out why a longer compliance period should be granted. There, is therefore nothing before me to suggest the compliance periods could not be met or that they are in any other way unreasonable. Accordingly, the appeals on ground (g) fail.

Conclusion

36. For the reasons I have set out above Appeal A should succeed in part and it is subject to a split decision on ground (a).
37. The Appeals on grounds (f) and (g), should not succeed. Since Appeals B, C, D and E are made only on these grounds, these appeals are dismissed.

Graham Wraight

INSPECTOR