



Appeal Decision

Site visit made on 28 February 2024

by Diane Lewis BA(Hons) MCD MA LL M MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 March 2024

Appeal Ref: APP/U5360/C/22/3307156

6 Stoke Newington Common, Hackney, London N16 7ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr David Akigbogan against an enforcement notice issued by the Council of the London Borough of Hackney.
- The notice, numbered 2020/0124/ENF, was issued on 11 August 2022.
- The breach of planning control as alleged in the notice is Without planning permission, operational development consisting of the construction of two side extensions at ground floor level and the erection of a timber boundary fence more than 1 metre in height.
- The requirements of the notice are:
 1. Remove the side extension from the Property as identified in Appendix A 'Photograph of the breach';
 2. Remove the side extension from the property as identified in Appendix B 'Photograph of the breach';
 3. Remove the wooden boundary fence from the property as identified in 'Appendix A Photograph of the breach';
 4. Make good all damage to the Property resulting from the removal of the unauthorised works; and
 5. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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.
- An application by the Council for an award of costs against the appellant is dealt with in a separate decision.

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 1990 Act as amended.

REASONS

Appeal on ground (b)

2. To succeed on this ground of appeal the appellant has to show that the construction of two side extensions at ground floor level and the erection of a timber boundary fence more than 1 metre in height have not occurred as a matter of fact.

3. In summary, the appellant's case is that alterations and upgrading works were carried out to existing extensions in May 2020. The works consisted of new windows, new flat roofs and externally rendered walls. The two existing extensions were not the result of full demolition work and the provision of new foundations. New extensions were not constructed. Google Street View images dated 2009, 2017 and 2018, a signed statement from the appellant, together with an invoice and statement from the builder, are provided as supporting documents.
4. There is no doubt that extensions existed at the property prior to the works. The question is the extent to which the original extensions survived in substance and whether in reality new buildings had emerged. This is a matter of fact and degree based on the available evidence. Case law has shown it is possible to conclude that there is a new building even when parts of the original building remain. The onus is on the appellant to prove the case.
5. The Council has submitted a set of before and after photographs, which provide good views of the extensions and more detail than the photos submitted by the appellant. The 'before' extension facing Stoke Newington Common was of shallow depth with a monopitch glazed roof. Windows extended across the front elevation, there was a side door and the structure appeared like a conservatory. A photograph of the new work during construction indicates the erection of a more substantial building envelope, with new blockwork walls and timber supports for the new flat roof. The 'after' photographs show that although roughly in the same position the structure has increased in height and extends further forward from the wall of the principal building. As a matter of fact and degree the work involved the construction of a new extension, not alterations to an existing extension.
6. The extension facing Jenner Road (Extension B) was a smaller, box like structure with a flat roof. The side wall(s) possibly were clad with timber, with windows forming much of the rear elevation. The appellant states there was 'no demolition work whatsoever'. However, the photographic evidence indicates the structure has increased slightly in height and probably in width and that the walls and roof are of more substantial construction. As a matter of fact and degree the work involved the construction of a new extension, not alterations to an existing extension.
7. In the statement from the building company the works were said to include the provision of new double glazed window units, new insulated flat roof, insulation to the internal walls, re-wiring and external walls - sand and cement rendering. The statement does not provide a detailed specification of the works for the two extensions. The itemisation of the works may be read as the construction of new external walls, rather than the rendering of existing walls. The invoice refers to 'complete refurbishment' at the property. The signed statement from the appellant adds no further detail of the works. The documents do not call into question the conclusions drawn from the photographic evidence.
8. The appellant does not dispute the erection of a timber boundary fence more than 1 metre in height.
9. In conclusion, as a matter of fact and degree the construction of two side extensions and the erection of a timber boundary fence occurred, as described in the alleged breach of planning control. The appeal on ground (b) fails.

Appeal on ground (c)

10. The issue is whether the development amounts to a breach of planning control.
11. The appellant relies on the arguments presented on the ground (b) and (d) appeals. The appellant accepted operational development was carried out and the works required planning permission, albeit in the appellant's view the works were alterations to existing structures. The appellant did not seek to argue the works did not constitute development by reason of section 55(2)(a) of the 1990 Act. No case is presented on the boundary fence.
12. Following my conclusion on ground (b), the erection of the two extensions amounted to building operations. Development within the meaning of section 55(1) of the 1990 Act took place. There is no evidence to show that the development was authorised by planning permission granted by the local planning authority and in fact the Council refused to grant planning permission (ref 2021/3010). There is no claim that the works were permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015. A breach of planning control took place and the appeal on ground (c) does not succeed.

Appeal on ground (d)

13. The issue is whether the erection of the two extensions was substantially completed by 11 August 2018. The onus is on the appellant to prove the case on the balance of probability.
14. The appellant stated the property was purchased in 2004 and that both extensions were in place by around 2006. However, the relevant date is when the unauthorised works, considered in the appeal on ground (b), were carried out. On the appellant's own evidence the works took place around May 2020, as set out in the appellant's signed statement and as indicated by the invoice dated 25 May 2020. The dated photographic evidence also lends support to this time scale. No case is made on the boundary fence.
15. The operational development was not substantially complete by 11 August 2018, is not lawful and is not immune from enforcement action. The appeal on ground (d) fails.

Appeal on ground (a)

16. The deemed planning application is for the development described in the breach of planning control.
17. The appellant accepted the boundary fence causes harm to the character and appearance of the area and presented no case to support a grant of planning permission for the fence. By the time the appeal site visit took place the fence along the boundary to the highway had been removed.
18. The development plan comprises the Hackney Local Plan 2033 (adopted July 2020) and the London Plan 2021. The main issue is the effect of the development on the character and appearance of the site and the surrounding area, having particular regard to the location of the property within the Northwold and Cazenove Conservation Area. Special attention must be paid to the desirability of preserving or enhancing the character or appearance of the

Conservation Area. The National Planning Policy Framework states that great weight should be given to the conservation of a designated heritage asset.

19. The Conservation Area Appraisal explains the Conservation Area, centred on the Tyssen-Amhurst Estate, occupies an important place in the architectural history of Hackney. The overall architectural style has a uniformity that gives this late Victorian suburb a distinct character and integrity. The almost universal building material is buff London stock brick, with painted architectural embellishments such as window architraves, cills, stringcourses, and eaves cornices and painted moulded capitals. Within this context the Victorian homes are of high quality and offer a variety of dwelling types. The variety in the detail of the external decoration of the homes is especially significant. The green and pleasant front gardens are also identified as a significant asset. Stoke Newington Common is described as a small but ancient open space that once was the village green and is now a valued recreational open space with important trees and tree groups.
20. The appeal site occupies a prominent position on the corner of Stoke Newington Common and Jenner Road. The late Victorian townhouse is three storey with basement, built in the characteristic stock brick and with decorative window surrounds. The main front entrance to the end of terrace building faces Jenner Road.
21. The design of the extension facing Stoke Newington Common (Extension A), with its flat roof, use of UPVC windows, dark coloured rendered walls and absence of detailing or decoration, fails to incorporate building forms and features that contribute to the significance of the Conservation Area. Furthermore, all the other buildings in the terrace have front bay windows that contribute to the rhythm and cohesiveness of the terrace. In sharp contrast, the extension is a very discordant addition by reason of its size, shape and projection beyond the building line of the terrace. In sum, the extension is very unsympathetic to the host building, the terrace and appearance of the street. The development detracts from local views across the open space towards the terrace.
22. The extension visible from Jenner Road appears as a box-like structure that fails to reflect the building forms, materials and detailing that contribute to the significance of the Conservation Area. Even though single storey, the projection from the rear elevation of the host dwelling is atypical of the terrace and the structure is highly visible from Jenner Road. The extension is out of keeping with the host building and the appearance of the street.
23. The extensions do not follow design guidelines for side extensions in the SPD¹. They cause less than substantial harm to the significance of the Conservation Area. The appellant considers that they improve the character and appearance of the previous structures and the area generally (when compared to the previously existing extensions). I disagree. They are incongruous, poorly designed additions. The harm is greater than the previous structures because of their form, increased scale and external materials. In particular, Extension A is bulkier than the one it replaced because of the increase in eaves height and the introduction of a flat roof. The less than substantial harm is not outweighed by any public benefit.

¹ The Residential and Alterations Extension SPD 2009

24. I have considered whether either extension alone would be acceptable but the poor quality of design evident in each case confirms planning permission for a single extension would not be justified.
25. The boundary to Stoke Newington Common is partly defined by a brick wall with inset panels. The Council's photos show there used to be a hedge behind the wall that softened the frontage and was consistent with a characteristic of the Conservation Area. The SPD encourages retention of soft landscaping to the front gardens of residential properties. The hedge was replaced by the unauthorised close boarded fencing. The solid panels, which extended above the height of the boundary wall, were intrusive and resulted in an excessive sense of enclosure. There are no public benefits to weigh against the less than substantial harm to the significance of the designated heritage asset.

Other matters

26. The reasons for issuing the notice do not refer specifically to any harm to the amenity of neighbouring occupiers, although the Council's statement refers to the extensions having an unacceptable impact upon neighbours in terms of outlook and overbearing impact.
27. The side of Extension A would be seen in views from the front bay window of the adjacent dwelling but the impact on outlook is unlikely to be overbearing because of the separation distance created by the neighbouring front entrance. Extension B is small in scale and is not very close to windows in the neighbouring dwelling. Therefore the structure does not have an overbearing impact. Accordingly, there is no conflict with Local Plan Policy LP2 (Development and Amenity), a factor which is neutral in the planning balance.
28. The developments do not involve direct works to Stoke Newington Common and as such there is no conflict with Local Plan Policy LP46 (Protection and Enhancement of Green Infrastructure). The Council has acknowledged the error of citing Policy LP46 in the notice. Policy LP47 (Biodiversity) seeks to safeguard and where possible enhance biodiversity. In a small way the loss of the garden hedge through the erection of the fence would not have assisted in that aim.

Conclusions

29. The two extensions and the boundary fence harm the character and appearance of the site and the surrounding area. They do not achieve the required high standards of design and fail to respond to local character and context. They do not preserve or enhance the Conservation Area. The developments are contrary to Part A of Policy LP1 (High quality design) and Policy LP3 (Designated heritage assets) of the Local Plan. By reason of the failure to follow a design-led approach the developments fail to comply with Policy D3 (Optimising site Capacity) of the London Plan. The developments are contrary to the development plan when read as a whole.
30. There are no other considerations to indicate the determination should not be in accordance with the direction of the development plan. The appeal on ground (a) does not succeed.

Appeal on ground (f)

31. The appellant accepted the fencing should be removed but considered only the unauthorised works to the extensions should be undone, to return the extensions to how they looked before.
32. The issue is whether the requirements are excessive to achieve the purpose of the notice.
33. The notice requires the removal of each extension and the boundary fencing. The requirements do no more than remedy the breaches of planning control and therefore are not excessive. To reinstate the previous extensions would require substantial new building works, development which would require but does not have the benefit of planning permission. There are no rights to re-erect the buildings. The appellant's proposal is not an acceptable alternative. The Council has confirmed there is no extant planning permission at the site and no fallback scheme that would provide an alternative to the specified steps.
34. I conclude the requirements are not excessive and the appeal on ground (f) fails.

Appeal on ground (g)

35. The issue is whether the compliance period of three months is reasonable. Considerations include what the recipient of the notice will have to do in practice to carry out the required remedial steps, how much time it would be reasonable to allow for that purpose, the level of harm caused by the breach of planning control and national planning policy on the importance of effective enforcement.
36. The appellant has not provided sufficient evidence to support increasing the period to six months to arrange for the works to be carried out by a builder. Three months strikes an appropriate balance, bearing in mind the harm that is being caused to the Conservation Area, a designated heritage asset. The Council has referred to its power to extend the compliance period if there is good reason to do so. The appeal on ground (g) fails.

Conclusion

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

Diane Lewis

INSPECTOR