



Appeal Decision

Site visit made on 24 January 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14TH MARCH 2024

Appeal Ref: APP/N5660/C/22/3295518

15 Andalus Road, London SW9 9PQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Anthony Swann against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The notice, numbered 21/00560/3DEV, was issued on 3 February 2022.
- The breach of planning control as alleged in the notice is that without planning permission, the erection of a part single-storey, part 2-storey L-shaped wrap around flat roofed, brick clad extension to the rear of the premises and to the side and rear of the existing 3-storey rear projection ('the unauthorised rear wrap-around extension').
- The requirements of the notice are to:
 - a) Remove the unauthorised rear wrap-around extension from the premises and reinstate the rear elevations of the premises as existed prior to the breach of planning control; and
 - b) Remove all associated waste and debris resulting from compliance with above steps, from the premises.
- The period for compliance with the requirements is: Six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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 varied enforcement notice is upheld.

Matters Concerning the Enforcement Notice

1. In paragraph 2, delete the word 'LONDON.' The word has been duplicated when outlining the land to which the notice relates. As such, the repeated word can be deleted. This has also been reflected in the address in the banner heading above.
2. In paragraph 5, step (a), delete the words "*from the premises and reinstate the rear elevations of the premises as existing prior to the breach of planning control*" and substitute with the words '*restore to its previous condition.*' It is unnecessary to provide such detail. The appellant is best placed to know the previous condition, and it is sufficient to outline that the land must be restored to its previous condition. In paragraph 5, step (b) delete the words '*above steps*' and substitute with the words '*step (a).*' There is only a single step, rather than several steps. As such, this is a grammatical change to the wording which provides clarity to the appellant.
3. The above mentioned corrections and variations would not alter the nature of the allegation or the requirements and would not result in injustice to any appeal party.

Preliminary Matters

4. During the course of the appeal the revised National Planning Policy Framework December 2023 (the Framework) was published. In respect of relevant paragraphs set out in evidence, there are no substantive changes relevant to the appeal, and no prejudice would be caused by me having regard to it.
5. In representations submitted with this appeal, reference has been made to issues such as noise and disturbance to neighbours, a lack of storage for waste, poor living conditions for occupiers, the loss of family homes as well as a lack of parking and implications to highway safety. The notice is concerned with the operational development to form an extension and does not allege any material change of use of the land and buildings. Consequently, matters that relate to impacts from the use of the building are not before me for consideration.

Appeal on Ground (b)

6. The appeal on ground (b) is that the matters alleged in the enforcement notice which appears to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellant should demonstrate that, on the balance of probability, the matters stated in the enforcement notice have not occurred.
7. The appellant contends that the description of the above alleged breach of planning control is not correct. They claim that there is no ground floor L-shaped, wrap around extension at the eastern and southern end of the side elevation. Also, the eastern end of the side elevation is not an extension but a canopy/cantilever.
8. From what I saw on site, the works to the rear of the building amounted to a part single storey, part two storey extension to the rear of the property as alleged. The works to form the two storey and single storey extensions appear as a single building operation and I have not been provided with any evidence to demonstrate otherwise. The extension extends to the side and rear of the existing three storey projection. An L shaped wrap around flat roof extension to the rear of the premises and to the side and rear of the existing 3-storey rear projection is therefore an accurate description of the development carried out on site.
9. Accordingly, I am of the view that the development has occurred as a matter of fact, and the ground (b) appeal fails.

Appeal on Ground (c)

10. To succeed on ground (c), the appellants must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. It is stated that part of the works forms a canopy/cantilever projecting at ground floor level and the extension and alterations are within the parameters of permitted development rights.
11. There are permitted development rights to extend and make alterations to a dwellinghouse under Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). Existing elevation plans and proposed floor plans accompanied the appeal statement, but the appellant has not directed me to the relevant sections of the Order that they claim permit the development carried out. Furthermore, I have not been provided

with elevation plans of the development as built. As such, I do not have sufficient information to determine whether the works carried out amount to permitted development.

12. The burden of proof rests with the appellant and the relevant test is the balance of probability. The appellant has failed to discharge the required burden of proof in respect of this ground of appeal.

13. An appeal on ground (c) therefore fails.

Appeal on Ground (a) and the Deemed Planning Application

14. The **main issues** are the effect of the development on

- the character and appearance of the area
- the living conditions of the occupants of 32 and 34 Tasman Road as well as 17 Andalus Road, with regard to privacy, outlook and light.

Reasons

Character and Appearance

15. The dwellings in the terrace block between 11 and 31 Andalus Road are set back behind small front walls with shared design features that include bay windows, a London brick finish and pitched roofs. The rear of the terrace is more varied, with flat and pitched roof rear projections and alterations to form large roof dormers. However, the scale and form of the two and three storey projections to the rear have largely been maintained with appropriate materials and window openings. The appeal site and rear street scene is appreciable from the south on Andalus Road in the space between the terraces.

16. The development has a scale, depth and two storey height that is typical of the extensions to the back of the terrace. Although several have pitched roofs, there are also examples of flat roof projections to the rear with a similar depth and height. Although the scale, depth and height of the extension is not objectionable, the extension has been finished in a yellow brick, which is at odds with the London brick finish of the host property and its immediate neighbours. Furthermore, the window openings at ground and first floor do not match the proportions, size, and detailing of the host dwelling or its immediate neighbours.

17. Consequently, the window design, their proportions and detailing together with the poor quality of the finishes have an adverse impact on the character and appearance of the host property and the rear terrace street scene. The impact of the development is also exacerbated by its prominence, being visible from localised views to the south on Andalus Road.

18. The appellant has provided photos of the rear terrace and noted that several neighbouring properties have similar two storey flat roof extensions. From what I saw, the extensions to the back were similar in scale, depth, and height to the development subject of this appeal. However, most, if not all were finished in materials to match the original property as well as having due regard to the proportions and detailing of the window openings. As such, the examples are sufficiently different from the appeal scheme that their designs and materials do not detract from their host properties or their immediate surroundings.

19. Accordingly, the development is contrary to the aims and objectives of Policies D5, Q2, Q5, Q8 and Q11 of the Lambeth Local Plan 2021 (Local Plan) and Policy D3 of the London Plan 2021 as well as the advice and guidance set out in the Lambeth Building Alterations and Extensions Supplementary Planning Document 2015 (SPD). The policies and guidance require extensions to sustain and reinforce local distinctiveness. The design should respond to the positive aspects of the locality in terms of built form, including architectural detailing (including fenestration and articulation). The introduction of new extensions should ensure compatibility with the main building and the wider context.

Living Conditions

20. The back of the appeal terrace faces the rear elevation and back gardens of properties fronting Tasman Road. The neighbours at 32 and 34 Tasman Road adjoin the appeal site, with ground and first floor windows facing the development at a distance of approximately 10 metres (m). The rear garden spaces at the back of the appeal site and the adjoining properties are shallow compact garden spaces.
21. Having regard to the layout, the outlook from the rear windows and garden of the neighbour's opposite, prior to the development being carried out, would have been affected by the proximity of the two storey rear elevations on Andalus Road. Despite the development extending marginally closer at two storeys, it maintains an adequate degree of separation, which is comparable to the distances between existing properties along this section of the terrace. Accordingly, the extension has not resulted in a significant change to the outlook experienced by the occupiers of No 34 and 32 Tasman Road. Nor, for the same reasons, do I consider that the extension has an adverse change to light reaching the neighbouring gardens or opposing windows.
22. The first floor window on the rear elevation of the development would provide overlooking to the gardens at No 32 and No 34 at close range, and more direct views towards the first floor windows at approximately 10m. However, the loss of privacy from the window could be adequately mitigated by way of a condition, requiring it to be obscured and fixed to a certain height. However, as I have already concluded that the development is harmful to the character and appearance of the area, it is not necessary to consider the wording of the condition to mitigate the identified harm.
23. The development is also positioned along the shared boundary with 17 Andalus Road. The development along this boundary is single storey with a flat roof, which extends a few metres past the neighbour's rear elevation. The two storey section is set back several metres from this boundary. The minor increase in depth and height along the boundary means it is not oppressive to the outlook from the nearest ground floor openings or adjoining garden space. For the same reasons it does not adversely impact on light reaching these areas. The window in the side elevation facing No 17 serves a non-habitable space and does not result in any loss of privacy.
24. In conclusion, subject to an adequately worded condition requiring the first floor bedroom window to be obscured, the development does not have a harmful effect on the living conditions of neighbouring occupiers at 32 and 34 Tasman Road or 17 Andalus Road, with regard to light, privacy and outlook. As such, the development would comply with Policy Q2 of the Local Plan, insofar as the as the

adverse impact on light, privacy and outlook to neighbours can be mitigated to an acceptable level.

Conclusion on Ground (a) the deemed planning application

25. For the above reasons, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as varied and refuse to grant planning permission on the deemed application.

Appeal on Ground (f)

26. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach.
27. In this case the notice requires the development to the rear to be removed and the land restored to its former condition. I therefore consider that the purpose of the notice is to remedy the breach of planning control alleged under s173(4)(a) of the Town and Country Planning 1990 Act. The appellant has suggested that there should be no need for internal alterations to revert back to its former use as a dwelling, or to remove internal doors and windows. Also, the rear of the building is screened by timber fencing and the windows and doors would not overlook or result in a loss of privacy to the adjacent properties.
28. There is no requirement set out in the notice to revert the Land to its former use or to remove internal doors and windows. Although I acknowledge that the appellant considers the extension to the rear of the dwelling is screened and does not impact on privacy, no alternative or lesser steps have been suggested to achieve the purpose of remedying the breach of planning control. Having regard to both the nature of the breach and requirements of the notice, no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice are necessary and proportionate.
29. For these reasons, the appeal on ground (f) fails.

The Appeal on Ground (g)

30. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed. The period for compliance with the requirements is within six months of the notice taking effect.
31. The appellant contends that additional time is required, due to weather conditions, specialist scaffolding work and building advice as well as the time and labour needed. The appellant requests an additional six months, extending the compliance period to twelve months. Having regard to the constrained nature of the rear garden area and the works that are required I consider that a period of time in excess of six months can be justified.
32. However, extending the period of compliance to twelve months would be excessive, particularly given the identified harm to the character and appearance of the area. On this basis, I consider that a period of eight months for the appellant to comply with the varied Notice would be reasonable. This time frame would strike an appropriate balance between having to complete the works on the constrained site and the harm identified.

33. To this limited extent, the appeal on ground (g) succeeds. I shall vary the terms of the Notice accordingly.

Formal Decision

34. It is directed that the notice be varied by:

In paragraph 2, delete the word 'LONDON.'

In paragraph 5, step (a), delete the words 'from the premises and reinstate the rear elevations of the premises as existing prior to the breach of planning control' and substitute with the words 'restore to its previous condition.'

In paragraph 5, step (b) delete the words 'above steps' and substitute with the words 'step (a).'

In paragraph 6, the deletion of the word 'six' and the substitution with the word 'eight'.

42. Subject to the variations, the appeal is dismissed, and the notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M. P. Howell

INSPECTOR