



Appeal Decision

Site visit made on 18 April 2024

by C J Leigh BSc (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th May 2024

Appeal 1 Ref: APP/C5690/C/22/3306403

Land at 205 Baring Road, London, SE12 0PX

- 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 Bunyamin Saglam against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice, numbered ENF/21/00222 was issued on 24 August 2022.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a single storey rear extension without planning permission.
 - The requirements of the notice are:
 1. Remove the unauthorised rear extension in its entirety; and reinstate the original elevation as denoted by the red line on Appendix 1.
 2. Make good all damage resulting from the compliance with the requirements of this notice.
 3. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the land.
 - The period for compliance with the requirements is six months from the date the notice takes effect.
 - The appeal is proceeding on the ground set out in sections 174(2)(a) and (f) 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.
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Appeal 2 Ref: APP/C5690/D/22/330535

205 Baring Road, London, SE12 0PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Bunyamin Saglam against the Council of the London Borough of Lewisham.
 - The application Ref DC/22/126848, dated 18 May 2022, was refused by notice dated 1 August 2022.
 - The development proposed is a proposed extension.
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Preliminary matters

1. The appeal form for Appeal 1 is dated 25 August 2022 and the appeal form for Appeal 2 is dated 8 August 2022, and both appeals have been conjoined for determination at the same time. At my site visit I saw the development shown in Appeal 2 had been constructed and was substantially complete and occupied.

Decisions

2. Both appeals are dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Appeal 1: The appeal on ground (a) – the deemed planning application

Appeal 2: Reasons

3. Since both appeals relate to seeking permission for the as-built development I can address the matters arising in both appeals together. The main issues in both appeals are:
 - (i) the effect of the development on the living condition of adjoining occupants,
 - (ii) the effect of the development on the character and appearance of the surrounding area,
 - (iii) the appellant's personal circumstances and the need for the development.

Living conditions

4. DM Policy 31 of the Lewisham Development Management Plan 2014 (DMP) requires residential extensions to result in no significant loss of privacy and amenity to adjoining houses and their back gardens. The Council's Alterations and Extensions Supplementary Planning Document 2019 (SPD) sets out guidance for single storey rear extensions, including to ensure no overbearing impact for neighbours or effect on light and outlook. The SPD guidance states that the acceptable height on a boundary depends on a number of factors, and that extensions projecting beyond 3m in length should not be more than 2.5m on the boundary.
5. I am informed there was previously a conservatory extension at the property and a wall, and have been provided with a description, drawings and photographs of these. Those are no longer in existence, with the single storey extension now projecting beyond the rear building line of the house with a total of 5.6m depth. The extension is on a raised patio area, and sits on the boundary with 207 Baring Road with a height given to me of 3.2m.
6. I acknowledge the existence of that previous conservatory and the wall, but with regards to the impact on neighbouring properties I have assessed the depth and height of the extension as it exists on the site, and in relation to the layout of the neighbour. There is an existing part single/part two storey rear/side extension to No. 207 on this boundary, but the extension to No. 205 projects beyond this. I could appreciate from my site visit and from submissions that the height and degree of projection combine to create a dominant feature to the garden of No. 207, and adverse impact upon the outlook from the property.
7. No. 203 Baring Road has a rear extension of limited depth, with the extension at No. 205 projecting notably beyond this. The extension at No. 205 is set away from the boundary. However, as with the effect on No. 207, it is the combination of both depth and height that means the extension is a dominant addition to the property, intrusive to the outlook from No. 203. The tall and large roof light adds further to scale of the extension and visual presence. The occupant of No. 203 refers to the narrower width of their property meaning there is a greater overbearing impact, and from my observations I concur with that. Furthermore, the location of No. 205 to the south of No. 203 means there is a more heightened impact in relation to potential for loss of light.
8. The depth and height of the extension notably exceeds the guidance in the SPD. From what I have read and seen I consider this leads to the adverse

impact that the SPD and the development plan seeks to avoid, namely any harmful effect on amenity. The occupiers of both adjoining properties have objected to the extension on the grounds of harm to their living conditions.

9. My attention has been drawn to extensions at other properties in the vicinity, most notably that at No. 209 Baring Road. I have not been provided with details on the circumstances which led to any grant of permission there, or any drawings of that extension or relationship with adjoining properties. I did see at my site visit, though, that the extension there is staggered and incorporates pitched roofs with low eaves on the boundaries. This also appeared to be the case at the other examples I could see. From the evidence provided to me, and my own observations, it is my judgement that there are material differences between the appeal property and other properties.
10. I have determined these appeals on their own merits and hence those other properties do not alter my findings. On the first issue I therefore conclude that the development conflicts with the development plan and the SPD.

Character and appearance

11. Policies 15 and 16 of the Lewisham Core Strategy 2011, and DM Policy 30 and DM Policy 31 of the DMP seek to ensure all development is of a high standard of design and is compatible with the local character of the area. Policy BE1 of the Grove Park Neighbourhood Development Plan requires alterations and extensions to existing properties to be of a high quality design that does not impact on coherence, scale, character and appearance of the townscape. These objectives are consistent with the National Planning Policy Framework's objective of seeking well-designed and high quality buildings. In addition, the SPD states that careful design of single storey rear extensions is required to avoid harm to the appearance of buildings.
12. As noted earlier, the depth and height of the extension is greater than that generally sought by the SPD. However, the appeal property is large and has a long garden, with other houses having similarly long gardens. The extensions at other properties that I saw at my site visit show to me that sizeable extensions are possible to large properties without harming the general spacious character of the area. Although the extension at No. 205 is different in form to other extensions seen – with a flat roof and is uniform across the back of the house rather than stepped – the design approach adopted at the property does not impose upon the host property or the wider area, where there is variety in houses due to the evident many past alterations and extensions over the years.
13. On the second issue it is my judgement that the design and scale of the extension does not adversely impact on the coherence, scale, character and appearance of the area, and is not harmful to the host property. It therefore satisfies the policies referred to above.

Need for the development

14. The appellant explains the extension was built to enable living space for an elderly relative who I am informed is disabled and with chronic illness. This is a material consideration. I also acknowledge the Framework seeks to support housing for older people, and such an objective continues in the Planning Practice Guidance: Housing for older and disabled people.

15. I have been provided with general medical information regarding the condition of the relative. However, there is no specific evidence or documentation explaining why there is a particular medical need for the size, depth and height of the extension that has been erected in order to provide any particular care. Nor is there any persuasive explanation of how, conversely, care could be met by means other than the extension of the size as exists at the property.
16. I must balance this personal circumstance against other matters of acknowledged importance, as set out in the policies of the development plan and the SPD. In my judgment, the harm arising due to the impact of the size of the extension at the property upon the living conditions, and consequential clear conflict with planning policies, outweighs the appellant's personal circumstances.
17. The appellant has also referred me to rights under Article 2 of the European Convention on Human Rights, as incorporated into the Human Rights Act 1998. This is the right to life, and the appellant's submissions do not contain any firm evidence that the withholding of planning permission would threaten this and hence breach Article 2. The appellant's submissions appear to be more focused on rights under Article 8, which provides that everyone has the right to respect for their private and family life and their home. Article 8 is a qualified right and interference may be justified where that is lawful and in the public interest. The protection of amenity is established in the development plan, and for the reasons given above I consider the interference with Article 8 is justified as it is in the public interest to protect living conditions.

Planning balance and conclusions

18. The extension causes harm to the living conditions of adjoining occupiers, and this leads to conflict with the development plan. I am required to determine the appeals in accordance with the plan unless material considerations indicate otherwise.
19. The absence of harm to the character of the area and the host property is a neutral matter that does not add any support in favour or against of the scheme. Although I recognise the personal circumstances put forward in favour of the scheme, I have found that the case put forward for the size of the as-built extension does not demonstrate to me such circumstances outweigh the conflict with the development plan.
20. The harm to the living conditions of adjoining occupiers, and consequential conflict with the development plan, leads to my overall conclusion that planning permission should not be granted for the development. The appeal on ground (a) fails for Appeal 1, and planning permission is refused on Appeal 2.

Appeal 1: The appeal on ground (f)

21. The appeal on ground (f) proceeds on the basis that the steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome the objections. The Council seek demolition of the extension in its entirety in order to remedy the breach of planning control. It is hence necessary to consider whether there are any obvious alternatives or lesser steps to achieve the purposes of the notice with less cost and disruption.

22. The appellant's submissions refer to the previous conservatory extension at the property. However, that is no longer in existence and so it would not be possible to seek reversion to that extension. Reference has also been made to possible permitted development rights at the property, but there is no confirmation as to the lawfulness of such generalised comments and hence there are no obvious alternatives or lesser steps that can be referred to in the notice.
23. The appellant has raised a number of possibilities about how the extension might be modified to address what he perceives as possible issues with the extension, but there is little detail on such proposals in order for any robust assessment or ability to properly specify such works. In any event, such suggestions appear to me not to address the harm I have identified, which derives from the combination of the depth and the height of the extension and the consequential impact on neighbours.
24. The appellant has referred me to the Equality Act 2010. Due to racial characteristics and a family member being disabled, the appellant submits there is the consideration of protected characteristics. As the terms of the enforcement notice would have a particular impact on persons with protected characteristics the Public Sector Equality Duty (PSED), as set out in s149 of the Equality Act, would then be engaged. The notice would see the demolition of the extension. s19 of the Act provides that specified forms of discrimination are not unlawful if it is '*a proportionate means of achieving a legitimate aim*'. Such a '*legitimate aim*' may be set out in planning policy and legislation. The Council's notice sets out the reasons for issuing the notice. My earlier conclusions have found the extension conflicts with the development plan. I am therefore satisfied that the terms of the notice are proportionate as a means to achieve the Council's legitimate aims as set out in their planning policy and in legislation.
25. The purpose of the Council's enforcement notice is to remedy the breach of planning control that has occurred, and in this instance the notice requires that extension to be removed. Any lesser step would not remedy that breach and so the appeal on ground (f) fails.

Conclusion

26. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice in Appeal 1 and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal 1: Formal decision

27. 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.

Appeal 2: Formal decision

28. The appeal is dismissed.

C J Leigh

INSPECTOR