



Appeal Decisions

Site visit made on 17 June 2024

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 25TH JULY 2024

Appeal A Ref: APP/G5750/C/23/3323832

38 Manbey Street, Stratford, LONDON, E15 1EU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Miss Liu Xiaoyan against an enforcement notice issued by the Council of the London Borough of Newham.
- The notice was issued on 17 May 2023.
- The breach of planning control as alleged in the notice is Without planning permission the erection of a front porch.
- The requirements of the notice are: 1. Demolish the front porch (as shown in the approximate location edged in blue on the attached plan); 2. On completion of step 1, remove all materials and debris from the site.
- The period for compliance with the requirements is: three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Appeal A Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Appeal B Ref: APP/G5750/W/23/3323351

38 Manbey Street, Stratford, Newham, LONDON, E15 1EU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Xiaoyan Liu against the decision of the Council of the London Borough of Newham.
- The application Ref is 23/00470/HH.
- The development proposed is described as 'Retrospective planning permission for erection of front porch'.

Appeal B Summary Decision: The appeal is dismissed.

Appeal A – The Notice

1. The requirements stipulate that after demolition of the front porch, all materials and debris are to be removed. I shall correct the notice so that it is materials and debris resulting from the demolition that are to be removed. No injustice would result from this minor correction which is made for clarity.

Appeal A – the appeal on ground (a) and the deemed planning application (DPA); Appeal B

2. The front porch development attacked by the notice is essentially the same as that which was the subject of the Appeal B refusal. I shall deal with these together below as 'the appeal porch' unless otherwise indicated.

Main Issue

3. The main issue is the effect of the appeal porch on the character and appearance of the host property and surrounding area.

Reasons

4. The appeal property is a terraced dwelling which features splayed lintels above the ground and first floor windows. Many properties in the terrace retain this feature, albeit that rendering has concealed this for some. Only a small number of the terrace properties have front porches and all save for the appeal porch have a mono pitched roof which integrates well with the main pitched roofs. Consequently, whilst roof materials and window designs are varied within the terrace, it still retains a pleasing sense of uniformity.
5. I note the appellant's comment that the appeal porch roof follows 'the same lines and angle' as the lintels. However, the footprint, height and incongruous hipped roof of the appeal porch detract from the attractive lintel feature and harmfully dominate the front elevation of the appeal property, detracting also from the remaining uniformity of the terrace.
6. The limited set back from the pavement does not prevent this being apparent in public views. The reduction in bulk from the hipped roof form and materials matching the front wall also do not overcome this harm. The appeal porch does not therefore represent good design irrespective of it not being within the curtilage of a listed building or in a conservation area.
7. The appellant draws my attention to the front porch at 36 Manbey Street which is of a similar size to the appeal porch. The Council explains that this was permitted in a different policy context, whereas the appellant submits that relevant policy has not significantly changed since this was permitted. In my view, No 36's porch does not justify granting planning permission for the appeal porch since it represents an out-of-scale addition to the front elevation.
8. I acknowledge the appellant's available fallback position with reference to permitted development (PD) rights under Schedule 2, Part 1, Class D of the Town and Country Planning (General Permitted Development) (England) Order 2015. Whilst there is a very strong likelihood that the appellant would exercise Class D PD rights if the appeal porch is not permitted, Class D would permit a materially smaller porch at a maximum of 3m height as compared to the some 3.6m ridge height of the appeal porch. The existence of this fallback position does not therefore justify granting planning permission for the appeal porch.
9. The appellant also proposes an alternative scheme for a porch with a mono pitched roof. As regards the ground (a) appeal, I could consider granting planning permission for this if it represents 'part of the matters' enforced against. In my view, the works involved in the alternative scheme would entail only a relatively modest amount of additional work and much of the original appeal porch would remain. It therefore falls within 'part of the matters'.
10. As regards Appeal B, I can consider this alternative proposal provided that no unfairness would result from my doing so in depriving those entitled to be consulted on the amendments of that opportunity. In my view, given the nature and extent of the changes proposed, no such unfairness would result.

11. Turning then to the alternative proposal for a front porch, the mono pitch roof design would be more in keeping with other porches and the main roofs of the terraced properties. The size and scale of the alternative design porch also would not be dissimilar to that permitted at No 36.
12. The porch at No 36 is though, in my view, harmfully dominant in size. The alternative proposal porch would similarly be of substantial size relative to the appeal property, with its brick finish lending it greater solidity and a more dominant presence than that at No 36. Its size and position means that it would also significantly detract from the characteristic splayed lintel feature, resulting in a visually intrusive appearance. The existence of fallback Class D PD rights also does not justify allowing the alternative porch since Class D would again allow only a significantly smaller size of porch.
13. I find then that both the appeal porch has, and the alternative design porch would have, a harmful effect on the character and appearance of the host property and surrounding area. There is conflict thus with Policies D1, D3, D4 and D8 of the London Plan (2021) which seek to ensure that proper account is taken of an area's distinct character, and encourage a design led approach that contributes to the vibrancy of the public realm.
14. Conflict arises also with Policies S1, S6, SP1 and SP3 of the Newham Local Plan 2018. These strive to ensure that new development integrates with its surroundings, reinforces distinctive identities of different places, is of high quality and reinforces local distinctiveness. I find no direct conflict with Local Plan Policy SP8 since there is no suggestion of harm to living conditions. It does not accord with the recommendation in the Altering and Extending Your Home SPD 2018 that works to the front of a property complement the original character of the home and street scene. For the same reasons, neither the appeal porch nor alternative porch represent good design or the sustainable development in respect of which the National Planning Policy Framework (2023) creates a presumption in favour.

Conclusion on Appeal A ground (a) and the DPA and on Appeal B

15. Whilst I acknowledge that the appellant did not intend to breach planning control, I find that the appeal development has resulted in material harm to the character and appearance of the area. The alternative proposed design also would be harmful for the reasons outlined. In view of the fundamental visual harm, there is conflict with the development plan, read as a whole, and this is not outweighed by any material considerations. For these reasons and taking into account all other matters raised, Appeal A ground (a) appeal fails and planning permission is refused in respect of the DPA. Appeal B fails for the same reasons.

Appeal A - the appeal on ground (f)

16. This ground of appeal is that the requirements of the notice exceed what is necessary.
17. S.173 of the Town and Country Planning Act 1990 indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires demolition of the

porch and removal of materials from the site suggests that its purpose is to remedy the breach of planning control.

18. The appellant submits that the notice should be corrected to allow the appeal porch to be altered in line with either the alternative design porch, or with Class D PD rights. The Council submits that, since the purpose of the notice is to remedy the breach, the appellant's proposals under ground (f) would not achieve this purpose.
19. I found above that the alternative design porch scheme would result in harm to the character and appearance of the host property and area. It would not represent an acceptable lesser step under ground (f).
20. As regards a Class D PD scheme, whilst I appreciate that the GPDO does not grant retrospective planning permission, Class D PD rights plainly represent a realistic fallback position for the appellant. Consequently, requiring complete removal of the appeal porch would be unlikely to anything achieve. It would be a punitive and excessive step and varying the requirements to enable modification in line with Class D PD rights would represent an obvious alternative that would result in less cost and disruption. The ground (f) appeal succeeds to this extent.

Appeal A - the appeal on ground (g)

21. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant requests a period of 6 months so as to ensure that they are not placed under any undue financial or mental strain when appointing a contractor and raising the necessary funds.
22. The Council's position is that 3 months is sufficient time to enable the works to be completed, that the appellant has not adduced any evidence in support of its submission for a longer period, and that the Council has a discretion to extend the compliance period if required.
23. In my view, the works to either alter the porch to accord with Class D PD rights or to demolish the appeal porch would be very likely to need to be undertaken by a contractor and would also likely cost a not insignificant sum. Whilst the appellant could seek to raise funds at the same time as awaiting contractor availability, 3 months seems to me to be an unreasonably short time period in which to do so. The 6 month period suggested by the appellant would strike a fair balance between resolving ongoing visual harm and providing a reasonable time period for compliance. The ground (g) appeal succeeds.

Appeal A – Overall Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations 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 A – Formal Decision

25. It is directed that the enforcement notice is corrected and varied by Deletion of all wording in paragraph 5 from and including 'Steps' to and including 'effect' and substitution of:

'Steps to be complied with:

Either:

A)

1. Demolish the front porch (as shown in the approximate location edged in blue on the attached plan); and
2. On completion of step 1, remove all resultant materials and debris from the site.

Or:

B)

1. Make alterations to the front porch (as shown in the approximate location edged in blue on the attached plan) so that it accords with the limitations of permitted development rights under Class D, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended); and
2. On completion of step 1, remove all resultant materials and debris from the site.

Time for compliance: six months.'

26. Subject to the correction and variations, 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 B Formal Decision

27. The appeal is dismissed.

V Bond

INSPECTOR