



Appeal Decision

Site visit made on 15 July 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26TH JULY 2024

Appeal Ref: APP/H5960/C/23/3329230 50 Maskelyne Close, London SW11 4AE

- 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 Ms Teodora Damilovic against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The enforcement notice was issued on 16 August 2023.
- The breach of planning control as alleged in the notice is without planning permission and within the last four years, the unauthorised erection of a single storey rear extension at the property.
- The requirements of the notice are 1) remove the unauthorised extension and return the property back to its previous condition; and 2) remove from the property all debris arising from the compliance with step 1 above.
- 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) and (f) of the Town and Country Planning Act 1990 as amended (the Act). 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. The appeal is dismissed and the enforcement 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.

Applications for Costs

2. An application for costs was made by Ms Teodora Damilovic against the London Borough of Wandsworth. An application for costs was made by the London Borough of Wandsworth against Ms Teodora Damilovic. These applications are the subject of separate Decisions.

Procedural Matters

3. The National Planning Policy Framework was amended on 19 December 2023 (the Framework). However, it has not been necessary for me to seek comments from the main parties about the implications of the updated Framework. This is because there are no material changes in respect of the ground (a) appeal main issues below.
4. The appellant has raised a concern about the local planning authority (LPA) including a copy of its enforcement committee report as part of notifying members of the public of the receipt of the enforcement notice appeal. In respect of this matter, the proper course of an LPA allegedly not following

proper procedures when issuing a notice is to challenge the issue by way of judicial review. This is not a matter that is relevant to the grounds of appeal or the consideration of whether the notice is invalid or a nullity. In any event, it is noteworthy that the LPA has commented that it did not send out a copy of the enforcement committee report as part of its appeal notification process. It states *'a local residents' group unilaterally sent copies of the appeal consult letter together with the planning committee report to residents. The LPA had no involvement in this and no knowledge of this. We have no control over the action of residents or residents' groups if they wish to contact one-another and provide (publicly available) information on the appeal'*.

Ground (b) appeal and 'The Notice'

5. The appeal made on ground (b) is on the basis that the matters comprising the alleged breach of planning control have not occurred. The appellant's claim under ground (b) is that *'there is no plan which shows the extension'*. This is not a claim that can be considered under ground (b) of section 174(2) of the Act. Instead, the appellant is claiming that the notice is not clear on its face and, for this reason, suggests that it is ambiguous and hence should be quashed.
6. Section 173 (Contents and effect of notice) of the Act does not require the LPA to show the location of operational development with reference to a plan. Furthermore, Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the Regulations) states that *'an enforcement notice issued under section 172 of the Planning Act shall specify (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue an enforcement notice; and (c) the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise'*.
7. The Regulations do not require a plan to show the precise location of operational development. The Regulations require the notice to refer to the precise boundaries of the land to which the notice relates. This has been done in terms of the plan appended to the notice. Furthermore, section two of the notice refers to the land to which the notice relates as *'50 Maskelyne Close, London, SW11 4AE'* and section 3 refers to the breach of planning control as *'without planning permission and within the last four years, the unauthorised erection of a single storey rear extension'* (my emphasis) *at the property (the "unauthorised extension")'*.
8. The notice accords with the requirements of section 173 of the Act and the Regulations. It is not defective and tells the recipient fairly what they have done wrong and what they must do to remedy it. In respect of the latter, the notice very clearly requires the removal of the unauthorised extension. Furthermore, it is noteworthy there are no other single storey rear extensions at the appeal property. The notice is neither null nor invalid and the appellant's claim that it should be quashed is unfounded.
9. In respect of the ground (b) appeal, the appellant does not provide any evidence to indicate that the erection of a single storey rear extension has not occurred. In fact, the appellant provides photographs of the single storey rear extension in her statement of case (ground (a) appeal). It is clear from her evidence that she does not dispute the fact that a single storey rear extension

has been built on the land. She is clearly aware of where it is and what the notice is attacking. I therefore conclude that the ground (b) appeal fails.

Ground (a) appeal and the deemed planning application

10. The appeal made under ground (a) is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issues are i) the effect of the development on the character and appearance of the area, ii) the effect of the extension on the living conditions of the occupiers of No. 49 Maskelyne Close in respect of outlook, and (iii) whether the development suitably mitigates against the risk of fire.

Character and appearance

11. The appeal site falls within a predominantly residential area which comprises linear blocks of maisonettes set within landscaped grounds. There is a distinctive order and consistency to the blocks of buildings in this area. While there is the odd exception (e.g., No 51 Maskelyne Gardens), there is generally an absence of extensions to these buildings and hence the original layout of the estate and the architectural form of the buildings remains essentially intact. I accept that there are some outbuildings in the rear amenity spaces, but they are physically separate from the host properties and other than the odd exception, they are appreciated as being subordinate in scale. This adds positively and distinctively to the character and appearance of the area.
12. The appeal extension, measuring about 5 metres (depth) by 5 metres (width) by 3 metres (height), occupies the full width of the rear amenity space associated with the ground maisonette known as 50 Maskelyne Close. Owing to its depth, height, and massing, I find that it is experienced as an incongruous addition to the building block as a whole. Indeed, it unacceptably detracts from the otherwise mainly open amenity spaces that provide the spacious context for the various building blocks that exist in the estate. Furthermore, the extension takes up a significant amount of the rear amenity space of No. 50 Maskelyne Close. It is not seen as a subordinate addition to the maisonette property.
13. When seen from the rear windows and outside amenity spaces of some of the surrounding properties, I find that the rear extension unacceptably competes with and dominates the building. While it would be possible to improve the appearance of the uncompleted extension by imposing a condition relating to the colour and type of cladding for the walls, this would not overcome my finding that owing to its position and scale it constitutes poor design. I therefore consider that the breach of planning control fails to take the opportunities available for improving the character and quality of the area and the way it functions. Consequently, harm has been caused to the character and appearance of the area.
14. The appellant states that if I were to find that the breach of planning control was harmful, she would be content to reduce the extension in depth to three metres. I do not have detailed drawings before me showing what this would look like or how the resultant development would be finished off. Nonetheless, while in principle a reduction in the depth of the extension would reduce the identified harm caused to the character and appearance of the area, it would not do so to the extent that I could reasonably conclude, for the same reasons

outlined above, that it would constitute good design or result in the creation of a high quality and beautiful building and place as required by chapter 12 of the Framework.

15. I therefore conclude that the breach of planning control causes harm to the character and appearance of the area. Therefore, it does not accord with the design, character, and appearance requirements of policies LP1 and LP5 of the adopted Wandsworth Local Plan 2023-2038 (WLP) and chapter 12 of the Framework.

Living conditions

16. The extension has been built up to the boundary with No. 49 Maskelyne Close. Owing to its height and depth, I find that it has an unacceptably enclosing and overbearing impact on the occupiers of this property when viewed from the ground floor by-folding glazed doors and decked area. A reduction in the depth of the extension to three metres would lessen this harmful impact to an acceptable degree, but this would not overcome the harm caused from a design point of view.
17. I conclude that the breach of planning control causes harm to the occupiers of No. 49 Maskelyne Close (who incidentally have objected to the development) leading to a material loss of outlook. Therefore, it does not accord with the amenity requirements of policy LP2 of the WLP and paragraph 135(f) of the Framework.

Fire safety

18. While the notice does not refer to Policy D12 of the London Plan 2021 (LP), this was expressly referenced in the enforcement report considered by the Council's Planning Committee. The LP forms part of the development plan for the area. Policy D12 (Fire Safety) of the LP relates to '*all development proposals*.' In this regard, it is necessary that justification is provided that the development accords with requirements of parts A(1) to A(5) of policy D12.
19. The appellant's claim is that the Council has no development plan fire safety policies and that, in any event, it is ordinarily a matter to be controlled under the Building Regulations. In this case, there is a relevant fire safety policy in the development plan for the area. As the appellant has not provided any information about the fire safety credentials of the extension (now or when it is completed), I cannot conclude that the development does or would accord with policy D12 of the LP. In the absence of any information about the fire safety credentials of the breach of planning control, I do not find that the imposition of a planning condition would be appropriate. Paragraph 3.1.12 of the reasoned justification to policy D12 of the LP states, '*the fire safety of developments should be considered from the outset*'.

Other considerations

20. The appellant asserts that were the appeal property not a maisonette, permitted development rights would exist which would permit the erection of a three-metre projecting extension. As the appeal property is a maisonette, permitted development rights do not exist. In this regard, there is therefore no fallback position that needs to be weighed in the planning balance.

21. The appellant also comments that it would be possible to erect a two-metre high fence on the boundary of the site utilising permitted development rights and that in this context the appeal extension does not have a materially different impact on the occupiers of the neighbouring property. I afford this matter only limited positive weight in the planning balance as the appeal extension is higher than two metres and has a more harmful impact on the occupiers of the neighbouring property than a two-metre high fence.
22. I acknowledge that there is a single storey extension at No. 51 Maskelyne Close. However, this is the exception rather than the norm in this area. In the context of the maisonette building block as a whole and the surrounding context, I agree with the Council that the extension at No. 51 Maskelyne Close does not assimilate well in its environment. It is understood that planning permission was not approved for this extension. The evidence is that it gained lawfulness owing to the passage of time. For the reasons outlined above, I do not find that the existence of this extension justifies granting planning permission for the appeal development.

Ground (a) appeal conclusion

23. I conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. In reaching this conclusion, I have considered supportive comments received from other interested parties, but they do not outweigh my conclusion that planning permission should be refused. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

24. The appeal made under ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach. The purpose of the notice is to remedy the breach of planning control.
25. The appellant claims that the requirements are excessive in so far that it would be acceptable to reduce the development to 3 metres in depth and to clad the uncompleted development in appropriate materials. I have considered these matters as part of the ground (a) appeal and have concluded that to the extent that such works would be part of the matters alleged, such development would nonetheless be unacceptable in planning terms. Furthermore, and, in any event, I do not have any plans showing what the alternative or 'lesser' development scheme would look like.
26. I conclude that the steps in the notice are not excessive. They are required to remedy the breach of planning control. Therefore, the ground (f) appeal fails.

Conclusion

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

D Hartley

INSPECTOR