



Appeal Decision

Site visit made on 28 August 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2024

Appeal A Ref: APP/E5330/W/22/3313735 **35 Point Hill, London SE10 8QW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) (the Act) against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr Richard Lewin against the decision of Royal Borough of Greenwich.
- The application Ref is 21/1196/MA, dated 31 March 2021, was refused by notice dated 3 June 2019.
- The application sought planning permission for the replacement of existing rear conservatory with a single-storey rear extension without complying with a condition attached to planning permission Ref 17/3433/HD, dated 4 May 2018.
- The condition in dispute is No 1 which states that: The development shall be carried out strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below: 17011-35PH-DRW-0001, 17011-35PH-DRW-1001, 17011-35PH-DRW-1002, 17011-35PH-DRW-1003, 17011-35PH-DRW-1004, 17011-35PH-DRW-2001, 17011-35PH-DRW-2002, 17011-35PH-DRW-3001, 17011-35PH-DRW-3002 and 17011-35PH-DRW-8001.
- The reason given for the condition is: In the interests of good planning and to ensure that the development is carried out in accordance with the approved documents, plans and drawings submitted with the application and is acceptable to the local planning authority.

Appeal B Ref: APP/E5330/C/22/3313781 **35 Point Hill, Greenwich, London SE10 8QW**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Richard Lewin against an enforcement notice issued by Royal Borough of Greenwich.
- The notice was issued on 19 December 2022.
- The breach of planning control as alleged in the notice is: The unauthorised installation of a concrete platform to provide a raised patio area and the raising of the original ground level for the remainder of the rear garden area, without benefit of planning approval, at Property ("the Unauthorised Development").
- The requirements of the notice are the:
 - i) Removal of the installation of the concrete platform that has provided a raised patio area and reinstate the original ground level prior to the unauthorised development, of the rear garden area. See annotated photograph with blue arrows showing the stairs and patio level to be removed and reinstated to the original ground level.
 - ii) Remove all resultant materials from the land, at Property and dispose of resultant waste to a registered Royal Borough of Greenwich waste site.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the ground[s] set out in section 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.

Appeal A Decision

1. The appeal is allowed and planning permission is granted for the replacement of existing rear conservatory with a single-storey rear extension at 35 Point Hill, London SE10 8QW in accordance with the application Ref 21/1196/MA, without compliance with condition number 1 previously imposed on planning permission Ref 17/3433/HD dated 4 May 2018 and subject to the conditions in the schedule below.

Appeal B Decision

2. Appeal B is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the unauthorised installation of a concrete platform to provide a raised patio area and the raising of the original ground level for the remainder of the rear garden area, without benefit of planning approval at 35 Point Hill, Greenwich, London SE10 8QW as shown on the plan attached to the notice and subject to the conditions set out in the schedule below.

Preliminary Matters

3. The description for Appeal A was changed by the Council to reflect more detail of what was being proposed by the revised plans. However, this was an application under the provisions of s73A of the Act for the same development as was previously approved by planning permission (17/3433/HD) albeit without complying with the planning condition defining what the previously approved plans were. As such, it is an application for the same development and so I have used the description in the banner heading and the decision in Appeal A, from the original planning permission.
4. In Appeal B, what is being applied for is what has been alleged on the enforcement notice. However, that development is the same as that relating to Appeal A and so I can consider what is alleged and what the appellant is seeking to retain with respect to the plans that were submitted in Appeal A.

Appeal A Main Issue

5. The main issue is the effect of varying condition 1 to allow the retention of the development in accordance with revised plans, on the living conditions of the neighbouring dwelling at No 33 with particular reference to privacy and light. I will consider the condition with respect to the tests for planning conditions within the National Planning Policy Framework (the Framework).

Reasons

Appeal A

6. The appeal site is an end of terrace dwelling within a row of similar properties which are located on Point Hill. Point Hill slopes down substantially towards the north-west and north-east and as a consequence of being on this hillside, the house at the appeal site and the adjoining property at No 33, have basements which are underground at the front but above ground level at the rear. Furthermore, there is a substantial drop in underlying garden levels between the appeal site and No 33.
7. The original planning permission to which Condition 1 is attached, proposed the basement room with steps immediately up to the rear of it without a patio or

terrace to stand or sit-out on. The patio as partly constructed and as proposed for completion and retention, extends from the rear of the dwelling and the rearward of the garden room within No 33. People standing on the raised patio at the appeal site, close to the existing fence on the boundary between the 2 properties can look over into the rear garden of No 33 as well as through the windows in that adjoining property. The intervisibility between occupiers of No 33 in their garden and the ground floor room and those in the garden of the appeal site is an intrusive arrangement for both parties. My findings in this regard are the same as the Inspector who dismissed the previous appeal to retain what has been constructed (Appeal ref APP/E5330/D/19/3235533).

8. The submitted plans now propose the installation of a new, higher fence close to the boundary as well as a raised concrete bed for planting. The intention of the planted bed is to ensure that people on the patio could not get too close to the boundary fence, in order to secure privacy for the residents at No 33. These changes when implemented would acceptably prevent direct overlooking from the higher vantage point within the appeal site, down to the garden and towards the glazed patio door of No 33.
9. The appeal site including the garden and the dwelling are substantially above the garden and rear glazed patios-door at No 33 due to the rising hillside ground levels. The hill continues upwards further to the south. The appellant's evidence is based upon the British Research Establishment (BRE) guidance and indicates that the proposed fence would not lead to a substantial loss of daylight or cause further significant overshadowing of No 33. The vertical increase in height of the proposed fence would not interrupt the 45 degree line drawn from the mid-point of the glazed patio-door in the rear of No 33 which helps to indicate that the amount of daylight reaching that area and the room should not be significantly affected. The Council has also referred to BRE guidance but have not provided a detailed counter-assessment.
10. When I visited in the early afternoon of a bright summer's day, I saw that an area of garden immediately outside the glazed doors at the rear of the lower ground floor level of No 33, which includes a modest raised patio, was already substantially over-shadowed by the by main, existing part of the house at No 35. Whilst my visit was a brief snapshot in time, it did help me set the proposed changes in context along with the BRE guidance referred to. The additional amount of fence will not have a significant impact upon daylight or sunlight reaching the immediate rear garden or further into the substantial rear garden of No 33. I have not been provided with any data or detailed evidence from the temporary higher fence that the occupants of No 33 installed for a 2 week period, to dissuade me from my consideration of this.
11. The fence as proposed would be higher for a similar length back from the houses as the existing fence but this would be off-set from the joint boundary, set on the back edge of the small planted bed within No 33. This would interrupt some views of the planted boundaries of the properties further to the south of the appeal site but would have very limited effect upon the outlook experienced on the patio of No 33 or as seen through the glazed patio doors. I do not consider that the fence would appear excessively or oppressively large and would be of a domestic scale. The lack of detailed vertical sky component calculation does not alter my opinion that the fence as proposed would have a very limited impact upon outlook for the adjoining residents.
12. Beyond the rear patio on the appeal site, the garden has also been raised in height. This potentially provides a higher vantage point over the adjoining

garden at No 33 than would previously have been the case. However, the pre-existing land levels as shown on submitted plans would have enabled people on the appeal site to look into the garden of No 33 and this is to be often expected within a tight-knit urban area. However, from within the garden of No 33, I could see the surface of the slabs forming the patio over the top of the existing low fence panels albeit only glimpses of them through the dense growth of bamboo within the appeal site.

13. The raising of the surface of the garden within the appeal site could result in people standing on the patio close to the boundary with No 33 in a high position. If that were to happen, seeing people high up on the patio looking down into that adjoining, much lower garden would be very uncomfortable for the adjoining neighbours emphasising a sense of being watched. The existing borders with dense bamboo, as has grown up since the development was constructed, provides a very effective limitation within the appeal site. It prevents people going too close to the joint boundary with No 33 and also to the rear of the garden adjoining gardens of other neighbouring properties. This does limit the harmful impacts of this arrangement.
14. Retaining the bamboo planting as it is now, providing this level of screening when it only involves living plants which I am told, are a potentially invasive species, could not be effectively enforced through a planning condition in the longer term. It would not be reasonable to impose a planning condition to keep this screen in the form that I saw when I visited because it will inevitably change over time through natural growth. It will also require maintenance possibly including cutting back on occasion. There is no alternative scheme before me to either replace or supplement this planting. However, I am confident given what I saw that an alternative hard and soft-landscaping scheme possibly incorporating existing planting but also with some hard-landscaping close to the boundary, could more permanently limit access along the most sensitive parts of the patio on the north-western side of the lower garden adjoining No 33 without causing undue impacts in other ways for those residents. Such a scheme could prevent some actual overlooking but more significantly would reduce the imposing impact of people standing at a higher level relative to the lower-down garden at No 33. I have therefore imposed a planning condition requiring further information and I return to that below. Adjoining neighbours could be consulted when such a scheme is submitted.
15. With respect to the main issue, varying condition 1 to allow the retention of the development in accordance with the submitted revised plans would have an acceptable effect upon the living conditions of the neighbouring dwelling at No 33 with particular reference to privacy and light. It is also necessary to impose a condition to ensure that those details are undertaken. With these changes, the development would comply with Policy DH(b) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies, adopted July 2014 (LP). That requires that with new development, including extensions and renovations, it is necessary to demonstrate that there would be no significant loss of amenity to adjacent or nearby properties, including with respect to daylight, sunlight, privacy or outlook and the sense of enclosure. Sufficient attention has been paid to these factors complying with the advice within the Residential Extensions, Conversions and Basements Guidance SPD (2018).

Other matters and further planning conditions

16. Reference has been made by various parties to the potential for an alternative

fence erected under permitted development rights¹ and also to rear extensions as referred to within the Council's 2018 Residential Extensions, Conversions and Basements Guidance (SPD). There is no evidence that either of those alternatives are likely to be developed. Given those are only theoretical scenarios these arguments have had little weight.

17. Allowing the appeal would grant a further planning permission and so it is necessary to attach the other conditions previously imposed. If some of those conditions are no longer of relevance, such as condition 3 which required something to be done prior to commencement on site, given that the extension has been built that will be a matter between the main parties to resolve.
18. I have also attached a condition to require the submission of a scheme of hard and soft landscaping around the lower rear garden where the ground levels have been raised, for reasons I have explained above. That is necessary to make the development acceptable and to ensure that the required scheme is submitted, approved and implemented. There is a strict timetable for compliance because permission is being granted retrospectively and it is not possible to use a negatively worded condition to secure the approval and implementation of the scheme before the development takes place. The condition will ensure that the development can be enforced against if the requirements are not met which could mean the reversion of the site to its former levels, which are shown on the plan referred to.
19. The Council has suggested further conditions. The Framework confirms that planning conditions should be kept to a minimum and it sets out tests to meet before imposing conditions. The details of the side fence have been specified and there is no need for the further condition regarding the materials. A further suggested condition would remove permitted development rights for further fences or extensions to fences. I can see no specific justification for removing these rights and it would not be reasonable to interfere with those.
20. The proposal along with the safeguards set out above would produce a development that would preserve the character and appearance of the West Greenwich Conservation Area.

Conclusion on Appeal A

21. Having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be allowed. I will grant a new planning permission for the development subject to a condition that it is carried out in accordance with the revised plans. I also attach the undisputed conditions and the further condition as referred to above.

Appeal B on Ground (a)

Main Issue

22. The main issue is the effect of the unauthorised development on the living conditions of the neighbouring dwelling at No 33 with particular reference to privacy and light.

Reasons

23. The notice requires the removal of the existing concrete platform which is a part-completed patio at the ground floor level of the conservatory and also the

¹ Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015

removal of the raised area of garden beyond that.

24. I have already determined that with the changes as proposed on the submitted plans dealt with above with respect to Appeal A, it will make the development acceptable. It is open to me under this ground of appeal to also grant planning permission in the same terms as Appeal A. It is also necessary to replicate the same safeguards through planning conditions as have been imposed on Appeal A including the definition of the same plans being approved.
25. In relation to the main issue in this appeal, the unauthorised development will have an acceptable effect on the living conditions of the neighbouring dwelling at No 33 with particular reference to privacy and light, subject to the same conditions as have been imposed on Appeal A. The development would then comply with LP Policy DH(b) and the SPD for reasons explained above.

Conclusion on Appeal B

26. For the reasons given above, I conclude that Appeal B succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The appeal on ground (f) does not therefore fall to be considered.

Andy Harwood

INSPECTOR

Appeal A Schedule of Conditions

- 1 The development shall be carried out strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:

21002-35PH-DRW-001 Rev C, 21002-35PH-DRW-002 Rev C, 21002-35PHDRW-003 Rev C, 21002-35PH-DRW-004 Rev C, 21002-35PH-DRW-005 Rev C, 21002-35PH-DRW-022 Rev C, 21002-35PH-DRW-023 Rev C, 21002-35PH-DRW-024 Rev C, 21002-35PH-DRW-025 Rev C, 21002-35PH-DRW026 Rev C, and Fence Details (Jacksons Fencing featherboard panel, flat top)

- 2 The rooflights hereby approved shall be installed as 'conservation style' which sit flush with the roof slope and shall be maintained as such thereafter.
- 3
 - a. No development shall commence on site until samples of the proposed brick and metal coping to be used on the building(s) have been submitted to and approved in writing by the local planning authority.
 - b. The development shall be carried out in accordance with the approved details.
- 4 The raised concrete platform shown on the hereby approved plans as a "proposed patio" shall be removed within 6 months of this decision unless within 3 months of this decision the "proposed higher fence" and "concrete raised bedding" as shown on the approved plans has been implemented. The proposed higher fence and concrete raised bedding shall thereafter be retained and not removed unless otherwise agreed by the Local Planning Authority.
- 5 The rear garden shall be reinstated to the levels shown on the cross-section drawing '21002-35PH-DRW-004 Rev C' within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for fencing or other hard feature and landscaping to prevent access to the north-western side boundary of the rear garden adjoining No 33 Point Hill, including detailed indications of all plants to be retained, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal B Schedule of Conditions

- 1 The development shall be carried out strictly in accordance with the application plans, drawings and documents hereby approved and as detailed below:

21002-35PH-DRW-001 Rev C, 21002-35PH-DRW-002 Rev C, 21002-35PHDRW-003 Rev C, 21002-35PH-DRW-004 Rev C, 21002-35PH-DRW-005 Rev C, 21002-35PH-DRW-022 Rev C, 21002-35PH-DRW-023 Rev C, 21002-35PH-DRW-024 Rev C, 21002-35PH-DRW-025 Rev C, 21002-35PH-DRW026 Rev C, and Fence Details (Jacksons Fencing featherboard panel, flat top)

- 2 The rooflights hereby approved shall be installed as 'conservation style' which sit flush with the roof slope and shall be maintained as such thereafter.
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 - a. No development shall commence on site until samples of the proposed brick and metal coping to be used on the building(s) have been submitted to and approved in writing by the local planning authority.
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 - i) Within 3 months of the date of this decision a scheme for fencing or other hard feature and landscaping to prevent access to the north-western side boundary of the rear garden adjoining No 33 Point Hill, including detailed indications of all plants to be retained, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.