



Appeal Decision

Site visit made on 22 October 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06th November 2024

Appeal Ref: APP/L5240/C/23/3335098

Land at 1 Whitethorn Avenue, Coulsdon CR5 2PQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Ryan Fernandes against an enforcement notice issued by the Council of the London Borough of Croydon.
- The notice was issued on 14 November 2023.
- The breach of planning control as alleged in the notice is Unauthorised erection of a raised platform/balcony area at the rear of the extension, wooden screening fence, with steps leading down to the rear garden, and the continuing use as a residential amenity space without planning permission.
- The requirements of the notice are: 1) Fully remove the unauthorised works, including the whole of the unauthorised raised platform and balcony, screening fence, and steps leading to the garden (hatched area in blue on attached plan) 2) Restore the property and land levels to its previous condition and levels prior to the erection of the unauthorised works, namely raised platform, and steps to garden. To clarify this includes the full removal of the concrete, bricks, wood and other materials used to create the raised platform/balcony, screening fences and steps leading to the rear garden. 3) Any debris from these works in connection with steps 1 & 2 must also be fully removed from the site.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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 of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. It is incumbent on me to get the notice in order. The development has been constructed in the rear garden and it is evident that there has been no material change in the use of the land. The notice refers to the continuing use of the development as a residential amenity space. As the development forms part of the garden, there is no need for the notice to refer to its use as a residential amenity space. I shall therefore correct the notice by deleting the unnecessary text in the description of the breach of planning control, without causing injustice to any parties.

Main Issues

2. The main issues are the effect of the development on the living conditions of neighbouring residents, with particular regard to privacy and noise, and the effect of the development on the character and appearance of the area.

Reasons

Living Conditions

3. The site is a detached dwelling with a rear garden. A vacant strip of land runs along its southern boundary, separating it from the rear boundaries of semi-detached houses on Winifred Road. Land levels slope significantly upwards from south to north, resulting in the site being at a higher level than properties on Winifred Road. Land levels to the north, on Whitethorn Avenue, are higher still.
4. A raised platform has been constructed outside bifold doors to a single storey rear extension at the site, with steps leading down to the garden. The raised platform is enclosed by simple, low-level balustrading, with a tall section of timber fencing on its southern boundary (referred to as a 'screening fence' in the notice).
5. There are partial views from the garden into neighbouring rear gardens. Some mutual overlooking between properties on this part of Whitethorn Avenue is therefore a normal and accepted occurrence due to changes in land levels. However, the raised platform provides wider and clearer views of the garden and the rear elevation of 3 Whitethorn Avenue (No.3). Although privacy within the rear garden of that property would have been somewhat compromised prior to the development due to land levels, the raised platform provides far more extensive views of the rear elevation of the neighbouring house.
6. The screening fence along the southern end of the raised platform greatly restricts views of properties on Winifred Road from the raised platform. It does not, however, prevent all views of those properties. There are clear views into the rear garden and the ground floor rear elevation windows of 48 Winifred Road (No.48), in particular, from the raised platform.
7. Both No.3 and No.48 have reasonably large gardens and planting along boundaries. Notwithstanding this, the extent of overlooking from the raised platform into both of those properties is such that the privacy of occupants of No.3 and No.48 is unacceptably harmed by the development. The effect is not the same from the bifold windows of the rear extension, even if the screening fence were to be removed.
8. Therefore, although mutual overlooking between properties is experienced due to changes in land levels, the development increases overlooking from the site and exacerbates any pre-existing loss of privacy. For this reason, the development reduces the privacy of occupants of No.3 and No.48 and causes unacceptable harm to their living conditions, contrary to Policies SP4.1, SP4.2 and DM10.6 of the Croydon Local Plan 2018 (CLP) and Policies D3 and D6 of the London Plan 2021 (LP). These require, amongst other things, development to be high quality which protects the amenity of occupants of adjoining buildings and enhances social cohesion.
9. As a domestic patio, the type and volume of noise associated with the development would be typical for a residential area. Even in the absence of boundary fencing to muffle noise created on the raised platform, it is extremely unlikely that noise created by activities on the raised platform would cause unacceptable harm to the living conditions of neighbouring residents.

Therefore, with regard to noise, the development does not conflict with the above-mentioned policies.

Character and Appearance

10. The area is suburban in character, with a broad consistency in the size, layout and design of properties on Winifred Road. There is more variance in the style of buildings on Whitethorn Avenue, where there is also a range of rear extensions.
11. The raised platform is consistent with the type of development seen to the north of the site, where rear extensions at different levels have been constructed, including decking and a conservatory. Such development is typical in residential areas where there are variances in ground levels.
12. The screening fence is much taller than other fencing in the locality. However, it is separated from garden spaces to the south by the intervening strip of vacant land, and it is seen and experienced alongside the tall and wide south elevation wall of the dwelling. That expansive elevation imposes itself on views from the south due to it being constructed on higher land levels. Therefore, although the screening fence is different to other boundary treatment in the locality due to its height, it does not significantly affect the character and appearance of the area.
13. In the context of surrounding development and different land levels, the raised platform, its balustrades, steps, and the screening fence are not inconsistent with the residential setting. They do not harm the character or appearance of the area and do not conflict with Policies SP1.1, SP4.1, SP4.2, and DM10 of the CLP, or Policy D3 of the LP. These set out how development should be high quality and sustainable, with respect to be given to the character and appearance of the local area, amongst other things.

Condition

14. I have identified harm which is being caused to the living conditions of neighbouring residents, but this harm could be addressed by appropriate privacy screening along small parts of the northern boundary and the southern boundary, similar to the screening fence already in place. The extent of screening necessary to address privacy concerns would not harm the character and appearance of the area for the same reasons the existing screening fence does not cause such harm. Furthermore, it would not need to stretch far along the boundaries to address the privacy concerns outlined above, which would avoid the unacceptable loss of any residents' outlook.
15. There are no details of potential additional privacy screening before me. In their absence, I am unable to specify the height, width and materials of such screening which would be appropriate. However, the design, height and material of the existing screening fence are appropriate for the area and could be replicated further along the southern boundary to eliminate unacceptable views of the ground floor rear elevation windows of No.48 from the raised platform. Similar screening along the north elevation would need to prevent views of the ground floor rear elevation windows of No.3. The screening would not need to comprise obscure glazing to be acceptable in design terms, and it would not need to exceed 1.8 metres in height from the raised platform to address the existing privacy concerns.

16. I am therefore satisfied that there is reasonable potential for details of appropriate privacy screening to be approved. The condition set out below requires details of privacy screening to be submitted for the Council's approval within a reasonable timeframe and requires any approved details to be completed and retained. If such details are not submitted, approved, or completed, the condition requires the development to be demolished within a reasonable timescale to ensure it is enforceable. The condition also requires any approved privacy screening to be maintained and retained, and it makes allowances for an appeal to be lodged against any refusal or non-determination of submitted details. Compliance with the condition would therefore ensure the development does not cause unacceptable harm to the living conditions of neighbouring residents.

Conclusion

17. In conclusion, the unacceptable harm which the development causes to the living conditions of occupants of No.3 and No.48 would be addressed by appropriate privacy screening, which can be required by condition. Therefore, subject to the condition below, the development accords with the development plan as a whole and there are no other considerations which indicate planning permission should not be granted.
18. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected, subject to a condition.

Formal Decision

19. It is directed that the enforcement notice is corrected by the deletion of the text 'and the continuing use as a residential amenity space without planning permission'.
20. Subject to the correction, the appeal 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 raised platform/balcony area at the rear of the extension, wooden screening fence, with steps leading down to the rear garden at 1 Whitethorn Avenue, Coulsdon CR5 2PQ as shown on the plan attached to the notice and subject to the following condition:
- 1) The raised platform/balcony area at the rear of the extension, wooden screening fence, and steps leading down to the rear garden hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed from the site within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 1 month of the date of this decision a scheme for the installation of privacy screening along parts of the northern and southern boundaries to prevent views of the ground floor windows of 3 Whitethorn Avenue and 48 Winifred Road from the raised platform 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 3 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 privacy screening specified in this condition, that privacy screening shall thereafter be maintained and retained in accordance with the approved scheme.

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.

L Douglas

INSPECTOR