



Appeal Decision

Site visit made on 11 July 2025

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2025

Appeal Ref: APP/U5360/C/23/3325051

53 Bethune Road, Hackney, London N16 5EE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the Act).
 - The appeal is made by Shefa Chaim Limited against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The notice was issued on 24 May 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a single storey roof extension over the existing two storey outrigger.
 - The requirements of the notice are to:
 1. Remove the single storey roof extension atop the existing two storey outrigger as shown in Appendix 1;
 2. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above; and
 3. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (e) 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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Decision

1. The appeal is dismissed and 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 amend.

Appeal on Ground (e)

2. To succeed on this ground, it is necessary for the appellant to demonstrate that copies of the notice were not served as required by s172 of the Act. Section 172(2) in particular requires that a copy of an enforcement notice shall be served: (a) on the owner and on the occupier of the land to which it relates; and (b) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. However, even if copies were not served as required, by reason of s176(5) of the Act, I can disregard that fact if neither the appellant nor the person who required service have not been substantially prejudiced by that failure.
3. The appellant's case on this ground is that a director of the appellant company, Mrs Klein, was not served with a copy of the notice personally. The enforcement notice includes the list of 'persons' served. For legal purposes, a limited company is a 'person' and even if the company does not have a secretary, I would expect that a director of the company would understand that correspondence cannot just

be ignored. Furthermore, even if the notice was not served on Mrs Klein as a company director, she was clearly aware of the notice and could instruct an agent to submit an appeal in time for it to be accepted as valid. It has not therefore been explained by the appellant why any lack of service upon anyone has caused any prejudice to them or any other party.

4. The appeal under ground (e) therefore fails.

Appeal on ground (b)

5. To succeed on ground (b), it is incumbent on the appellant to demonstrate that the matters which are stated in the allegation have not occurred, as a matter of fact. There is no dispute that the construction of a single storey roof extension over the existing two storey outrigger has occurred.
6. Whilst this ground of appeal can be used to argue that the way in which the allegation has been described is incorrect, the appellant's case concentrates on whether the extension is completed or whether it is a part-completed development that does not require planning permission. That is an argument to pursue under ground (c) which is also being considered below.
7. The development as alleged has occurred and the appeal under ground (b) therefore fails.

Appeal on ground (c)

8. The appeal on this ground is that what is alleged does not constitute a breach of planning control. The onus is upon the appellant to demonstrate their case.
9. The development as alleged is similar to that proposed within an approved Lawful Development Certificate (LDC) Ref 2016/4423 for "the proposed erection of single-storey rear extension at third floor level above existing two-storey rear addition with rear and side windows." I have been provided with the plans that were agreed and which are referenced on that LDC. That LDC also confirms that the reasons for it being issued are "The proposed development comprises permitted development as defined by Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development)(England) Order (as amended)" (the GPDO). The conditions that are referred to on the LDC are those from the GPDO at paragraph 'B.2.' which are relevant along with the limitations of the preceding paragraph 'B.1.'.
10. Under s191(6) of the act, the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed. Whether a development is complete or is unfinished is a matter of fact and degree. I have limited information provided but the extension has a roof and is covered in felt. From what I could see, it has become damaged as I could see flaps hanging over the sides which may be remnants from when it was originally installed. The appellant states that the structure has been built to make sure that it meets the criteria of permitted development although also confirms that the eaves would require alterations to be put back to meet the permitted development limitations.
11. There are differences in what has been constructed and the LDC proposal. The eaves of the roof-deck currently protrude further over the side and rear walls of the lower older part of the building. There is no set-back, bevelled edge between the extension and the top of the existing first floor. The appellant has not

demonstrated how the external cladding could be installed over external felting and battening without extending the walls beyond those of the pre-existing building below.

12. Whilst the building has an unfinished appearance, it has been in situ for a significant period in a similar form. The Council took photographs of a structure which had the same basic proportions including the decked-roof, albeit without the current felt and battening on external walls, in July 2021. The notice was not issued until May 2023. Little had changed in that time other than the blanking-out of windows. Even if I disregard the period since the notice was issued, the extension had been in the same basic form for a significant period and there had been ample opportunity to revise the extension to accord with what the Council had accepted as being permitted development when issuing the LDC. However, the appellants refer to a further submission of a planning application and that they had intended to finish the development in accordance with that. At the time of preparing the appeal submission, that application had not received a decision since it was submitted in 2020.
13. It appears that the current structure has not involved the partial implementation of the LDC proposal but the implementation of a different form of development. There may be different iterations of a similar form of extension that may constitute permitted development under the provisions of the GPDO. However, in this instance, the appellant does not dispute that changes are required in order to enable the development to comply with the limitations and conditions of Part B. I also have no detail of whether various conditions could be complied with and the onus is upon the appellant to make their case.
14. As a matter of fact and degree the roof-extension is a part-complete development which is something materially different from what was confirmed as lawful within the LDC. It is not work in progress towards that LDC development and is not therefore permitted development. As such, the appeal under ground (c), fails.

Appeal on ground (a)

15. Under this ground of appeal, I have to consider whether planning permission ought to be granted for the matters stated on the notice as the breach of planning control.

Main issue

16. The main issue is the effect of the development on the character and appearance of the building and surrounding area.

Reasons

17. The appeal site includes the 2 storey terraced building on the western side of Bethune Road which is set over three split levels. The building has a typical traditional appearance with a bay window to the front, pitched and hipped roof. Prior to the unauthorised development taking place, the submitted plans show that the building had a 3-storey outrigger at the rear with a pitched-roof that sloped upwards towards the boundary.
18. The building is within an area where there is considerable unity amongst groups of buildings including those to the immediate north of the appeal site. These from the front appear almost like a series of pairs of semi-detached dwellings but are in fact

linked at the rear. The terrace is primarily constructed of brick with some buildings having been painted. The window openings have ornate surrounds and there are some balconies on top of the front bay windows. The building at the appeal site is also close on its south side, to a 3 storey red-brick flatted development.

19. The back of the terraced buildings can be broadly viewed from the small cul-de-sac, Fairholt Close, at the rear where the dwellings have secondary accesses into their gardens. Other dwellings also face onto the cul-de-sac. A brick wall demarcates the rear gardens and some landscaping extends above that in various places. However, the rear elevations of the buildings in Bethune Road can be clearly seen and there is some unity between them albeit that these elevations are less ornate than the fronts. The roofscape of pitched slate roofs is a very evident characteristic.
20. The Council states that the building at the appeal site is 'locally listed' and therefore a non-designated heritage asset. I have not been provided with evidence to support that, although it is not disputed by the appellant. The unity of the terraced properties both in terms of detailed design features and layout presents a pleasant urban street-scape as well as roofscape.
21. The development has replaced the pitched roof which I can tell from the existing drawing provided from the LDC submission, was a modest feature on top of the 2 storey outrigger which enabled retention of views of the main roof on this dwelling as well as those adjoining it. The structure is very high-up and with an almost flat roof is discordant, contrasting substantially with the form of the host building and those nearby. This appears as an incongruous addition within the terrace as well as on this building which disrupts the roofscape.
22. In relation to the main issue, the roof-extension has an adverse effect on the character and appearance of the building and surrounding area. This does not comply with Policies LP1 and LP4 of the Hackney Local Plan 2033, adopted July 2020 (HLP). These seek, amongst other things, to ensure that all new development is of the highest architectural and urban design quality, responding to local character and context as well as conserving or enhancing non-designated heritage assets, revealing their significance and settings.
23. Furthermore, it does not comply with Policies D3 and D4 of the London Plan 2021 (LP). These together include the requirements that all development must make the best use of land by following a design-led approach, optimising the capacity of sites, ensuring that development is of the most appropriate form and land use for the site as well as enhancing local context, responding to existing character delivering high quality design and place making.

Other matters

24. The extension would provide some improvement to the accommodation for the occupants of the buildings. This has limited weight in favour of the development.
25. HLP Policies LP2 (development and amenity) and LP47 (biodiversity and nature conservation) and LP Policy SI4 (managing heat risk) are quoted on the notice. I have not been provided with any evidence from the Council to indicate that these are not complied with or that they should form the basis of further main issues.

26. The appellant considers that the extension should be approved because of the permitted development alternative which is subject to the LDC. I would emphasise that even if the enforcement notice is upheld, it cannot interfere with any permitted development rights that may be applicable. There is therefore a possibility that a development may take place which would comply with the LDC proposal or another iteration which complies with the limitations and conditions set out in the GPDO without the need for planning permission. I am only presented however with the LDC proposal to show a way in which an alternative could be constructed without planning permission. That appears to be on the limits of what could be built. It is not clear how that could be constructed without substantial changes to the current structure or possibly its complete removal and starting the building works again. I do however consider that there is a reasonable prospect that the permitted development scheme may be constructed if this notice is upheld.
27. That scheme would have a similar general appearance to what has been constructed. That would however, from details that I have been provided with and from what I could see, appear to be a narrower proposal. It would be set-back from the elevations of the existing building below it. It would therefore have less bulk and the stepping back of the walls would reduce its impact upon the roofscape of the terrace as well as the adjoining flats. Those changes would be modest but nevertheless would in my view make a noticeable difference.
28. Whilst there is a permitted development fallback position, it would be less harmful than what has been constructed. The fallback has limited weight therefore as it would be preferable to carry out that permitted development alternative.

Overall balance and conclusion on ground (a)

29. The development plan policies that have been referred to but which are not relevant to the main issue do not weigh for or against the development.
30. The improvements to the building and permitted development fall-back do not outweigh my consideration of the main issue. Having had regard to the development plan as a whole and all other material considerations, I conclude that the appeal on ground (a) should fail and consequently, the deemed planning application shall be refused.

The Appeal on ground (f)

31. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The Council has confirmed that the purpose of the notice is to remedy the breach of planning control, which I take to mean the purpose within s173(4)(a) of the Act.
32. I have determined above that the fallback and other matters are insufficient to outweigh my concerns with the development as it exists. Putting on the tiles and fixing the windows would not remedy the breach of planning control. Furthermore, whilst the permitted development alternative could be undertaken, the GPDO does not have any provision to grant planning permission retrospectively so I cannot include a step requiring the LDC proposal, for example is implemented. That does not interfere however with the ability to utilise permitted development rights in accordance with the GPDO. There is no obvious alternative however to achieve the purposes of the notice.

33. The appeal under ground (f) therefore fails.

Conclusion

34. 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 application deemed to have been made under section 177(5) of the 1990 Act as amended

Andy Harwood

INSPECTOR