



Appeal Decision

Site visit made on 20 October 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2020

Appeal Ref: APP/B5480/C/20/3249167

The land at 107A Chestnut Avenue, Hornchurch RM12 4HH

- 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 Mr Murat Brahlilka against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 20 February 2020.
- The breach of planning control as alleged in the notice is without planning permission the construction of first floor rear extension.
- The requirements of the notice are:
 1. Demolish the rear first-floor rear extension as shown in the location hatched in black on the plan attached to the notice.
 2. Remove all materials, rubble and debris accumulated as a result of taking step 1 above.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

The Notice

1. There is an error in requirement number one in section five of the enforcement notice, what you are required to do, in that the word 'rear' appears twice. I shall correct the notice by deleting the word 'rear' where it appears before 'first-floor' and consider there is no prejudice caused to either party by me so doing.

Preliminary Matter

2. The appellant appears to suggest that there may be a lesser step to remedy the breach of planning control, requiring the extension to be altered in accordance with a planning permission, a point more appropriately made under an appeal on ground (f) however, that ground has not been pleaded. In any event, there is no evidence of an alternative planning permission. Consequently, if an appeal on ground (f) had been made it would have failed.

Background

3. A retrospective planning application was submitted and subsequently refused and dismissed on appeal¹ for the first-floor rear extension subject of the enforcement notice. It appears that there has been no material change in

¹ APP/B5480/D/19/3240326

circumstances since the previous Inspector's decision and consequently, it is against this background that I have considered this appeal.

The appeal on ground (a) and the deemed planning application

4. The main issue is the effect of the extension on the living conditions of the occupants of 107 Chestnut Avenue with particular regard to outlook and daylight matters.
5. Havering Residential Extensions and Alterations Supplementary Planning Document September 2011 (SPD) advises that two storey rear projections on terraced properties are rarely acceptable because they inevitably affect adjoining properties, unless jointly built. It is stated that two storey extensions should be set in from the common boundary by two metres and project no more than three metres.
6. There are two first floor windows in the rear elevation of the neighbouring No.107, that closest to the extension appears to serve a bathroom. Whilst the extension projects from the rear elevation by only a little over three metres, as a result of its siting on the boundary with No.107 and its height, the extension will have an unacceptable overbearing impact on the outlook from those first floor windows and, in the absence of evidence to suggest otherwise, result in loss of daylight to the neighbouring bathroom window.
7. Additionally, as the previous Inspector found, due to the bulk of the extension and its location on the shared boundary, it appears as an unduly tall and imposing structure which has an overbearing impact upon the outlook from the garden at No.107.
8. The lack of objections is a neutral matter which cannot outweigh the identified harm.
9. Overall, I conclude that the extension causes unacceptable harm to the living conditions of the occupants of 107 Chestnut Avenue in respect of outlook and daylight matters. This is contrary to Policy DC61 of the Havering Core Strategy and Development Control Policies Development Plan Document (2008) which seeks amongst other things to ensure that development does not result in unacceptable loss of daylight. It also conflicts with the National Planning Policy Framework which seeks a high standard of amenity for existing and future users of buildings.
10. For the above reasons, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (g)

11. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that the period of two months is too short, and a period of 12 months is appropriate.
12. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision. If the appeal proceeds on ground (g) and other grounds, the appellant is entitled to assume success in the other grounds, and so it is necessary to start from the date of the appeal decision when considering what the 'reasonable' period for compliance would be.

Consequently, it is not relevant that the appellant has had time since the notice was issued to make plans in the event of the appeal being dismissed.

13. The purpose of the time period within the enforcement notice is to allow for the physical works associated with the notice to be removed. Whilst there is no substantive evidence to support the appellant's request that the period for complying with the notice is extended to 12 months, the demolition of the extension would need to be carried out by a builder or suitably qualified tradesperson. Such works, whilst ongoing would undoubtedly have some impact on life within the house and I have some sympathy with the appellant in this regard.
14. I am satisfied that having regard to these circumstances, that even if account is taken of the need to remedy the harm, the notice does not afford the appellant reasonable time to comply with the requirements of the notice. Looking at the case in the round, the requirements to undertake all the works within two months would place a disproportionate burden on the appellant.
15. Taking this and all other matters into account I conclude that the period for compliance should be extended to three months rather than the 12 sought. A period of three months would be a proportionate response to the breach of planning control and would achieve an appropriate balance between the need to resolve the breach of planning control and the interests of the appellant. To this extent, the appeal on ground (g) succeeds.

Formal Decision

16. It is directed that the enforcement notice is corrected and varied by:
 - (1) The deletion of the word 'rear' where it appears before 'first-floor' in requirement number one.
 - (2) The deletion of two months and the substitution of three months as the period for compliance.
17. Subject to the above correction and variation, 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.

Felicity Thompson

INSPECTOR