



Appeal Decision

Site visit made on 6 December 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2022

Appeal Ref: APP/B5480/C/21/3281328

101 Birch Crescent, Hornchurch RM11 2NQ

- 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 Priya Patel against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 19 July 2021.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the construction of an extension at roof level.
 - The requirements of the notice are:
 1. Demolish / remove the extension at roof level and restore the roof to a pitched roof matching the slope of the adjoining terraced dwelling with tiles and materials to match the front roof slope; AND
 2. Remove all building materials and debris from the site as a result of taking step 1 above.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) 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. It is directed that the enforcement notice be:
 - varied by deleting the words "four months" within section 6 (Time for Compliance) and its replacement with "nine months".
2. Subject to this variation, 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 amended.

Preliminary Matters

3. During the course of this appeal, Havering Core Strategy and Development Control Policies Development Plan Document, 2008 (CS), and policies contained within it, has been replaced with the Havering Local Plan 2016 – 2031, which was adopted in November 2021 (Local Plan). This must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on the new Local Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded CS.

Appeal on ground (a), the deemed planning application

Main Issue

4. The main issues are the effect of the development upon the character and appearance of the host building and area.

Reasons

5. The appeal property is an end of terraced two storey dwelling, located in a terrace characterised by similar traditional two storey terraced properties. The appeal property is situated in a prominent corner location.
6. The rear roof extension has been built flush with the rear main wall of the house and finished in the same render material as the ground and first floor levels of the appeal site. In these respects, the eaves line of the original property, which is so prominent in the remainder of terrace, has not been preserved. In addition to the design of the extension, the size, scale, and bulk of the roof extension introduces an overly dominant and visually discordant feature which is highly visible from public vantage points on Macdonald Avenue. Therefore, the unauthorised development results in harm to the character and appearance of the host building and the area generally.
7. The appellant also refers to a number of other roof forms and extensions generally in the area. However, those other examples referred to have maintained their original eaves line and these other roof extensions are finished in sympathetic roof materials, such as tiles or slates. As such, the existence of other extensions in the wider area does not justify the harm I have identified above.
8. I therefore conclude that the development has a harmful impact upon the character and appearance of the host building and area generally. The development is therefore contrary to Policy 26 of the Local Plan. Amongst other things, these require that development proposals are of a high architectural quality. Furthermore, the development does not meet the aims of part 12 of the National Planning Policy Framework, 2021, which requires development to be sympathetic to local character and history.
9. The Council have also referred to Policy D1 of the London Plan, 2021. Whilst this policy includes information on design and growth it seeks to provides a framework for Borough's to carry out area assessments in preparation of development plans and therefore is not directly relevant to the current appeal. As such, I find no conflict with this policy.

Conclusion on Ground (a) and the Deemed Planning Application

10. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused

The appeal on Ground (f)

11. The appeal on this ground 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 which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".

12. The enforcement notice requires the demolition of the unauthorised development, and the restoration of the roof to its former condition, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
13. The appellant states that the requirement to remove the entire rear roof extension is excessive and that they should be able to modify the rear roof extension to comply with the drawings approved under the previously approved Certificate of Lawful Development for a rear dormer roof extension. However, to revert to this scheme would not remedy the breach.
14. Furthermore, it has been held that the prescribed tolerances in the GPDO should not be regarded as limitations but as part of the definition of the permitted development. An extension, such as the current appeal development, which exceeds the tolerances under the relevant part of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO), is entirely outside permitted development rights.
15. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
16. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

17. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 4 to 9 months, in order to raise funds, prepare technical plans, obtain quotations, appoint a contractor, and carry out the works. The appellant also states that it is likely that her family, including her young children, will need to move out whilst the works take place.
18. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view 9 months would strike a more reasonable and proportionate balance. I shall therefore extend the period from 4 to 9 months for compliance with the notice.
19. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

20. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR