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# Appeal Decisions

Site visit made on 14 February 2023

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 21 March 2023**

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**Appeal Refs: APP/B5480/C/21/3279187 (Appeal A), 3279188 (Appeal B), 3279189 (Appeal C), 3279190 (Appeal D), 3279191 (Appeal E), 3279192 (Appeal F), 3279193 (Appeal G), 3279194 (Appeal H), 3279195 (Appeal I), 3279196 (Appeal J), 3279197 (Appeal K), 3279198 (Appeal L) & 3279199 (Appeal M)**

**The Land known as 57 Nags Head Lane, Upminster, Brentwood CM14 5NL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Sam Rashid (Appeal A), Mr Foz Rashid (Appeal B), Mr Donald Messenger (Appeal C), Mr Fozlul Rashid (Appeal D), Mr Jaylul Rashid (Appeal E), Mr Rish Singh (Appeal F), Mr S H Rashid (Appeal G), Ms Manjeet Kaur (Appeal H), Ms Jahanara Mcready (Appeal I), Mrs Roonie Messenger (Appeal J), Mr Moynul Rashid (Appeal K), Mr Adel Salah (Appeal L) and Ms Jasmin Salah (Appeal M) against an enforcement notice issued by the Council of the London Borough of Havering.
  - The notice, numbered ENF/776/18, was issued on 24 June 2021.
  - The breach of planning control as alleged in the notice is without the benefit of planning permission:
    1. Erection of residential extensions on the first floor level and creation of balconies at the rear of property as identified in the plan indicating as A below; and
    2. Alterations to the roof profile at the rear and front of the property; and
    3. Erection of canopies and roof overhangs over the front porch leading up to the entrance of the garage in the basement at the front of the property identified as B in the plan below.
  - The requirements of the notice are to:
    - i. Remove all additional roofs structures and roof overhangs from front and rear of property that were built during the formation of the balconies; AND
    - ii. Remove from rear of the property all residential roof extensions built on the first floor level, the balcony and supporting structures; AND
    - iii. Remove all canopies and roof overhangs over the front porch leading up to the entrance of the garage in the basement at the front of the property; AND
    - iv. Ensure the front and rear elevations including roof profile match the elevations before the unauthorised development took place as shown in the image below
    - v. Remove from the land all debris, rubble and other materials accumulated as a result of taking steps (i), (ii), (iii), and (iv) above.
  - The period for compliance with the requirements is: Three months.
  - The appeals are proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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## Decisions

1. The enforcement notice is quashed.

## Matters concerning the notice

2. Section 173 (1) of the Act says that a notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of s171A (1) within which, in the opinion of the

authority, the breach falls. Section 173 (2) says that a notice complies with subsection (1) (a) if it enables any person on whom a copy of it is served to know what those matters are.

3. The enforcement notice alleges the erection of residential extensions on the first floor level and creation of balconies at the rear of property as identified in the plan indicating as A below [sic]. It also alleges alterations to the roof profile at the rear and front of the property and the erection of canopies and roof canopies over the front porch leading up to the entrance of the garage in the basement at the front of the property identified as B in the plan below [sic]. I find the wording ambiguous as to whether the breach includes first floor extensions which are outside the areas identified as 'A' and 'B'.
4. Requirement (iv) of the notice requires the recipient to ensure the front and rear elevations including roof profile match the elevations before the unauthorised development took place, as shown in an image included in the notice. I have compared the works carried out at the property with the image included in the notice. During my site visit, I was able to see that the property has been extended at the ground floor as well as the first floor level. The works are not limited to the areas identified by 'A' and 'B' but wrap around the original dwelling and outbuilding, i.e., the buildings with hipped roofs.
5. It is clear from the appellants' case that they consider the enforcement notice is only attacking the areas 'A' and 'B', as indicated on the plan inserted at section 3 of the enforcement notice. Indeed, the plan is identified as 'A and B identifying the areas where development has taken place' which would suggest their understanding to be correct in this respect.
6. The Council's case, however, is far from clear in this respect. The Council suggests the majority of development has been carried out in areas which are subject to enforcement notices dated 6 March 2009 and 22 October 2009. This would suggest the enforcement notice which is the subject of this appeal, is intended to attack works outside the aforementioned areas 'A' and 'B', since they do not appear to coincide with the areas subject to the 2009 enforcement notices.
7. I have considered whether it is possible to correct the notice so that it is clear the allegation is not limited to the areas identified by 'A' and 'B'. However, since the appellants have based their entire case on the understanding that the notice is attacking areas 'A' and 'B' only, correcting the notice in this way would cause them injustice as they may wish to advance an alternative case under ground (d), in particular, whether more than one operation has occurred.
8. Alternatively, I have considered whether it is possible to correct the notice so that it is clear the allegation is limited to the areas identified by 'A' and 'B'. However, given the limited extent of the areas identified on the plan within section 3 of the notice, this is likely to result in limited or partial removal of first floor extensions, which could leave rooms open to the elements and would leave the majority of the first floor extensions *in situ*, which would cause injustice to the Council.

9. Furthermore, were the appellants to comply with the requirements of the notice, including requirement (iv), and ensure the front and rear elevations match the elevations shown in the photograph identified in the notice, this would necessitate them removing both ground floor and first floor extensions, and the front extension, which projects beyond the principal elevation of the original dwellinghouse. Such requirements are inconsistent with the breach, which does not include ground floor extensions and are inconsistent with the appellant's understanding of the breach.
10. Deleting requirement (iv) would make it less clear as to what the appellants have to do and, given the wording of requirement (i), which requires the removal of roofs structures and roof overhangs that were built during the formation of the balconies, I am concerned deleting requirement (iv) would, by virtue of section 173(11) of the Act<sup>1</sup>, inadvertently result in the granting of planning permission for any unauthorised roof alterations that were not built during the formation of the balconies.
11. I have considered whether the notice is a nullity, however, the allegation is broadly stated and whilst it is ambiguous, I do not find it hopelessly so. Nevertheless, for the reasons given above, I conclude that the notice is invalid beyond correction, and should be quashed due to uncertainty.

## **Conclusion**

12. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control, or the steps required for compliance. It is not open to me to correct the errors in accordance with my powers under section 176(1)(a) of the 1990 Act as amended, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
13. In these circumstances, the appeals on the grounds set out in section 174(2)(d) of the 1990 Act as amended do not fall to be considered.

*M Savage*

INSPECTOR

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<sup>1</sup> Section 173(11) of the Act provides that where an enforcement notice could have required any buildings or works to be removed or any activity to cease but does not do so, then so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A.