



Appeal Decision

Site visit made on 30 January 2024

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2024

Appeal Ref: APP/B5480/C/22/3307893

317 Lodge Lane, Romford RM5 2HX

- 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 Razvan Stanuti against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 26 August 2022.
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission, the erection of an outbuilding in the rear garden of the property.
 2. Without planning permission, the erection of a ground floor extension to the rear of the property.
 3. Without planning permission, the erection of a building (swinging frame) in the rear garden of the property.
 4. Without planning permission, the erection of a porch to the front of the property.
 - The requirements of the notice are:
 - (i) Demolish the outbuilding in the rear garden of the property in the approximate area marked A on the plan attached to the notice; and
 - (ii) Demolish the ground floor rear extension in the approximate hatched area marked B on the plan attached to the notice; and
 - (iii) Demolish the approximately 5 metre high wooden building (the swinging frame) in the rear garden of the property in the approximate area marked C on the plan attached to the notice; and
 - (iv) Demolish the porch to the front of the property; and
 - (v) Remove all other debris, rubbish or other materials accumulated as a result of taking steps 1, 2, 3 and 4.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed insofar as it relates to the development of the porch and the rear extension and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended (the 1990 Act) for the porch and rear extension at 317 Lodge Lane, Romford RM5 2HX.
2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the outbuilding and swinging frame and planning permission is refused in respect of the outbuilding and swinging frame on the application deemed to have been made under section 177(5) of the 1990 Act.

Procedural Matters

3. The appellant's Statement of Case contains submissions that amount to an appeal under ground (d) although that ground was not pleaded on the appeal form. The Council were given an opportunity to comment on those submissions and the parties were given the opportunity of making Final Comments. I have taken these into account in my determination of the appeal.
4. The appellant confirmed in their Statement of Case that the swinging frame (the swing) has been dismantled. However, I shall still deal with it in my decision as it was there at the time of the notice.

The ground (d) appeal

5. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant, who needs to show, on the balance of probabilities, that the extensions were substantially complete four years before the notice was issued; namely before 26 August 2018, which is the relevant date. No submissions were made in respect of the swing. The Courts have held that in determining whether works are "Substantially complete" regard should be had to whether the building operation is carried out internally and externally fully in accordance with the planning permission.
6. The appellant submits he began work on constructing the porch, single storey rear extension and outbuilding in July 2018. This was after he received planning permission for the porch and rear extension on 2 May 2018 (Council reference P0016.18). Emails between the appellant and the Council's Building Control service show the foundation works for the extension and porch were carried out by 14 July 2018. Other emails evidence the following:
 - Masonry walls completed for porch and extension by 25 July 2018
 - Windows fitted by 26 July 2018
 - Roofs fitted on the porch and extension completed by 1 August 2018
 - Doors fitted by 7 August 2018
 - Electric and plumbing first fix completed by 20 August 2018
 - Building control inspection on 24 August 2018 states concrete on the ground floor slab can be poured.
7. The Council dispute these submissions and quote the wording from the Building Control Inspection Note dated 24 August 2018 as being "ovs now in place correctly as agreed on previous inspection ok to concrete". The Council consider it most unlikely that the building was then substantially complete in the next 48 hours. In addition, Building Control have an email from the appellant dated 29 October 2019, to which is attached a series of photographs that show building work still well underway in areas such as at foundation level and with the damp proof course. The Council also enclose a copy of an aerial photograph dated June 2018 from Google Earth, which appears to show that no work had taken place on the day the image was taken to construct any of the developments.

8. In terms of my assessment, I note the Council's information that the appellant did not apply for a Completion Certificate but that is not necessarily an indication that the porch and extension remained incomplete. Even if one was issued, that would be after an inspection that may have taken place some time after the building works had become substantially complete. This point therefore merits limited weight.
9. With regard to the photographs sent to Building Control in 2019, the Information icon on each of the appellant's photographs show that they were all taken between 21 June 2018 and 4 October 2018, not 2019 as assumed by the Council. The appellant explained that the 2019 email was a repeat email as he had not received a response to his 4 October 2018 email.
10. The photographs taken after 26 August 2018 show that significant building work was still on going in my view. For example, the 9 September 2018 photograph shows an incomplete, unplastered internal wall. Photographs from 15 September 2018 show a newly plastered wall drying out and an incomplete floor construction. In addition, I note Building Control's site inspection note dated 3 September 2018 states "The cavity brick and blockwork for the rear extension have now been completed, there is no wallplate, and the roof joists are sitting on both skins of the cavity." It may be that a wallplate was not needed for a flat roof and the Building Control Inspector did not require any further work but this has not been explained by the appellant.
11. There is no evidence that the outbuilding was substantially complete before the relevant date. From the rest of the material before me, I am satisfied that significant work was undertaken for the construction of the porch and the extension in a short period before the relevant date. However, it has not been shown that either were substantially complete by the relevant date.
12. The Planning Practice Guidance advises that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probability. In this case the appellant's own evidence demonstrates that the outbuilding, porch and extension were not substantially complete by the relevant date. As such the appeal on ground (d) fails.

The ground (a) appeal and the deemed application

Main Issues

13. The main issues are the effect of the various extensions on (i) the character and appearance of the area; and (ii) the effect of the extensions and the swing on the living conditions of neighbouring occupiers, having regard to privacy and outlook.

Reasons

Character and appearance

14. The appeal relates to a mid-terrace, two storey dwelling situated in a residential area. Surrounding dwellings are from various eras, are of different designs and include bungalows as well as semi-detached houses. The

- distinctive character and appearance of the area stems in part from this existing variety and the backdrop of the surrounding countryside.
15. The porch has a flat roof with a window on the front elevation that aligns with the first floor window above. The entrance door is on the side and is accessed via a few steps. The depth of the porch extends only just beyond the width of the door frame, which includes a narrow glazed panel to one side. The width of the porch extends approximately halfway across the front elevation of the building. It appears wider as there is a significant roof overhang to the front and over the door.
 16. The Council are concerned that the size of the porch is unduly dominant and visually intrusive in the street scene. However, the property has the benefit of a large front garden, which means the porch is set well back from the pavement and the depth of the porch is less than the width. The appeal property is slightly wider than others in the terrace as it has a flying freehold over the side entry. I therefore find the width of the porch is proportionate to the width of the building. A third party is concerned that the size of the porch has led to the misuse of their hard standing. I have not been provided with any substantive evidence that this is the case but, in any event, this is a private matter between the parties.
 17. There are a variety of porch designs in the area including flat roofs and pitched roofs and doors on the side and/or facing the pavement. Their principal feature, like the appeal site, is that none dominate the design of the front elevation, they merely add interest and variety.
 18. For these reasons, the addition of the porch at the appeal site does not have a harmful effect on the character and appearance of the area. As such, it accords with Policy 26 of the Havering Local Plan 2016-2031, adopted November 2021 (HLP) and Policy D3 of The London Plan - The Spatial Development Strategy for Greater London, March 2021 (TLP), which require high quality design.
 19. It also does not conflict with the guidance in Havering's Residential Extensions and Alterations Supplementary Planning Document, adopted 2011. This states that prior to designing an extension, consideration should be given to the details of the original house and the street scene. Porches should also be in proportion to the size of the house, amongst other matters. As the porch is now substantially complete, no conditions are necessary.
 20. Turning now to the developments at the rear. The rear extension extends across the full width of the property and is approximately 5.5m in depth and was measured by the Council as being 3m in height. One corner furthest from the building is angled so that the kitchen window faces the bottom of the garden of No 315 Lodge Lane. The extension has a flat roof which oversails the angled corner.
 21. Just beyond the rear extension, the appellant has erected a timber outbuilding. This is open on the side facing the dwelling, has a flat roof and extends approximately across the full width of the garden. It has a height of approximately 2.7m and provides a sheltered outdoor dining area and storage space either side. The gap left between these additions amounts to little more than a narrow strip.

22. The appeal site has a modest rear garden which is bounded by others of a similar size. The resulting gardens area is constrained by the rear gardens of two smaller terraces at right angles to the appeal site, which "book end" the row of gardens.
23. When the houses were originally built, it appears the gardens only contained a coal shed, some of which remain, and the views across the gardens were largely open. Over time, residents have added various other sheds but the prevailing view was still open. The combination of the appellant's new extension and outbuilding has changed this and is especially harmful as the property is in the middle of a terrace, thereby shortening and closing off the open aspect across the whole of the gardens area. The harm arises from the amount of rear garden that is covered at the appeal site by the combination of the rear extension and the outbuilding. Openness is an important quality to maintain between properties to avoid an unduly cramped and constricted layout.
24. The appellant submits that there is little difference between the approved plans and the rear extension as built. The approved plans were for an extension 5.45m in depth as opposed to 5.5m and the height was originally set at 2.75m but built at 3m. I agree, the differences are modest and, as such, there is little difference in the effect of the development on the character and appearance of the area between the approved scheme and the as built scheme. On its own the rear extension is therefore acceptable as openness is preserved.
25. Turning now to the outbuilding, permitted development allowances enable outbuildings to be constructed in the rear garden but these are limited to 2.5m in height where they are within 2m of the boundary of the site. In addition, there is a limitation on the total area of ground that can be covered by buildings, which is limited to 50% of the total curtilage.
26. The appellant submits that the height of the outbuilding only marginally exceeds the permitted development allowance. I agree on paper that may be the case but the context for the increase in height is different from that of the extension, which is seen against an existing two storey building. The height of the outbuilding is more noticeable as it protrudes above the height of the much lower garden fences and is of a uniform height. The outbuilding at the bottom of the garden at No 315 is not only shorter overall but varies in height due to the different roof design, with a gable facing the garden and eaves lower in height near the garden fencing.
27. The appellant also overlooks the 50% of the total curtilage permitted development limitation, which is exceeded in this case due to the floor area of the rear extension and the porch. On its own, the outbuilding does not maintain the character and appearance of the area due to its siting, height, depth and width.
28. When considered together, the rear extension and the outbuilding reduce openness and fail to maintain the character and appearance of the area. Together they do not accord with Policies 7, 26 and 27 of the HLP which require, amongst other matters, that new development maximises the opportunities for greening. They also do not accord with Policies D3 and D6 of TLP, which require high quality design where the built form and massing of the development should be appropriate for the surrounding context.

29. Policy 10 of the HLP is not relevant to my consideration as it is directed at the development of new dwellings in gardens.

Living conditions

30. The combination of both rear additions also has an effect on the outlook from the rear of No 315, where the occupier describes themselves as being “completely boxed in”. I saw that this property still has the original coal shed situated on the boundary with No 313 and there is also a large, almost full width, outbuilding at the bottom of the garden at No 315. Whilst these structures curtail the outlook from No 315 to a certain extent, it is still possible to see partly over the roof of the outbuilding, as I saw from the kitchen window at the appeal site. This is not possible with the appellant’s outbuilding though, due to the height and the uniform shape of the roof. As a result, the combination of the developments at the appeal site have reduced outlook even further. Retaining the extension on its own though would enable a degree of outlook to be preserved across the gardens.
31. Having regard to the swing, this was positioned on the strip of remaining open space between the rear extension and the outbuilding. It appears to have been built to a height of 3m and then increased to 5m. I have not been provided with any other information as to what it looked like but it appears when it was used, it was possible to see into an adjoining habitable ground floor room and unduly overlook a neighbouring garden.
32. Policy 7 of the HLP requires development to protect residential amenity, having regard to unacceptable overlooking, loss of privacy or outlook. The developments in combination do not accord with this policy and as such there is harm caused to the living conditions of neighbouring occupiers.

Interim conclusion

33. As I have found it is the combination of the rear extension and the outbuilding that causes most of the identified harm, it is open to me to issue a split decision and grant planning permission for one of the rear additions. As the rear extension and the outbuilding are clearly separable both physically and functionally from each other there would be no injustice to this course of action.
34. Permission was granted for the rear extension in the past and the as built scheme is not noticeably different from the approved plans. In addition, on its own, it preserves openness. However, I have found the outbuilding is a significant intrusion on the openness of the rear gardens area. I shall therefore allow the appeal in respect of the extension.
35. To summarise, the appeal on ground (a) succeeds in respect of the porch and the rear extension but fails in respect of the outbuilding and swing.

Other Matters

36. Concerns have been raised about the following matters: the introduction of a step in the shared side entry; damage and nuisance caused to neighbouring properties during construction and afterwards; and that the development is not within the boundaries of the property. These are all private matters and fall outside the scope of my decision.

Conclusion

37. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for two matters the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the remaining parts. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of section 180 of the 1990 Act.

D Fleming

INSPECTOR