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## Appeal Decision

Site visit made on 4 June 2025

by **Peter White BA(Hons) MA DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2025

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**Appeal Ref: APP/B5480/C/23/3327723**

**The land known as 264 Mungo Park Road, Rainham RM13 7PU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Karthigesu Manoharan against an enforcement notice issued by the Council of the London Borough of Havering.
- The notice was issued on 14 July 2023.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a rear / side extension.
- The requirements of the notice are:
  - (i) Demolish the single storey rear/side extension; and
  - (ii) Remove all rubbish, materials and debris resulting from taking step (i) from the site.
- The period for compliance with the requirements is: 2 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended) ("the Act"). 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 ("the DPA").

**Summary of decision:** The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

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### Preliminary Matters

1. The appellant has formally appealed only on ground (a), but the appellant's claim that the rear element of the development was completed before the side/rear extension is a matter for ground (c). As the Council have addressed this matter, no injustice would arise to either party were I to consider it, and I have done so as an appeal on ground (c).
2. At the site visit the appellant's agent advised that the side extension had been removed. That was mostly the case, largely leaving just the floor slab which is around a block higher than the nearest natural ground level, and low-level elements of the exterior face of the cavity wall.

### The appeal on ground (c)

3. Appeals on ground (c) are made on the basis that the matters stated in the Notice do not constitute a breach of planning control. The burden of proof is on the appellant.
4. The construction of a rear / side extension was development for the purposes of Section 55 of the Act, and planning permission was therefore required for it under Section 57.
5. I have not been advised of any certificate of lawfulness issued in relation to the development. But in 2019 the appellant applied to the Council for a determination as to whether prior approval was required for a proposed 6m rear extension ("the

previously proposed development”), under Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015<sup>1</sup> (“the GPDO”).

6. At that time the Council notified the applicant that prior approval was not required, and no party has alerted me to any conflict with the requirements of Schedule 2, Part 1, Class A of the GPDO (“Class A”). Therefore, were the previously proposed development constructed, it would be ‘permitted development’, and planning permission would be granted for it under Article 3(1) of the GPDO.
7. The development constructed was built as a single development, as a side and rear extension. The rear part was the same depth and width as the previously proposed development. But it also included a side extension, had a different internal layout, and different rear fenestration details. The development constructed was therefore not the previously proposed development.
8. Development carried out cannot be made ‘permitted development’ retrospectively, and, with the evidence before me, the single storey rear/side extension was therefore erected without planning permission. The matters stated in the Notice therefore constituted a breach of planning control.
9. The appeal on ground (c) therefore fails.

#### **The appeal on ground (a)/the DPA**

10. Appeals on ground (a) are made on the basis that planning permission ought to be granted for the matters stated in the Notice as constituting the breach of planning control.

#### *Main Issues*

11. The main issues are:
  - the effect of the development on the living conditions of the occupiers of the neighbouring dwelling at 262 Mungo Park Road (“No 262”), and
  - the effect of the appellant’s fallback position in relation to ‘permitted development’ for a 6m rear extension

#### *Living conditions*

12. No 262 is the adjoining dwelling which, together with the dwelling subject to the appeal, makes up the pair of semi-detached properties. The Council has raised no issue in relation to the dwelling on the other side, closest to the side element of the development (which has largely been demolished).
13. The Council’s Supplementary Planning Document<sup>2</sup> (“SPD”) advises that semi-detached dwellings can generally be extended to the rear by up to 4m in depth, although other factors may be taken into account.
14. From No 262, the extension runs along the northern side of the boundary, beyond a low boundary fence. It results in a 6m long wall along the boundary at a height of more than 2.5m, although the buff bricks give it a smart and relatively light appearance. It creates a courtyard style area in the neighbouring garden, which

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<sup>1</sup> LPA reference Y0308.19

<sup>2</sup> Residential Extensions and Alterations Supplementary Planning Document (2011)

contains patio slabs and a small tree. Nevertheless, it will be an imposing feature from the closest ground floor room.

15. The width of the neighbouring dwelling and garden reduces the effects of the extension to some degree and a sense of openness is generally maintained in the garden. But overall, the development is a significant visual presence from one room.
16. The development is therefore harmful to outlook from No 262, and conflicts with the relevant parts of Havering Local Plan 2016-2031 (2021) Policy 7, which supports development which does not result in unacceptable outlook for existing or future residents.

#### *The fallback position*

17. I found above that, with the information before me, the previously proposed development of a 6m rear extension would be 'permitted development', and planning permission would be granted for it by Article 3(1) of the GPDO. Neither party has advised me of any provision which limits the time period within which that development could commence, and I have found none.
18. The 'permitted development' relates to a rear extension very similar to the development constructed, being the same depth, and being depicted as having the same height<sup>3</sup>. The effect on No 262 would therefore be the same as that of the development constructed, and the Council have raised no objections to the side extension, which has largely been removed.
19. Construction of the previously proposed development as 'permitted development' would require compliance with the Notice in the first instance. Nevertheless, there is a realistic prospect that it could be implemented following the removal of the existing development.
20. The development constructed is therefore no more harmful than the appellant's fallback position, and the effects of the two developments would be the same. I therefore attribute substantial weight to the appellant's fallback position.

#### *Conditions*

21. The development has been carried out, and the Council have suggested no conditions in the event that I allow the appeal and grant planning permission.

#### *Conclusion on ground (a)*

22. Against the development, I attribute significant weight to the harm the living conditions of occupiers of No 262, and the consequent conflict with development plan policy. However, the substantial weight I attribute to the appellant's fallback position outweighs the harm arising.

#### **Conclusion**

23. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.

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<sup>3</sup> In fact, the rear extension for which prior approval was not required may be taller, on account of the annotation indicating 2.8m in height.

### **Formal Decision**

24. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the construction of a rear / side extension at 264 Mungo Park Road, Rainham RM13 7PU as shown on the plan attached to the notice.

*Peter White*

INSPECTOR