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## Appeal Decisions

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 A Ref: APP/B5480/C/22/3313939**

**Appeal B Ref: APP/B5480/C/22/3313940**

**The land known as 131 Howard Road, Upminster RM14 2UQ**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr. Saranjit Singh Sandhu and Appeal B is made by Mrs. Amarpreet Kaur Sanghera against an enforcement notice issued by the Council of the London Borough of Havering.
- The notice was issued on 7 December 2022.
- The breach of planning control as alleged in the notice is:
  1. Without planning permission, extensions and enlargements to the roof; and
  2. Without planning permission, the construction of a side extension.
- The requirements of the notice are:
  - i) Demolish the extensions to the roof comprising the hip to gable enlargement and rear dormer and reduce the height of the ridge to its original level which should match that of the adjoining dwelling at 129 Howard Road; and
  - ii) Demolish the single storey side extension on the eastern flank of the dwelling; and
  - iii) Remove all other debris, rubbish or other materials accumulated as a result of taking steps (i) to (ii) above.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 (as amended) ("the Act").

**Summary of decision:** The appeals succeed in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

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### Preliminary Matters

1. Works of extension and alteration of the side of the dwelling and its roof took place in 2021 and 2022. The appellant submitted an initial application for a certificate of lawfulness ("LDC"), which the Council refused. A second LDC application was made after the Notice was issued, which the Council declined to determine. Neither LDC application is before me for a determination. The Council also advise a rear extension has been carried out with planning permission, but that is not part of the development before me.

### The appeal on ground (c)

2. Appeals on ground (c) are made on the basis that the matters stated in the Notice do not constitute a breach of planning control.
3. The extension and enlargement of the roof and construction of a side extension are development for the purposes of Section 55 of the Act, and planning permission is therefore required for them under Section 57.
4. Neither party state when the development began, but on the application form for the appellant's second LDC application, they stated that "the use or activity [was]

begun, or the building works [were] substantially completed” on 1<sup>st</sup> September 2022.

5. That is not the appellant’s present case, which is that the works were modified following the first LDC refusal, but before substantial completion of the development. They state that by November 2022 (before the Notice was issued) it met the requirements for ‘permitted development’ under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the GPDO”).
6. In order to be ‘permitted development’, and to benefit from deemed planning permission under Article 3(1) of the GPDO, the different elements of the development must have met the requirements of Schedule 2, Part 1 Classes A, B and C of the GPDO by the date the Notice was issued, or on substantial completion of the works if that was earlier.
7. The parties dispute whether the side extension met Class A.1.(d), which excludes development where the height of the eaves of the part enlarged, improved or altered exceeds the height of the eaves of the existing dwellinghouse. They also dispute whether the extension and enlargement of the roof met Class B.1.(b), which excludes development where any part exceeds the height of the highest part of the roof. It is agreed that the front rooflights meet the requirements of Class C.

*The side extension:*

8. In relation to Class A, the Technical Guidance<sup>1</sup> states the eaves of a house are where the lowest point of a roof slope meets the outside wall. It states that the height of the eaves will be measured to the point where (if projected upwards) the external wall would meet the upper surface of the roof slope. It also states that parapet walls and overhanging parts of eaves should not be included in any calculation of eaves height.
9. The statutory declaration of the appellants’ planning consultant provides his professional opinion that the drawings submitted for the second LDC application depict ‘permitted development’, but no drawings were exhibited as part of the declaration. One set of the plans provided by the appellants shows the side extension to have an eaves height no higher than those of the existing dwelling; another set clearly shows a higher eaves height. The second set depicts a form of development which would not meet the requirements of Class A. The first set may demonstrate a development which met its requirements, but the annotation “height is not to exceed 3m at the eaves and 4m maximum” raises some doubt – given the eaves of the existing dwelling were lower than 3m in height.
10. The statutory declaration of Mr Sunny Saranjit Sandhu states that the works had been completed by November 2022, and that by the time the Notice was issued “the work to enlarge the roofs, including over a side extension, had been completed.” The statutory declaration of the builder states that the single storey side extension roof was lowered to match the original eaves of the property, and that this work was completed “early December 2022” for the side extension.
11. The Council’s photograph of 7 December 2022, the date the Notice was served, shows the works in relation to the side extension had not been completed at that

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<sup>1</sup> Permitted development rights for householders: Technical Guidance - Ministry of Housing, Communities & Local Government 2019

time. The photograph is clear and convincing, and accords with the account given by the builder, even if it conflicts with that given by Mr Sandhu. The development against which the Notice was issued was the development at the point it had reached on that date, in its partially completed form, and not the development completed later that month.

12. At that time, the roof of the side extension was incomplete. But it is the development which had occurred at the time the Notice was issued that is before me, even if further works were undertaken to complete the development later.
13. Although the side wall itself was no higher than the eaves of the existing dwelling, the rafters in place at that time sat on top of the external side wall and were higher than the eaves of the original dwelling. At that point in time the eaves of the extension therefore exceeded those of the existing dwelling, and the side extension did not meet the requirements of Class A.

*The extension and enlargement of the main roof:*

14. The appellants' planning consultant's statutory declaration stated the LDC drawings showed the height of the 'dormer roof' to be no higher than the original ridge tiles.
15. In relation to the main roof, with the rear dormer extension, I agree. An initial form of the development extended the height of the main ridge line above its previous height, but I have seen no evidence that the development was substantially completed in that form, and the statutory declaration of the builder was that it was not.
16. Photographs in evidence demonstrate that the development constructed by the date the Notice was served did not exceed the height of the highest part of the roof. That was also the case at my site visit, where I saw the height of the main ridge was the same as that of the semi-detached pair at No 129.
17. However, the Council describes the building operations as one unlawful development, even though the breach of planning control alleged in the Notice is set out in two parts. At the time the Notice was issued the completed parts of the roof extended seamlessly over the side extension at the front of the dwelling. On the front elevation it was a single structure and operation.
18. Class B condition B(2)(b)(ii) states the development must be constructed so that no part of the enlargement<sup>2</sup> extends beyond the outside face of any external wall of the original dwellinghouse (other than where an enlargement joins the original roof to the roof of a rear or side extension). As the side extension is without planning permission, and the Notice requires its removal, the additions and alterations to the roof include parts of the roof beyond the external wall of the original dwelling. Although there was no conflict with Class B.1.(b), the development as constructed therefore did not meet the requirements of Class B.

*Conclusion on ground (c):*

19. For the reasons given above the appeal on ground (c) fails.

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<sup>2</sup> Of a dwellinghouse consisting of an addition or alteration to its roof

### **The appeal on ground (f)**

20. Appeals on ground (f) are made on the basis that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.
21. The Notice requires the removal of the development in its entirety and is clearly intended to remedy the breach of planning control. The steps required by the Notice must therefore remedy the breach of planning control, even if they also remedy any injury to amenity.
22. The development alleged in the Notice was described as extensions and enlargements to the roof and the construction of a side extension. That development was not substantially complete at the time the Notice was served, but went on to be completed, following further works, in a manner which complied with Part 1 Classes A, B and C of the GPDO. Planning permission was therefore subsequently granted under Article 3(1) of the GPDO for the development as it was completed.
23. The Notice shall cease to have effect so far as inconsistent with that permission, as described in Section 180 of the Act, and it therefore acts against elements of the development which had occurred by the time the Notice was issued, but which no longer exist.
24. In these circumstances, as planning permission exists for part of the matters constituting the breach of planning control, an alternative requirement to 5(i) and 5(ii), to require removal of those parts of the matters not benefitting from planning permission (comprising the higher eaves of the side extension), would remedy the breach of planning control. That lesser step would achieve the purposes of the Notice with less cost and disruption to the appellants, as those works have already been carried out.
25. The appeal on ground (f) therefore succeeds.

### **Conclusion**

26. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeals on ground (f) succeed to that extent.

### **Decision**

27. It is directed that the enforcement notice is varied by:
  - In Section 5, before criterion 5.(i) insertion of the word, “**EITHER**”
  - After criterion 5.(ii), insertion of the words, “**OR** (iii) Reduce the height of the eaves of the side extension to a height no higher than the eaves of the existing dwelling;”
  - In criterion 5.(iii) (of the original Notice), deletion of “(iii)” and its substitution with “(iv)”, and deletion of, “(i) to (ii)” and their substitution with “(i) to (iii)”.
28. Subject to the variations, the enforcement notice is upheld.

*Peter White*

INSPECTOR