
Appeal Decision

Site visit made on 14 November 2016

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 November 2016

Appeal Ref: APP/Q5300/C/16/3149324
131 Lincoln Road, Enfield, EN1 1LH

- 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 1990 Act").
- The appeal is made by Lorraine Watson ("the Appellant") against an Enforcement Notice issued by the Council of the London Borough of Enfield ("the Council") on 31 March 2016.
- The enforcement notice is numbered ENF/15/0658.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, the unauthorised erection of a single storey rear extension (for identification purposes outlined in blue on the plan attached to the Enforcement Notice) to the rear of the Premises in excess of the parameters set out within Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The requirements of the Enforcement Notice are: 1. Remove the single storey rear extension (outlined in blue for identification purposes on the plan attached to the Enforcement Notice) to comply with Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) by the Town and Country Planning (General Permitted Development) (England) Order 2015. 2. Remove all resulting materials from the Premises.
- The period for compliance with the requirements is two (2) calendar months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) & (c) of the 1990 Act.

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.

Procedural Matters

1. The Council's representative failed to attend the pre-arranged site visit. I was able to carry out an unaccompanied inspection of the relevant parts of No. 131 and the surrounding area. The Council and Appellant raised no objections to my determination of the appeal on that basis.

Background Matters

2. I will refer to the single-storey rear extension to which the Enforcement Notice relates as "the Extension".
3. The Extension was constructed in August / September 2015. The Extension fills the full width of the plot at No. 131 which is about 3.5m wide. There are no windows in the side elevations of the Extension. The Extension is used as additional living space.
4. No. 131 is a two-storey dwelling-house within a terrace of similar sized dwellings. The original dwelling-house at No. 131 had a rear single-storey

element to it. I will refer to the original single-storey element of No. 131 as the "Original Single Storey Element"

Reasons - Ground (c) that those matters referred to in the Enforcement Notice do not constitute a breach of planning control

5. The onus of proving that the construction of the Extension does not constitute a breach of planning control rests with the Appellant. The Appellant has to prove this on the balance of probabilities.
6. The construction of the Extension has involved the carrying out of building operations on land. Accordingly, it is "development" as defined in Section 55 of the 1990 Act.
7. Section 171A of the 1990 Act explains that the carrying out of development without the required planning permission constitutes a breach of planning control. The Council have not granted an express planning permission for the construction of the Extension.
8. Deemed permission is granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") for, amongst other things, the enlargement of a dwelling-house (subject to limitations).
9. The Appellant has referred to the permitted development rights which currently allow single-storey extensions to terraced dwellings which do not extend beyond the rear wall of the original dwelling-house by more than 6m.
10. It appears to me having regard to the plan attached to the Enforcement Notice and to the rear elevations of other nearby dwelling-houses within this terrace that No. 131 would have had, at one time, two rear walls. Those walls would have been:
 - a) Part of the rear wall of the two storey part of the dwelling-house.
 - b) The rear wall of the Original Single Storey Element to No. 131.
11. In my assessment the land between the Original Single Storey Element and the side boundary with No. 133 was enclosed by a single-storey extension which, together with the Original Single Storey Element filled the entire width of the plot at No. 131. I will refer to the extension that filled this gap as "the Side Extension". The Appellant has provided no evidence to indicate that this Side Extension existed on 1 July 1948 and was thus part of the original dwelling-house.
12. The Extension combined with the Side Extension exceeds 6m in depth when measured from the rear wall of the two storey part of the dwelling-house at No. 131 and therefore the Extension cannot be permitted development.
13. Further, there is a condition in the Order which requires that the materials used on any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwelling-house. The materials used in the Extension's exterior works are timber and they are not of a similar appearance to the materials used in the construction of the exterior of the existing dwelling-house i.e. brick.
14. Further still, the permitted development rights referred to by the Appellant are subject to a condition that before beginning the development the Appellant

must provide the information specified in Condition A.4 (2) to the Local Planning Authority. That information was not supplied.

15. I am aware that the Appellant attempted to contact the Council about relying on the permitted development rights available to extend No. 131 prior to the Extension being built. There was a lack of understanding between the Appellant and the Council Officers that she spoke to. However, these communications clearly do not constitute compliance with the relevant condition.
16. I therefore conclude, for the reasons explained above, that the Extension is not permitted development. The appeal on Ground (c) therefore fails.

Reasons - Ground (a) and the deemed planning application – that in respect of the breach of planning control planning permission ought to be granted

17. The reasons for issuing the Enforcement Notice explain that in the Council's view the Extension, by reason of its size, siting and excessive rearward projection, results in the introduction of an overly dominant and obtrusive form of development which gives rise to conditions through loss of light, loss of outlook and a heightened sense of enclosure that adversely affects the amenities enjoyed by the occupiers of the neighbouring properties at Nos. 129 and 133 Lincoln Road
18. The Development Plan for the area includes Policy CP30 of the Council's Core Strategy adopted in 2010 and Policies DMD11 and DMD37 of the Development Management Document adopted in 2014. I do not consider that the Extension has been built in the public realm as the land to the rear of No. 131 and other nearby dwellings is clearly not in an area that is accessible to everyone.
19. The Development Plan explains that proposed rear extensions will only be permitted if there is no impact on the amenities of neighbouring properties.
20. Single-storey extensions must:
- a) Not exceed a depth of 3m beyond the original rear wall in the case of a terraced property.
 - b) Not exceed a line taken at 45-degrees from the mid-point of the nearest ground floor window of an adjacent property.
 - c) Secure a common alignment to other rear extensions.
21. The Extension by reason of its dimensions clearly does not comply with the relevant parts of the Development Plan relating to dimensions of single-storey extensions.
22. However, I consider that it is necessary to consider what harm, if any, the Extension causes before requiring its demolition/alteration. It should be noted that the occupiers of the adjacent dwellings have stated in writing that:
- a) They are not affected by the Extension in any way.
 - b) They have enough light in their gardens.
 - c) They do not feel closed in.

Does the Extension result in loss of light or sunlight to either of the adjacent dwellings?

23. There are no ground floor windows at No. 129 that are affected by the Extension.
24. There is a ground floor window at No. 133. I have not been informed what room that window serves. However, it is clear to me that the Extension does not breach the 45-degree line – that line was broken when the Side Extension was erected and before that was probably broken by the Original Single Storey Element at No. 131.
25. The gardens of the dwellings at Nos. 129 and 133 and broadly south facing. The Extension may have some impact on early morning sunlight reaching part of the garden at No. 129 and late evening sunlight reaching part of the garden at No. 133 but there is no evidence before me that the impact in terms of loss of sunlight to either of these gardens is unacceptable.
26. I therefore conclude, for the reasons explained above, that the Extension does not result in an unacceptable loss of light or sunlight to either of the adjacent dwellings.

Does the Extension result in loss of outlook and a heightened sense of enclosure for the occupiers of either of the adjacent dwellings?

27. I will, for the sake of convenience, refer to the issue of loss of outlook and a heightened sense of enclosure jointly as “loss of outlook”.
28. I have explained that there are no ground floor windows at No. 129 that are affected by the Extension.
29. I do not consider that the outlook from the window at No. 133 is affected by the Extension – the impact in terms of loss of outlook from that window was possibly affected when the Side Extension was built.
30. I do not consider that the Extension has had any harmful impact in terms of loss of outlook for the occupiers of Nos. 129 and 133 when using that part of their gardens adjacent to the Extension.
31. The occupiers of No. 133 have a path and hardstanding (used as a patio) adjacent to the Extension and it was clear from what I saw at my site visit that the Extension aided the privacy enjoyed for the occupiers of No. 133 when using the sitting out area.
32. From what I could see at the site visit the occupiers of No. 129 would not suffer loss of outlook when using that part of their garden adjacent or near the Extension.
33. I therefore conclude, for the reasons explained above, that the Extension does not result in an unacceptable loss of outlook for the occupiers of adjacent dwellings.

Does the extension harm the character or appearance of No. 131 or the surrounding area?

34. The Development Plan explains that development which is inappropriate in its context or which fails to have appropriate regard to its surroundings will be refused.
35. I have explained above that the external materials used on the Extension do not match those used in the original dwelling-house. However, in the context of the surrounding area the wood cladding finish to the Extension does not result in any harm to the character or appearance of the area or the host dwelling.
36. The Extension does not secure a common alignment to other nearby rear extensions. However, there is no common alignment to other rear single-storey extensions at the present time. Whilst the Extension goes beyond the depth of the majority of other rear extensions in the adjoining area it does not, in my assessment, cause any harm to the character or appearance of the area. Accordingly, I do not find any conflict with the relevant parts of the Development Plan relating of good design.

Conclusion

37. I have explained above that the Extension does not comply with parts of the Development Plan. However, no harm results from its presence and therefore I consider that this is a material consideration which indicates to me that the decision does not need to be made in accordance with the Development Plan. Accordingly, planning permission for the retention of the Extension is acceptable in the circumstances.
38. For the reasons given above I conclude that the appeal should succeed on Ground (a) and planning permission will be granted.

Decision

39. 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 for the development already carried out, namely the erection of a single storey rear extension on the land at 131 Lincoln Road, Enfield, EN1 1LH.

Tim Belcher

Inspector