

Appeal Decisions

Site visit made on 20 September 2016

by L J O'Brien BA (Hons) MA

a person appointed by the Secretary of State for Communities and Local Government

Decision date: 24 November 2016

Appeal A Ref: APP/Y5420/C/16/3149127

The land and building(s) known as 28 Willingdon Road, London, N22 6SB shown edged red on the plan attached to the enforcement notice ("the premises")

- 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 Enam Huq against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 21 March 2016.
 - The breach of planning control as alleged in the notice is "the unauthorised enlargement of the roof of the property consisting of the erection of a rear dormer roof extension and the erection of an extension on the roof of an existing rear outrigger".
 - The requirements of the notice are 1. Remove the rear dormer roof extension and the extension that has been erected on the roof of the existing rear outrigger. 2. Remove the pitched roof that has been erected on top of the existing rear outrigger and return the roof to its original condition. 3. Remove all resultant debris.
 - The period for compliance with the requirements is 4 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does fall to be considered.
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Appeal B Ref: APP/Y5420/C/16/3149125

The land and building(s) known as 30 Willingdon Road, London, N22 6SB shown edged red on the plan attached to the enforcement notice ("the premises")

- 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 Kamal Uddin against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 21 March 2016.
- The breach of planning control as alleged in the notice is "the unauthorised enlargement of the roof of the property, consisting of the erection of a rear dormer roof extension and the erection of an extension on the roof of an existing rear outrigger".
- The requirements of the notice are 1. Remove the rear dormer roof extension and the extension that has been erected on the roof of the existing rear outrigger. 2. Remove the pitched roof that has been erected on top of the existing rear outrigger and return the roof to its original condition. 3. Remove all resultant debris.
- The period for compliance with the requirements is 4 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does fall to be considered.

Decisions

Appeal A

1. I direct that the enforcement notice is varied by, under Section 5, Time for compliance, the deletion of the word "4" and its substitution with the word "6". Subject to this variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

2. I direct that the enforcement notice is varied by, under Section 5, Time for compliance, the deletion of the word "4" and its substitution with the word "6". Subject to this variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Main Issue

3. The main issue in these appeals is the effect of the developments on the character and appearance of the host dwellings and the wider area.

Reasons

The appeals under ground (a) and the deemed planning applications

4. Numbers 28 and 30 Willingdon Road are neighbouring two-storey mid-terraced properties located within a primarily residential area. The rear gardens of these properties back onto the rear gardens of properties on Cobham Road. Like numbers 28 and 30, many of the properties in the area have two-storey rear outriggers.
5. A roof extension, including the addition of two dormer windows and the alteration of the pitch of the outrigger roof has been constructed at both properties. The extensions are large, extending almost the full width and height of the main rear roofs and nearly the full length of the rear outriggers. The setback from the host dwellings is minimal. Consequently, the extensions appear to dominate the host buildings when viewed from ground level. This lack of subservience is exacerbated by the steep pitch of the outrigger roofs which, from certain angles, appear as though they partially obscure the windows above.
6. Whilst many neighbouring properties have rear outriggers the majority in the immediate vicinity of the appeal sites appear to have flat or shallow pitched, rather than steep pitched, roofs. Regardless of whether the original roof form at numbers 28 and 30 was flat or had a shallow pitch, the new steep pitch is out of keeping with others in the vicinity.
7. The materials used in the construction of the new gables are also not in keeping with those used on the rest of the gables below. This has the effect of emphasising the extensions and ensuring that they do not blend in with the host dwellings as well as they could.
8. I consider that the roof extensions represent bulky additions to the properties which are out of keeping with the scale, design and materials of the host dwellings and the character and appearance of others in the wider area. As

such I have found conflict with Policy SP11 of the London Borough of Haringey's Local Plan Strategic Policies 2013 – 2026 which seeks to ensure that new development is of the highest standard of design which respects its local context. The development also fails to accord with saved policy UD3 of the London Borough of Haringey Unitary Development Plan (July 2006) which requires development to complement the character of the local area and be of a scale that is sensitive to the surrounding area. The development is also at odds with policies 7.4 and 7.6 of the London Plan, July 2011 which expect development to have regard to existing spaces and streets, comprise details and materials that complement the character of the area and integrate well with surrounding streets.

9. I noted two other examples as part of my site visit. However, I am not aware of the precise details surrounding one of these and, according to the Council, the other is currently the subject of an enforcement notice. The existence of other extensions is not sufficient justification for perpetuating the harm I have identified and, in any event, each case must be treated on its own merits. I also acknowledge the appellants' arguments regarding the limited views which are available of the extension; however, this is not sufficient to overcome the harm I have identified.
10. I note that, in theory, similar extensions could be built under permitted development (PD) rights. Indeed, Certificates of Lawful Development (LDC), issued by the Council on 25 September 2015 certified that similar roof extensions, of a slightly different design would be PD. I have the power to grant planning permission for the whole or any part of the development enforced against. However, the proposals the subject of the LDCs would in reality be similar, but different extensions. They would both be smaller, with a different roof structure and could not simply be described as part of the development enforced against. For this reason, I am unable to consider allowing the appeals subject to revised materials or an amended roof design.
11. The existence of PD rights and the LDC provide a fall-back position against which to consider the relative harm caused by what has been built. However, the extensions that could be built as PD or specifically under the LDC would be smaller than that which has actually been built and the shallower pitch of the roofs would go towards reducing the impact of the extensions. The appellants also agree that more appropriate materials would also form part of the development under the LDC which would aid with the integration of the extensions with their host dwellings. As such, extensions of this nature would be considerably less harmful than those in situ. In these circumstances, neither the existence of PD rights nor the LDC indicate that planning permission should be granted for what has actually been constructed.
12. The parties have advised that it is mainly the alterations to the pitch of the roof of the outriggers which the Council take issue with. It remains open to the appellants to submit planning applications to the Council which more closely resemble the LDC.
13. I have noted comments from a neighbour regarding the impact of the extension at number 30 on living conditions at their property with particular regard to loss of light, overshadowing and overlooking. Whilst I acknowledge that the extension inevitably has some impact on the living conditions next

door this is not to such an extent so as to cause an unreasonable degree of harm.

14. For the reasons detailed above, I consider that the appeals should be dismissed and ground (a) should fail. As such planning permission will not be granted.

The appeals under ground (f)

15. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
16. In order to assess an appeal under ground (f) it is necessary to establish the purpose of the notice (i.e. does it seek to remedy the breach or the injury to amenity). Both notices in these cases allege the construction of a roof extension without planning permission and require its complete removal and the reinstatement of the previous roof. Whilst both notices refer to remedying any injury to amenity as well as remedying the breach within the reasons for issuing the notice, it is clear from the requirements that these notices seek to remedy the breach and not only the harm to amenity. Where this is the purpose the relevant consideration for an appeal on ground (f) is whether the steps are excessive to remedy the breach.
17. The appellants suggest that the wholesale removal of the roof extensions is excessive and, in fact, altering the developments so they would correspond with the proposals covered by the LDCs and shown on plans AS1012-CNCL/LOFT/PD2 (Appeal A) and AS1011-CNCL/LOFT/PD2 (Appeal B) dated 23 September 2015 would be more appropriate.
18. Development which is not lawful cannot be altered so as to become permitted development retrospectively. In this instance, altering the developments to those shown on the LDCs would not remedy the breaches. In these circumstances, it would not be appropriate for the notices to be varied to require alteration in line with the LDCs and the steps required by the notices are therefore not excessive. For these reasons the appeals under ground (f) fail.

The appeals under ground (g)

19. The ground of appeal is that the time given to comply with the requirements of the notice is too short. The Council have given four months. The appellants hold that a period of six months would be a reasonable and practical amount of time to allow for the relocation of the existing tenants in number 30 and the undertaking of the works.
20. Given that the current tenants must be given a reasonable notice period prior to the commencement of the works, I have some sympathy with the appellants' concerns. In order to ensure that this can be achieved I shall extend the period from four to six months as requested. In my view, the extension of the period for compliance provides a sufficient amount of additional time to allow notice to be served on the tenants and for work to commence and be completed following their departure. Whilst there are currently no tenants in situ at number 28, the nature of the work is such that it would affect both properties and consequently the extended time period must apply to both notices. A period of six months would also give the appellants an

opportunity to apply for planning permission for a scheme that more closely reflects the development proposed by the LDC should they wish to do so and should it be technically feasible.

21. For these reasons the appeals under ground (g) succeed to this limited extent and I will vary the notices and extend the periods for compliance to six months.

Conclusions

22. I have considered all other matters raised but these do not change my conclusion that the appeals under grounds (a) and (f) should be dismissed. The appeals under ground (g) are allowed to the extent set out above.

Laura O'Brien

Appointed person