
Appeal Decision

Site visit made on 6 February 2017

by K R Saward Solicitor

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

Decision date: 16 February 2017

Appeal Ref: APP/Z5060/C/16/3162411
29 Sutton Road, Barking, Essex IG11 7YD

- 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 Syed Ali Junaid against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice was issued on 18 October 2016.
The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction of an extension to the rear of the property.
- The requirements of the notice are:-
 - Remove the unauthorised extension to the rear of the property.
 - Remove all waste material from the site.
- The period for compliance with the requirements is 3 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. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld as corrected as set out in the Formal Decision.

Preliminary Matters

1. The allegation concerns “the unauthorised construction of an extension to the rear of the property”. In the Grounds of Appeal, the appellant queries which extension is the subject of the notice because the dwelling has been extended at the rear on three occasions. The appellant says the kitchen extension existed upon his acquisition of the property in 2007. He extended the toilet in 2011 and a ‘conservatory’ was built in 2013. The plan attached to the notice does not assist as the whole appeal site is simply outlined in red.
 2. Correctly identifying the development is all the more important because the notice requires the “extension” to be removed. If it is unclear from the notice which extension is being attacked, it will similarly be uncertain whether the additions must be removed in whole or part.
 3. In its Appeal Statement, the Council talks of the “proposal” as though unbuilt. It also refers to “the 5.1 deep extension” before going on to explain that it is “the combined depth of the existing and unauthorised extensions” that are 5.1m beyond the rear wall of the original house. This indicates that it is an addition to an existing extension with which the Council is concerned, but it is in the notice itself which must be clear.
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4. At my site visit, it became apparent that there are three very distinct single storey rear extensions each with a flat or gently sloping roof of differing height. The kitchen extension is built up to one side boundary. A deeper toilet/store extension is alongside built close to the other boundary. From their external condition, neither appears new. A further extension has been added behind the kitchen which is clearly much newer. This is the addition which the appellant describes as a 'conservatory'. The appellant can have had little doubt that this most recent addition was the subject of the enforcement notice rather than the more historic extensions.
5. For the avoidance of any doubt, wording can be inserted to make it clear that the notice concerns the unauthorised construction of an extension to the rear of the property "behind the existing kitchen extension". Such amendment does not prejudice the appellant in any way as he has made representations for the retention of this structure. Nor would any injustice arise to the Council. Hereafter, I shall refer to the 'conservatory' as 'the extension'.
6. The Council's Appeal Statement suggests that the immunity period is 10 years which I take to be in error as the notice correctly identifies a 4 year period.
7. Whilst the box on the Appeal Form has not been ticked for an appeal under ground (c), the appellant has made submissions and provided drawings to illustrate that the extension is permitted development. Those arguments raise issues relevant to ground (c) and I shall deal with them under that ground. The Council will have seen those submissions and has had opportunity to comment.

Reasons

Ground (c)

8. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof on this ground is firmly on the appellant.
9. At the time that the appellant says the extension was built (i.e. 2013), the Town and Country Planning (General Permitted Development) Order 1995, as amended, was in force. Pursuant to Article 3 and Schedule 2, Part 1, Class A, the enlargement, improvement or other alteration of a dwellinghouse was permitted development subject to certain limitations and conditions.
10. One limitation was that the enlarged part of the dwellinghouse must not extend beyond the rear wall of the original dwelling by more than 3m for a single storey extension. In May 2013, provision was introduced for extensions up to 6m in depth but subject to conditions and limitations including prior notification to the local planning authority. Clearly, that was not done and so the 3m limit applied.
11. As an addition to a previous extension, the combined projection is approximately 5.1m, a figure uncontested by the appellant. Therefore, the depth of the extension exceeded the 3m threshold. Whilst the size of the extension may have fulfilled other requirements of Class A, all limitations and conditions must be met. Due to the overall depth this cannot have been permitted development. Planning permission was required, but not obtained.
12. The ground (c) appeal fails.

Ground (a) and the deemed planning application

Main Issues

13. The main issues are the effect of the development on:

- the character and appearance of the host dwelling and surrounding area; and
- the living conditions of neighbouring occupiers.

Reasons

Character and appearance

14. The notice refers to the design of the extension with reference to Policy BP11 of the Borough Wide Development Policies DPD, 2011. Among its principles this policy seeks the design of buildings that protect or enhance the character and amenity of the area.
15. The appeal property is a mid-terrace two storey house of simple architectural style. As mentioned in my preliminary note, it has previously been extended at the rear by two single storey additions. Together, these extensions span the width of the dwelling. The extension attacked by the notice is a further rearward projection attached to the kitchen extension at the same width.
16. The Council's Residential Extensions and Alterations Supplementary Planning Document, adopted 2012, provides that the depth of an extension to a terraced house should not normally exceed 3.65m measured from the original wall of the house. This is a guide only, but in this instance the extension juts uncomfortably into the rear garden space at an overall depth of about 5.1m.
17. Whilst it may only be 9sqm in floorspace, the extension is nevertheless a prominent addition given the extent of its rearward projection. It causes the rear elevation to be dominated by its extensions. With its block like form having mainly solid side walls except strips of translucent plastic at high level, the design is poor and unsympathetic to the host dwelling. Attempts have been made from use of painted render to match its appearance. However, the mix of materials including the plastic roof and very poor quality of finish does nothing to protect or enhance the character of the dwelling or area. The overall result is a most unsatisfactory appearance.
18. The appellant indicates a willingness to make changes to the extension in order to address the Council's concerns. Whilst a condition could be imposed to improve the materials and finish for parts of the extension, a condition could not address the design or size. There is no appeal on ground (f) to suggest any lesser steps other than demolition to remedy the breach of planning control.
19. I find that there is a significant adverse effect on the character and appearance of the host dwelling and surrounding area in conflict with Policy BP11 and the SPD, as aforesaid. It is also contrary to paragraphs 17 and 56 of the National Planning Policy Framework insofar as they promote high quality design.

Living conditions

20. In its reasons for issuing the notice, the Council states that "the erection of the

rear extension results in a negative impact on present and future occupants and neighbours...". It is unclear how there might be a negative impact on present and future occupants and it is not for me to speculate. That being so, I do not explore this issue further.

21. Similarly, the notice fails to express how there is impact on neighbours. Elaboration is found in the Council's Appeal Statement where it specifies harm is caused to the neighbouring occupiers of No 31 in terms of outlook from their garden, but this cannot be gleaned from the notice itself. In any event, I am not satisfied that there is an adverse effect to occupiers using the neighbouring garden when the extension projects above the high boundary fence only to a limited degree. Moreover, this part of the neighbouring garden at No 21 is covered by a canopy structure which projects even further along the shared boundary than the extension. Any enclosing effect will arise predominantly from this canopy rather than the extension.
22. I find no adverse effect on the living conditions of neighbouring occupiers with reference to outlook to cause conflict with DPD Policy BP8 which seeks to protect residential amenity, including outlook, and the corresponding aims within DPD Policy BP11.

Conclusion on ground (a) and the deemed planning application

23. Although I have found no harm with regard to the effect of the development on the living conditions of the neighbouring occupiers of No 31 this does not alter the fact that the development is nevertheless harmful with regard to the first main issue. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) and the application for deemed planning permission should fail.

Formal Decision

24. It is directed that the notice be corrected by inserting the words "behind the existing kitchen extension" after the word "property" in paragraph 3. and in the first bullet point of paragraph 5.
25. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

KR Saward

INSPECTOR