
Appeal Decision

Site visit made on 28 June 2017

by D A Hainsworth LL.B(Hons) FRSA Solicitor

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

Decision date: 24 July 2017

Appeal Ref: APP/U5930/C/16/3159598

98 Maynard Road, Walthamstow, London E17 9JF

- The appeal is made by Shaukat Ali Tahir under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 63178) issued by the Council of the London Borough of Waltham Forest on 2 September 2016.
 - The breach of planning control alleged in the notice is the construction of a first-floor rear extension.
 - The requirements of the notice are as follows: -
 - "1) Demolish the unauthorised first floor rear extension.
 - 2) Make good the existing ground floor and first floor rear extension.
 - 3) Remove all resulting materials, rubble and general detritus from the land following compliance with steps 1 and 2 above."
 - The period for compliance with these requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d).
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the construction of a first-floor rear extension at 98 Maynard Road, Walthamstow, London E17 9JF.

Reasons for the decision

Ground (d)

2. The appellant maintains that the enforcement notice was issued more than four years after the date on which the construction of the first-floor rear extension had been substantially completed, and that the time limit for its issue had therefore expired. However, he acknowledges in his representations of 5 April 2017 that building works were outstanding at the start of the four-year period, namely the installation of a window and guttering. Photographs taken by the Council on 4 September 2012, two days after the start of the four-year period, confirm that these works were outstanding.
 3. Plans submitted by the appellant in 2015 with the planning application for the retention of the first-floor rear extension show that it has been designed as an extension to a bedroom. This bedroom had one window only, which was in its rear elevation. The extended bedroom also has one window only, which is in a corresponding position in the extended rear elevation. This window had not
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been installed at the time when the photographs were taken; there was simply an opening in the wall where the window now is.

4. As a matter of fact, the first-floor rear extension as it existed at the start of the four-year period was unfinished. Since the window is an essential element of the extended bedroom, I have concluded that the first-floor rear extension had not been substantially completed at this time. The time limit for the issue of the notice had therefore not expired when it was issued and the appeal on ground (d) has failed.

Ground (a)

5. The main issue in deciding whether planning permission should be granted for the first-floor rear extension concerns its effect on the amenities of the occupiers of the houses, 96 and 100 Maynard Road.
6. The Waltham Forest Development Management Policies Local Plan contains policies that are relevant to this issue. Policy DM4 seeks to protect neighbours from "any excessive loss of residential amenity". Design criterion A) xv) in Policy DM29 states that "the potential impact ... on neighbouring amenity" should be addressed in accordance with Policy DM32, criterion A) of which seeks to "ensure that daylight/sunlight, outlook and privacy is maintained" for neighbours in their homes and gardens.
7. The only window in the first-floor rear extension does not afford a view of either of the houses, Nos 96 and 100, or a significant view of their outdoor space. The standard of privacy has in fact been improved at both these properties when compared to the outlook that would have existed from the unextended bedroom.
8. No 96 is the adjoining terrace house. It has a substantial rear extension with a similar depth to No 98's. The two extensions are separated by the yards between the properties. The first-floor rear extension does not affect the amount of daylight enjoyed by No 96. It may have a slight effect on the amount of sunlight reaching parts of that property at certain times of day and year and it has some impact on the outlook from that property. However, in my view it has not resulted in No 96 incurring an "excessive loss of residential amenity", so as to bring the first-floor rear extension into conflict with Policy DM4; nor has it resulted in a failure to maintain No 96's amenities in accordance with Policies DM29 and DM32.
9. The relationship between Nos 98 and 100 is unusual and the sequence of events relating to it is significant.
10. No 98 is an end-terrace house, probably dating from the 19th century. Its main part has a V-shaped roof. As a result, the main part has a high side wall on the boundary with No 100. This wall has been added to by a two-storey rear extension, which has a mono-pitched roof and a lower side wall on the boundary. The first-floor rear extension is part of this extension.
11. Planning permission was granted in 1999 for a part single-storey/part two-storey rear extension to No 98, but this did not include the first-floor rear extension. This was built over the single-storey element of the approved extension and, as indicated above, it has been in existence since 2012. No 100

is a new house, which was built following the grant of planning permission in 2014 for the demolition of the detached house that used to exist on this side of No 98 and its replacement by two houses. The planning application for the retention of the first-floor rear extension was submitted in October 2015 and was refused in January 2016. The enforcement notice was issued in September 2016.

12. The appellant has explained that works which included the first-floor rear extension were inspected by a Council planning officer, Mr Jim Gordon, in August 2012 and again in September 2012. The appellant states that after Mr Gordon had consulted his manager and considered some new planning guidelines, Mr Gordon advised him that he could keep the first-floor rear extension provided the brickwork was rendered. He states that Mr Gordon and a colleague of his then visited the property in January 2013, after the render had been applied, and advised him that that the work was satisfactory and no further action would be taken. The appellant states that he heard no more until September 2015, when a planning officer who was reviewing Mr Gordon's files visited the property and advised him to submit the planning application in order to regularise the matter.
13. The Council state that they have no record on file of any agreement that the first-floor rear extension was acceptable. However, they have not produced any notes of Mr Gordon's dealings with the appellant or any information that would cast doubt on the appellant's account of what took place.
14. Full details of the appellant's dealings with Mr Gordon have been set out in his formal witness statement and I have no reason to doubt the accuracy of this statement. I have therefore concluded on the balance of probabilities that, at the time when the first-floor rear extension was built, Council officers took the view that its impact on the detached house that then existed where No 100 now stands was acceptable. I have also concluded that the Council must have taken the same view about its impact on No 100 when they granted planning permission in 2014 for the demolition of the detached house and its replacement by No 100 and its neighbour.
15. The first occupiers of No 100 bought it in 2016. During the course of this appeal, they have submitted representations in which they indicate that as new owners they do not consider it appropriate to comment on the process leading to the appeal, but that they intend to paint No 98's side wall white to increase the light to their property.
16. This long high wall on their boundary affects their amenities, since as a whole it dominates the outlook on this side of their property and blocks some sunlight. If the first-floor rear extension were removed, there would be an improvement in amenity to the extent that the overall size of the wall would be less.
17. However, after giving due consideration to the matters described in paragraphs 9 to 16 above, I have concluded that the first-floor rear extension does not result in No 100 incurring an "excessive loss of residential amenity" so as to bring it into conflict with Policy DM4; nor has there been a failure to maintain No 100's amenities in accordance with Policies DM29 and DM32.
18. I have therefore decided to allow the appeal on ground (a) and to grant planning permission for the first-floor rear extension. It has not been

suggested that any planning conditions should be imposed in this event and I do not consider that any could be justified, although I hope the appellant and the owners of No 100 can come to an arrangement for the whole of the side wall to be painted white.

D.A.Hainsworth

INSPECTOR