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## Appeal Decisions

Site visit made on 6 August 2019

**by Stephen Hawkins MA MRTPI**

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

**Decision date: 11 September 2019**

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### **Appeal A Ref: APP/Y5420/C/18/3209866**

#### **37 Richmond Road, Wood Green, London N11 2QR**

- 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 M Rubinson against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 7 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey side to rear ground floor extension.
- The requirements of the notice are: 1. Remove the single storey side to ground floor rear extension in its entirety; 2. Remove all resultant debris.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

**Summary of Decision: The appeal is dismissed and the enforcement notice upheld.**

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### **Appeal B Ref: APP/Y5420/X/19/3224449**

#### **37 Richmond Road, Wood Green, London N11 2QR**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr M Rubinson against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2018/0267, dated 20 December 2018, was refused by notice dated 14 February 2019.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is erection of 3 metre rear extensions on the two original rear walls forming an L-shape extension.

**Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.**

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### **Preliminary Matter**

1. The allegation in the enforcement notice and the notice requirements are clear and precise. There is nothing ambiguous in the wording of the allegation or the requirements. The appellant can be in no doubt that the notice is attacking the single storey rear extension to the dwelling. The notice tells the appellant fairly

what he has done wrong and what he needs to do to put it right. Therefore, the notice satisfies the relevant legal test<sup>1</sup>.

### **Application for costs**

2. An application for costs was made by Mr M Robinson against the Council of the London Borough of Haringey. This application is the subject of a separate Decision.

### **Background**

3. The appeal site contains a two storey mid-terrace dwelling built of brick, with a slate roof. The rear wall of the dwelling is stepped, with a two storey outrigger set in from the shared boundary with 39 Richmond Road (No 39). The single storey extension wraps around the side and rear of the outrigger. The extension has white plastic panel walls with clear panels on the roof. An appeal against the refusal of planning permission for the extension was dismissed on 27 July 2018<sup>2</sup>.

### **Appeal A**

#### **Ground (f) appeal**

4. The ground of appeal is that the requirements of 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.
5. At s173, the Act sets out 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 that has occurred by restoring the land to its condition before the breach took place. The second (s173(4)(b)) is to remedy any injury to amenity caused by the breach. The Council did not specify in the notice whether it was one or both of these purposes that it sought to achieve. However, the notice requires complete removal of the extension, rather than a reduction in its size or another modification. To my mind, the requirements of the notice therefore go beyond remedying an injury to amenity. It follows that the purpose of the notice must be to remedy the breach.
6. The appellant argued that modifying the extension, by removing part between the side of the outrigger and the boundary with No 39 and altering its external materials so that they matched those of the dwelling, would comply with the limitations and conditions in Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, where the GPDO limitations exemptions or provisos are exceeded the whole development is unlawful, not just that element in excess of permitted development<sup>3</sup>. GPDO rights cannot be claimed retrospectively by the later removal of one element so as to return the remaining development to the permitted tolerance. Therefore, modifying the extension would not restore the site to its condition before the breach took place.
7. Although reference was made to *Ahmed*<sup>4</sup>, in that instance there was a ground (a) appeal, so the planning merits of the development could be considered.

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<sup>1</sup> *Miller Mead v MHLG* [1963] 2 MLR 225.

<sup>2</sup> Ref: APP/Y5420/D/18/3200218.

<sup>3</sup> *Garland v MHLG* [1968] 20 P&CR 93.

<sup>4</sup> *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566.

The Courts have made it clear that where there is an appeal on ground (f) but, as in this case, no ground (a) appeal and the purpose of the notice is to remedy the breach, the power in s176 (1)(b) of the Act to vary the notice to under-enforce is limited and general planning considerations or arguments about amenity cannot be entertained<sup>5</sup>. It also follows that conformity with Development Plan policies is not relevant in this appeal.

8. The above notwithstanding, at s173(4)(a) the Act also provides for remedying a breach of planning control by making development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land. This includes a planning permission granted by the GPDO. In the absence of a ground (a) appeal, I cannot impose planning conditions requiring the submission, approval and implementation of a detailed scheme of the modifications. Consequently, whether the extension could be made to comply with the relevant limitations and conditions of the GPDO is dependent on whether the notice requirements can be varied accordingly.
9. A submitted plan showed a proposed reduction in the footprint of the extension. However, little detail of the external appearance of the modified extension walls and roof or its external materials was provided. Therefore, the amount of the extension which would require modification and its finished appearance are both unclear. Given this uncertainty, in my view it would not be possible to vary the requirements of the notice to make the extension comply with the relevant limitations and conditions of the GPDO with the degree of precision necessary. Setting out the relevant limitations and conditions of the GPDO in the notice requirements would not be precise and would fail the *Miller Mead* test.
10. I am mindful that enforcement action is meant to be remedial, not punitive. There was no evidence to suggest that following removal of the extension, the dwelling would then not benefit from permitted development rights. There would undoubtedly be less cost and disruption to the appellant if part of the extension could be retained. However, for the reasons set out above there is no mechanism available that would enable that objective to be achieved. In any event, based on the information available I am not persuaded that there is a realistic prospect of part of the extension being rebuilt later in an extension erected as permitted development. The extensions in Appeal B, which are significantly different in terms of their design, size, form, external materials and construction to the extension in this appeal, suggest otherwise.
11. For the above reasons, permitted development rights do not represent a valid fall-back position and modifying the extension is not an obvious alternative to upholding the notice as issued. Consequently, I find that remedying the breach can only be achieved by complete removal of the extension and all the resulting materials, as set out in the notice requirements. It follows that those requirements are not excessive for their purpose and the ground (f) appeal must fail.

### **Ground (g) appeal**

12. The ground of appeal is that the time for compliance is unreasonably short.

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<sup>5</sup> *Wyatt Brothers (Oxford) Ltd v SSETR* [2001] PLCR 161; *Stamatios Miaris v SSCLG and Bath and North East Somerset Council* [2016] EWCA 1564 (Admin); *Keenan v SSCLG & Woking BC* [2016] EWCA Civ 438.

13. During my site visit, I noted that the extension provided dining, bathroom and storage facilities for occupiers of the dwelling. I appreciate the inconvenience that loss of these facilities will cause. However, to my mind the extension is a comparatively small-scale adjunct, rather than being integral to the functioning of the dwelling. Therefore, removal of the extension is unlikely to have a significant effect on the occupiers' day-to-day activities. Moreover, as the works would have little physical effect on the main habitable rooms, it should be possible for the occupiers to continue to reside at the dwelling without experiencing undue disturbance whilst the extension is removed. There was no firm evidence to indicate that the appellant had to give his tenants at least two months' notice to vacate the extension or that he may have to provide them with alternative accommodation.
14. As the ground (f) appeal was unsuccessful the extension must be removed in its entirety, not altered. The appellant is likely to have to arrange for a builder to remove the extension. It is unlikely that a small builder would need more than a few weeks' notice to undertake the required works. For the most part, the extension is a lightweight structure. The removal works are modest in scale, they will not be particularly complex to carry out and they are unlikely to take more than a few weeks to complete.
15. Therefore, I am satisfied that the two month compliance period in the notice strikes the appropriate balance between giving the appellant enough time to inform his tenants, mitigate any effects on them and to arrange for and have the required works carried out, whilst remedying the planning harm caused by the extension. It follows that extending the time for compliance to four months would not be justified.
16. Therefore, the ground (g) appeal must also fail.

## **Conclusion**

17. For the reasons given above I consider that the appeal should not succeed.

## **Appeal B**

### **Main Issue**

18. At s192 (1), the Act enables an application to be made to ascertain whether any proposed use or operations would be lawful. In such cases the burden of proof is firmly on the applicant, who must describe what is proposed with sufficient clarity and precision to enable it to be exactly understood. Consequently, the main issue in this appeal is whether the appellant has shown that the proposed extensions would be permitted by the GPDO Schedule 2, Part 1, Class A.

### **Reasons**

19. Paragraph A.1 (f) of the GPDO Schedule 2 Part 1 Class A permits a single storey extension to a terraced dwelling, provided it does not extend beyond the original rear wall by more than 3 metres and does not exceed 4 metres in height, subject also to the condition in paragraph A.3 (a) that the materials used in any exterior work are of a similar appearance to those used in the construction of the exterior of the dwelling.

20. The application was accompanied by a plan showing two proposed rear extensions in a stepped arrangement. According to the plan, both extensions would project no more than 3 metres from the respective parts of the original rear wall of the dwelling. Although the Council recently assessed one of the extensions as having a depth of 3.35 metres, this is a relatively minor discrepancy and when scaled off the plan could be attributed to a distortion in printing. The extensions would be less than 4 metres in height. The plan indicates that the walls of the extensions would be finished in brick. There were no measurements or external materials specified on the plan. However, when taken together with the application description and other information supplied, it is not unreasonable to conclude that the size of the extensions would comply with paragraph A.1(f). Also, from the details provided it can be inferred that the materials would be of a similar appearance to those of the dwelling. Therefore, the appellant has shown sufficiently clearly that the extensions would not breach the size limitations in Class A, paragraph A.1(f) or the materials condition in paragraph A.3 (a). The Council did not suggest that additional Class A limitations and conditions would be breached and I have found no reason to suggest otherwise.
21. There is an existing extension at the rear of the dwelling, in the form of the unauthorised structure in Appeal A. For the reasons set out in that appeal, the structure could not be modified to become permitted development. However, the description of the proposed extensions on the application form and what was shown on the accompanying plan made no reference to retaining any part of the unauthorised structure. The plan clearly distinguishes between the original rear wall of the dwelling (solid black) and the proposed extensions (cavity walls). The plan shows entirely new extensions projecting from the original rear wall of the dwelling, not utilising parts of the unauthorised structure. Although occupying part of the same footprint, as noted previously these extensions differ significantly in design, size, form, external materials and construction to the unauthorised structure. Furthermore, in practice it is likely that the unauthorised structure would have to be removed before construction of the extensions could commence. Consequently, none of the above factors support the Council's contention that the extensions would utilise part of the unauthorised structure.
22. As there is no evidence that the extensions would incorporate part of the unauthorised structure, they would not offend s191(2) (b) of the Act. Further, as Appeal A was outstanding on the date of the LDC application, the notice could not have then been in force in any event. Also, the extensions would not breach Article 3 (5)(a) of the GPDO. Moreover, as an LDC under s192 is not the equivalent in law of a planning permission, it would not be authority for undertaking unauthorised development.
23. Accordingly, I find that as a matter of fact and degree and on the balance of probability, the appellant has shown with sufficient clarity and precision that at the date of the application, the extensions would be permitted by the GPDO Schedule 2, Part 1, Class A.

## Conclusion

24. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development was not

well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195 (2) of the Act.

**Formal Decisions**

- 25. Appeal A is dismissed and the enforcement notice is upheld.
- 26. Appeal B is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

*Stephen Hawkins*

INSPECTOR



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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 20 December 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed extensions are permitted by Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

*Stephen Hawkins*

Inspector

Date: 11 September 2019

Reference: APP/Y5420/X/19/3224449

### **First Schedule**

Erection of 3 metre rear extensions on the two original rear walls forming an L-shape extension, as shown on the unreferenced and undated plan entitled "Proposed Development at 37 Richmond Road, London N11 2QR" prepared by MSC Planning Ltd.

### **Second Schedule**

Land at 37 Richmond Road, Wood Green, London N11 2QR.

## NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: 11 September 2019

by **Stephen Hawkins MA MRTPI**

**Land at:**

**Reference: APP/Y5420/X/19/3224449**

**Scale: Not to scale**

