
Appeal Decisions

Site visit made on 3 September 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 25 September 2019

Appeal A Ref : APP/L5240/C/18/3203671

Appeal B Ref : APP/L5240/C/18/3203672

81 Norbury Hill, London, SW16 3RU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Salim Badar and Appeal B by Mrs Nazia Badar against an enforcement notice issued by the Council of the London Borough of Croydon.
- The notice was issued on 2 May 2018.
- The breach of planning control as alleged in the notice is without planning permission the erection of a first floor rear extension and dormer extension in rear roof slope.
- The requirements of the notice are 1) remove the first floor rear extension and dormer extension in rear roof slope bordered in red on the diagram attached to the notice and edited photograph marked A attached to the notice, 2) reinstate the rear elevation and roof of the dwelling to how it existed prior to the breach of planning control taking place or 3) complete the development as identified on the approved plans and documents which form part of planning application no. 17/02997/HSE, 4) remove all resultant debris from the premises as a result of compliance with requirements 1 & 2 & 3 as identified above.
- The period for compliance with the requirements is six months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended

Summary of Decisions: the appeals are dismissed and the enforcement notice is upheld

Appeals A and B

Preliminary Matters

1. The Appellants claim under ground (e) that the notice has not been properly served as it does not contain the name of the nominated officer. This is not pertinent to a ground (e) appeal but is relevant to the validity of the notice and whether the notice was issued without proper authority. I shall therefore address this as a preliminary matter.
2. The notice has a signature but does not state the name of the nominated officer. But the Appellants do not identify any express requirement in legislation or Regulations for the name of the nominated officer to be expressly stated in an enforcement notice and I am not aware of any such requirement.

3. There is in this case no misunderstanding between the parties as to the identity of the author of the signature on the notice and no argument before me that the officer did not have the authority to issue the notice. I therefore conclude that the absence of the name of the nominated officer does not make the notice a nullity or affect its validity.

Ground (e) appeals

4. This ground of appeal is that copies of the notice were not served as required by section 172 of the 1990 Act, as amended. The Appellants say that the way the personal service was conducted undermined privacy and they criticise the posting of the notice to the lamppost opposite the appeal site.
5. Section 329 of the 1990 Act provides for the mechanics of service of notices. It permits personal service and there is nothing before me that suggests that in this case there has been any improper personal service. It also provides for service by affixing a notice conspicuously to some object on the land and that is what appears to have happened in this case. I therefore on the evidence before me conclude that copies of the notice have been served as required by section 172 of the Act.
6. In any event section 176(5) of the Act enables me to disregard incorrect service where there is no substantial prejudice. Even if I am wrong and there has been incorrect service I find this to be the case here. The Appellants have exercised their right of appeal and submitted written representations and I have no evidence of substantial prejudice.
7. For the reasons given the appeals on ground (e) do not succeed.

Ground (c) appeals

8. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development includes the carrying out of building, engineering, mining or other operations in, on, over or under land. Certain development has the benefit of planning permission by virtue of permitted development rights granted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO). The Appellants argue that the matters alleged in the notice fall within Class A and B of Schedule 2 Part 1 of the GPDO and benefit from permitted development rights.
9. Class B grants permitted development rights to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof subject to certain conditions and limitations. Class B.2 (a) provides that development permitted by Class B is subject to the condition that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
10. The development the subject of this appeal is constructed of unpainted wood in contrast to the main dwelling. It therefore does not satisfy condition B.2 (a).
11. To benefit from permitted development a proposal must meet all of the limitations and conditions under the Class relevant to the proposal. Failure to satisfy any one condition is sufficient to mean that permitted development

- cannot be relied upon. Having concluded that Class B.2 (a) is not met it is therefore not necessary for me to consider Class B.2 (aa) or B.2 (bb).
12. The Appellants argue that the development benefits from Class A permitted development rights. These apply to the enlargement, improvement or other alteration of a dwellinghouse subject to certain specified conditions and limitations.
 13. But the fact that the materials used in exterior work are not of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse also means that the Class A.3 (a) condition is not met.
 14. For the reasons given above, I conclude that the development does not benefit from permitted development rights by virtue of Class A or Class B.
 15. The Appellants also argue that planning permission has been granted for the first floor extension by virtue of application 17/02997/HSE. But the permission does not reflect the development carried out.
 16. For the above reasons the ground (c) appeals do not succeed.

Appeal A

Ground (a) appeal and deemed application

Main Issue

17. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the host dwelling and surrounding area.
18. The development plan (including the London Plan and the Croydon Local Plan) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development respects its setting. Policy DM10 of the Local Plan provides that proposals should be high quality and should respect the development pattern, layout and siting; scale, height, massing and density; and the appearance, existing materials and built and natural features of the surrounding area. I have also taken into account as a material consideration the Residential Extensions and Alterations Supplementary Planning Document No. 2 (the SPD).
19. The appeal site comprises a large detached house in a mainly residential area. The development the subject of this appeal comprises the erection of a first floor rear extension and dormer extension in the rear roof slope.
20. I agree with the previous Inspector on appeal that the scale and bulk of the combined first floor projection/rear dormer causes harm to the character and appearance of the area. The works are prominent and appear as a two storey box- like addition dominating the host building. It is out of keeping and not subservient to the main dwelling. The large dormer does not integrate well with the mainly hipped roofs which are characteristic of the surrounding area. Whilst I recognise that the SPD encourages good quality contemporary design in this case the development does not respect the height and proportions of surrounding buildings and the local character of the surrounding area.
21. I have taken into account that the energy rating of the dwelling, the garden areas and the benefits to the Appellant in improving the original dwelling but

the environmental and social benefits do not outweigh the identified harm to the character and appearance of the area.

22. I have considered the other sites drawn to my attention by the Appellant. I do not know the particular circumstances of these sites and have determined this case on its own merits. In any event any harm caused by other development in the area does not justify the harm identified in respect of this case. Development similar to that carried out on the appeal site is not characteristic of the area. I note the absence of objection from current neighbours but this is not conclusive as to the absence of harm.
23. I conclude that the development causes undue harm to the character and appearance of the host dwelling and surrounding area contrary to relevant policies in the development plan (including policy DM10 of the Local Plan) and the Framework.
24. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. I do not consider painting the development would adequately mitigate the harm by reason of the scale and bulk of the development. I do not consider that conditions would overcome the identified harm.
25. For the reasons given above I conclude that the ground (a) appeal should not succeed and planning permission should not be granted on the deemed application.

Appeals A and B

Ground (f) appeal

26. This ground of appeal is that the steps required by the notice are excessive. There are two purposes which an enforcement notice can seek to achieve – to remedy the breach of planning control or to remedy the injury to amenity caused by the breach.
27. In this case the notice provides for alternative steps. It therefore covers both purposes.
28. The Appellants argue that a green wall on the main façade of the dormer and first floor extension and a green roof on the flat roof of the ground floor extension would comprise lesser steps by reducing concerns about the design, encouraging bio-diversity and helping rainfall drainage. But there are no plans or detailed proposals before me. I am not persuaded on the evidence before me that these steps would overcome the identified harm by virtue of the scale, bulk and dominance of the development.
29. For the reasons given above, the ground (f) appeals do not succeed.

Formal Decisions

Appeal A

30. 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.

Appeal B

31. The appeal is dismissed and the enforcement notice is upheld.

S. Prail

Inspector