



Appeal Decisions

Site visit made on 24 September 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 28 October 2019

Appeal A: APP/G5180/C/18/3216957

Appeal B: APP/G5180/C/18/3216958

48 Wickham Road, Beckenham BR3 6LT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr John Evans against an enforcement notice issued by the Council of the London Borough of Bromley. Appeal B is made by Mrs Samantha Evans.
- The enforcement notice was issued on 30 October 2018.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a two storey side extension on the northern elevation of the dwelling which does not accord with the scheme approved, ref 15/01053/FULL6 in that:
 - a) an additional entrance has been inserted in the rear elevation of the extension;
 - b) an additional internal staircase has been constructed between the ground and first floor of the extension; and
 - c) rooflights have been inserted in rear roof slope of the extension.
- The requirements of the notice are:
 - a) demolish the unauthorised two storey side extension described in paragraph 3;
 - b) restore the dwelling to its previous condition prior to the unauthorised works;
 - c) remove from the land any resulting debris.
- The period for compliance with the requirements is 3 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act as amended. Appeal B is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, Appeal B 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: Appeal A is allowed and the enforcement notice is quashed. Planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs has been made by Mr and Mrs Evans against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

The Notice

2. The enforcement notice alleges that an additional entrance has been inserted in the rear elevation of the extension. The Council accepts that this entrance was shown on the plans approved under planning permission reference 15/01053/FULL6. Consequently, this aspect of the scheme should not have been specified in the allegation. As the main parties have provided comments on this matter, I am satisfied that I can correct the notice without prejudice to delete this part of the allegation.

The appeal on ground (c)

3. In order to succeed on ground (c), the appellants must show on the balance of probability that the matters alleged in the notice do not constitute a breach of planning control. In this type of appeal, the onus of proof is firmly upon the appellant.
4. Planning permission has been granted for a two-storey side extension and roof alterations to the front¹ (the 2015 permission). The appellants claim that the development was commenced but, prior to completion, their family circumstances changed which required alterations to the scheme.
5. The differences between the approved plan and the development include alterations to the fenestration and internal changes, which would enable the extension to function as a separate dwellinghouse although the appellants state that is not their intention. An application for a two-storey side extension, roof alterations to front and elevational alterations (part retrospective) was subsequently refused² (the 2017 application).
6. The appellants argue that the extension, as built at the date of the notice, was a two-storey side extension as set out in the description of development in the 2015 permission. It is contended it is lawful as there is no planning condition requiring the development to be built in accordance with the approved plans.
7. When interpreting planning permissions, the principle is that a planning permission should stand by itself, and the meaning be clear from within the four corners of the document. However, in this case, the application was for full planning permission which must be read with the approved plans³. The appellants accept that the development is not in accordance with those plans, hence, there is a breach of planning control.
8. Nonetheless, the appellants argue that the only way to impose a limitation or restriction on a planning permission is by imposing a condition; case law is cited⁴. In *I'm Your Man Ltd* a planning application for the permanent use of buildings was made after a 1995 grant of planning permission for a similar use for 'a temporary period of seven years'. No condition was imposed on the 1995 planning permission requiring cessation of the use after that time. It was held that, in the absence of a condition, the 1995 planning permission was not restricted to a temporary use. *R (oao) Altunkaynak* endorsed that principle. I have considered these judgements but the principles at issue differed significantly from the matters before me, which concerns a development not built in accordance with the approved plans as opposed to use restrictions.
9. I am also referred to *Lambeth LBC*⁵ in which the Council attempted to restrict a planning permission through the description of development as opposed to imposing a condition. In this case, the Council is not seeking to restrict the permission but to ensure the development is constructed as approved. Again, the circumstances are different.

¹ Ref 15/01053/FULL6 dated 19 June 2015.

² Ref 17/05737/FULL6 dated 27 February 2018.

³ In *Barnett v SSGLG & East Hants DC* [2008] EWHC 1601 (Admin), [2009] EWCA Civ 476 it was held that a full planning permission must be read with regard to the approved plans.

⁴ *I'm Your Man Ltd v SSE & North Somerset DC* [1999] 4 PLR 107 and *R (oao) Altunkaynak v Northamptonshire Magistrates Court & Kettering Borough Council* [2012] EWHC 174 (Admin).

⁵ *Lambeth LBC v SSCLG SSCLG & Others* [2018] EWCA Civ 844.

10. The appellants make a second argument that the works only affect the interior of the building, therefore, they are not development within the meaning of section 55(2) of the 1990 Act as amended. This does not, however, mean there has not been a breach of planning control. If the extension had been built as approved, and then altered later, it could be argued that the subsequent alterations did not require permission. As explained above, the extension has not been constructed in accordance with the planning permission. I consider that this argument is better considered as fallback position under the ground (a) appeal.
11. The appellants' final point about the alleged additional entrance door has been dealt with by a correction to the notice as set out above.
12. To conclude on this matter, the appellants have not shown on the balance of probability that the matters alleged in the corrected notice do not constitute a breach of planning control. Therefore, the appeals on ground (c) must fail.

Appeal A on ground (a) and the deemed planning application

Preliminary Matter

13. Since issuing the notice the Council has adopted the Bromley Local Plan (January 2019). I am directed to Policies 6, 7 and 37 which the Council says are most relevant and consistent with Policies BE1 and H8 of the now superseded Unitary Development Plan. I have considered the appeal against the 2019 policies.

Reasons

14. The appeal on ground (a) is that planning permission should be granted for the matters alleged in the notice. The terms of the deemed planning application are derived from the allegation. As such, planning permission is sought for a two-storey side extension with rooflights and an internal staircase. For the avoidance of doubt, I have considered the scheme in the first instance on the plans submitted with application reference 17/05737/FULL6, for which permission has been sought previously. The development was not complete at the date of my visit and it is important to be clear on this matter.
15. The appeal property is a two-storey detached house located on a corner plot. A two-storey side extension has been erected on the north elevation projecting towards Brograve Gardens. The Council is concerned that the departures from the approved scheme have created the potential for the two-storey side extension to be used as a separate dwellinghouse. This would be considered unacceptable as it would adversely affect the character and appearance of the area.
16. The Council is not alleging that a material change of use to two separate dwellinghouses has occurred. The concern is focussed on what may happen in the future. This is problematic because, at present, the dwelling remains as a single unit of accommodation. The appellant insists it will stay as such. While two separate dwellings on the site may be unacceptable and contrary to development plan policy, the development before me is an extension. Any subsequent unauthorised change of use would be a matter for enforcement. For this appeal, I must consider the planning issues associated with an extension, the main issue being its effect on the character and appearance of the area.

17. Crucially, the Council accepts there is a valid fallback position in that the 2015 permission is for a very similar extension. The external differences between the schemes are minor and are limited to the fenestration. The Council has not raised any concerns about the rooflights or other differences in the external appearance aside from the rear door, which I have removed from the allegation for the reasons set out above.
18. The Council indicates that a grant of permission for the 2017 scheme would be creating future problems and I am asked to consider amending the notice to ensure the development accords with the 2015 scheme. However, this would serve no useful purpose. If the development were built as per the 2015 scheme, internal alterations could be carried out at some point in the future. Ensuring adherence to the approved plans will not prevent an unauthorised change of use, which the Council would have powers to deal with in any event.
19. Overall, I am unable to find that the extension for which permission is sought has an adverse impact on the character and appearance of the area due to its similarities to the approved scheme. Whether or not the extension may be subject to a change of use in the future is not a relevant to this assessment.

Other Matters

20. I have had regard to the concerns of local residents, the majority of which concern the potential for two separate dwellings and the potentially adverse effects of that form of development. I am aware that there was a letterbox in the door, a separate rear access and dividing boundary treatment, all of which suggested a change of use was intended. However, this had not occurred at the date of the notice. As set out above, I must consider the development before me, which is an extension of a very similar form to that already approved.

Conclusion

21. I find that the development does not have an adverse effect on the character and appearance of the area. It accords with Policies 6 and 37 of the Local Plan which seek to promote high quality design and ensure development complements the host building and is compatible with the surrounding area.
22. Policy 7 states that the extension cannot be severed from the main house. I accept that the extension could potentially be severed but, as explained above, this severance has not occurred. The Council intends the policy to relate to future situations as set in the supporting text. However, the wording of the policy itself is clear "the extension cannot be severed". At present, the extension before me has not been severed and hence the development accords with Policy 7.
23. I have not considered the alternative scheme offered by the appellant as part of this appeal, as I have found the development to be acceptable when considered against the plans submitted with 2017 application. For the avoidance of doubt, I have imposed a plans condition.
24. The Council's suggested condition to limit the occupancy of the extension is not necessary. If the extension is severed to form a separate dwelling such that a material change of use occurs, planning permission would be required.

Conclusion

25. For the reasons given above I conclude that the Appeal A should succeed on ground (a) and planning permission will be granted. Appeal A on grounds (f) and (g) does not therefore need to be considered.

Formal Decision

26. It is directed that the enforcement notice is corrected to delete the following statement from paragraph 3 "*a) an additional entrance has been inserted in the rear elevation of the extension*".
27. Subject to this correction, the Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a two storey side extension on land at 48 Wickham Road, Beckenham BR3 6LT referred to in the notice, subject to the following condition:
- 1) The development hereby permitted shall be carried out in accordance with the plans dated December 2017, as submitted with application reference 17/05737/FULL6 as follows:
 - `proposed front elevation' Ref L(-4) 301.3;
 - `proposed rear elevation' Ref L(-4) 304.3;
 - `proposed right side elevation' Ref L(-4)302.3;
 - `proposed left side elevation' Ref L(-4)303.3;
 - `proposed ground floor plan' Ref L(-2) 301.3;
 - `proposed first floor plan' Ref L(-2) 302.3.
28. Appeal B on grounds (f) and (g) does not fall to be considered.

Debbie Moore

Inspector