
Appeal Decisions

Site visit made on 10 December 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal A Ref: APP/G5750/C/19/3224171

Land at 92 Chobham Road, Stratford, London E15 1LZ

- 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 John James Grogan against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, numbered 18/00523/ENFC, was issued on 1 February 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a roof extension, facilitating the provision of a balcony.
 - The requirements of the notice are:
 1. Demolish the roof extension (as shown edged in yellow on the photograph attached at Appendix 1) and return that area of the property to its form prior to the unauthorised works being undertaken.
 2. On completion of step 1 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground set out in section 174(2) (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 have lapsed.
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Appeal B Ref: APP/G5750/C/19/3225644

Land at 92 Chobham Road, Stratford, London E15 1LZ

- 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 John Grogan against an enforcement notice issued by the Council of the London Borough of Newham.
 - The enforcement notice, numbered 18/00523/ENFC, was issued on 25 February 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a rear extension.
 - The requirements of the notice are:
 1. Demolish the rear extension (as shown in the approximate location edged in blue on the attached plan, and a [sic] shown edged in yellow on the photograph attached at Appendix 1).
 2. On completion of step 1 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is three 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.
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Appeal C Ref: APP/G5750/D/19/3231923

92 Chobham Road, Stratford, London E15 1LZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.

- The appeal is made by Mr John Grogan against the decision of the Council of the London Borough of Newham.
 - The application Ref 19/00350/HH, dated 4 February 2019, was refused by notice dated 29 April 2019.
 - The development proposed is mono pitch to side infill element of extension.
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Summary of Decisions

Appeal A - APP/G5750/C/19/3224171

1. The enforcement notice is varied, the appeal is dismissed and the enforcement notice is upheld.

Appeal B - APP/G5750/C/19/3225644

2. The enforcement notice is corrected and varied, the appeal is dismissed and the enforcement notice is upheld.

Appeal C - APP/G5750/D/19/3231923

3. The appeal is dismissed.

Preliminary Matters and Background

4. The appeal site is a mid-terrace dwelling. A certificate of lawfulness has been granted for a loft conversion with a rear and side dormer extension including two velux windows to the front elevation. However, an extension has been added to the roof to create a balcony area with a parapet roof, and this is the breach alleged in the enforcement notice which is the subject of Appeal A.
5. Prior approvals have been granted¹ for single storey rear extensions under Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). However, a rear extension has been built that is larger and therefore is not permitted development under the GPDO. Permission has been refused for the extension in its built form and a subsequent appeal has been dismissed². An application for a certificate of lawfulness for a ground floor rear and part side infill extension has recently been submitted to the Council but has not been determined³. An enforcement notice requiring the removal of the rear extension is the subject of Appeal B. Appeal C relates to the refusal of planning permission for the extension in an amended form, with an alteration to the roof to introduce a mono pitch section to one side.
6. There is a typographical error in the requirements of the notice under Appeal B, which I can correct without causing injustice to either party as the meaning is sufficiently clear.
7. The Council has referred to policies in the Draft London Plan in the Enforcement Notices and its reason for refusal. Having regard to the advice in paragraph 48 of the National Planning Policy Framework, I am not aware of the extent of unresolved objections to the relevant policies and therefore I give them limited weight. Moreover, the policies are not determinative in these appeals.

¹ Ref 17/01710/PREHH and 19/00352/PREHH

² Ref APP/G5750/D/18/3219608

³ 20/00103/HH

8. Despite the variation in the site address, the appeals all relate to the same property and therefore I have dealt with them in a single decision letter.

Appeal C

Main Issues

9. The main issues are:

- The effect of the proposal on the living conditions of the occupiers of 90 Chobham Road with regard to light and outlook; and
- The effect of the proposal on the character and appearance of the site and surrounding area.

Reasons

Living conditions

10. Both the appeal site and the adjacent property at No 90 are two storey terraced buildings that have two storey rear outriggers, with long and narrow rear gardens. The outriggers have a narrow gap between them, divided by the boundary between the two properties. For No 90, this gap provides a passageway giving access to its rear garden, and is already gloomy due to the surrounding built form and its orientation.
11. The built extension projects a substantial distance rearward into the garden, thereby filling in the area around the two storey outrigger at No 92. The remaining passageway to No 90 would be further enclosed by the neighbouring extension, creating a 'tunnel effect'. Although the proposal would reduce the height of the flank wall of the extension along the boundary with No 92 when compared with the existing unauthorised extension, due to its substantial rear projection and proximity to the boundary it would still result in a sense of enclosure. This would be apparent in the outlook from the ground floor windows and part glazed door that look onto the passageway, as well as from the passageway itself. As a result of its height and proximity to the boundary, it would also cause a loss of daylight to the rooms served by these windows, and to the passageway.
12. Due to its rearward projection beyond the end of the original two storey outrigger, the extension would cause a loss of afternoon sunlight to a large part of the garden to No 90. This would be partially alleviated by the proposed mono pitch roof, but due to its overall height, depth and proximity to the boundary, it would still cause a noticeable loss of sunlight.
13. For these reasons, the proposal would be harmful to the living conditions of the occupiers of 90 Chobham Road, with regard to light and outlook. It would thus be in conflict with policies SP1, SP2, SP3 and SP8 of the Newham Local Plan 2018 (LP) and policies 7.1, 7.4 and 7.6 of the London Plan 2016 (London Plan), insofar as they seek to provide high quality development, better urban design, that ensures adequate access to daylight and sunlight, while minimising overshadowing and overbearing impacts. It would also be in conflict with the guidance in the Altering and Extending Your Home Supplementary Planning Guidance 2018 (SPD).

14. I do not however see any conflict with LP policy S6 which sets out the strategic criteria and spatial strategy for the borough, or LP policy H1 which relates to new housing developments.

Character and appearance

15. The site is in a predominantly residential area of generally traditional dwellings, with some modern infill development which reflects the proportions of the older buildings. While there have been alterations to the rear elevations of some of the buildings in the vicinity of the site, I saw none which are of a comparable scale to this proposal. Due to its scale, which would fill the width of the garden, and its substantial rearward projection, it would dominate the rear elevation of the building. It would not respect the scale and character of the original building and the wider terrace. The mono pitch section of roof minimises the bulk, but does not reduce its overall width or depth.
16. The Council's SPD contains an image of a similar form of extension, but that does not indicate that it would be acceptable in every situation, nor that its scale is comparable with this proposal.
17. I therefore conclude that the proposal would be harmful to the character and appearance of the site and surrounding area. It would thus be in conflict with LP policies SP1, SP2 and SP3, and London Plan policies 7.1, 7.4 and 7.6, which seek, amongst other things, to ensure that development is of a high quality that respects the positive elements and distinctive features of the borough. It would not be in conflict with the guidance in the SPD. I do not however find a conflict with LP policies S6 and H1, for the same reasons as I have given previously.

Other Matters

18. The appellant argues that there is a 'fallback' position in that prior approval has been granted for two schemes for a smaller extension. However, these schemes have not been implemented, and seeking to adapt the extensions to reflect these schemes would not make the development lawful. Moreover, both of the prior approval schemes were subject to a condition that the extensions be completed on or before 30 May 2019. As the extension has not been completed in accordance with the prior approval schemes, these permissions are no longer capable of being implemented.
19. Nonetheless, if the extension were to be removed in accordance with the requirements of the enforcement notice, a further application could be submitted for a smaller extension that meets the limitations of the GPDO, and this is a theoretical fallback position. While there is a possibility that the appellant would seek to do this if this appeal is not successful, the extension as built is wider and extends further along the boundary with No. 90 than a permitted development scheme, and therefore the fallback position is less harmful and does not indicate that this appeal should be allowed.

Conclusion in relation to Appeal C

20. For the reasons set out above, and taking into account all matters raised, I conclude that the appeal should be dismissed.

Appeal B – ground (f)

21. This ground is that the steps required by the notice exceed what is necessary to remedy the breach or injury to amenity. The appellant argues that the requirements should be amended to exclude the part of the extension that was the subject of the prior approval and to require compliance with the 2017 prior approval scheme.
22. Since the notice requires the extension to be removed in its entirety, the purpose of the notice is clearly to remedy the breach. No lesser steps than complete removal would achieve that purpose, and the requirements of the notice cannot, therefore, be said to be excessive. Such a requirement does not preclude the appellant from carrying out any works that he may lawfully be entitled to do once the notice has been complied with. There is no extant permission for an alternative scheme and there is no obvious alternative to total removal of the extension. As a result, the appeal fails on ground (f)

Appeals A and B – ground (g)

23. This ground of appeal is that the period for compliance with the notices is unreasonably short. Both notices provide for a three month compliance period.
24. The appellant argues that 9 months would be reasonable, in order to allow time to raise finance, identify a contractor and physically carry out the works. I recognise that there is a balance between bringing the identified harm to an end without unnecessary delay, and the interests of the appellant. I consider that three months is too short, bearing in mind the extent of the works, and that six months would be an appropriate balance.
25. To this limited extent the appeals on ground (g) succeed and I will vary the notices accordingly.

N Thomas INSPECTOR

Formal Decisions

Appeal A - APP/G5750/C/19/3224171

I direct that the enforcement notice be varied by substituting 6 months as the period for compliance. Subject to this variation I dismiss the appeal and uphold the enforcement notice.

Appeal B - APP/G5750/C/19/3225644

I direct that the enforcement notice be corrected by substituting 'as' for 'a' in Step 1 of the requirements, and varied by substituting 6 months as the period for compliance. Subject to this correction and variation, I dismiss the appeal and uphold the enforcement notice.

Appeal C - APP/G5750/D/19/3231923

The appeal is dismissed.