



Appeal Decisions

Site visit made on 8 January 2020

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

an Inspector appointed by the Secretary of State

Decision date: 28th January 2020

Appeal A Ref : APP/G5180/C/19/3226242

Appeal B Ref : APP/G5180/C/19/3226243

Land at 106 Birch Tree Avenue, West Wickham, BR4 9EL

- 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 HJB Eaglesfield and Appeal B is made by Miss MJ Stringer against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 8 March 2019.
- The breach of planning control as alleged in the notice is without planning permission the construction of an unauthorised side and rear dormer extension.
- The requirements of the notice are i. remove the side and rear dormer extension, ii. re-instate the roof to its original form, iii. remove all materials associated with i. and ii. above, iv. leave the land in a tidy condition.
- The period for compliance with the requirements is five months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal A and Appeal B

Ground (a) appeals and deemed application

Main Issue

1. The main issue in the determination of these appeals is the effect of the development on the character and appearance of the host dwelling and the surrounding area.

Character and appearance

2. The appeal site comprises a two storey semi-detached house in a residential area. Birch Tree Avenue is characterised by semi-detached houses which are generally of a uniform and symmetrical design. The notice concerns a side and rear dormer extension.
3. The development plan (including the London Plan and the Bromley Local Plan) reflects the National Planning Policy Framework (the Framework) in seeking to ensure that development respects its setting. Policy 37 of the Local Plan provides that all development proposals, including extensions to existing buildings, will be expected to be of a high standard of design and

layout. It sets out a list of criteria to be met including that development should positively contribute to the streetscene

4. The deemed application before me is for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, namely 'the construction of an unauthorised side and rear dormer extension'.
5. I agree with the conclusions of a previous Inspector who dismissed an appeal following the refusal of planning permission for the development carried out. The development the subject of the notice is bulky and oversized creating a dominant appearance that is not subservient to the host dwelling. It creates a top heavy and incongruous addition to the site unsympathetic to the main dwelling, the pair of semi detached dwellings of which the site is part and the surrounding area. It creates a visual imbalance in the symmetry of the appeal site. It detracts from the pattern of roof development in the locality and creates a dominant impression out of keeping with the streetscene. It does not complement the scale of adjacent buildings nor does it make a positive contribution to the streetscene contrary to the criteria set out in policy 37 of the Local Plan.
6. The side and rear dormer extension causes undue harm to the character and appearance of the host dwelling and surrounding area and does not accord with relevant policies in the development plan (including policy 37 of the Local Plan) and the Framework.
7. I have considered whether conditions could overcome the identified harm and have taken into account the Planning Practice Guidance. I conclude that conditions could not overcome the identified harm and planning permission should not be granted for the development carried out.
8. The Appellants do not argue that the development as built should be retained but seek consent to a set of revised plans for a modified dormer. I recognise that enforcement action should not be punitive and that, where appropriate, obvious alternatives should be considered. I have the power in these appeals to grant planning permission for the whole or part of the subject matter of the notice. I have therefore considered whether the revised plans comprise a solution short of complete remedy which is acceptable in planning terms.
9. Whilst I recognise that the revised scheme differs from the development carried out including being of a reduced width its scale remains significant and it would continue to dominate the roof and be out of keeping in its context. I do not consider that the revised plans remedy the identified harm to the character and appearance of the main dwelling and the surrounding area. It would not make a positive contribution to the streetscene and does not accord with relevant policies in the development plan including policy 37 of the Local Plan.
10. My attention is drawn to other development nearby and appeal decisions concerning sites in the locality. But I do not find development similar to the development the subject of these appeals so widespread as to be characteristic of the area. Any harm caused by other development does not justify further harm by reason of the development on the appeal site. I do not know the particular circumstances of other sites to which my attention is

drawn and I have determined these appeals on their own particular merits. I note the absence of objections from neighbours but this is not conclusive of the absence of harm.

11. For the reasons given above the development carried out and the revised plans cause undue harm to the character and appearance of the host dwelling and surrounding area contrary to the development plan and there are no material considerations before me that alter my conclusions. Planning permission should not be granted on the deemed application in whole or part.

Ground (f) appeals

12. This ground of appeal is that the steps to comply with the notice are excessive.
13. There are two purposes which an enforcement notice can seek to address. The first is to remedy the breach of planning control and the second is to remedy the injury to amenity caused by the breach. In this case the notice requires removal of the side and rear dormer extension and reinstatement of the roof to its condition before the breach took place. Its purpose is therefore to remedy the breach of planning control. No lesser steps than those set out in the notice would satisfy the purpose of returning the site to its condition before the unauthorised development took place.
14. The Appellants argue that the notice should be amended to enable the alternative scheme set out in the revised plans to be permitted as a lesser step. But the revised plans seek to remedy the injury to amenity caused by the breach and do not remedy the breach itself. The plans do not therefore satisfy the purpose of the notice. In any event I have concluded in the deemed application that the revised plans do not remedy the injury to amenity caused by the breach.
15. For the reasons given above, the ground (f) appeals do not succeed.

Ground (g) appeals

16. This ground of appeal is that the period for compliance with the notice is unreasonably short. The notice provides for a five month compliance period.
17. The Appellants argue that the period should be extended to 7-9 months in order to allow the necessary arrangements to be made for the development to be removed from the site. But the steps are not complex or specialist and there is no evidence before me as to why it is not achievable in five months.
18. I have balanced competing interests – the private interest of the Appellants in developing land and the public interest of bringing the identified harm to an end without unnecessary delay. I consider that five months strikes an appropriate balance and I shall uphold the enforcement notice accordingly.
19. For the reasons given above the ground (g) appeals do not succeed.

Formal Decisions

Appeal A and Appeal B

20. The appeals are 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.

S. Prail

Inspector