



Appeal Decision

Site visit made on 5 February 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th February 2020

Appeal Ref: APP/A5270/C/18/3217319

96 Empire Road, Perivale UB6 7EG

- 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 S Gabriel Hidalgo Tobar against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 26 October 2018.
- The breach of planning control as alleged in the notice is the erection of a secondary single storey rear extension.
- The requirements of the notice are Demolish the secondary single storey rear extension; and Remove all resultant debris.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Application for costs

1. An application for costs was made by the London Borough of Ealing against Mr S Gabriel Hidalgo Tobar. This application is the subject of a separate Decision.

The appeal on ground (c)

2. The ground of appeal is that there has not been a breach of planning control. The appellant's case in this regard is that the roof of the conservatory is glazed and that as such there is no planning permission required. However, notwithstanding the detailed design of the structure, a conservatory would be treated in the same way as any other extension to a dwelling in terms of whether it benefitted from permitted development rights.
3. Schedule 2 Part 1 Class A of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) states that the enlargement, improvement or other alteration of a dwellinghouse constitutes permitted development subject to various conditions. These conditions are set out at paragraph A.1. and include that, subject to certain further provisos, the total enlargement must not extend beyond the rear wall of the original dwellinghouse by more than 6 metres.
4. There is no dispute between the parties that the cumulative depth of extensions added to the rear of the dwelling significantly exceeds 10 metres. The extension, in this case, does not therefore qualify as permitted

development under the terms of the GPDO. The ground (c) appeal therefore fails.

The appeal on ground (d)

5. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. In order to succeed on this ground it would be necessary for the appellant to show, on the balance of probability, that the building operation was substantially completed at least 4 years before the notice was issued, that is by 26 October 2014.
6. In support of his case the appellant has provided an aerial photograph of the site. The image, which is said to be sourced from Google Earth, is claimed to be dated 2013 and to show only that the building work was started then. However, the image itself is undated and furthermore is considerably blurred, to the extent that it is not possible to clearly distinguish the edges of buildings and undeveloped areas. The image provided incorporates three annotated arrows which are intended to identify the position of the unauthorised extension. It seems to me that the shading of the area in question bears greater similarity in appearance to the open areas of land at the rear, rather than the built-on areas at the front, and at best to demonstrate that development work had no more than started at this time. The appellant states that the conservatory was completed at the beginning of 2014, but provides no further evidence to support this claim.
7. The Council has also provided a Google Earth aerial image of the site, which is dated 4 June 2015. In this image there is greater clarity in terms of the extent of built areas, with the outline of the appeal extension, appearing as only a perimeter wall, rather than as a building with a roof.
8. Drawing the above considerations together, it therefore seems to me, on the balance of probability, that the extension was not substantially completed at the time of the key material date in October 2014. I am also mindful that the appellant has not sought to challenge the veracity of the information provided by the Council.
9. For the above reasons, I give more weight to the strength of the Council's evidence in this case, such that I am not persuaded that, on the balance of probability, the extension was substantially completed at least 4 years before the notice was issued. The ground (d) appeal therefore fails.

The appeal on ground (a)

Main Issues

10. The ground (a) appeal is that planning permission ought to be granted. The main issues are the effect of the development on i) the character and appearance of the host dwelling and the surrounding area and ii) the living conditions of the neighbouring occupiers of No 94 Empire Road with particular regard to outlook and natural light.

Reasons

11. The Council has brought to my attention that a retrospective planning application for the exact same extension has already been refused planning permission, following a recent appeal¹.
12. The Inspector in that case noted that the cumulative projection of the extension appears overly deep and would be out of keeping with the scale and proportions of the host dwelling and in the main with the pattern and arrangement of surrounding dwellings. He therefore found conflict with Policies 7.4 and 7.6 of the London Plan 2016 (LP); Policies 7.4 and 7B of the adopted Ealing Development Management Development Plan Document 2013 (DPD) and guidance within the Council's Supplementary Planning Document 4 (SPD4), insofar as they seek to promote good design which responds well to its surroundings.
13. The Inspector went on to find that the construction of the extension along the side boundary with the adjoining property, No 94 Empire Road, and its excessive rearward projection, resulted in a very overbearing development that caused unacceptable harm to outlook and natural light for those residents. In so doing he found conflict with Policy 7.6 of the LP, Policy 7B of the DPD and SPD4 insofar as they seek residential amenity to be safeguarded.
14. The Inspector found that, on the basis of the information before him, the owner's personal health circumstances did not outweigh the aforementioned harm found. From the observations during my visit I have no reason to take a contrary view to the previous Inspector's findings. Whilst there is no evidence before me that neighbouring occupiers, in particular, object to the extension, I have a statutory duty to consider the impact of development, including on existing and future neighbours. This does not therefore overcome any of the above findings. Consequently the ground (a) appeal fails.

The appeal on ground (f)

15. The ground of appeal is that the steps required by the notice to be taken are excessive. The objective of the notice is to return the land to its condition before the breach of planning control took place. It follows that the purpose of the notice is to remedy the breach, as explicitly stated within the notice itself. Given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by the removal of the secondary, single storey rear extension. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail.
16. I acknowledge the appellant has suggested that lesser steps could include removal of part of the glazed roof and wall next to the neighbour's property. However I have not been provided with any details of such an alternative scheme, to enable me to consider whether such an outcome could be achieved by granting planning permission in relation to any part of the matters alleged in the notice.

¹ Appeal ref APP/A5270/D/18/3204436 (decision dated 6 August 2018)

The appeal on ground (g)

17. The appeal is that the time given to comply with the requirements is too short. The appellant has set out that a longer period (12 months) is required to raise the funds to remove the extension and to dispose of the debris.
18. However I concur with the Council that the demolition of the structure and removal of material would be a relatively straightforward operation and I have not been provided with any information to support the claim that the extended period, sought by the appellant, is required in order to raise the necessary funds.
19. Although the compliance period is given in the notice as three months, it is clear from the representations that the Council would be amenable to a four-month period. I am not persuaded that it would be necessary to allow more time than this for compliance with the requirements. The ground (g) appeal therefore succeeds only to this limited extent.

Conclusion

20. For the reasons given above I conclude that the appeal on grounds (a), (c), (d) and (f) should not succeed. I shall uphold the enforcement notice, with a variation, and refuse to grant planning permission on the deemed application.

Formal Decision

21. It is directed that the enforcement notice be varied by deleting the words "three months" in paragraph 5 and substituting the words "four months" instead.
22. Subject to this variation, 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.

Roy Merrett

INSPECTOR