



Appeal Decision

Site visit made on 15 October 2019

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 22 February 2020

Appeal Ref: APP/M5450/C/18/3219232

32 Park Drive, Rayners Lane, Harrow, HA2 7LT

- 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 Telmo Mendes against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 23 November 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of an additional single storey rear extension onto an existing side extension ("**Unauthorised Development**").
 - The requirements of the notice are:
 1. Demolish the Unauthorised Development as shown on the annexed enforcement plan marked in hatched black from the Land.
 2. Make good any damage caused to the existing building as a result of step 1. The materials used shall match those used in the existing building.
 3. Remove all materials associated with the above step 1 from the land.
 - The period for compliance with the requirements is (3) calendar months after the notice takes effect.
 - 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. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under Section 177(5) of the Act as amended, and falls to be considered.
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The Notice

1. The enforcement notice is corrected as follows:

Delete Requirement 1 and replace it with the following:

Either: Demolish the Unauthorised Development as shown on the annexed enforcement plan marked in hatched black.

Or: Carry out remedial works and complete the development in accordance with the terms and conditions of planning permission ref P/0988/19, dated 26 April 2019 insofar as it relates to the single storey side extension and barbecue structure.

Preliminary Matter

2. In April 2019, during the appeal process, planning permission (ref P/0998/19) was granted for, as described, "a single storey rear extension; erection of bbq structure (demolition of a rear extension/outbuilding) (part retrospective)". This permission remains extant and represents a material consideration in my determination of the current appeal.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

3. The deemed planning application (dpa) seeks planning permission for the retention of the outbuilding in situ. The main issue, by way of the emphasis of the Council's objections, is the development's effect on the living conditions at No 34 Park Drive.

Reasons

4. The Council, in its reasons for issuing the enforcement notice, refers to the depth and siting of the development which results in a loss of outlook to No 34 due to what it considers to be the creation of an overbearing wall like structure. Whilst I note the objections in this regard, from my site visit observations I also consider that the lengthy rearward projection involves a character and appearance issue. Accordingly, I find, in this particular instance, that there is a degree of crossover as to the development's impact.
5. Although the extension has, in part, a shallow, pitched canopy it appears that the structure's height against the common boundary with No 34 is limited to some 2.4m. A normal rear garden enclosure is 2m in height, reflected in a householder's permitted development entitlement in this regard and, whilst a 2.4m height might be moderate compared to the eaves level of a typical single storey extension, I find that the impact on the neighbouring property is compounded by the extension's excessive and uninterrupted depth.
6. From the photographs supplied the effect on No 34 is apparent and the neighbour's outlook from the first floor rear windows onto a lengthy expanse of flat roof running the boundary is unduly affected, resulting in a sense of enclosure on No 34's southern boundary. The various policies cited by the Council in the enforcement notice are primarily concerned with development exhibiting a high standard of design from which it follows that an appropriate scale, massing and height would ensure that the living conditions of neighbours would be safeguarded. In this instance I find that the development in situ does not satisfy such a requirement.
7. I therefore conclude that the development is harmful to the living conditions at No 34, conflicting with the relevant objectives of policies 7.4B and 7.6B of the London Plan, policy DM1 of the Harrow Development Management Local Plan Policies Council's and the Council's Supplementary Planning Document 'Residential Design Guide.' For the above reasons, and having had regard to all matters raised, the appeal does not succeed and planning permission is refused for the development's retention.

The Appeal on Ground (f)

8. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f) it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity. Since the notice's issue planning permission has been granted for the side extension's modification which, the Council indicates in its associated case report, due to the proposed reduction in size, altered design and limited height, would not cause harm to the appearance of the site, the character of the area, nor the amenities of the neighbours.

9. On this basis it would follow that the enforcement notice's purpose, due to its requirement for the extension's demolition in its entirety, is to remedy the breach. However, given that there is now an extant planning permission (ref P/0988/19) in place, capable of implementation, one of the elements of which involves the retention of the barbecue structure, and thereby requires only for the extension's partial demolition, I am satisfied that the notice can be corrected to allow for the potential implementation of this alternative, articulated scheme.
10. In reaching my decision I have had regard to the representations from an interested party but, as a permitted fallback permission now exists, objections must relate to the dpa for which I am refusing planning permission. Given the circumstances the appeal on ground (f) succeeds.

The Appeal on Ground (g)

11. The appeal on ground (g) is that the stated time period for compliance falls short of what is reasonable. The appellant has requested that the three months specified should be increased to four months due to personal circumstances and the need for finding alternative storage. However, given that I have corrected the enforcement notice to take account of the extant planning permission, and the appellant has indicated a willingness to implement this in the event that the appeal on ground (a) fails, I consider that the more limited scope of demolition involved can be addressed within a three month period.
12. Should the appellant, instead, choose to demolish the side extension in full then, in the event of the appellant encountering difficulties in this regard, the Council, by way of s173A(1)(b) of the 1990 Act as amended, has powers to vary the notice to extend the period for compliance as it considers fit. The appeal on ground (g) does not, therefore, succeed.

Overall Conclusion

13. Although the dpa in respect of the outbuilding's retention as it stands fails I have determined that, given there is now an obvious alternative scheme in the form of approved modifications to the building, the appeal on ground (f) should succeed. The enforcement notice is corrected, accordingly.

Formal Decision

14. The appeal on ground (a) is dismissed and the enforcement notice is upheld, but is corrected by, in point 5, deleting Requirement 1 and substituting it with the following wording:

Either: Demolish the Unauthorised Development as shown on the annexed enforcement plan marked in hatched black.

Or: Carry out remedial works and complete the development in accordance with the terms and conditions of planning permission ref. P/0988/19 dated 26 April 2019 insofar as it relates to the single storey side extension and barbecue structure.

Timothy C King
INSPECTOR