



Appeal Decision

Site visit made on 13 February 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th March 2020

Appeal Ref: APP/M5450/C/19/3234911

Land at 4 Carlton Avenue, Kenton, Harrow HA3 8AY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mrs Anita Jindal against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 9 July 2019 under ref. ENF/0326/15/P.
 - The breach of planning control as alleged in the notice is: *"Without planning permission: the material change of use of the Land from a single family dwelling house to two residential units ("**Unauthorised Use**") and construction of a single storey front extension incorporating front porch; single and two storey side to rear extension ("**Unauthorised Development**")."*
 - The requirements of the notice are set out as follows:
 - 1. Cease the Unauthorised Use
 - 2. Remove all kitchens except (1) one from the Land
 - 3. Remove all bathrooms except (1) one from the Land
 - 4. Remove all internal partitions, materials and paraphernalia that enables the Unauthorised Use from the Land
 - 5. Either, demolish the Unauthorised Development or build in accordance with planning permission (P/0784/15)
 - 6. Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the Notice."
 - The period for compliance with these requirements is 3 calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (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.
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Decision

1. The appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. An application for a partial award of costs was made by the Council of the London Borough of Harrow against Mrs Anita Jindal. This application is the subject of a separate decision.

The appeal site and matters of clarification

3. No. 4 is a semi-detached, 2-storey residential property. Apart from the hotel and associated grounds opposite the appeal site, Carlton Avenue is a residential street of predominantly semi-detached, 2-storey properties.

4. The enforcement notice acts against an alleged unauthorised operational development and an alleged unauthorised material change of use.
5. With regard to the former alleged breach of planning control, various extensions and alterations to the property were granted planning permission in April 2015 under ref. P/0784/15. However, the appellant explains that during the construction phase due to financial constraints some elements of the approved scheme were omitted including the rear dormer and the hipped roof above the 2-storey side extension. This resulted in a 2-storey, flat-roofed side to rear extension together with a single-storey front extension incorporating a porch that joins the front bay and has separate roofs with different pitches over the front extension and the porch. A retrospective planning application (ref. P/5325/18) for the development as built was refused in February 2019 and a subsequent section 78 appeal was dismissed in July 2019 under ref. APP/M5450/D/19/3227599.
6. With regard to the alleged material change of use, during a site inspection on 23 May 2019, the Council claimed to have found a separate self-contained flat on the first floor of the side extension. The ground (c) appeal relates to this alleged use only. The purpose of the appeal on ground (c) is to show that the matters stated in the notice do not constitute a breach of planning control. As the Council has correctly indicated, the evidence put forward by the appellant on this ground is more suited to ground (b) – that the breach of planning control alleged in the notice has not occurred. I shall therefore first consider this implied or hidden ground (b) appeal.

The implied appeal on ground (b)

7. In order to succeed on this ground, the onus is on the appellant to show, on the balance of probability, that the material change of use from a single-family dwelling house to 2 residential units has not occurred as a matter of fact. The relevant date for assessing whether the alleged breach of planning control set out in a notice has taken place is the date of issue of the notice.
8. The appellant explains that additional kitchen and bathroom facilities were provided in the extension to allow extended family members and friends to stay in privacy. The appellant and her family are Muslim and it is said that when guests visit it is preferable to allow males and females to have their own space to shower and change clothes without being seen by members of the opposite sex. The 2-storey side extension is stated to be still completely connected to the main house and without any separate utility connections. The appellant asserts that there is no intention to subdivide the property to create 2 separate residences.
9. Some internal changes have evidently occurred since the notice was issued. My focus must be on what the Council found before the notice was issued. At that time, there can be little doubt that a separate planning unit had been created on the first floor of the extension through various internal works. A separate entrance door off the inside of the front porch had been installed and this led to a narrow internal staircase at the top of which were and are 2 distinct rooms, one containing a fully fledged domestic kitchen alongside a bedroom area with a single bed, table, chairs and a wardrobe whilst the

other is a bathroom containing a toilet, washbasin and shower. There was no physical connection between those 2 rooms and the remainder of the living accommodation in the main house at no. 4. It was only possible to access the communal porch area at the front having progressed down the narrow staircase. To all intents and purposes, even if there are no separate utility connections, a self-contained residential unit had been made.

10. Whilst there is now only a doorway to the same narrow staircase from the internal hallway of the main house and the cooker/hob in the first floor kitchen have been removed, this was not the situation on the ground when the notice was issued. The kitchen area and the bathroom have all the characteristics of being designed for day-to-day living. They would have plainly enabled the first floor of the side extension to be used as separate self-contained living accommodation. Looked at another way, the access to and the self-contained layout of the first floor of the side extension and the facilities within it went beyond simply providing additional ancillary accommodation for extended family members and friends to stay in privacy.
11. Whether or not the first floor of the side extension was ever actually occupied as a separate flat is not entirely clear. It was, however, apt for such use. Indeed, when asking what use the first floor of the side extension has or of what use it is, I consider that any reasonable observer would probably conclude that its use is as one separate (albeit currently unoccupied) residential unit. Separate residential use could easily be activated, almost overnight, by nothing more than introducing personal belongings and reinstalling the cooker/hob and the entrance door.
12. Drawing these threads together and having regard to where the onus of proof lies, I consider on the balance of probability that the implied appeal on ground (b) should not succeed.

The appeal on ground (c)

13. Section 55(3) (a) of the 1990 Act as amended declares that the use as 2 or more separate dwelling houses of any building previously used as a single dwelling house involves a material change in the use of the building and of each part of it which is so used. That being the case, the material change of use of the premises to 2 residential units constitutes development for which express planning permission was required. There is no evidence of any such planning permission having been obtained. This constitutes a breach of planning control. The appeal on ground (c) has therefore failed.

The appeal on ground (a) and the deemed planning application

14. The question here is whether planning permission ought to be granted for what is alleged in the enforcement notice.
15. The development plan includes the London Plan (LP), Harrow's Core Strategy (CS) and Harrow's Development Management Policies (DMP). The National Planning Policy Framework (the Framework) and the Council's Supplementary Planning Document: *Residential Design Guide* (SPD) are material considerations.

16. The appellant does not seek to gain planning permission for the alleged unauthorised use (2 residential units). For the avoidance of doubt, planning permission could not have been given for that use. The studio flat created on the first floor of the side extension does not come even close to the required minimum space standard of 37 sq. m as set out in Table 3.3 in Policy 3.5 of the LP. New development is expected to reflect these minimum standards to ensure that new housing developments are of the highest quality. It is a very narrow and restricted flat, with a claustrophobic and cramped feeling. This makes for poor living conditions for any occupiers.
17. With regard to the alleged unauthorised operational development, as in the previous appeal, the main issue for consideration is the effect of the single-storey front extension incorporating front porch and single and 2-storey side to rear extension upon the character and appearance of the host property and the street scene.
18. I have fully considered the previous Inspector's very recent appeal decision. It contains a comprehensive set of findings that cover the planning merits of the unauthorised operational development. I have also had regard to the appellant's submissions concerning the previous appeal. I can find nothing of substance from the evidence before me to indicate that the case has materially changed since that appeal. Consequently, I must give the previous Inspector's findings considerable weight.
19. In particular, I see no reason to disagree with the previous Inspector's view that: *"... the flat roof with eaves above the height of the existing eaves is at odds with the hipped roof form of the host dwelling, resulting in an awkward, disjointed relationship between the two."* There has been a failure to follow the advice in the SPD. This says that it is generally desirable for a first floor or 2-storey extension to be roofed to reflect both the material and design of the existing roof, including normal eaves detail and that a pitched roof will normally be required on 2-storey extensions. The inclusion of a painted finish at first floor level to the front and rear walls of the side to rear extension is noted but this does not overcome the discordant design and shape of the roof form itself.
20. The single-storey front additions incorporate a front porch, display 2 different roof pitches and link into and go partly over the original advanced feature bay window. There has therefore been an unsympathetic and incoherent change to the front of the host building.
21. The previous Inspector in paragraphs 8 and 9 gave full consideration to the developments that have taken place at no. 2 and explained how the balance between the semi-detached pair (nos 2 and 4) had not been restored across the front by the subject development. I would add that this is also the outcome at the rear since the subject 2-storey side extension projects beyond the original upper rear elevation of the host dwelling, unlike the side addition at no. 2.
22. Like the previous Inspector, I also viewed the street scene close by to the north-west of the appeal property and noted some side extensions (for example at no. 8) and the enclosure of or extensions to former open porches (for example at nos 8, 12, 20 and 22). I saw no identical arrangement to

that exhibited at no. 4. Moreover, I am not aware as to whether all those examples had the benefit of planning permission, or indeed the circumstances in which they were built. They do not set a precedent for the appeal development as such.

23. I have taken into account all other matters raised and I understand that the enforcement notice will have financial consequences for the appellant. However, that is often the case when having to rectify development built without planning permission and such personal circumstances can rarely justify permanent built development which causes unacceptable harm. The extensions were found by the Council and the Planning Inspectorate to do just that well before the enforcement notice was issued.

24. The Framework declares that the creation of high quality buildings and places is fundamental to what the planning and development process should achieve. The unauthorised operational development has not led to the creation of a high quality building or place and is not sympathetic to local character. Rather, I find on the main issue that the single-storey front extension incorporating front porch and single and 2-storey side to rear extension are harmful to the character and appearance of the host property and the street scene. There is therefore a failure to respect LP Policies 7.4B and 7.6B, CS Policy CS 1B, DMP Policy DM 1, the Framework and the SPD. As the notice indicates, these policies and guidance documents contain aspirations for high quality design which has not been achieved.

25. There is conflict with the development plan. I find no material considerations of sufficient weight to justify a grant of planning permission for the alleged unauthorised operational development or the alleged unauthorised material change of use. The objections to them could not be satisfactorily overcome by the imposition of planning conditions. I conclude that the appeal on ground (a) and the deemed planning application should not succeed.

The appeal on ground (f)

26. The appellant has concerns about the notice's third requirement only. She does not dispute the need for the other 5 requirements. It is said that the request to remove all bathrooms except one is excessive and unjustified, when it was the provision of the second kitchen which resulted in the Council's conclusion that the property had an unauthorised use and where it is ordinary for family homes of this size to have 2 bathrooms, as is the case at 2 Carlton Avenue.

27. The primary purpose of this enforcement notice is to remedy the breach of planning control which has occurred (section 173(4) (a) of the 1990 Act as amended). The key consideration on ground (f) is whether the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to achieve the purpose of remedying the breach of planning control.

28. It is well established law that an enforcement notice directed at a material change of use may require the removal of works integral to and created solely for the purpose of facilitating the unauthorised use, even if such works

on their own might not constitute development. The bathroom would have plainly enabled the first floor of the side extension to be used as additional separate self-contained living accommodation. There is no clear evidence to suggest that the building work to provide the bathroom had been carried out in connection with a different and lawful use.

29. The Council refers to a further complexity. The retention of the bathroom on the first floor of the side extension would directly conflict with the requirement at step 5 of the notice, whichever of the alternatives stated within it were followed. Building in accordance with the relevant planning permission and approved plans would entail the space occupied by the bathroom being set aside for the dressing room on the rear side of the steps which were to link into the main staircase. There is no workable and agreed proposal before me showing any alternative arrangements. I cannot amend the relevant planning permission.
30. However, the enforcement notice would not actually prevent the appellant from doing whatever she is legally entitled to do once the requirements of the notice have been complied with. That might include the reinstallation of a second bathroom in place of the dressing room. With that in mind, it might serve little purpose to have the bathroom removed now, but the future layout of the building would be a matter for discussion with the local planning authority. The appellant could approach the Council to see whether the approved floor plan can be amended so as to keep the bathroom with a smaller dressing room. That would be a matter for the Council in the first instance but if the approved plans could be amended accordingly, building in accordance with the planning permission (as at step 5 in the notice) would then enable the bathroom to be retained. Upholding the enforcement notice would not prevent the appellant from having discussions with the Council.
31. As things stand, the appeal on ground (f) must fail as the requirements of the notice do not exceed what is necessary to remedy the breach of planning control that has occurred.

The appeal on ground (g)

32. This ground of appeal is that the time allowed for compliance with the notice falls short of what should reasonably be allowed. The appellant requests a period of 6 months, rather than the 3-month period given in the notice. The gist of the appeal on ground (g) is that a compliance period of 6 months would be more reasonable and proportionate as it would allow more time for funds to be raised without placing the family into financial hardship and for the required works to be completed.
33. It is desirable that the breach of planning control is remedied without unnecessary delay in order to address the harm that arises from it, as identified in the reasons for issuing the notice. In line with the advice at paragraph 58 of the Framework, effective enforcement is important to maintain public confidence in the planning system. No financial details have been supplied concerning the estimated cost to demolish the unauthorised development or to build in accordance with the relevant planning permission. I am inclined to the view that the physical works required by the notice are relatively straightforward and should not take very long to complete. The

costs of demolition or of carrying out the necessary modifications are unlikely to prevent compliance.

34. Section 173A(1)(b) of the 1990 Act as amended allows the Council to extend the period for compliance with the notice at its own discretion, should good reasons be found for doing so, which might include the need for further discussions between the parties or the need to take into account any unforeseen difficulties that might arise. Given these circumstances and on the basis of the evidence before me, I consider that the compliance period of 3 months is a reasonable and proportionate response to the breach of planning control that has occurred. The appeal on ground (g) therefore fails.

Andrew Dale

INSPECTOR