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## Appeal Decision

Site visit made on 3 August 2020

**by R Satheesan BSc PGCert MSc MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 August 2020**

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**Appeal Ref: APP/A5270/C/19/3244017**

**395 Whitton Avenue East, Greenford, Middlesex UB6 0JU**

- 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 Iqbal Hamid Choudhury against an enforcement notice issued by the Council of the London Borough of Ealing.
  - The enforcement notice was issued on 27 November 2019.
  - The breach of planning control as alleged in the notice is without planning permission: The erection of a single storey rear canopy extension.
  - The requirements of the notice are:
    - A. Remove the canopy extension in full; and
    - B. Remove all resultant debris.
  - The period for compliance with the requirements is 3 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. 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. It is directed that the enforcement notice be:
  - varied by deleting the words "three months" within section 5 (What you are required to do) and its replacement with "four months".
2. Subject to this variation, the appeal is dismissed, and 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.

### Appeal on ground (a), the deemed planning application

#### Main Issues

3. The main issues are the effect of the development upon:
  - the character and appearance of the host building and the area;
  - the living conditions for the occupiers of 393 and 397 Whitton Avenue East, with particular regard to outlook.

#### *Character and appearance*

4. Whilst there is no specific policy objection to the principle of a single storey rear extension, the current unauthorised development comprises poor quality

materials consisting of plywood walls with a polycarbonate sheet roof, which lacks any architectural merit, resulting in harm to the character and appearance of the host building and the area generally.

5. I appreciate that there are no public views of the extension from the street. Nevertheless, it would be clearly visible from a number of neighbouring properties and their gardens. Whilst reasonably localised in its extent, the effect of the development diminishes unacceptably the character and appearance of the host building with consequent harm to the character and appearance of the surrounding area.
6. I therefore find that the development adversely affects the character and appearance of the host building and the area, in conflict with policy 7.4 of the London Borough of Ealing Development Management Development Plan Document, 2013 (DMDP), and policies 7.4 and 7.6 of the London Plan 2016. Amongst other things, these state that development in Ealing's existing built areas should complement their materials and detailing, and that buildings and structures should provide a high quality design and be of the highest architectural quality.

*Living conditions for Nos 393 and 397 Whitton Avenue East - outlook.*

7. Prior to current unauthorised development, occupiers of Nos 393 and 397 Whitton Avenue East would have had an open outlook across the rear gardens of Whitton Avenue East. In contrast, the existing poor quality materials of the flank wall of the development, results in a large expanse of plywood, facing towards both neighbouring gardens at Nos 393 and 397 Whitton Avenue East. This results in harm to the living conditions for the occupiers of these neighbouring properties at Nos 393 and 397, with regard to outlook, in conflict with Policy 7B of the DMDP. Amongst other things, this seeks to ensure that new development achieves a high standard of amenity for users and for adjacent uses by ensuring a) high quality architecture; f) positive visual impact; and that external treatments, fittings and materials must compliment the building context and must not impair the visual amenity of surrounding uses.

*Other Matters*

8. I note that the appellant is willing to render the side elevations of the structure so that it would not appear visually intrusive when viewed from the neighbouring properties and so would not harm outlook. However, given that the side walls are made from plywood it is unclear how this can be achieved or that the final finish would be satisfactory. The appellant also states that Foamex PVC Foamboard could be used to clad the external walls which will be printed in a pebbledash finish to match the outside of the property. Again, I am not convinced that this provides a satisfactory external material which would be robust enough to withstand the test of time. As such the alternative materials suggested by the appellant would not overcome the objections raised above under the main issues. It follows that I do not consider that this could be satisfactorily dealt with by condition.
9. The appellant has referred to their permitted development rights as a potential fall-back position but such a scheme would be smaller in size than the current development and comprise matching materials to the main dwelling, such that it would have a more harmonious relationship with the host dwelling and the

surrounding area. Furthermore, under the ground (f) appeal the appellant suggest that the extension could be adjusted to comply with permitted development. However, no detailed plans or evidence has been submitted to demonstrate how this could be achieved. In the absence of any further evidence, the permitted development fallback position does not justify the harm caused from the current development and I am not satisfied that the development could be adapted satisfactorily to comply with permitted development legislation.

10. I have had regard to the content of the appellant's statement and to the presence of other properties within the vicinity, some of which appear to have been extended with canopy extensions and varying designs and sizes. However, I am not aware of the particular circumstances in those cases and in any event, I must consider the appeal scheme on its own merits. The existence of other extensions in the locality does not justify the harm I have identified nor does the lack of objection raised with regards to the height and size of the extension.
11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to the character and appearance of the host building and area generally and to the living conditions of neighbouring occupiers with regards to outlook. None of the other matters raised by the appellant, including the benefits provided by the canopy for occupiers of the appeal site outweigh this harm identified. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

### **Conclusion on Ground (a) and the Deemed Planning Application**

12. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

### **The appeal on Ground (f)**

13. The appeals on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach". The enforcement notice requires the removal of the unauthorised development, and as such, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
14. The appellant considers that the canopy could be modified and reduced in size and that the side elevations could be finished in materials that match the host dwelling, to comply with permitted development rights. However, I have already found under the ground (a) appeal, that it has not been satisfactorily demonstrated how the extension could be modified to comply with permitted development legislation. Furthermore, it has been held that the prescribed tolerances in the GPDO should not be regarded as limitations but as part of the definition of the permitted development. An extension which exceeds the tolerances of the GPDO is entirely outside permitted development rights. It is

not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice.

15. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.

16. On this basis, the Ground (f) appeals fails.

### **The appeal on Ground (g)**

17. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant asks that the time for compliance is extended from three to six months, in order to provide the appellant with additional time undertake the necessary works in light of the current situation with Covid-19.

18. I have identified under ground (a) that the development is harmful to the character and appearance of the building and the area generally and to the living conditions of neighbouring occupiers with regards to outlook. As such, the 6 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements of the notice.

19. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, 4 months would strike a more reasonable and proportionate balance in light of the Government policy regarding Covid-19 and restricting social contact. I shall therefore extend the period from 3 to 4 months for compliance with the notice.

20. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

### **Conclusion**

21. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*R Satheesan*

INSPECTOR