



Appeal Decision

Site visit made on 18 July 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal Ref: APP/M5450/C/19/3241603

41 Nibthwaite Road, Harrow HA1 1TB

- 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 Miss Maria Afzal against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 11 October 2019.
 - The breach of planning control as alleged in the notice is:
Without planning permission:
 - a. the construction of a single storey rear extension on the Land as shown hatched on the attached plan (the "Unauthorised Development") at the Land
 - The requirements of the notice are:
 - a. Demolish the Unauthorised Development as shown hatched on the attached plan
 - b. Make good any damage sustained as a result of compliance with the abovementioned requirement, by using the appropriate materials and ensure that the rear elevation of the remaining rear extension is in accordance with the approved plans of LBH/8851
 - c. Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
 - The period for compliance with the requirements is Three (3) calendar months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)[a] and [f] of the Town and Country Planning Act 1990 as amended.
-

Summary Decision

1. The appeal is dismissed and the Enforcement Notice upheld subject to variations.

Matters concerning the notice

2. It was clear from my site visit that the postcode on the enforcement notice is incorrect. I have therefore taken the postcode from the appeal form, which is consistent with the postcode given on the enforcement notice plan and shall correct the notice accordingly.
3. Requirement (b) in paragraph 5 of the notice includes the requirement to 'make good any damage sustained as a result of compliance with the abovementioned requirement, by using appropriate materials and ensure that the rear elevation of the remaining rear extension is in accordance with the approved plans of LBH/8851'. The use of the term 'appropriate materials' is not sufficiently precise. Furthermore, it was apparent from my site visit that Application P/3829/17 which was granted on appeal, reference APP/M5450/D/17/3188372, has been implemented. In the interests of certainty, I will vary the notice by deleting the uncertain requirements and require that all materials used shall match those used in the existing building.

The parties have been given the opportunity to comment on the variation and as such, I am satisfied that there would be no injustice caused.

Ground (a)

Main Issue:

4. The main issue is the effect of the appeal scheme on the living conditions of the occupants of the appeal dwelling and the occupants of the neighbouring dwellings.

Reasons

5. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged. The works are not complete and windows and doors have not been inserted into the extension. Planning permission may be granted only for those matters, as corrected or varied and I no power to grant planning permission for something completely different from that enforced against.
6. The appeal property is located in a generally residential area characterised by semi-detached dwellings with generous rear gardens. The appeal property comprises a semi-detached dwelling which has previously been extended to the rear. The property has been further extended to the rear with a single storey extension which incorporates what appear to be pre-existing garden walls. The extension extends above the wall on both sides in brickwork which contrasts with the brickwork used in the construction of the wall and pre-existing rear extension.
7. Although the extension is physically linked to the existing ground floor, the external windows and doors to the pre-existing ground floor extension remain. Given the depth of the ground floor living area, this significantly reduces the amount of daylight in the kitchen/dining area and results in a harmful sense of enclosure for its occupants, contrary to Policy 7.6B(f) of the London Plan (LP)(2016) which seeks, in part, to ensure that buildings and structures provide high quality indoor spaces and contrary to Policy DM1 of the Harrow Development Management Policies Local Plan (HDMPLP)(2013) which seeks to ensure that proposals achieve a high standard of privacy and amenity, amongst other things.
8. The single storey rear extension extends well above the boundary wall and given its position relative to No 43, appears a dominant feature to occupants of No 43, creating a harmful sense of enclosure, contrary to Policy DM1 of the HDMPLP, the requirements of which are set out above, and contrary to Policy 7.6B(d) of the LP which states that buildings and structures should not cause unacceptable harm to the amenity of surrounding land and buildings. The appellant asserts that the occupants of No 43 are considering applying for a 6 meter deep extension, however, I have no substantive evidence of this and am therefore unable to take this into account.
9. During my visit I saw that No 39 Nibthwaite Road has been extended to the rear. Photographs provided by the Council indicate that this extension at No 39 was not present during the Council's investigation into the breach. Although the extension at No 39 does not project as far as the appeal extension, its location

to the rear of the property means that any loss of outlook or sense of enclosure as a result of the appeal scheme would be very limited. There would therefore be no conflict with Policy 7.6B of the LP or Policy DM1 of the HDMPLP in this regard. Whilst I have found that there is no harm to the living conditions of No 39, I have found that there is harm to the living conditions of occupants of No 41 and 43. Accordingly, the appeal under ground (a) fails.

Ground (f)

10. An appeal on ground (f) is made on the basis 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
11. Section 173(3) of the Act says an enforcement notice shall specify the steps required to be taken in order to achieve any of the purposes set out in 173(4)(a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or restoring the land to its condition before the breach took place. From the evidence before me, it appears that the purpose of the notice is to remedy the breach.
12. The enforcement notice requires the Unauthorised Development to be demolished. The appellant states that the side walls have been garden walls for over 10 years and these walls should not be part of the enforcement notice, only the rear wall, roof and that brickwork that is built on top of the garden wall. However, the appellant has not provided, by reference to a plan, the extent of wall that she considers should be retained, nor have I been provided with any substantive evidence that the walls were pre-existing.
13. Furthermore, as set out under ground (a), planning permission may be granted only for those matters, as corrected or varied and I no power to grant planning permission for something completely different from that enforced against. Whilst the building comprises elements which may have been pre-existing, these form an integral part of the building and would therefore fall to be removed under the requirements of the Notice. I consider the requirements would remedy the breach set out in the Notice. Accordingly, the appeal under ground (f) fails.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected and refuse to grant planning permission on the deemed application.

Formal Decision

15. It is directed that the enforcement notice is corrected by:
 - The deletion of 'HA1 1BT' in paragraph 2 of the notice and its replacement with 'HA1 1TB'.
 - The deletion of the words "by using the appropriate materials and ensure that the rear elevation of the remaining rear extension is in accordance

with the approved plans of LBH/8851" in paragraph 5 (b) of the notice and their replacement with the words "and ensure that all materials used shall match those used in the existing building".

16. Subject to this correction, 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.

M Savage

INSPECTOR