

Appeal Decisions

Site visit made on 12 November 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Date of decisions: 10 December 2020

Appeal A Ref: APP/D5120/C/20/3248517 **38 Hengist Road, Erith DA8 1HA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr J Singh against an enforcement notice issued by the Council of the London Borough of Bexley.
 - The enforcement notice was issued on 3 February 2020 under ref. 19/00280/ENF.
 - The breach of planning control as alleged in the notice is *"Without planning permission, the erection of an unauthorised single storey rear extension, shown in the approximate location outlined in blue on the attached plan."*
 - The requirements of the notice are set out as follows:
*"1. Remove the extension shown in the approximate location outlined in blue on the attached plan;
Or
2. Reduce the depth of the extension shown in the approximate location outlined in blue on the attached plan to be 3 metres in depth from the rear of the original dwelling house and built using materials that match those used in the existing dwelling.
And
3. Remove all resultant materials from the land."*
 - The period for compliance with these requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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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Appeal B Ref: APP/D5120/W/20/3248516 **38 Hengist Road, Erith DA8 1HA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr J Singh against the decision of the Council of the London Borough of Bexley.
 - The application ref. 19/02664/FUL, dated 3 November 2019, was refused by notice dated 28 January 2020.
 - The development proposed is *"Single storey rear extension retrospective permission"*.
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Decisions

Appeal A Ref: APP/D5120/C/20/3248517

1. It is directed that the enforcement notice be varied, following the limited success of the appeal on ground (g), by altering the text "two (2) months"

to “three (3) months” in paragraph 6 as the time for compliance. Subject to the variation, the appeal is otherwise 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.

Appeal B Ref: APP/D5120/W/20/3248516

2. The appeal is dismissed.

Background and matters of clarification

3. The appeals concern a single-storey, flat-roofed rear extension which has been added to enlarge the ground floor of a 2-storey, terraced house. The building seems to date from the Victorian period. Like many other houses in the same terrace on the northern side of Hengist Road, it was built with a 2-storey rear projection or outrigger. Beyond that at no. 38, there is also a shorter single-storey lean-to addition.
4. The terms of the deemed planning application in Appeal A are defined by the breach of planning control alleged in the enforcement notice. As this is the same as the retrospective planning application that is the subject of Appeal B (the section 78 appeal), the 2 appeals can be dealt with together.
5. The plans which accompanied the retrospective planning application reflect what has been built. They show that the flat-roofed rear extension reaches a width of 1.758 m, a height of 2.9 m and a depth of 5.28 m. It abuts the boundary with 36 Hengist Road. Given its depth, it has effectively infilled the side yard alongside the main outrigger and lean-to addition, stopping just short of the latter’s rearmost wall. Internally, it provides space alongside the kitchen in the outrigger and the bathroom in the lean-to.

Appeal A, ground (a) and the deemed planning application and Appeal B

6. The main issue is the effect of the rear extension upon the amenities of the neighbouring property at 36 Hengist Road with particular regard to outlook and light.
7. My decision is based on what I consider to be the most relevant development plan policies to which I have been referred – Policy ENV39 of the Council’s Unitary Development Plan (UDP) which says the Council will consider the extent to which new development “...would not prejudice the environment of the occupiers of adjacent property...” and UDP Policy H9 which seeks to ensure that extensions and alterations meet various criteria, the second of which states that “...the development should not adversely affect the privacy and amenity of residents of adjoining properties including daylight and sunlight and outlook...”.
8. These policies accord with the broad thrust of the National Planning Policy Framework (Framework) which sees the creation of high-quality buildings and places as being fundamental to what the planning and development process should achieve. The Framework seeks a high standard of amenity for existing and future users and it says that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions,

taking into account any local design standards or style guides in plans or supplementary planning documents. In this regard, I have been referred to the Council's Design and Development Control Guideline 2 (DDCG2) relating to extensions to houses and attached to the UDP.

9. DDCG2 should not be viewed as being substantially out of date because of subsequent changes to the rules on permitted development. In particular, larger home extensions, up to 6 m in depth for terraced houses, can only be undertaken if the prior notification and neighbour consultation procedures have been properly followed. Such procedures cannot be applied retrospectively and their outcomes cannot be predicted.
10. The outriggers and narrow side yards at the rear of these terraced properties have a close-knit relationship such that the occupiers tend to be mutually dependent on the maintenance of what openness there is at the rear of their dwellings in order to preserve their rather limited outlooks. I saw that the extension has resulted in a significant depth of built development on the boundary with no. 36, notably higher than both the existing boundary treatment and any wall or fence which could be constructed on that boundary as permitted development.
11. Significantly, as the Council points out, the rear ground floor of no. 36 has not been extended. It has a window to a main habitable room in the main rear wall very close to the common boundary and a kitchen window and door in the opposing wall of its own rear outrigger only slightly further away. Even though the subject extension has a single-storey built form and a flat roof slightly under the relevant height limit of 3.1 m as set out in the DDCG2, it has impinged to an unacceptable degree upon the outlook from those adjacent ground floor windows, mainly because of its proximity and excessive depth in combination. There is now a far more solid and oppressive sense of enclosure along the boundary to no. 36 and the extension has unacceptably diminished the limited outlook previously available between the opposing 2-storey outriggers.
12. The extension has not caused a loss of privacy for the occupiers of no. 36. Given that the rear elevations here face north, there is unlikely to have been any material loss of sunlight reaching the rear of no. 36. Even though there is a surrounding 2-storey built form at the rear, the extension will have caused some diminution of daylight within the rear ground floor of no. 36. This compounds the unacceptable loss of outlook.
13. The Council's DDCG2 advises that on semi-detached houses, single-storey extensions at the rear and on the boundary with the adjoining half of the property should not normally exceed 3.1 m in height above existing ground level or 3.5 m in depth from the rear of the property. Whilst DDCG2 is only guidance and does not categorically rule out larger rear extensions, there has been a very clear infringement of the guidelines regarding depth. The conflict is not marginal and like the Council I cannot find any exceptional circumstances at this site that would justify such a rear extension over 5 m in depth. The conflict with this local design standard confirms the decision I have reached in this case.

14. Permitted development rights represent a fallback and a material consideration when assessing the planning merits. However, there is no clear evidence before me, such as fully worked-out plan drawings of an alternative scheme, to suggest that an identical or even a very similar extension could take place once the notice has been complied with, using the permitted development rights that would then be available. Embarking on permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, would be unlikely to produce something less desirable than the development that has taken place. The restriction to a depth of 3 m would be the significant and critical factor in terms of reducing the effect on the neighbouring property at no. 36. There must be some doubt about the likelihood of the appellant rebuilding a 3 m deep extension to a height to the eaves of 3 m or to an overall roof height of 4 m, when the most obvious and rational option (as required by the notice) would be to simply reduce the depth of the current extension to 3 m.
15. The appellant has provided copies of 4 appeal decisions (at Appendices A-D of the appellant's statement on Appeal B) where infill extensions were allowed but they all refer to sites in other local planning authorities where the developments were subject to different development plan policies and the site contexts and proposals were not identical to those in the appeal cases before me. For instance, the case in Appendix A involved a replacement infill extension and a more favourable arrangement of windows and rooms in the neighbouring property. In the Appendix B case the extension would have had a mono-pitch sloping roof starting from a low point of 2.5 m on the boundary wall and largely comprising a long roof light. In Appendix C, the Inspector referred to existing definitive boundary treatment being in position, namely a boundary wall with a trellis on top of it. The case at Appendix D related to an application for prior approval (not express planning permission), to an extension approximately 2.6 m high, and to a site where the window positions at the rear of the neighbouring property differ markedly to those at the rear of 36 Hengist Road and where a Certificate of Lawfulness was in place for an alternative development. These cases have little bearing on the appeal cases before me which must be determined on their own merits.
16. For the reasons given, I find on the main issue that the extension has materially harmful impacts upon the amenities of the neighbouring property at 36 Hengist Road with particular regard to outlook and light. There is thus conflict with UDP Policies H9 and ENV39 which aim to safeguard the amenities of adjoining properties. This outweighs the benefit the extension provides to the appellant in terms of the enlarged and enhanced ground floor living space.
17. Drawing all the above together, and taking into account all other matters raised and the lack of third-party objections in response to these appeals, my finding on the main issue determines the outcome of the appeals. There is conflict with the development plan and I find no material considerations of sufficient weight to justify a grant of planning permission. The objections to this development could not be overcome by planning conditions. I have

therefore concluded that Appeal B and ground (a) and the deemed planning application in Appeal A should not succeed.

Appeal A, the appeal on ground (g)

18. This ground of appeal is that the time given for compliance with the enforcement notice falls short of what should reasonably be allowed. The notice gives 2 months for the requirements to be carried out.
19. The appellant has stated that this period is too restrictive because it does not allow sufficient time to raise funds, tender the job to builders, negotiate with and instruct a builder and complete the works required. The appellant says that some firms take several weeks to provide a quotation and a further period to start work. If the appellant chooses to reduce the depth of the extension, it is stated that new building control consent will be required, as well as revised structural drawings and calculations. It is requested that the compliance period be extended to 6 months.
20. 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. The physical works required by the notice (in either of the alternatives) are relatively straightforward and should not take very long to complete. The cost of the works is unlikely to prevent compliance. Even so, it is quite plausible that the appellant may find himself using up about 2 months before a builder is standing ready on site to start work.
21. Whilst a period of 6 months would appear to me to be excessive, I consider that a compliance period of 3 months would still remedy the breach in a reasonable timescale and would give the appellant a realistic opportunity to source and secure a suitable building company and for the works to be programmed into the appointed building company's schedule and then carried out. This period would strike the appropriate balance between the competing public and private interests and not place a disproportionate burden on the appellant. The Council has the discretion to further extend the compliance period, should any unforeseen difficulties arise, using its powers under section 173A (1) (b) of the 1990 Act as amended. On balance I find that the 2-month compliance period given in the notice was too short.
22. The appeal on ground (g) therefore succeeds to a limited extent on the above basis. The enforcement notice will be varied to give a 3-month compliance period.

Andrew Dale

INSPECTOR