



Appeal Decision

Site visit made on 7 July 2021

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6TH August 2021

Appeal Ref: APP/M5450/C/20/3257345
125 Lynton Road, Harrow, HA2 9NH

- 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 Vignesawarajah Manikkam against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice, numbered ENF/0288/16/5806, was issued on 15 July 2020.
 - The breach of planning control as alleged in the notice is 1. Without planning permission the unauthorised construction of a single storey side to rear extension and wooden canopy ("Unauthorised Development"); and 2. Without planning permission the unauthorised change of use of the Land from use as a single family dwelling house to use as 2 dwelling houses ("Unauthorised Use").
 - The requirements of the notice are 1. Cease the Unauthorised Use of the Land; 2. Remove all kitchens from the land except (1) from the main dwellinghouse; 3. Remove all bathrooms from the land except (2) from the main dwellinghouse; 4. Remove all internal partitions that enable the Unauthorised Use; 5. Demolish the Unauthorised Development; 6. Make good any damage caused to the Land as a result of the above steps 1 – 6 and ensure that all materials used shall match those used in the existing building; and 7. 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 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single storey side to rear extension and wooden canopy on land at 125 Lynton Road, Harrow, HA2 9NH referred to in the notice, subject to the conditions set out in the attached schedule.

Ground (c)

2. An appeal on this ground is that the matters stated in the notice do not constitute a breach of planning control. The appellant is not arguing this in relation to the entirety of the Unauthorised Development as defined on the notice but in relation to part of it which he argues benefits from permitted development rights following a successful application for prior approval under reference P/3706/15. The Council do not dispute that there was such a prior

approval but argue that the whole of the rear extension was unlawful because it was built as one operation.

3. Permitted development rights do not apply unless the development fully accord with the limitations set out in the General Permitted Development Order ('the GDPO'). In this case, the details provided by the appellant in the prior approval process do not accurately reflect the whole of the development if it was built as one operation, and is therefore one development. It is for the appellant to prove on the balance of probabilities that the element of the rear extension used by the original dwellinghouse ('the Host Dwelling Extension') was built fully in accordance with the prior approval as a separate operation from the rest of the rear extension used by the flat ('the Flat Extension').
4. A second issue raised by the Council is that the permitted development rights would not apply if the use as two separate dwellinghouses was already lawful. The definition of 'dwellinghouse' in relation to Schedule 2 Part 1 A does not include a building containing one or more flats. The definition of flat in the GDPO is '*a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally*' which does apply in this case as the bedrooms in the second unit is underneath the upstairs of the host property.
5. The appellant states that the part of the development which constitutes the Host Dwelling Extension was constructed first and completed by June 2016 with the building control certificate issued in December 2016. He states that work to the other element to the rear of the building, the Flat Extension was started in February 2017 and completed in February 2018. In support of this assertion the appellant has provided a quote for 'Refurbishment and Renovation for the Ground Floor two rooms and extended area' and dated receipts for payment for the quoted works between December 2017 and February 2018. The tenant of the Flat and two other neighbours who visited the property during that time and have a view of it from their houses have provide signed statements that the work to the rear extension was done in two phases.
6. The Council has provided a photograph taken by Building Control in July 2016 which confirms the appellant's case in that the first part of the development appears to be built by that time (including windows, doors, guttering and external lighting). The Council's case is that that photograph shows that the foundations up to damp proof course level for the second part of the works, the Flat Extension, were built at the same time as the part which the appellant's state were built in accordance with the prior approval and that this means that there was one operation and the whole development is therefore unlawful.
7. It seems on balance, that factually both parties are correct in terms of when the works were undertaken. The question is then whether the shared foundations mean that the Host Dwelling Extension was not built in accordance with the prior notification. The shared foundations are clearly an element which was not shown in the plans sent to the Council as part of the prior approval process. On balance, and in light of the fact that it was clear from the photograph and from the site visit that the foundations to both elements must have been built at the same time, I find that the prior approval was not implemented in accordance with the approved plans, or indeed the permitted development rights under Part 1 Class A. The entirety of the operational

development as described in the notice is therefore unauthorised and the appeal on this ground cannot succeed.

8. In addition, the development would only be permitted by the prior approval if the extension is to a single dwellinghouse for the purposes of the GPDO which is not the appellant's case. I deal with whether the Land had been used as two separate dwellings under Ground (d) below.

Ground (d)

9. This ground of appeal solely relates to the matters which appear to constitute the breach of planning control as set out in paragraph 3(2) of the notice, i.e. "the Unauthorised Use". To succeed on this ground the appellant needs to prove that the Land has been used as 2 separate dwellinghouses for a continuous and significantly uninterrupted period of 4 years prior to the service of the notice (15 July 2020). The burden of proof lies with the appellant and is on the balance of probabilities
10. The appellant states that, prior to the development alleged in the notice, he rented out a separate unit, consisting of a small side extension and part of the original house, as a self-contained flat from 2007. The appellant has provided a statutory declaration that he had the same tenant between 2007 and December 2017, who got married and had a child during that time, and has provided bank statements which show weekly payments from the tenant between November 2013 and Dec 2017. This is corroborated by a signed statement from the previous tenant confirming that she lived there between 2009 (after she married the existing tenant) and December 2017 with corroborating personal documents (including medical records, employment records and polling cards) which record the tenants' names and their address as 125 Lynton Road, dated variously between 2009 and 2017.
11. In addition, neighbours have provided signed statements that tenants were living in self-contained accommodation which was accessed by entrance to the garden from Widdecombe Ave and that only the appellant's family used the main front door to the house. Two other neighbours have corroborated the appellant's evidence that the same named tenants lived in the separate flat for over 10 years.
12. The evidence provided by the appellant as a whole, in the absence of any evidence from the Council to contradict it, provides sufficient clarity and precision and makes the appellant's case regarding the separate residential use for a substantially uninterrupted period of more than 4 years prior to the issue of the notice more likely than not. The appeal on ground (d) is therefore successful in relation to proving the use as 2 separate residential units.
13. This does affect the appellant's argument in relation to the development pursuant to the prior notification. The stand-alone development for the Host Dwelling Extension would not be permitted under the terms of the GPDO because the host property would no longer fall within the relevant definition of dwellinghouse as set out above. This is in fact not material in this appeal given my finding in relation to the ground (b) appeal as set out above.

Ground (a) and the deemed application for planning permission

14. The main issues are the effect of the development as built on (i) the character and appearance of the area; (ii) the living conditions of the occupiers and

future occupiers in terms of size, layout, outdoor amenity space; and in lack of provision of refuse and cycle storage.

15. The application for deemed planning permission is in relation to the operational development described in paragraph 3(1) of the notice, i.e. the "Unauthorised Development", as it is all unauthorised.
16. A revision of the National Planning Policy Framework was published on 20 July 2021, after the site visit. The parties have been given the opportunity to provide comments on whether in their view any of the changes affect their case, and both the revised Framework and the views expressed have been considered as part of this appeal.

Character and Appearance

17. The host property is an end terrace which is on a corner plot between Lynton Road and Widdicombe Avenue. It has a large rear garden and double garage at the rear boundary. The adjoining rear gardens on Exeter Road are also large meaning that the properties are well separated and there is no feeling of the development being overbearing. The adjoining house at 127 Lynton Road is itself extended at the rear and also has a large rear dormer extension, and as such will not be adversely affected by the extensions as built in terms of seeming overly dominant or obstructive as the development will not feel overbearing or inappropriately large in contrast.
18. The development is evident from the street scene, both from Widdicombe Avenue and when looking at the corner of the property from Lynton Road, in that there is a large extension which extends past the rear elevation of the original house. Part of the reason that that this is so obvious is because of the different materials used for the various elements on that side elevation which contrast also with the existing fence. The appellant has confirmed that he would agree to a condition to re-render the original side extension and length of new red brick finish along the flank wall to Widdicombe Avenue. This would add uniformity and improve the appearance of that elevation on the edge of the street and therefore reduce the harm to the visual amenity of the street scene. The flank wall is at the edge of the plot immediately adjacent to Widdicombe Avenue, but the garages at the rear of the garden and another outbuilding further along Widdicombe Avenue are also immediately adjacent to the street and so the development does not appear overly prominent or unusual. The size of the extension would still be observable if rendered, but the harm would be sufficiently reduced so that it would be acceptable in terms of effect on character and appearance of the area.
19. The finish of the rear extension is red brick, unlike the original dwelling which is rendered. The brickwork does contrast with the render, but there are a variety of materials used in the surrounding built form and wider area, including red bricks. Similar coloured bricks can be seen on the rear ground floor extension with red roof tiles on the dormer extension on the adjoining 127 Lynton Road. In addition, there are only limited views of the rear of extension from the highway, and the Council did not object to the proposed use of the red bricks for the rear extension under the prior approval reference P/3706/15. Other examples of similar materials being used on ground floor extensions can also be seen in the vicinity. The red brick is therefore not out of place in this area and does not cause visual harm.

20. The canopy element is small and cannot be seen from the public domain, and there will be limited views of it from some neighbouring properties. It is not of a substantial construction and is not causing any harm to the character and appearance of the area in its own right and so is not contrary to planning policy.
21. Overall, any harm caused by the operational development stated in the notice can be overcome by a condition requiring the side elevation facing Widdecombe Avenue to be rendered to match the host property and the development will not be in conflict with Harrow Core Strategy 2012 Policy CS1 or Harrow Development Management Policies 2013 ('HDMP') Policy DM1, which are part of the development plan, and which aim to achieve a high standard of design and layout and prevent harm to the character of the local area.

Living Conditions

22. The plans submitted, and the layout observed during the site visit, showed a self-contained two bedroom residential property with large living room, separate kitchen, bathroom and hall. The garden and patio area are accessed directly from the property and shared with the host property. I have already found that the use of flat as a separate dwelling is authorised as set out above in relation to the ground (d) appeal.
23. The Council were concerned that it had been used previously as a three bedroomed property, and the photographs submitted by them show a bed in the corner of the living room in addition to the living room furniture and television etc. The Council have therefore assessed the property against the space standards in the London Plan¹ that apply to a three bedroom, 6 person dwelling, although there has been no evidence submitted to show that it has been used long term in this way, or indeed occupied by 6 people at any time. Indeed the appellant's case is that only 4 people have occupied the flat at any one time. The Council say that the small size, poor layout and inappropriate outdoor space, provides cramped and sub-standard living accommodation without adequate storage to the detriment of the occupiers and future occupiers of the dwelling.
24. The shared garden is large and there is an area of patio immediately in front of the entrance and double patio doors of the Flat Extension which is associated with its use. This external area provides access to the side gate leading to Widdecombe Avenue which is the only access to the separate residential use in the flat. In addition, the bedrooms in the flat do not adjoin the rear garden and are therefore more private. The outdoor amenity area is therefore appropriate due to its size and situation (which would not normally be associated with a flat of this size), albeit shared.
25. The flat is large and fairly spacious as a 2 bedroom dwelling (as it is currently being used) with a large fitted-kitchen and separate living room. It exceeds the 70sqm recommended floor space set out in the London Plan 2021 and HDMP Policy DM26 when assessed as a 4 person dwelling. The appellant has suggested that a condition to regulate the use as such can be imposed, which I agree would be appropriate in the circumstances and meet the statutory tests.

¹ The London Plan 2016 has been revised so that the relevant policies are now contained in the London Plan 2021 but the policy context overall has not altered and the space standards in relation to 2 and 3 bedroom flats, as set out in the new policy D6, remain the same.

The hall area is also large and uncommonly wide which allows adequate room for additional storage if required. I do not find that the living conditions of the flat, with the occupancy condition imposed, would be inappropriate or cause harm and would not therefore be in conflict with Core Policy CS1, HDM Policy DM26 or the London Plan 2021. Any minor harm caused by the lack of refuse and cycle storage can be adequately secured by way of condition which will be in accordance with Policies DM26 and 45.

Conclusion on Ground (a) and the application for deemed planning permission

26. I do not therefore find that the development, with appropriate conditions attached as set out below, causes harm to the character and appearance of the area or to the living standards of the occupiers or future occupiers. It is therefore in accordance with the Harrow Core Strategy and Development Management Policies, the London Plan and other local planning policies.

Conditions

27. I have considered the conditions with reference to the revised Framework and Planning Practice Guidance. As the development has already taken place Conditions 1, 2 and 3, which require a scheme to be submitted and agreed, need to include a timetable for action and a 'sanction' for non-compliance in order to be enforceable and so have been drafted in this way.
28. I am imposing the conditions as set out in the Schedule of Conditions and consider them all necessary to make the development permitted by the deemed application for planning permission acceptable. Conditions 1 and 2 are required to secure adequate cycle and refuse storage in accordance with HDMP Policies DM26 and 45 which form part of the development plan. Condition 3 is necessary to ensure that the development does not harm the character and appearance of the area and condition 4 is necessary to secure that adequate living standards are maintained and is necessary to comply with the development plan, particularly HDMP Policy DM26 and Policy D6 of the London Plan 2021.

Overall Conclusion

29. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted in relation to the "Unauthorised Development" as defined in the notice. The appeal also succeeds on ground (d) in relation to the "Unauthorised Use" as defined in the notice. The appeal on grounds (f) and (g) does not therefore need to be considered.

Zoë Franks

INSPECTOR

Schedule of Conditions

- 1) Unless within 3 months of the date of this decision a scheme for the parking of bicycles, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the occupation of the Flat Extension for residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the occupation of the Flat Extension for residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) Unless within 3 months of the date of this decision a scheme for the storage of refuse, is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the occupation of the Flat Extension for residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the occupation of the Flat Extension for residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) Unless within 3 months of the date of this decision a scheme for the rendering of the wall adjoining Widdecombe Avenue in a uniform colour, are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the occupation of the Flat Extension for residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the occupation of the Flat Extension for residential use shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 4) The separate dwelling used as a flat (including the Flat Extension) shall not be occupied by more than 4 people at any one time.