
Appeal Decision

Site visit made on 21 September 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th September 2021

Appeal Ref: APP/U5930/C/21/3270336

62 Chesterfield Road, Leyton, London E10 6EN

- 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 Ms N Khaliq on behalf of Khaliq Property Two Ltd against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice was issued on 29 January 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the enlargement of a pre-existing hip to gable roof extension.
 - The requirements of the notice are:
 - 1) Demolish and remove the unauthorised enlarged hip to gable roof extension and reinstate the roof to its previous dimensions and configuration (as shown in images attached - Appendix A) prior to the breach of planning control.
 - 2) Remove all resulting materials, rubble and general detritus from the Land following compliance with the step above.
 - The period for compliance with the requirements is 6 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. 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.

Procedural Matters

2. During the course of this appeal, the London Plan, 2016, and policies contained within it, has been replaced with the London Plan 2021 (London Plan), which was adopted on 2 March 2021. This must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on the new London Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded London Plan 2016.
3. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.

Ground (a) appeal and the Deemed Planning Application

Main Issue

4. The main issue is the effect of the unauthorised development on the character and appearance of the host building and the area.

Reasons

5. The appeal property is an end of terraced traditional two storey dwelling, located in a terrace characterised by similar traditional two storey terraced properties. The relatively consistent design, materials, and style of these properties provides a degree of uniformity and harmony to the terrace. The current unauthorised development comprising an enlarged hip to gable roof extension is situated in a prominent corner location, highly visible from a number of public vantage points on both Chesterfield Road and Epsom Road.
6. Despite the use of durable materials, the size, scale, and bulk of the roof extension introduces an overly dominant and visually discordant feature which is clearly visible from the surrounding streets. Therefore, the unauthorised development results in harm to the character and appearance of the host building and the area generally.
7. Prior to the current unauthorised development, the property had been extended with a previous roof extension. However, the evidence indicates that this was a more modest development, and it is the excessive scale and bulk of the current unauthorised development which is particularly discordant. The appellant also refers to a number of other roof forms in the area. However, none of the other examples shown include roof extensions which protrude above the eaves of the original dwelling. In any event I have considered the appeal development on its own merits. As such, the existence of other roof forms in the wider area does not justify the harm I have identified above.
8. I therefore conclude that the development has a harmful impact upon the character and appearance of the host building and area generally. The development is therefore contrary to Policies DM4 and DM29 of the London Borough of Waltham Forest Development Management Policies Local Plan, 2013, Policy CS15 of the Waltham Forest Local Plan Core Strategy, 2012 (CS), and Policies D3 and D4 of the London Plan. Amongst other things, these state that development proposals should be of high quality, with architecture that pays attention to detail, relate to the original 'host' building, and respect the street scene and character of the area.
9. Furthermore, the development does not meet the aims of part 12 of the Framework, which requires development to be sympathetic to local character and history.
10. The Council have also referred to Policy CS2 of the CS. However, whilst this policy includes a section on 'Housing Design', this appears to relate more specifically to new housing developments and therefore is not directly relevant to this current appeal. As such, I find no conflict with this policy.

Conclusion on Ground (a) and the Deemed Planning Application

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 character and appearance of the host building and area generally. None of the other matters raised by the appellant, including the changes in living standards, enhancing housing supply, or the benefits associated with providing additional living space 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.

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 appeal 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".
14. 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.
15. The appellant states that the development could be amended by the construction of a feature and/or the use of a different tile colour to visually separate the rear dormer from the front roof. However, no drawings/visual materials of these amendments have been submitted, and therefore I am unable to determine what the proposed development would look like. Indeed, it is open to the appellant to submit a planning application to the Council for this revised scheme if they so wish.
16. The appellant also states that the precise dimensions and configuration of the previous roof form are not recorded and therefore it would be impractical and unfeasible to try and reinstate this. However, the enforcement notice includes clear photographs of the former roof extension, and the Council also highlight that the previous planning application (Council ref: 2009/0405) drawings could also be used to work out the previous layout and configuration.
17. As the notice does no more than seek remedy of the breach, it is not excessive. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
18. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

19. 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 6 to 12 months, in order to provide the appellant with additional time to carry out the works, especially in light of the current situation with the Covid-19 pandemic. The appellant further states that it is extremely difficult and time consuming to source labour and machinery arising from pent up demand when construction resumes following the lifting of Covid restrictions.

20. I have identified under the ground (a) appeal that the development is harmful to the character and appearance of the host building and area. As such, the 12 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements of the notice. Since the appeal was lodged, we are now in a different situation with the pandemic, with the easing of social distancing restrictions. Therefore, the current period for compliance should allow sufficient time for the requirements to be undertaken.
21. I conclude that 6 months given would be reasonable and proportionate time to comply with the notice and the appeal on ground (g) fails.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice 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