
Appeal Decisions

Site visit made on 12 October 2021

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2021

Appeal A Ref: APP/G3110/C/21/3276232

Appeal B Ref: APP/G3110/C/21/3276233

The Land at 293b Iffley Road, Oxford, Oxfordshire OX4 4AQ

- 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 Arshad Hussain against an enforcement notice issued by Oxford City Council.
- The enforcement notice was issued on 28 April 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a first-floor side extension on the dwelling on the Land in the approximate location shown by blue edging on the Plan.
- The requirements of the notice are:
 - (i) Demolish or dismantle the first-floor side extension referred to in paragraph 3 of this notice, and
 - (ii) Remove all materials and rubble arising from step (i) above from the Land.
- The period for compliance with the requirements is:
 - Step (i) 1 month after this notice takes effect, and
 - Step (ii) 2 months after this notice takes effect.
- Appeal A 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 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld.

Procedural Matters

1. Both parties refer in their submissions to a first-floor extension that has been built at 291B Iffley Road and a subsequent revised planning application. For the avoidance of doubt the appeals only relate to the extension at No 293b.
2. Planning permission was granted in 2011 for a first-floor extension. Notwithstanding the comments from both parties regarding commencement of development, it is agreed by the parties that the extension as constructed, and subject of the enforcement notice, is not the same development as that approved by the previous planning consent.
3. The appeal form indicates that the appeals are made under grounds (a), (c), (d), (f) and (g). The appellants have subsequently confirmed that the appeals are not proceeding on grounds (c) and (d).

Appeal A on ground (a)

Main Issues

4. The main issues are the effect of the development on (i) the character and appearance of the area and, (ii) the living conditions of neighbouring residents in terms of outlook and light.

Character and appearance

5. The appeal property is a semi-detached property comprising commercial uses on the ground floor with residential accommodation above. Although the roof designs in the surrounding area vary, pitched roofs to the front elevation are a feature along this particular stretch of the road.
6. The first-floor extension, by virtue of its flat roof design and prominent position in line with the front elevation of the property, is readily visible from the public realm and forms an incongruous addition to the property. Thus, the development fails to respect the character and appearance of the original property and the street scene.
7. I consider that the development is harmful to the character and appearance of the appeal property and the street scene. The development conflicts with Policy DH1 of the Oxford Local Plan 2036 (2020) (LP) which states that planning permission will only be granted for development of high quality design that creates or enhances local distinctiveness.

Living conditions

8. The adjacent property at No 295 Iffley Road has a first-floor side window facing the appeal property. Whilst I have been provided with no technical information, given its height and depth it is likely that the appeal development significantly reduces the amount of daylight and sunlight reaching this side window. Moreover, due to its close proximity to No 295, it is also likely that the extension has an overbearing impact when viewed from this side window resulting in an undesirable feeling of enclosure for the occupants of No 295.
9. Therefore, I consider that the development has a harmful effect on the living conditions of the occupiers of No 295 Iffley Road with regard to loss of light and outlook. Thus, the development conflicts with Policies H14 and RE7 of the LP which state that planning permission will only be granted for development that provides reasonable daylight and sunlight for occupants of both existing and new homes and ensures that the amenity of occupiers and neighbours is protected.

Other Matters

10. The appellant refers to the Oxford City Design Guide. However, I have not been provided with a copy of this document and therefore cannot take it into account.
11. I have considered the appellant's comments regarding a planning application at 291B Iffley Road. No detailed drawings are before me thus, I am unable to compare this possible development with the appeal development. I therefore give this matter little weight.

12. Both parties refer to a planning application¹ for the 'erection of a first-floor pitched roof extension' at the appeal property which was submitted after the enforcement notice was issued. I have not been provided with the full details of this application and therefore give this matter little weight.

Conclusion

13. There are no material considerations to indicate a determination other than in accordance with the development plan.
14. For the reasons given above, I conclude that Appeal A on ground (a) should not succeed. I shall uphold the 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.

Appeals A and B on ground (f)

15. An appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173(3) of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the removal of the extension, the purpose is clearly to remedy the breach of planning control. No lesser steps than the removal of the extension would achieve that purpose.
16. The appellants contend that a planning application for a revised proposal is due to be approved at No 291B Iffley Road and therefore the appeal extension could be altered in the same way as No 291B. I have dealt with this matter under ground (a) above and found that I have been provided with insufficient information. In any event the appellants acknowledge that altering the appeal development similar to No 291B would not overcome the Council's reason for refusal in relation to the side window.
17. In this case the steps specified require the demolition or dismantling of the entire first-floor side extension and the removal of all the resultant materials and rubble. In order to remedy the breach, it is not excessive to require the removal of the extension. To require that does not, therefore, exceed what is necessary and the appeals on ground (f) must fail.

Appeals A and B on ground (g)

18. The ground of appeal is that the time given to comply with the requirements of the enforcement notice is too short. The appellants consider that a compliance period of until at least September 2022 is necessary as the property has been let from April 2021 until August 2022. The appellants refer to the Covid-19 laws/Housing Act 2004 stating that at least 6 months' notice to vacate must be given to tenants.
19. I am informed by the Council that this matter has been ongoing with the Council since June 2020 and a Planning Contravention Notice was issued in January 2021. Thus, I consider that the appellants have had ample opportunity to give the relevant notice to the tenants. However, the appellants have exercised their right to appeal and have continued with the letting of the

¹ 21/01693/FUL

property either in the anticipation of success of the appeals or in the knowledge of the potential risks being taken.

20. Given the harm it is causing the development should not be allowed to continue for any longer than is necessary. I consider that a compliance period until September 2022 is unnecessarily long. Having regard to the submissions from both parties and taking into account the date the current tenancy agreement began; I consider that a compliance period of two months as set out in the notice is a reasonable period for compliance which strikes the appropriate balance between the legitimate interests of enforcing planning control and the interests of the appellants. Therefore, the appeals on ground (g) fail.

Formal Decisions

21. **Appeal A** 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.
22. **Appeal B** is dismissed and the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR