



# Appeal Decisions

Site Visit made on 20 September 2021

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 October 2021**

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**Appeal A Ref: APP/N5660/C/20/3256236**

**Appeal B Ref: APP/N5660/C/20/3256237**

**Appeal C Ref: APP/N5660/C/20/3256238**

**113 Hopton Road, London SW16 2EL**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by: Mr Alvi Ishmael (Appeal A), Ms Aneesa Ishmael (Appeal B) and Ms Farina Ishmael (Appeal C) against an enforcement notice issued by London Borough of Lambeth.
- The notice was issued on 7 July 2020.
- The breach of planning control as alleged in the notice is without planning permission the erection of a single storey ground floor L-shaped wrap around extension on the rear and side elevation of the original 2 storey rear return, and the erection of a full width/length rear roof extension to the rear of the original mansard roof addition at second floor level and on the mono pitched roof of the original 2 storey rear return.
- The requirements of the notice are to:
  - a) Remove the unauthorised single storey rear wrap-around extension in its entirety and reinstate the rear elevations of the premises as existed prior to the breach of planning control; and
  - b) Remove the authorised rear roof extension in its entirety and reinstate the rear roof slopes of the premises as existed prior to the breach of planning control; and
  - c) Remove all associated waste and debris resulting from compliance with above steps, from the premises.
- The period for compliance with the requirements is: Nine months after this notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) 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.
- Appeals B and C are proceeding on the ground set out in section 174(f) of the 1990 Act.

**Summary of Decisions: The appeals succeed in part on ground (f) and the enforcement notice is upheld with variations in the terms set out below in the Formal Decisions.**

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## Preliminary Matters

1. Since the appeal was submitted, the Council has adopted its new Lambeth Local Plan (LLP) 2020-2035 (adopted September 2021). The Council advise that its new policies D5, Q2, Q5 and Q11 are largely the same as the ones they replace, and which were referred to in the enforcement notice. I have been provided with copies of the new policies and, since they now form part of the development plan, have considered the appeal on the basis of these new policies. The appellant has been given the opportunity to comment on the newly adopted LLP through the appeal process.
2. Since the enforcement notice has been issued, the London Plan (2021) has been published. The Council advise that it considers policies D1 and D4 are relevant to the appeal. The appellant has been given the opportunity to comment on the implications of the new plan on the appeal.

## **Main Issues**

3. The main issues are the effect of the appeal scheme on:

- The character and appearance of the area; and
- The living conditions of neighbouring occupants.

## **Reasons**

### *Character and appearance*

4. The appeal site comprises a semi-detached dwelling located in a generally residential area. The site has been extended to the rear at the ground floor level, with a wrap around extension and platform with steps leading down to the garden and at the second floor, with an extension to the two-storey outrigger.
5. Policy Q5 of the LLP) seeks to ensure that development responds to positive aspects of the locality and historic character in terms of built form, including roofscapes and policy Q11 states that subordination will be a key consideration when assessing proposals for extensions. Development which unacceptably dominates the host building will not be permitted. The Building Alterations & Extensions Supplementary Planning Document (SPD) 2015, explains that building straight up off the existing rear elevation is unlikely to achieve the subordination required in Policy Q11(b). Policy D4 of the London Plan (2021) seeks good design.
6. A certificate of lawfulness, reference 18/00434/LDCP, for the erection of a roof extension over the existing rear return with two dormer windows to the side elevation was granted on 26 March 2018. This is not a planning permission but confirms that the proposal complies with Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). The plans show that the extension would be set below the ridge of the outrigger and back from its eaves and would be finished in tiles, to match the existing roof. This would make it appear as a subordinate roof extension.
7. The two-storey outrigger extension, as constructed, has been finished in white render and is not set back from the eaves of the original roof. This has resulted in an overly dominant structure which does not appear subordinate to the main roof and imbalances the pair of dwellings. Although it has been constructed to the rear, there are views of the extension from Oakdale Road between the building of flats 25-27A and the building of Nos 28 and 29. There are also limited public views of the extension from Russel's Footpath. It can also be seen from a number of properties along Hopton Road and Oakdale Road. Views of the single storey extension, by contrast, are more limited due to its more limited height and are interrupted by outbuildings.
8. The appellant has drawn my attention to extensions at No 60 Hopton Road and No 101, however, I have no substantive details of either property. The Council advise that the second floor/roof extension to No 101 was constructed under permitted development rights. I was able to glimpse the extension to the outrigger of No 101 from the footpath to the rear, which had the appearance of a mansard roof. I could see no significant public views of the rear of No 60.

Given the difference in design and the more limited public views, neither of the examples cited is comparable to the appeal scheme before me.

9. I accept that, given its limited height, and the very limited public views of the single storey rear extension, it does not harm the character and appearance of the area. Nevertheless, as set out above, the two-storey outrigger extension can be viewed from the public domain, as well as a number of properties in the area and so, given its dominant form, it has a harmful effect on the character and appearance of the area, contrary to policies Q5 and Q11 of the LLP, policy D4 of the London Plan and the SPD, the requirements of which are set out above.

#### *Living conditions*

10. Planning permission 18/00439/FUL was granted on 27 March 2018, for the erection of a single storey ground floor rear and side infill extension. The appellant has provided overlapped plans, which are asserted to show the difference between the development as approved and as built.
11. The single storey extension, as constructed, opens onto the rear garden, with a platform and steps leading down to a grassed area and outbuilding beyond. Interrupted views into the rear garden of 111 are possible from the platform. Although users of the platform and stairs are likely to spend a limited amount of time moving between the house and garden, occupants of No 111 are likely to find such overlooking intrusive. While steps are shown on the approved plans, given their far more limited dimensions, they are unlikely to result in overlooking.
12. In addition to viewing the extension from the appeal site, I was able to view the extension from the neighbouring property, No 115. The single storey extension has been constructed to the boundary fence, whereas the approved plans show a slight setback from the party wall. This is not reflected in the appellant's overlapped plans. The overlapped plans also fail to reflect the fact that the extension has been constructed closer to the first-floor window in the outrigger than was shown in the approved plans.
13. While the approved scheme would have allowed a 4m extension, the building as extended protrudes around another 1.34 metres. Although the rear garden of No 115 is generous, during my visit I saw seating and other paraphernalia which suggests that the area adjacent to the extension is used by occupants of the dwelling for sitting out and enjoying the garden. Due to the height of the extension, its extent and proximity to No 115, it appears a dominant, overbearing feature, which, despite the presence of vegetation, provides a harmful sense of enclosure to users of the rear garden of No 115.

#### *Fallback*

14. Planning permission 18/00439/FUL was granted on 27 March 2018, for the erection of a single storey ground floor rear and side infill extension. Condition 1 of the permission requires the development to be begun no later than three years from the date of the decision notice, condition 2 requires the development to be carried out in accordance with the approved plans and drawings and condition 3 requires the materials to match those of the existing building. The appellants have constructed a single storey wrap around extension to the rear of the dwelling. Although there are differences between

what has been approved and what has been constructed, as a matter of fact and degree, I consider the planning permission has been implemented.

15. The extension, as erected, has a harmful effect on the living conditions of neighbouring occupants for the reasons set out above. Although there are significant similarities between the approved extension and the works carried out, such that the planning permission has been implemented, it is the deviations from the approved plans which have resulted in the harm to living conditions, contrary to policy Q2 of the LLP, which seeks to avoid any undue sense of enclosure or unacceptable levels of overlooking, amongst other things. As such, the fallback position does not weigh in support of the grant of planning permission on the deemed planning application.
16. A bedroom and bathroom have been created in the outrigger extension. The side window in the bedroom of the roof extension, although obscure glazed, is fully openable, enabling occupants to peer out over the garden of the adjacent property and into windows of the adjacent property. Such overlooking is harmful to the living conditions of the occupants of 111 Hopton Road. However, given there is another window which serves the bedroom, it would be possible to include a condition requiring that the side windows are obscure glazed and non-openable. This would address concerns regarding overlooking and so there would be no harm in this regard.

### **Other Matters**

17. The enforcement notice identifies Policy D5 of the LLP within its reasons for issuing the notice. However, the policy simply sets out the circumstances in which the Council will take enforcement action and is therefore not determinative in the appeal before me.
18. The Council has referred me to policy D1 of the London Plan. While the policy requires consideration of urban form and structure, this is in relation to the production of area assessments, to help understand the capacity growth, not individual developments. It is therefore not determinative in the appeal before me.

### **Ground (a) conclusion**

19. While concerns regarding overlooking from the outrigger extension could be addressed via condition, I have found that it unacceptably harms the character and appearance of the area. Although I have found the single storey extension does not harm the character and appearance of the area, I have found that it unacceptably harms the living conditions of the occupants of neighbouring properties. Consequently, I conclude that the development conflicts with the development plan as a whole. There are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

### **Ground (f)**

20. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control, or remedy any injury to amenity which has been caused by any such breach. The Council confirm that the purpose of the notice is to remedy the breach.

21. Section 173 of the Act sets out that the purposes of an enforcement notice are (a) remedying the breach by making any development comply with the terms of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.

*Single storey wrap-around extension*

22. The appellant suggests removing the wrap around extension in its entirety is excessive. As set out above, I have found that the works carried out in the construction of the single storey extension, although not in full accordance with the approved plans, have implemented the planning permission. A lesser step would therefore be to make the development comply with the terms of the planning permission.
23. Although it was held in *Wyatt Brothers (Oxford) Ltd v SSETR* [2001] PLCR 161 that the power to vary the enforcement notice so that it would under-enforce is limited, this was where there was no deemed planning application. Significantly in this case, there is an extant planning permission. Requiring compliance with the terms of the permission would fall within the terms of section 173(a) and would therefore remedy the breach.
24. Lesser steps would be to require compliance with the previous approval, reference 18/00439/FUL. I note the concern the Council has raised regarding an apparent land drop from the front to the rear of the property of approximately 60cm. However, I see no reason why this could not be addressed without the need for the platform and steps which have been constructed.

*Two-storey outrigger extension*

25. It is established case law, that where it appears there is an obvious alternative which would overcome the planning difficulties with less cost and disruption, the Inspector should feel free to consider it. In relation to the extension to the two-storey outrigger, as confirmed by the Council's decision in relation to 18/00434/LDCP, in the event the enforcement notice is complied with, it would be possible for the appellant to construct a dormer under permitted development rights. An obvious alternative in this case therefore, with less cost and disruption would be for the extension to be altered to accord with the details provided under the LDC application.
26. Varying the requirements of the notice to give the appellant the option to modify the extension so that it accords with the details provided under the application, drawing number HOPTON 05/2017 Revision A01, with the requirement that windows inserted in the side elevation of the dwellinghouse are obscure glazed and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed, would address the concerns raised regarding the effect of the extension on character and appearance of the area and ensure the living conditions of neighbouring occupants are not harmed.

**Overall conclusion**

27. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the

enforcement notice prior to upholding it. The appeals on ground (f) succeed to that extent.

### **Formal Decisions**

28. It is directed that the enforcement notice is varied by, at section 5:

- After the words '*a) Remove the unauthorised single storey rear wrap-around extension in its entirety and reinstate the rear elevations of the premises as existed prior to the breach of planning control*', the insertion of '*Or alter the unauthorised single storey rear wrap-around extension so that it complies with the terms of planning permission 18/00439/FUL, dated 27 March 2018, including the conditions subject to which that permission was granted*'.
- After the words '*b) Remove the unauthorised rear roof extension in its entirety and reinstate the rear roof slopes of the premises as existed prior to the breach of planning control*', the insertion of '*Or alter the unauthorised rear roof extension so that it complies with the details approved under 18/00434/LDCP and shown on drawing number 05/2017 rev A01, dated 26 March 2018 and ensure that windows inserted in the side elevation of the dwellinghouse are obscure glazed and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed.*'

29. Subject to the variations above, the appeals are 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