



Appeal Decision

Site visit made on 4 February 2022

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 February 2022

Appeal Ref: APP/D5120/C/19/3240354

108A Overton Road, London, SE2 9SE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr K Richardson against an enforcement notice issued by London Borough of Bexley.
 - The notice was issued on 17 September 2019.
 - The breach of planning control as alleged in the notice is the erection of a single storey rear extension.
 - The requirements of the notice are 1) Remove the rear extension shown in the approximate location outlined and hatched in blue on the attached plan; and 2) Remove all resultant materials from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees were not paid within the specified period so the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decision

1. The enforcement notice is varied by the deletion of 'three months' in section 6 and the substitution instead of 'nine months'. Subject to the variation the appeal is dismissed and the enforcement notice is upheld.

Procedural matters

2. 108 Overton Road was originally an end terraced, double fronted, two storey dwelling, but it was subdivided, from front to back, into nos.108 and 108A; no.108 becoming a mid-terraced two storey dwelling and no. 108A an end terraced two storey dwelling. No.108A was then extended at the rear by a two storey extension, and subsequently by a single storey extension which extended across the rear elevation of the two storey extension and up to the boundary to no.106. It is the rear single storey extension that is the subject of the notice.

3. The plan attached to the enforcement notice identifies the enforcement land, with a red line, to encompass both no.108 and no.108A. The notice also identifies the enforcement property, in section 2, to be 108 Overton Road. There are therefore errors in both the notice and the plan. However, the breach of planning control is correctly identified in section 3 with the additional comment that it is 'shown in the approximate location outlined and hatched in blue on the attached plan'. The plan does identify the extension in outline and hatched in blue.

4. The errors in the enforcement notice and on the attached plan have not prevented the Appellant from submitting the appeal and he has not otherwise been prejudiced. This is no reason, therefore, to find the notice invalid. The address of the appeal property is correctly identified in the header to this decision.

5. Alleged comments and actions by the owner of 110 Overton Road are not material considerations and are not relevant. Nor is any possible extension to that property under permitted development right.

Reasons

The ground (c) appeal

6. The Appellant maintains that the single storey rear extension is development permitted under the provisions of Class A of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Class A provides for the enlargement, improvement or other alteration of a dwellinghouse, subject to limitations and conditions. One of the limitations is that the enlarged part of the dwellinghouse, if it is within 2 metres of the boundary of the curtilage of the dwellinghouse, must not exceed 3 metres in height. The single storey rear extension abuts, and is therefore within two metres of, the boundary to no.106. At the site visit the height of the extension, to its flat roof and not to side parapet walls, was measured to consistently exceed 3 metres in height along its rear elevation. The single storey rear extension thus exceeds 3 metres in height within two metres of the boundary of the curtilage to the dwellinghouse, and therefore fails to comply with a limitation of Class A.

7. The Appellant has stated that "...the Council's own records clearly detail that part of the rear extension already has formal consent". He has not specified which records he is referring to or which part of the extension "...has formal consent". He has, however, referred to application no. 17/00990/GPDE for the erection of a single storey rear extension at no.106 alongside the boundary to no.108. It is presumed that this is the 'consent' he has referred to. The application was for prior approval and was made under the provisions of condition A.4 of Class A of Part 1 of Schedule 2 of the GPDO. Prior approval was granted subject to the extension being built in accordance with the details approved to the local planning authority, which included the 3 metre height limitation of Class A. This matter, therefore, is not relevant to consideration of this appeal, because the extension that is the subject of this appeal must satisfy the same height limitations that were required of the proposed extension at no.106.

8. The single storey rear extension that has been erected at 108A Overton Road exceeds 3 metres in height within 2 metres of the boundary of the curtilage to the dwellinghouse and therefore does not satisfy a limitation of, and is not development permitted by, Class A of Part 1 of Schedule 2 of the GPDO. The ground (c) appeal thus fails.

The ground (f) appeal

9. No part of the single storey rear extension "...has formal consent..." and the Council is seeking to remedy a breach of planning control, rather than "...any material harm to amenity". The requirements of the notice are not excessive and the ground (f) appeal thus fails.

The ground (g) appeal

10. A breach of planning control should be remedied as soon as is reasonably possible. Three months is not reasonable even to organise a contractor and to have the works carried out, let alone and also for occupants of the property to find and relocate to alternative accommodation. The Appellant is seeking a compliance period of twelve months but this is also unreasonable. Six months should be

sufficient for occupants to find and move to alternative accommodation and for a suitable contractor to be instructed, and three months should be adequate for the demolition works to be carried out. The ground (g) appeal thus succeeds and the compliance period has been varied to be nine months.

John Braithwaite

Inspector

