



Appeal Decision

Site visit made on 7 June 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 June 2022

Appeal Ref: APP/B5480/C/21/3279328

347 Upminster Road North, Rainham RM13 9JR

- 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 Ataul Wahed Chowdhury against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice was issued on 25 June 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a single storey rear extension.
 - The requirements of the notice are:
 1. Demolish the single storey rear extension from the area shown hatched black on the attached plan; AND
 2. Remove all materials, rubble and debris from the site as a result of undertaking step 1 above.
 - The period for compliance with the requirements is 3 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. It is directed that the enforcement notice be:
 - Varied by deleting the words "three months" within section 6 (Time for Compliance) and its replacement with "six months".
2. Subject to the variation, 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.

Preliminary Matters

3. During the course of this appeal, Havering Core Strategy and Development Control Policies Development Plan Document, 2008 (CS), and policies contained within it, has been replaced with the Havering Local Plan 2016 – 2031, which was adopted in November 2021 (Local Plan). This must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on the new Local Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded CS.

Appeal on ground (a), the deemed planning application (DPA)

Main Issues

4. The main issues are the effect of the development upon:

- the character and appearance of the host building and area; and
- the living conditions for the neighbouring occupiers of No 349 Upminster Road North, with particular regard to outlook.

Reasons

Character and appearance

5. The appeal site is characterised predominantly by semi-detached and detached properties with relatively long rear gardens. The unauthorised works, the subject of this enforcement notice, relates to a brick built flat roof ground floor rear extension. For semi-detached properties, the Council's Residential Extensions and Alterations Supplementary Planning Document, 2011 (SPD) advises in order to ensure that extensions are subordinate to the original dwelling, as a general rule, houses can be extended from the rear wall of the original dwelling by up to 4 metres in depth. Whilst the Council's SPD is guidance only, its emphasis on good design is consistent with National Planning Policy Framework (the Framework).
6. The rear extension far exceeds the above recommended 4m recommendation and extends the building considerably, such that the rear extension is not a subordinate to the original building. Despite some variation in building lines and relatively long the rear garden, the excessive depth and size of the extension has unbalanced the appearance of the pair of semi-detached houses. In this regard, the excessive depth and size of the rear extension introduces an overly dominant and visually discordant feature, which fails to harmonise with the host building and the surrounding area.
7. Therefore, the development has a harmful effect upon the character and appearance of the host building and the area. Accordingly, the development is contrary to Policies 7 and 26 of the Local Plan, which amongst other things states that the Council will promote high quality design that contributes to the creation of successful places in Havering by supporting development proposals that:... Are of a high architectural quality and design.

Living conditions for the neighbouring occupiers of No 349 Upminster Road - outlook

8. The Council's SPD advises that for semi-detached properties, any extension which projects more than 4 metres in depth, should be within an angle of 45 degrees, taken from the 4 metre dimension on the property boundary, in order to ensure a reasonable level of amenity is afforded to neighbouring properties. However, contrary to the above guidance the unauthorised extension as built, which extends beyond 4m in depth, is full width of the original building and therefore does not accord with this guidance.
9. The unauthorised rear extension is far greater in depth than the neighbouring rear extension constructed at No 349, and the height of the extensions rises well above the existing boundary treatment, which has resulted in a large expanse of the flank wall of the extension, built close to the boundary with No

349. As a result, the unauthorised extension appears as a dominant feature in the outlook from windows in the rear elevation of this neighbouring property at ground floor level and from the garden itself. In this respect the unauthorised rear extension creates an increased sense of enclosure to the neighbouring occupiers of No 349, which harms their living conditions.

10. Therefore, the development fails to provide acceptable living conditions for occupiers of No 349, with regard to outlook. Accordingly, the development is contrary to Policy 7 of the Local Plan, which amongst other things states that to protect the amenity of existing and future residents the Council will support developments that do not result in: i. Unacceptable overlooking or loss of privacy or outlook.

Other matters

11. The appellant advises that the extension was constructed to provide an accessible bedroom and bathroom at ground floor level to accommodate the appellant's mother's medical needs. In light of the enforcement notice I recognise that the failure of this appeal would result in the removal of the extension used by the appellant's family. This would represent an interference with their rights under Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998.
12. I have considerable sympathy with the appellant's personal circumstances and can fully appreciate why they would wish to retain the extension for their family members. Nevertheless, there is insufficient evidence to justify the size and scale of the development, and I observed during my site visit that a larger proportion of the extension accommodated a large kitchen/diner, which does not support the appellant's contention that the development is necessary for an accessible bedroom and bathroom for the appellant's elderly mother. Furthermore, there are alternative measures which could be explored to provide the accommodation needed for the appellant's mother, which do not result in harm to the character and appearance of the host building and area generally, and to the living conditions for the neighbouring occupiers of No 349.
13. Due to the above factors, there is limited evidence before me to suggest that the removal of the extension would have a disproportionate effect on the appellant's family when weighed against the planning harm set out above. As a result, I can only give the appellant's personal circumstances modest weight in my decision.
14. The appellant further states that an extension could be built under prior approval for up to 6m in depth and up to 3m in height. However, the appellant acknowledges that the current 'as built' development exceeds this size. Permitted Development (PD) rights only apply when the development fully accords with the limitations set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). If development is commenced but any limitation is exceeded, the whole development would be unlawful, not just the element in excess of PD. Limitations to, for example, the size of development is expressed precisely in the GPDO. There cannot be a 'de minimis' infringement. It has been held that PD rights cannot be claimed retrospectively by the removal of an element so as to return the residual development to the permitted tolerance. Therefore,

reference to permitted development rights does not support the current unauthorised development.

15. The appellant also refers to two appeal decisions¹ from two other Councils (The Royal Borough of Windsor and Maidenhead and the London Borough of Harrow) and a planning permission² granted by the London Borough of Havering for an 8m deep two storey rear extension.
16. With regard to the appeal decision for Windsor and Maidenhead, the Inspector found that that development was subordinate in appearance to the main house and that the extension was only "*a minor amount taller than the boundary wall*". In relation to the appeal decision at Harrow Road, the Inspector found that "*Given the greater separation distance and the intervening built form of an existing garage, I do not consider that the proposal would have a material effect on the living conditions of the occupants of the neighbouring property at No 16 Kings Way.*" The planning permission granted by the London Borough of Havering at 415 Upminster Road North relates to a detached property (and not a semi-detached property as is the case here). Furthermore, that development was located adjacent to existing large outbuilding and a property in commercial use at No 417 Upminster Road North.
17. As such, it is clear that the circumstances of those other developments referred to are materially different to the current appeal development before me, where I have found that the development is not subordinate to the host building and that the size and depth of the extension harms the living conditions of the neighbouring occupiers of No 349 with regard to outlook. Therefore, reference to these other developments do not lend support for the current unauthorised development.

Conclusion on Ground (a) and the DPA

18. 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 and the living conditions for the neighbouring occupiers of No 349 Upminster Road with regard to outlook. Lack of objections raised from neighbouring occupiers of the appeal site does not justify the harm I have identified above.
19. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010 (EA). The EA sets out the relevant protected characteristics which includes disability. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the EA. Nevertheless, having regard to the legitimate and well-established planning policy aims to protect the character and appearance of the area and the living conditions of neighbouring occupiers, in this case I consider that greater weight attaches to the public interest. Dismissal of the appeal is therefore necessary and proportionate, and it would

¹ Appeal Refs: APP/T0355/D/17/3184564 – 193 Clare Road, Maidenhead, SL6 4DL and APP/M5450/W/17/3172955 – 18 Kings Way, Harrow, Middlesex HA1 1XU.

² Council ref: P0858.21 – 415 Upminster Road North.

not result in a violation of the human rights of the appellant's family. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

20. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the DPA should be refused.

The appeal on Ground (f)

21. 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".
22. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
23. The appellant states that the steps required are excessive in terms of remedying the breach as he tried to submit an amended application under the prior approval (PD legislation) for an extension of up to 6m in depth, thus reducing the depth of the extension by 2m. However, as outlined above under the ground (a) appeal above, PD rights only apply when the development fully accords with the limitations set out in the GPDO. If development is commenced but any limitation is exceeded, the whole development would be unlawful, not just the element in excess of PD. Limitations to, for example, the size of development is expressed precisely in the GPDO. There cannot be a 'de minimis' infringement. It has been held that PD rights cannot be claimed retrospectively by the removal of an element so as to return the residual development to the permitted tolerance.
24. 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.
25. On this basis, the Ground (f) appeal fails.

The appeal on Ground (g)

26. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 3 months to at least 6 months in order to provide sufficient time to carry out the works required, especially given that builders and tradesman are currently in a high demand as a result of the global pandemic.
27. In my view 6 months would strike a more reasonable and proportionate balance in this instance. I shall therefore extend the period from 3 to 6 months for compliance with the notice.
28. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

29. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation 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