



Appeal Decision

Site visit made on 26 July 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 August 2022

Appeal Ref: APP/A5270/C/20/3263411

10 Rydal Crescent, Perivale, Middlesex UB6 8EG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr. Emile Ayad against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice, numbered 20EN0569, was issued on 1 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of an additional rear extension as shown hatched on the attached plan.
 - The requirements of the notice are to:
 1. Remove the additional rear extension in its entirety; and
 2. Remove all resultant debris
 - The period for compliance with the requirements is: 6 months.
 - The appeal 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.
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Decision

1. The appeal is dismissed, 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

2. The appellant ticked ground (d) on the appeal form and initially submitted evidence in support of this ground through the appeal. However, in response to the Council's Statement of Case, the appellant states they accept that, whilst elements of a previous structure remain in situ at the site, the roof and supporting structure has largely been replaced.
3. From my inspection of the site, I agree that the structure, as a matter of fact and degree, comprises a single extension and any previous structures have been incorporated into the fabric of the new extension. The appellant confirms they cannot provide sufficient evidence to demonstrate that the appeal structure has been at the site for more than 4 years and has withdrawn their appeal under ground (d). The appeal shall therefore proceed on the basis of grounds (a) and (f) only.
4. Since the Notice was issued, the 2021 London Plan (LP) has been published. Although the enforcement notice refers to policies of the 2016 London Plan, it also refers to policies of the New Draft London Plan. The Council has identified those policies of the 2021 London Plan it considers are relevant to the appeal and the appellant has had the opportunity to comment on these through the appeal. I shall therefore consider the appeal on the basis of the 2021 London Plan.

Ground (a)

5. The appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Main Issues

6. The main issues are the effect of the appeal scheme on:
- The character and appearance of the area;
 - The living conditions of neighbouring occupants, having regard to outlook and light.

Reasons

Character and appearance

7. The appeal site is located in a generally residential area which is characterised by terrace dwellings constructed using traditional materials, with modest rear gardens. Although the appeal property fronts onto Rydal Crescent, the side return of the appeal property runs along Coniston Avenue. The rear extension has been constructed using timber, clear and white plastic sheeting and metal corrugated sheeting.
8. The extension extends well above the boundary fence and the clear and white plastic, wooden joists and metal corrugated roof cladding, although located to the rear of the main dwelling, are clearly visible from both Rydal Crescent and Coniston Avenue. While there has previously been a canopy in the rear garden, this appears to have been a less prominent structure which was more limited in extent and height. Furthermore, it has since been removed.
9. Policy 7.4 of the Ealing Development Management DPD (DPD)(2013) seeks to ensure that development in existing built areas complements their materials and detailing and policy 7B of the DPD seeks materials which complement the building and context. The materials used in construction of the extension, although lightweight, gives it a make-shift appearance, which contrasts with the more traditional materials used in construction of the main dwelling and used elsewhere in the area.
10. As a result, it appears an incongruous feature which diminishes the character and appearance of the area, contrary to policies 7.4 and 7B of the DPD, the requirements of which are set out above and policy D3 of the LP, which seeks to ensure development responds to the existing character of a place and is of high quality, amongst other things.
11. Section 177(1) of the Act allows for a grant of planning permission for the whole or part of the matters. Although advanced under ground (f). the appellant states they would be willing to remove the central section of the 'canopy structure', which they assert would reduce the extent of the structure visible from the neighbouring property at No 12 and to a lesser extent the street.
12. While the structure is stated to have been built in sections, from the photographs provided by the Council, the roof appears to comprise a single corrugated metal sheet. As set out above, from my inspection of the site, I

consider the structure comprises a single extension. The removal of the middle section would result in the creation of an extension to the main building, albeit more limited in depth and a separate outbuilding, identified as a 'shed' (retained). I do not therefore consider the extension is severable in this way, or that the proposed scheme forms part of the matters specified in the notice.

13. Moreover, it is not clear from the evidence, or from my inspection of the site, what the visual effect of removing the central section would be. It is likely the appellant would need to cut the wooden beams and corrugated metal sheeting, which would be visible from the public domain and would exacerbate the make-shift appearance of the structure. The section that would be removed is actually the least prominent part of the structure, given its setback from the highway. Its removal would not sufficiently mitigate the harm to the character and appearance of the area.

Living conditions

14. The extension projects the full length of the rear garden and sits well above the boundary fence with No 12 Rydal Crescent. Due to its height and depth, the appeal extension appears a dominant structure which occupants of No 12 are likely to find overbearing and diminishes the outlook from No 12, contrary to policy 7B of the DPD, which seeks to ensure that new development achieves a high standard of amenity for adjacent uses.
15. The appellant has drawn my attention to prior approval, reference 210059PALH E, for a 6m deep single storey rear extension at No 12 Rydal Crescent. However, the occupants of No 12 are not obliged to build the 6m extension. Furthermore, given the height of the appeal extension and its proximity to No 12, the occupants of No 12 are still likely to find it overbearing, even if they build their own extension.
16. As set out above, the appellant has suggested removing a central section of the extension. However, I have found that the proposed scheme does not form part of the matters specified in the notice. Furthermore, the section removed would be limited in extent and so the harm to occupants of No 12 would remain.

Other Matters

17. The Council has referred to policy D1 of the New Draft London Plan in its enforcement notice. However, policy D1 of the London Plan (LP)(2021) sets out how London Boroughs should plan for growth and sets out requirements for the preparation of development plans. It is therefore not directly relevant to the appeal scheme before me.

Ground (a) Conclusion

18. I acknowledge that the extension provides a sheltered area to the rear of the house, which is likely to be of benefit to the occupants of the property. However, I am not persuaded that the appeal scheme is the only means of providing such shelter. For the reasons given above, I conclude that the appeal scheme conflicts with the development 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)

19. An appeal under ground (f) is made on the basis 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 the matters stated in the notice, or... to remedy any injury to amenity which has been caused by any such breach. It is clear from the wording of the notice that its purpose is to remedy the breach of planning control.
20. I am obliged to consider whether there is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal. The appellant states they would be willing to remove the central section of the canopy structure. However, as set out above, I have found that the proposed scheme does not form part of the matters stated in the notice.
21. Furthermore, I have found the removal of the central section would fail to address the harm that I have identified to the character and appearance of the area and living conditions. Allowing the extension to remain would fail to remedy the breach. Consequently, the appeal under ground (f) must fail.

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.

M Savage

INSPECTOR