



Appeal Decisions

Site visit made on 9 August 2022

by **D Boffin BSc(Hons), DipTP, MRTPI, DipBldg Cons(RICS), IHBC**

an Inspector appointed by the Secretary of State

Decision date: 6th September 2022

Appeal A Ref: APP/M5450/C/21/3278446

Appeal B Ref: APP/M5450/C/21/3278458

Land at 22 Gainsborough Gardens, Edgware HA8 5TB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). Appeal A is made by Mr Jayesh Dalpat Anjaria and Appeal B is made by Mrs Rashila Jayesh Anjaria against an enforcement notice issued by London Borough of Harrow.
- The notice was issued on 4 May 2021.
- The breach of planning control as alleged in the notice is:
Without planning permission, the Unauthorised Development of a single storey side to rear extension, first floor side to rear extension and a side dormer extension ("the Unauthorised Development").
- The requirements of the notice are:
 1. Demolish the entire Unauthorised Development
 2. Reinstate the original catslide roof
 3. Make good any damage caused to the building as a result of the above step and ensure that all materials used shall match those used in the existing building
 4. Remove from the Land all materials and debris arising from compliance with the requirements of the Notice
- The period for compliance with the requirements is: 12 calendar months.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the 1990 Act.

Summary Decision: The appeals succeed in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Preliminary Matters and Background

1. As set out above there are two appeals on this site. They relate to the same enforcement notice, therefore, to avoid duplication I have dealt with them together in the reasoning below unless specified differently.
2. The evidence before me cites the design of other extensions within the surrounding area and the impact of the development on the character and appearance of the area. However, an appeal on ground (a) has not been made. Therefore, the planning merits of the case before me are not relevant to my decision as my decision rests on the facts of the case, on relevant planning law and judicial authority. Furthermore, I am not empowered to consider whether or not planning permission should be granted for the development.
3. The appeal property is a semi-detached dwelling in a residential area. In January 2015 prior approval¹ (the prior approval) was granted for a single storey rear extension 6 metres deep, 3.4 metres maximum height and 3 metres to the eaves. That extension was shown as 6.465 metres in width on the plans submitted with the prior approval. Later that year, in May, planning

¹ Ref No: P/0003/15

permission² (the planning permission) was granted for '*single storey side to rear extension; first floor side/rear extension; external alterations*'. The rear ground floor extension was shown as extending across the whole of the rear of the property with an 'indent' in its rear corner adjacent to 24 Gainsborough Gardens (No 24). The depth of that rear extension was shown to be 4.56 metres adjacent to the boundary with 20 Gainsborough Gardens (No 20). Moreover, in August that year the Council granted a Certificate of Lawful Development (the LDC)³ in relation to a proposed side dormer.

4. Although raised under ground (c), the appellants have stated that differences in the heights of the side dormer roof and the side extension are, in their opinion, minor issues and the whole development does not require demolition as the front parapet on the side extension could be removed to reduce its height. They have also stated that requirements 3, 4 and 5 are not required as the works were approved by the Council therefore, they are not unauthorised, and the materials used match the existing house. These arguments are more pertinent to ground (f) - 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
5. Both parties were given the chance to comment on whether they considered that the planning permission was begun and is still extant and whether the requirements of the enforcement notice could be varied to allow modification of the development to comply with that planning permission. The Council has had the opportunity to make submissions on these matters and so no prejudice arises from me dealing with them as though made under ground (f).

The ground (c) appeals - Appeals A and B

6. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. The onus is on the appellants under this ground of appeal to show, on the balance of probability, that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control. For example, the appellants need to demonstrate that development has not occurred for the purposes of Section 55 of the 1990 Act, or that the matters alleged in the notice have been granted planning permission, or that they constitute 'permitted development'. The appellants' evidence does not need to be corroborated by "independent" evidence in order to be accepted. If there is no evidence to contradict or otherwise make their version of events less than probable, there is no good reason to reject their evidence provided it is sufficiently precise and unambiguous.
7. In this case, the prior approval, planning permission and LDC were submitted to and determined by the Council separately. The existing plans for each showed the dwelling in its un-extended form as none of the proposals had been implemented during 2015. The Council's consideration of each application resulted in 3 separate and distinct decisions which, as things stood, would have allowed those developments to proceed. Notwithstanding these separate Council decisions, the situation must be judged at the date the development/s was/were carried out; normally the date the works commenced.

² Ref No P/1616/15

³ Ref No P/2787/15

8. To establish if there has been a breach of planning control, whether there was one or more building operation/s needs to be assessed. If the works were undertaken contemporaneously, the development as a whole must be evaluated. It is not possible to split the works into different components on the basis that part or parts is/are permitted development and another part has express planning permission if they were undertaken contemporaneously. That could occur only if each separate part was substantially complete before starting another.
9. The appellants maintain that the prior approval rear extension was commenced and completed first, the LDC side dormer was commenced thereafter and completed and last the planning permission extensions were commenced and completed. Nevertheless, that statement has been contradicted by the appellants' agent who has stated that the loft conversion was completed first, then the rear extension and lastly the side/part rear and first floor extensions. Furthermore, other than these contradictory statements the appellants have not provided any evidence of how or when the commencements and completions took place. As such, their evidence is insufficiently precise and unambiguous in this respect.
10. Additionally, the Council's evidence includes its Officer's Building Control Site Inspection Notes (the site inspection notes) in relation to a building regulation application⁴ for 'two storey side and part single storey part two storey rear extension and internal alterations'. It also includes the plans that the Council states were associated with that application and the appellants have not disputed that fact. Those plans indicate that the overall ground floor and first floor footprints and design of the extensions, to be considered for building regulation approval, were similar to that included within the prior approval, planning permission and LDC when taken as a whole. The footprints and design of the extensions as constructed are similar to that shown on those plans. The site inspection notes indicate that works commenced on the 1 May 2018 and that the final inspection took place on the 15 January 2019. There is nothing within those notes to indicate that the extensions proposed as part of the building regulation application were constructed in separate phases.
11. Furthermore, as constructed, there is no dispute that the front elevation of the single storey side extension is appreciably taller than the 3 metres approved in the planning permission. There is no window in that front elevation. The ground floor rear extension extends across the whole of the rear of the property and the depth of the room enclosed decreases adjacent to the boundary with No 24 creating an 'indent'. However, the roof continues over the 'indent' created and the rear corner/section of the ground floor extension, adjacent to the boundary with No 24 has not been constructed in accordance with the planning permission. The depth of the ground floor extension adjacent to the boundary with No 20 appears to reflect the depth of the extension that was granted within the prior approval. However, the rear ground floor extension is across the whole of the rear of the property. The appellant has also conceded that the side dormer extension is taller than that shown on the LDC plans. The former eaves of the catslide roof, that were shown to be retained on those plans, have not been retained.
12. Consequently, on the balance of probability, it is more likely than not that the development described within the alleged breach of planning control was

⁴ Ref No: FP/00555/2018

carried out as one building operation. There is no evidence before me to indicate that the operational development as a whole falls within permitted development rights. Moreover, the development as constructed is materially different from that granted by the planning permission. Therefore, as a matter of fact and degree and on the balance of probabilities, the development has been carried out without planning permission. Express planning permission is required and there is no evidence that planning permission has been granted for the development as constructed.

13. I conclude that the matters alleged constitute a breach of planning control and the appeals on ground (c) must fail.

The ground (f) appeals – Appeals A and B

14. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
15. The notice does not specify which of the two purposes it seeks to achieve. Nonetheless, in requiring the demolition of all of the unauthorised development it is evident that the Council seeks to remedy the breach. As a result, and in the absence of an appeal on ground (a) as set out in section 174(2) of the 1990 Act and a deemed planning application, the power available to me under section 176(1) of that Act only relates to whether the requirements exceed what is necessary to remedy the breach.
16. Given my findings within the ground (c) appeals above the extensions are in breach of planning control and therefore requirements 3, 4 and 5 do not exceed what is necessary to remedy the breach. Moreover, only removing the parapet at the front of the single storey extension, on its own, would not remedy the breach of planning control. In addition, as stated above, there is no ground (a) appeal or deemed planning application in this case therefore I am not empowered to consider the planning merits of retaining the extensions as constructed or retaining them with the front parapet removed.
17. However, if there is an extant planning permission the breach of planning control could also be resolved by the development being altered to comply with the terms and conditions of that planning permission. The Council maintains that the development in situ is significantly different to the approved scheme as it was undertaken in one operation and as a result, the planning permission is not extant, and it expired in May 2018 and is now out of time.
18. Given that part of the footprint of the development as constructed appears to overlap that of the planning permission I consider that there is an element of development common to both the permission and the enforcement notice. The development as constructed has a larger ground floor footprint than that approved by the planning permission.
19. Nonetheless, large parts of the flank wall on the boundary with No 24, the front wall of the ground floor side extension and some of the flank wall on the boundary with No 20 would be in a similar position to that of the walls of the development as constructed. Based on the evidence before me it appears that the digging of a trench to contain those parts of the foundations of the development would have been a '*material operation*' as defined within section 56 of the 1990 Act in respect of the planning permission. As such, it would appear that the development permitted by the planning permission was begun within the time limits set out in that permission.

20. I acknowledge, that it is possible to deviate from the permitted works in a manner that later becomes an enforcement issue. Nevertheless this does not retrospectively alter the fact that the planning permission can be treated as being begun in relation to section 56 of the 1990 Act. Therefore, I consider that the planning permission is still extant.
21. There would also be less cost and disruption than total demolition, as the appellants would be able to modify the development by demolishing/removing only the parts of the development that do not accord with the planning permission. In light of the extant planning permission which the Council granted and would have been subject to public consultation, I consider that complete demolition of the development is therefore excessive and unnecessary.
22. Consequently, under section 176(b) of the 1990 Act, I will vary the notice to require either the complete demolition of the development, or that the development shall be altered to comply with the terms and conditions of the planning permission. The appellants therefore have the choice of which course of action to take and I can carry out the variations without injustice to the parties. The appeals on ground (f) therefore succeed to this extent.
23. Furthermore, given that the time limit for compliance is 12 months the appellants would also have sufficient time to submit a further planning application to the Council to modify the extensions to remedy any injury to amenity which has been caused by the breach.

Conclusion

24. For the reasons given above, I conclude that the ground (c) appeals fail and 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 decision

25. It is directed that the enforcement notice be varied by:
- Substituting all the wording of the requirements with the following wording:
 - 1. **Either** (a) demolish the entire Unauthorised Development and reinstate the original catslide roof **Or** (b) modify the dwellinghouse to comply with the terms of planning permission (ref: P/1616/15) dated 27 May 2015, including the conditions subject to which that permission was granted.
 - 2) Make good any damage caused to the building as a result of the above step and ensure that all materials used shall match those used in the existing building.
 - 3) Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
26. Subject to these variations the enforcement notice is upheld.

D Boffin

INSPECTOR