



Appeal Decision

Site visit made on 14 September 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Ref: APP/E5330/C/21/3273118
398 Rochester Way, London SE9 6LH

- 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 Thingocdiep Vu against an enforcement notice issued by Royal Borough of Greenwich Council.
- The enforcement notice was issued on 15 March 2021.
- The breach of planning control as alleged in the notice is the unauthorised construction of a rear extension.
- The requirements of the notice are to reduce the depth and eaves height of the rear extension by reference to a previous prior approval (16/2860/PN), render the extension, reduce the ground level to the rear of the host property, and to reduce the height of an outbuilding.
- The period for compliance with the requirements is six 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.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld with a varied compliance period.

Preliminary Matters

1. Two versions of the enforcement notice are before me. The version supplied by the appellant is unsigned and shows tracked changes. It contains the allegation set out above. The alternative version, supplied by the Council, extends the allegation to include the unauthorised construction of an outbuilding and raised land.
2. The Council acknowledge that the version sent to the appellant's agent on the day of issue limited its allegation to the construction of the rear extension, but say that a later completed version to include allegations as to the outbuilding and raised land was the version formally issued (and signed) and hand delivered to the appellant. The appellant's agent contends that only the first unsigned version was received.
3. The difference matters because, in response to a PCN issued in 2018, the appellant stated that all works had been completed towards the end of 2017, and this is also referenced in correspondence (Council appendix JD7). It is thus relevant to the question of injustice whether the works not presently raised in the allegation (if they are not) might now be immune from enforcement action. I am not informed that any other enforcement action has been taken.
4. If the appellant is right, then, despite the lack of any objection from the appellant's agent to my correcting the allegation to include the outbuilding and land levels, I would not think this correction possible without causing injustice

to the appellant. This is because there is sufficient uncertainty for me to think that, if a new notice were now to be issued against the outbuilding or the land levels, a ground (d) appeal might succeed. This is because the works now appear to have been *in situ* for more than four years, with (on the appellant's case) no enforcement action having yet been taken against them.

5. However, I have no real reason to doubt the Council's version of events. The 'first' enforcement notice contains tracked changes and is unsigned. Until a notice is signed or otherwise duly authorised, I do not consider it to be 'issued' or therefore to amount to a valid enforcement notice capable of generating an appeal. The Council have given a detailed explanation of the events surrounding service of the notice including contemporaneous photographs taken at the time of service and a copy of the 'second' notice sent with instructions to the Council's Legal Services department on the day of issue. It is clear from their explanation that the 'second' notice was formally issued. I accept from the Council's explanation that this second notice was duly served on the appellant.
6. Therefore the question of correcting the allegation does not arise. The alleged breach of planning control in the issued notice is *Without planning permission the unauthorised construction of a rear extension, outbuilding and raised land*.

Main Issues

7. It follows from the foregoing that the appeal relates to the subject of the notice as served, being the construction of a rear extension, outbuilding and raised land. The appeal on ground (a) seeks planning permission for what has been constructed, and the main issues concern the effects of the development on the living conditions of neighbouring occupiers and on the character and appearance of the host property and surrounding area. The appeal on ground (f) contends that the requirements of the notice are excessive. Finally, the appeal on ground (g) seeks more time to comply with the requirements of the notice if and insofar as it is upheld.

Reasons

Ground (a): character and appearance

8. The relevant development plan policies consist of the London Plan of March 2021 and the Royal Greenwich Local Plan of 2014. A supplementary planning document ('SPD') to the latter, concerning residential extensions and alterations, was adopted in 2016.
9. Together the policies require design that makes the best use of site capacity but which responds to its local context, positively contributing to urban and environmental improvements. Proposals for residential additions should be limited to a scale and design appropriate to the building and locality.
10. The appeal property consists of an end-of-terrace house in an established residential area, fronting onto Rochester Way but set well back from the main thoroughfare. The surrounding houses are a mix of terraced and semi-detached properties mostly rendered in pebbledash. The host property has landlocked the rear garden as a result of a side extension for which permission has previously been granted.

11. Modest garden outbuildings are seen in the vicinity, as are occasional single-storey rear extensions mostly finished in materials commensurate with the host dwelling.
12. The Council's SPD recommends that a single storey residential extension should not normally project more than 3.6m from the rear wall of the original house, for reasons relating to requiring a subservient relationship as well as to avoid adverse impacts on neighbouring living conditions. As acknowledged by the SPD, it is however the case that permitted development rights have existed to construct extensions of a greater depth than this.
13. Prior approval was granted for a 5.8m deep rear extension at the subject property in 2016, to achieve a maximum height of 2.95m. The extension that has been constructed, unauthorised in its entirety, exceeds these dimensions by around 55cm in both directions. This has had the unfortunate effect of rather overwhelming the house and appearing wholly out of scale. The roof appears not to be of a height commensurate with the internal floor division of the house, but attaches to the house only slightly below the first floor windows. Whilst acknowledging that something similar has been done next door-but-one, there at least the parapet is evident, with the main roof height of the extension appearing more in scale with the storeys of the house.
14. The disproportionate height of the extension is augmented by the excessive depth. The depth exceeds that at no. 377, brought to my attention by the appellant, with the further difference being that the extension at no. 377 is not of an excessive height. Together these two factors of height and depth create an extension that compromises the appearance of the house and the surrounding area. This dissonance is amplified by the contrasting rendered finish, although that matter alone could be overcome by requiring a different matching finish by imposing a planning condition. However, whilst acknowledging that the extension cannot be seen from public vantage points, it nonetheless cannot be said to positively contribute to the improvement of the built environment, irrespective of the particular finishing materials.
15. Accordingly I find that this aspect of the development fails to comply with the requirements of the development plan policies to which I have referred.
16. Turning to the raised land levels and the outbuilding, the SPD requires that outbuildings should be in proportion to the original house and garden and should not impact upon the open character of the surrounding area. They must be sensitively designed, in the appropriate locality, taking into account the residential amenity of neighbouring properties. The same design considerations apply to outbuildings by virtue of the development plan policies previously cited.
17. The raised land levels do not adversely affect the character of the area *per se* but they have facilitated the construction of the outbuilding to an excessive height when compared with the surrounding area. It is a chalet-type building with an extensive roof overhang that reaches to the boundary of the property on either side. Having been constructed on raised ground, it dominates the rear gardens in the vicinity and adversely affects the character of the area for this reason. It does not comply with the development plan.

Living conditions

18. Some matters are raised by neighbouring residents that the notice does not expressly attack, such as guttering, drainage, a boiler flue, damp proofing or the boundary treatment. Inasmuch as these raise planning matters, because they are not considerations raised by the notice, they are beyond the scope of my considerations on this appeal.
19. The extension has been constructed up to and on the boundary of the adjoining property to the west. It is said by the neighbour, and demonstrated by photographs, that the morning sun to the neighbour's patio area has been obliterated. Whilst some compromise to the neighbour's living conditions would result from the development for which prior approval was given, I consider that the additional depth and height of the development as constructed has given rise to tangible harm to those living conditions. This is not only the additional loss of sunlight, but also the sense of enclosure that this large and overbearing extension produces.
20. The raising of land levels by around half a metre results in direct overlooking into neighbouring houses and gardens, from the host property's garden and from the outbuilding. This results in an unacceptable invasion of privacy. The appellant's offer of installing obscure glazing to the outbuilding could go some way to alleviating this concern, but it would not overcome the objections arising from the ground levels or from the impact of the height of the outbuilding on the area's character.
21. Accordingly, I find that each aspect of the alleged breach of planning control has had a detrimental impact on neighbouring living conditions, contrary to the relevant development plan policies, particularly Local Plan policy DH(b) requiring that development does not result in an unacceptable loss of amenity to adjacent occupiers by reducing the amount of daylight, sunlight or privacy they enjoy or result in an unneighbourly sense of enclosure.
22. It follows that the appeal on ground (a) does not succeed.

Ground (f)

23. The steps required by the notice do not seek the removal of all aspects of the alleged breach. The three developments are all unauthorised in their entirety; however, the Council has had regard to the existence of permitted development rights and has accordingly under-enforced in order to preserve those rights. I have explained above that I find the outbuilding and land levels to have formed part of the allegation in the version of the notice that was issued and served, and thus the requirements to remove or alter those elements do not exceed what is required to address the allegation.
24. As I have found all aspects of the alleged breach to be unacceptable, whether or not the extension is re-rendered or the outbuilding is obscure glazed, I am unable to find that lesser steps would satisfactorily address the purposes of the notice. The appeal on ground (f) does not succeed.

Ground (g)

25. As I have noted above, the rear garden area is now landlocked by the house, with a side extension having been constructed in recent years, apparently contemporaneously with the developments now enforced against. This means

that considerable disruption will inevitably result in achieving the works required, with soil and demolition materials likely needing to be taken through the house. In order that steps may be taken to safeguard the family's living conditions during this period, I accept that six months is likely to be too short a period in which to arrange for and complete the works. Nonetheless I do not think that 12 months are realistically required. I shall vary the compliance period to nine months.

Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a varied compliance period and refuse to grant planning permission on the deemed application.

Formal Decision

27. It is directed that the enforcement notice be varied by the substitution of 6 months by 9 months as the period for compliance. Subject to that 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.

Laura Renaudon

INSPECTOR