



Appeal Decision

Site visit made on 31 August 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2022

Appeal Ref: APP/G5180/C/21/3278225

Land at 23 Lynwood Grove, Orpington, BR6 0BD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Sue Huang against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 1 June 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey side extension on the north flank elevation of the host dwellinghouse. The extension measures approximately 2.4m in height, it extends the full length of the dwelling house and adjoins the first floor rear extension, which does not constitute permitted development by virtue of Class A of Part 1 of Schedule 2 of the Town and Country Planning Act (General Permitted Development)(England) Order 2015. In addition, the first floor rear extension has not been built in accordance with the approved plans (ref. 15/01869). The eaves of the first floor extension exceeds (*sic*) the height of the eaves of the host dwelling.
 - The requirements of the notice are: (1) Remove from the above land the partially constructed single storey side extension on the northern flank elevation and;
(2) Reinstate boundary treatment between No 23 and No 21 and; (3) Reduce the height of the first floor rear extension to that approved on drawing No LYN23/2.
(3) (*sic*) Remove all materials and debris associated with (1) and (2).
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, 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. It is directed that the enforcement notice is corrected by in the final sentence of paragraph 4 substituting "No 21" by "No 25" and varied by in step 2 of paragraph 5 substituting "No 21" by "No 25" and renumbering the second step (3) in paragraph 5 to step (4). Subject to the correction and variations the appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by Mrs Sue Huang against the Council of the London Borough of Bromley. This application is the subject of a separate Decision.

Preliminary Matters

3. Although the appeal was initially made on grounds (b) and (d), the appellant also referred in subsequent written submissions to matters which are more relevant to ground (c)-"*that those matters* (i.e., the matters stated in the notice which give rise to the alleged breach of planning control), *if they occurred, did not constitute a breach of planning control*". Therefore, I shall

deal with the appeal as if it had also been made on that ground. There would be no unfairness, as the Council largely addressed matters relating to ground (c) in their statement.

4. The Act at s176(1) empowers me to correct any defect, error or misdescription in an enforcement notice and to vary the terms of that notice. The power is wide and is subject only to a test of whether there would be injustice to the appellant or the Council. References to "No 21" in paragraphs 4 and 5 of the notice are clearly clerical errors and should instead refer to 25 Lynwood Grove (No 25). There is also an obvious clerical error in paragraph 5, which has two steps numbered 3. These minor errors do not make the notice invalid. The allegation in paragraph 3 of the notice describes the single storey extension as being on the north side elevation of the dwelling. It should therefore have been clear that reference in the reasons for issuing the notice to the adjacent residential property were meant to refer to No 25. Furthermore, it should have been clear that the requirement to reinstate the boundary treatment in paragraph 5 at step 2 is interconnected with the removal of the single storey side extension and is also therefore meant to refer to No 25. I am satisfied that the notice can be corrected and varied to refer to No 25 and also renumbering the second step 3 to step 4, without causing injustice to the appellant.
5. I did not read the Council's statement as seeking a further variation of the notice to require demolition of the first floor rear extension. In any event, that would clearly cause injustice to the appellant, as it would impose a more onerous requirement compared to the notice as issued.
6. As no fee was paid, there is no deemed planning application arising from an appeal on ground (a). Therefore, planning merits considerations, including the effect of the matters alleged in the notice on the character and appearance of the area and on the living conditions of occupiers of adjoining residential property, are not before me in this appeal.

Ground (b) appeal

7. The ground of appeal is that the matters alleged in the notice have not occurred as a matter of fact. It is for the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
8. The appeal property contains a detached dwelling. At the rear is a single storey addition erected during the mid-1970's. A first floor rear extension is currently in the course of construction above the 1970s addition.
9. A single storey flat roofed extension has been erected on the north side elevation of the dwelling. The depth of the side extension is such that it protrudes beyond the line of the rear elevation of the original dwelling, almost reaching up to the rearmost corner of the 1970s addition. The parapet walls on the side extension front and rear elevations are part and parcel of, and integral to, the structure. Reference in the Government's Technical Guidance (TG)¹ to measuring the height of the highest part of the roof of an existing dwelling is of limited relevance in this matter.
10. Photographic evidence supplied shows that the overall height of the side extension exceeds that of the 1970s addition, by up to around 0.6 m. It also shows that the topmost part of the side extension is so close to the first floor rear extension as to be physically touching it. To adjoin something does not necessarily involve any physical attachment. Therefore, as a matter of fact and degree, it is not unreasonable to describe the side extension as one that

¹ Permitted development rights for householders: Technical Guidance, MHCLG September 2019.

'adjoins' the first floor rear extension. Even if I had found otherwise, that would not have led to the quashing of the notice; the allegation could have been corrected to delete reference to "*adjoins the first floor rear extension*" without causing injustice to the appellant. The first sentence of the allegation makes it abundantly obvious that the notice attacks the side extension.

11. In August 2015, planning permission was granted to enlarge the dwelling including a two storey extension on the southern side, a first floor rear extension and a ground floor front infill extension². According to the approved drawings, the first floor rear extension eaves should be level or no higher than the eaves line of the original dwelling. However, the Council's photographic evidence shows that prior to the issuing of the notice the walls of the first floor rear extension protruded above the eaves line of the original dwelling by perhaps around 0.3 m. Whilst the eaves and roof structure had not been constructed at that time, that does not alter the situation regarding the overall height of the first floor rear extension as built relative to that of the original eaves. Moreover, given that there were no eaves in existence on the first floor rear extension when the notice was issued, the approach to the measurement of eaves height set out in the TG has limited relevance to this ground of appeal.
12. Therefore, on the balance of probability the matters alleged in the notice have occurred as a matter of fact. The appellant has been unable to show otherwise. The ground (b) appeal fails.

Ground (c) appeal

13. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The appellant also has to show why their appeal on this ground should succeed, the standard of proof being the same as set out above.
14. Erection of the side and first floor rear extensions has involved the undertaking of building operations falling within the definition of development in the Act at s55(1). Planning permission is required for the carrying out of any development of land, by virtue of s57(1) of the Act.
15. The GPDO³ at Article 3, Schedule 2, Part 1, Class A grants planning permission for the enlargement, improvement or other alteration of a dwelling, where certain limitations and conditions are met. The limitation in paragraph A.1(j)(iii) provides that where, as in this case, the enlarged part of the dwelling extends beyond a wall forming the side elevation of the dwelling it should not have a width greater than half that of the original dwelling. This is qualified by the limitation at paragraph A.1(ja), which provides that development is not permitted where the total enlargement (being the enlarged part together with any existing enlargement of the original dwelling to which it will be joined) exceeds or would exceed the limits set out in paragraph A.1(e) to (j).
16. The effect of paragraph A.1(ja) is that the width of the 1970s addition also has to be taken into account when assessing the width of the side extension. The granting of planning permission for the 1970s addition makes little difference in this respect. The 1970s addition spans virtually the entire width of the rear elevation of the original dwelling. The side extension is joined to the 1970s addition. Consequently, even if the other limitations and conditions of Class A are all met, the side extension cannot be permitted by the GPDO; when the 1970s addition and the side extension are taken together, the width of the total enlargement is greater than half that of the original dwelling. The TG example

² Council Ref: DC/15/01869/FULL6.

³ The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

on page 27 makes this clear, as it is the *total enlargement* (my emphasis) that exceeds more than half the width of the original dwelling, irrespective of the sequence in which the extensions are erected.

17. Turning to the first floor rear extension. The available evidence shows that the original dwelling had a deep, overhanging eaves detail. I appreciate that once the first floor rear extension is complete, the roof structure would rest on an element of masonry concealed by the eaves. Even so, during my visit I observed that the roof of the original dwelling had been removed and partly replaced by a roof structure currently consisting largely of exposed timber rafters. The walls of the dwelling were surrounded by a timber scaffold at first floor level, with sheeting between some of the uprights. This all made comparison between the eaves line of the first floor rear extension and that of the original dwelling somewhat difficult. The original eaves line could not be clearly ascertained. The appellant did not produce information, for example a detailed construction drawing showing the original dwelling and first floor rear extension roofs in section, which might have gone towards showing whether the respective eaves lines were in alignment. As a result, based on the evidence before me I am not persuaded that the first floor rear extension walls are no higher than the eaves line of the original dwelling.
18. Given the probable increase in overall height set out above, the first floor rear extension is highly likely to be appreciably larger and to have a different roof arrangement compared to that shown on the approved drawings accompanying the 2015 permission. The relationship with the eaves of the original dwelling is an important factor in determining whether the first floor rear extension is successfully integrated into its context in visual terms. Therefore, in my judgement, as a matter of fact and degree, the extent to which the walls of the first floor rear extension exceed the eaves height of the dwelling results in what has been built as being materially different to the approved drawings and is without planning permission.
19. A breach of planning control includes at s171A(1)(a) of the Act, carrying out development without the required planning permission. The appellant did not draw my attention to any other planning permission, either in the GPDO or granted expressly following the submission of a planning application, in respect of the side extension or the first floor rear extension.
20. Accordingly, on the balance of probability the matters alleged in the notice constitute a breach of planning control. The appellant has been unable to show otherwise. The ground (c) appeal also fails.

Ground (d) appeal

21. The ground of appeal is that it was too late to take enforcement action against what has been alleged in the notice. The appellant also has to show why their appeal on this ground should succeed, the standard of proof being the same as in the above grounds.
22. The time limit for taking enforcement action in respect of building operations is no later than four years beginning with the date on which the operations were substantially completed. Although what is meant by "substantially completed" is not defined in the Act, relevant case law confirms that a building cannot be so regarded even if the outstanding works affected only the interior⁴.
23. This ground of appeal focussed on the side extension. In this respect, the appellant relied almost entirely on the Council's letter dated 21 February 2016 referring to the extension in question. According to the Council however, this

⁴ *Sage v SSETR & Maidstone BC* [2003] UKHL 22.

letter was actually sent on 21 February 2019, the date having been entered incorrectly.

24. I am given to understand that the Council's enforcement investigation relating to the side extension began in May 2018; the reference number quoted in the letter would appear to bear this out. When also looked at in the context of a visit by Council officers to No 25 to observe the side extension on 5 February 2019, as evidenced from the copies of photographs bearing that date, it is in my view more likely that the letter in question would have been sent shortly afterwards, i.e., during February 2019, not three years before. Also, according to the Council, their officers had visited the property in May and June 2018 but were unable to see the side extension, suggesting that it was only at an early stage of construction by those dates. Furthermore, the Council supplied copies of photographs taken by an interested resident purportedly dating from in or around mid-September 2018, which showed the side extension in an unfinished state externally, with unrendered blockwork walls.
25. Consequently, the above evidence does not support the appellant's claim. Moreover, they have produced little by way of any clear and precise evidence which might otherwise have gone towards showing that the side extension was substantially complete before 1 June 2017.
26. Therefore, in my view on the balance of probability the side extension was not substantially completed more than four years prior to the date the notice was issued. The appellant has been unable to show otherwise. The ground (d) appeal also fails.

Conclusion

27. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations.

Stephen Hawkins

INSPECTOR