
Appeal Decisions

Site visit made on 24 October 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 November 2022

Appeal A Ref: APP/G5180/C/22/3300998

51 Sweeps Lane, Orpington BR5 3PE

- 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 Mrs Soile against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice was issued on 26 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey rear/side extension.
 - The requirements of the notice are:
 - (a) Remove from the Land the unauthorised extension as described in paragraph 3,
 - (b) Remove from the Land all resulting debris following compliance with paragraph 5 (a)
 - The period for compliance with the requirements is 56 days.
 - 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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Appeal B Ref: APP/G5180/W/22/3298272

51 Sweeps Lane, Orpington BR5 3PE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Soile against the decision of Council of the London Borough of Bromley.
 - The application Ref DC/21/04728/FULL6, dated 15 September 2021, was refused by notice dated 22 March 2022.
 - The development proposed is described as "As built amendments to approved plans reference 15/01220/FUL6."
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Decisions

Appeal A

1. It is directed that the enforcement notice be:
 - varied by deleting the words "56 days" within section 6 (Time for Compliance) and its replacement with "ten months".
2. Subject to this 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.

Appeal B

3. The appeal is dismissed.

Background and Preliminary Matters

4. Planning permission was granted for a “a single storey rear/side extension”¹. The appellant accepts that the development was not built in accordance with these approvals, which resulted in the serving of the enforcement notice. I shall therefore deal with the unauthorised works, as alleged within the notice, below.

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

5. Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal is against refusal of permission for the identical development, the considerations in that appeal are the same, and I have treated both cases together.

Main Issues

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

- the character and appearance of the area; and
- the living conditions for the neighbouring occupiers of 49 Sweeps Lane, with particular regard to outlook.

Reasons

Character and appearance

7. Sweeps Lane is characterised predominantly by two storey semi-detached residential properties. The unauthorised works, the subject of this enforcement notice, relates to a single storey ridged roof side and rear extension, which is visible from public vantage points on Wotton Green.
8. I note that the appellant states that that the pitched roof design and materials of the extension are sympathetic. Nevertheless, the rear and side extension extend the building considerably, such that the extension is not a subordinate to the original building. The excessive overall height, depth and scale of the extension has introduced an overly dominant and visually discordant feature, which fails to harmonise with the host building and the surrounding area.
9. 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 6 and 37 of the Bromley Local Plan, 2019 (LP). Amongst other things, these state that all development proposals, including extensions to existing buildings, will be expected to be of a high standard of design and layout, and that the scale, form, and materials of construction should respect or complement those of the host dwelling and be compatible with development in the surrounding area.

¹ Council ref: 15/01220/FULL6.

Living conditions for the neighbouring occupiers of 49 Sweeps Lane - outlook

10. The unauthorised rear extension is built along the shared boundary with 49 Sweeps Lane (No 49), which also has a single storey rear and side extension along this boundary. However, the structure at No 49 is relatively small in height and width. The unauthorised rear extension at No 51 is far greater in width and height than the neighbouring rear extension constructed at No 49, and the height of the extension rises well above the existing boundary treatment, which has resulted in a large expanse of the flank wall of the extension, built along this boundary.
11. 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 49, which harms their living conditions.
12. Therefore, the development fails to provide acceptable living conditions for occupiers of No 49, with regard to outlook. Accordingly, the development is contrary to Policy 37 of the LP, which amongst other things states that developments will be expected to respect the amenity of occupiers of neighbouring buildings and those of future occupants.

Other matters

13. The appellant advises that the extension was constructed to provide improved living accommodation for an elderly relative. 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.
14. 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. Furthermore, the Council have previously granted planning permission for an alternative single storey side and rear extension (Council ref:15/01220/FULL6) which does not harm the character and appearance of the area of the living conditions on neighbouring occupiers. Therefore, there are alternative measures which could be explored to provide the accommodation needed for the appellant's elderly relative, which do not result in harms identified above.
15. 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.
16. The appellant states that the development does not harm the open character of the area, nor results in any loss of daylight and sunlight. However, lack of harm in these respects is a neutral consideration that does not weigh in favour of the development. This does not, therefore outweigh my conclusions on the two main issues I have identified above.

17. In support of the appeal the appellant has referred to a number of other planning permissions for side and rear extensions in Nightingale Road, Orpington. However, those other properties are approximately 3 miles from the appeal site and relate to dwellings of a different design, character, and plot size than the appeal site. Furthermore, it is also clear that the design and sizes of those extensions are not the same as the development before me. Therefore, the circumstances which led to those permissions would unlikely be the same as the current appeal development before me. I therefore attribute no weight to those other approvals.

Conclusion on Ground (a), the DPA and Appeal B

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 area and the living conditions for the neighbouring occupiers with regard to outlook.
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 age. 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 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.

Appeal A: 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 removal 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 development could either be:
- a) reduced in height so that the roof of the extension is 2.5m with a flat roof in line with the next door's property (by removing approximately 4 courses of breeze blocks); or
 - b) reduced in depth so that the extension is in line with next doors extension (with dimensions to be checked later on after a condition is agreed).

24. However, no revised drawings of these proposals have been submitted, and therefore I am unable to determine what the proposed extension would look like, or whether it would form part of the development alleged. Indeed, it is open to the appellant to submit a planning application to the Council for this revised scheme if they so wish.
25. 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.
26. On this basis, the Ground (f) appeal fails.

Appeal A: The appeal on Ground (g)

27. This ground of appeal is that the time given to comply with the notice is too short. The appellant asks that the time for compliance is extended from 56 days to 12 months, to find suitable accommodation for their family member, and to find a builder and carry out the necessary remedial works.
28. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my opinion, 10 months would strike a more reasonable and proportionate balance. This would also provide the appellant with additional time to explore the possibility of seeking planning permission for an alternative side/rear extension.
29. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusions

30. **Appeal A:** 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.
31. **Appeal B:** For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

R Satheesan

INSPECTOR