



Appeal Decisions

Site visit made on 30 January 2023

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2023

Appeal A Ref: APP/C5690/C/21/3289570

Appeal B Ref: APP/C5690/C/21/3289571

108 Durham Hill, Bromley BR1 5ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Bernard Stephenson and Appeal B is made by Mrs Sandra Stephenson against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice was issued on 15 December 2021.
 - The breach of planning control as alleged in the notice is the unauthorised erection of a single storey rear extension and portacabin to the front curtilage without planning permission.
 - The requirements of the notice are:
 1. Complete removal of the portacabin to the front curtilage
 2. Reduce the external depth of the single storey rear extension to 3 metres or less.
 3. Make good all damage resulting from the compliance with the requirements of this notice.
 4. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the land.
 - The period for compliance with the requirements is six months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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.
 - Appeal B is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. It is directed that the enforcement notice is corrected as follows:
 - by the removal of the word 'unauthorised' from the allegation.
 - by the insertion of the words 'the installation of a' in the allegation as follows:

'The erection of a single storey rear extension and the installation of a portacabin to the front curtilage without planning permission'.
2. It is also directed that the notice is varied by the deletion of 6 months and the substitution of 9 months as the time for compliance.
3. Subject to the corrections and variations the appeals are 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.

Application for costs

4. An application for full costs has been made by the appellants against the Council in respect of both appeals. This application will be the subject of a separate Decision.

The Notice

5. The word 'unauthorised' in the breach is superfluous and I shall correct the notice to remove it.

Ground (b)

6. An appeal under ground (b) is that the matters to which the notice relates have not occurred. This is a legal ground of appeal, and the onus of proof lies with the appellants. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
7. The appellants argue that the portacabin which is the subject of the notice was not erected on the land, but a cabin/caravan was placed on the site as a free-standing unit resting on the ground. The photographs provided by the appellant show a feature which has the appearance of a portacabin being craned onto the concrete pad on the street frontage.
8. The allegation refers to the erection of a portacabin but the reasons for serving the notice reference the installation of the portacabin. The evidence does not show that the portacabin was 'erected' and 'installed' appears to be a more accurate description of the procedure by which the portacabin came to be on the site. I shall correct the notice to refer to the 'installation' of the portacabin. This will not cause injustice to either party as there is no dispute that a portacabin has been placed on the site.
9. The appellant has not argued that a portacabin has not been put on the site and to that extent the appeal under ground (b) does not succeed.

Ground (c)

10. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is also a legal ground of appeal and again the onus of proof lies with the appellants. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.
11. The appellants' appeal under ground (c) relates only to the portacabin, which has subsequently been removed from the site. In order to achieve success on ground (c) the appellants must show that the portacabin is either not development, or that planning permission is not required for it for whatever reason, or that it complies with the terms and conditions of a planning permission.
12. The appellants are not arguing that the portacabin is not development, nor that it complies with a planning permission. Their argument is that the portacabin does not require planning permission because it constitutes a caravan which is used by their family in connection with the house.
13. Although they have not referred to it the use of land as a caravan site is permitted development by virtue of Schedule 2, Part 5, Class A of the Town

- and Country Planning (General Permitted Development) (England) Order 2015 (GDPO Schedule 2, Part 5, Class A) where, in most cases, a caravan site licence is not required under the Caravan Sites and Control of Development Act 1960 (CSCDA60).
14. One of the circumstances within which a site licence is not required is for the use of land as a caravan site if the use is incidental to the enjoyment as such of a dwellinghouse within the curtilage of which the land is situated.
 15. In short, the appellants are seeking to establish that the use of land for siting a caravan (the portacabin) for use ancillary to the dwelling is permitted development.
 16. The Council says that it seeks to rely on the Planning Enforcement Report in respect to the appeals under ground (c). This document does not address the arguments made by the appellants under this ground. Nevertheless, the onus of proof lies with the appellants and the absence of any arguments by the Council does not alter this nor that their evidence must be sufficiently precise and unambiguous.
 17. The siting of a caravan is a use of land. The notice does not refer to a material change of use and there is no suggestion in the evidence that the Council considers that the portacabin was being used other than in connection with the house. There is also nothing in the Council's evidence to indicate that the portacabin is sited other than within the curtilage of 108 Durham Hill. Therefore, if it can be established that the portacabin is a caravan then it could be sited on the land as permitted development.
 18. The term caravan is defined in the CSCDA60 and in law a caravan is only a caravan if it meets the description laid down in the CSCDA60 and the Caravans Sites Act 1968 (CSA68) (as amended). The CSCDA60 defines a caravan as any structure designed or adapted for human habitation which is capable of being moved from one place to another.
 19. The appellants have submitted photographs of the internal arrangements of the portacabin which illustrate that it accommodated a sink, a shower and a toilet. The same photographs also demonstrate that there was an electrical supply to the portacabin and space for a bed and storage of clothes.
 20. The portacabin has been removed and I was unable to verify that the submitted photographs were an accurate reflection of the internal arrangements. However, the Council has not raised any concerns in respect of whether the photographs are an accurate representation of the facilities available to users of the portacabin. On that basis I find that the photographs show that the portacabin had been adapted for human habitation.
 21. The other tests which are to be applied in determining whether a structure falls within the definition of a caravan are also derived from the CSCDA60 and the CSA68 and are commonly referred to as the construction test, the mobility test, and the size test.

The Construction Test

22. There is a concrete pad on the site. Two photographs provided by the appellants shows the portacabin as a complete unit suspended from a crane when it was being removed from the site. Two photographs which are

embedded in the Council's Planning Enforcement Report show the portacabin in situ. None of this evidence points to the portacabin being constructed on the site and the portacabin meets the construction test.

The Mobility Test

23. The appellants' photographs show that the portacabin is physically capable of being moved by road from one place to another, including being transported on a motor vehicle or trailer. Therefore, the portacabin meets the mobility test.

The Size Test

24. The CSA68 sets out that a caravan must not exceed 20 metres in length and 6.8 metres in width and that the overall height of living accommodation measured internally from the floor at its lowest level to the ceiling at the highest level must not exceed 3.05 metres. These dimensions are absolute and any deviation from them results in the structure not being deemed a caravan.
25. The appellants have not provided any dimensions for the portacabin and as it is no longer on the site, I have been unable to verify its internal and external measurements during my site visit. However, at the site visit I was able to see the concrete pad upon which the portacabin was positioned. Given its size it is reasonable to assume that a structure of more than 20 metres in length could not be accommodated on it.
26. The photographs of the portacabin also suggest that it was not more than 6.8 metres in width. However, there is insufficient information before me to allow me to estimate with any certainty the overall height of the living accommodation. In this respect the evidence does not satisfy the size test.
27. I conclude that on the application of the relevant tests it has not been shown that the portacabin constituted a caravan. For that reason, the portacabin did not constitute permitted development by virtue of the GDPO Schedule 2, Part 5, Class A. The appellants have not argued that the installation of the portacabin is permitted development for any other reason.
28. Drawing all of these strands together, I find that the appellants have not provided evidence which is sufficiently precise and unambiguous so as to demonstrate, on the balance of probabilities that the matters alleged in the notice do not constitute a breach of planning control.

29. For the reasons set out above the appeal under ground (c) does not succeed.

Ground (a) and the Deemed Planning Application (DPA) – Appeal A only

Background

30. The appellant says that he only wanted the ground (a) appeal to relate to the rear extension and he has only referred to the rear extension in his appeal statement. However, the terms of the DPA are derived from the allegation, as amended, and are the erection of a single storey rear extension and the installation of a portacabin. Therefore, I have considered both elements of the development as part of the appeal under ground (a).
31. The Council also approached its submissions on the basis that the appeal under ground (a) relates to both the rear extension and the portacabin and it relies on the Planning Enforcement Report in this regard.

Main Issues

32. The main issues are:

- The effect of the rear extension and the portacabin on the character and appearance of the site and the adjoining terrace of houses.
- The effect of the rear extension on the living conditions of the occupiers of No. 106 Durham Hill, with particular reference to outlook.

Character and appearance

33. Durham Hill is part of an established residential area characterised by short terraces of two storey houses set back behind short front gardens and generally facing the street. 108 Durham Hill (No. 108) is an end of terrace property and the terrace of which it forms part has the same configuration of buildings and similar façade to the other terraces which are typical of the wider area. To that extent the dwelling and the terrace of buildings play an important role in the streetscape and sense of place.
34. The terrace has a strong rhythm of door and window alignment and its position set back from the street allows the terrace to be seen as a whole when approaching from both ends of Durham Hill. Although there is a change in eaves and ridge height along the terrace in response to rising ground level the overall appearance of No. 108 and the terrace generally is one of traditional urban architecture of its time.
35. There is a gap between No. 108 and the adjacent houses which face Northover. This land has been apportioned to the houses around it such that No. 108 has some land on the street frontage in addition to a garden to the rear. The photographs provided by the parties show that the portacabin was positioned in this space and the extension which is also the subject of the notice is behind the house within the rear garden space. There is also a large shed in the rear garden such that in combination with the extension, most of the rear garden is covered with buildings.
36. There is a large outbuilding to the rear of the adjacent house facing Northover, which is set back from Durham Hill on the same building line as No. 108. The submissions by the appellant show the portacabin in front of this building.
37. The portacabin has been removed. However, on the basis of the submissions its position and appearance are matters of fact and the appellant states that it was out of character with the area.
38. The position of the portacabin in front of the row of buildings would disrupt the views of the terrace from the street. Furthermore, as a result of its stark appearance which retained the characteristics of a storage unit including panelled sides and a flat roof would appear as an alien feature in the context of the traditional, cohesive appearance of No. 108 and the terrace.
39. The rear extension is not visible from the street frontage, and it is not read as part of the terrace from Durham Hill. However, as a result of its height, scale and massing it dominates the rear garden of No. 108. In combination with the shed the extension takes up nearly all of the outdoor space to the rear of the house. This represents poor design which neither respects the character of nor complements the existing building.

40. The appellant points to the Council's reference to 70% of the total curtilage area being covered by the outbuilding and the extension in its reason for serving the notice. He considers that this figure is not accurate and by his calculation 56% of the total area of the plot is covered by buildings, reducing to 44% if the house is excluded.
41. The Lewisham local plan Alterations and Extensions Supplementary planning document (2019) (the Extensions and Alterations SPD) sets out design principles for rear extensions including that they do not take up more than half the depth of the original rear garden/yard to avoid the overdevelopment of sites. Neither the Council's nor the appellant's calculations relate to this guidance because the information which they have provided refers to the coverage of the curtilage/plot as a whole. Evidence in respect of the depth of the rear extension relative to the depth of the garden is not before me.
42. Nevertheless, in relation to the plot as a whole, the extension and the portacabin together with the shed, cover most of the curtilage/plot and I agree with the Council's conclusion that in this case that amounts to overdevelopment. In this regard the overdevelopment of the plot contributes to the poor design quality of the development, notwithstanding its compliance or otherwise with the Extensions and Alterations SPD.
43. The appellant's suggestion that a green roof could be installed on the extension, would not increase the usable garden space. For that reason, it does not alter my view that the works which are the subject of the notice amount to overdevelopment which is harmful to the character and appearance of the site. Neither does the use of facing brick which matches the house as opposed to render alter my conclusions regarding harm.
44. I conclude that the rear extension and the portacabin have a harmful effect on the character and appearance of the site and the adjoining terrace of houses. Therefore, the development is contrary to Policy D3 of the London Plan (2021) which requires development to respond to local distinctiveness and Policy 31 of the Lewisham local development framework Development Management Local Plan (2014) (the DM Local Plan) which requires extensions to be of high quality design and to respect or complement the existing building.
45. Furthermore, the development is contrary to the National Planning Policy Framework (the Framework) which refers to the need for development to be sympathetic to local character and therefore to Policy 15 of the Lewisham local development framework Core Strategy Development plan document (2011) (the Core Strategy) which seeks high quality design through the application of national and regional policy and guidance.
46. The development also does not conform with the advice contained in the Lewisham local plan Alterations and Extensions Supplementary planning document (2019) (the Extensions and Alterations SPD) which sets out design principles for rear extensions.
47. Policy D1 of the London Plan which relates to London's form, character and capacity for growth is not directly relevant to this main issue.

Living conditions

48. No. 108 is attached to No. 106 Durham Hill (No. 106) and the properties share a boundary. In common with the other houses in the terrace No. 106 has a

long and narrow garden and there is a door and windows facing the garden. The appellant has provided photographs of his neighbours property and I was able to view the relationship between the extension and the boundary during my site visit.

49. The photographs show that in the case of No. 106 there is a glazed door and two small windows at ground level and two larger windows at first floor. The garden serving No. 106 is unkempt and does not appear to be routinely used as an amenity space on the basis of the photographs. However, given the limited size and lack of privacy afforded by the front garden, the rear garden is the only useable outside space available to the resident at No. 106.
50. The appellant notes that his neighbour has no objections to the extension. The appellant also argues that the kitchen in his neighbours house which has the same layout as his own is not large enough to eat meals in and is not a functional room.
51. Despite the change in ground level, the extension at No. 108 projects significantly above the boundary fence and for a considerable distance along it. Anyone standing at the rear door or using the garden would experience a sense of enclosure as a result of the overbearing effect of the rear extension which would be heightened by the narrowness of the garden space. The extension would have a limited effect on the outlook from windows particularly taking account of the useability of the kitchen. Nevertheless, the enclosing effect on the outlook from within the rear garden in particular would amount to harm.
52. I conclude that the rear extension has a harmful effect on the living conditions of the occupier of No. 106 Durham Hill, with particular reference to outlook. Therefore, the development is contrary to Policy 31 of the DM Local Plan which requires that residential extensions should result in no significant loss of amenity to adjoining houses and their back gardens.
53. Furthermore, the development is contrary to the Framework which refers to the need for development to provide a high standard of amenity and therefore to Policy 15 of the Core Strategy which seeks high quality design through the application of national and regional policy and guidance.
54. The development also does not conform with the advice contained in the Extensions and Alterations SPD which sets out design principles for rear extensions including that they should not have an overbearing or enclosing effect on adjacent properties by way of their height, position and depth.

Other matters

55. The appellant says that he would be willing to remove the shed from the rear garden space. Such action would have a positive impact in terms of the effect of the rear extension on the character and appearance of No. 108. It would also provide for additional rear garden space and reduce the proportion of the garden taken up by buildings in accordance with the aims of the Extensions and Alterations SPD. However, it would not address the harm which I have found in respect of the effect of the rear extension on the living conditions of the occupiers of No. 106 Durham Hill, with particular reference to outlook.
56. The appellant says that he sought planning permission and approval under building regulations for the extension before commencing work. Building control approval was forthcoming and the appellant assumed that this

amounted to approval for the extension from the Council. However, he subsequently submitted two planning applications both of which were refused. Notwithstanding any advice obtained by the appellant or applications made, there is no fallback position available to the appellant in terms of an extant planning permission.

57. The appellant refers to Schedule 2, Part 1, Class A of the Town & Country Planning (General Permitted Development) Order 2015 (GDPO Part 1, Class A) in his submissions which relates to the provision of rear extensions up to 6 metres in depth on terraced properties. However, such extensions are only permitted development where the 'prior approval' process has been followed.
58. The appellant argues that there were no objections from neighbours to the retrospective planning applications and on that basis Prior Approval under the GDPO Part 1, Class A would have been granted. Notwithstanding that the prior approval process cannot be carried out retrospectively so as to render an existing extension permissible under the GDPO Part 1, Class A, the absence of objections to the development is not determinative.
59. Under Condition A4 (9) of the GDPO Part 1, Class A the Council must consider the amenity of all adjoining premises not just those which are the subject of representations. Given the Council's decisions on the subsequent retrospective planning applications, it is reasonable to assume that it would have notified the appellant that prior approval is refused should they have submitted an application.
60. The Council has referred to Policy 32 of the DM Local Plan in its reasons for issuing the notice. However, this policy relates to new housing design, layout and space standards and it is not directly relevant to the type of development which is the subject of the appeal. Nevertheless, I note that the appellant says that his property does not meet the space standards set in Policy 32.
61. The improvement of housing stock generally by increasing the size of existing homes to meet space standards is a benefit. However, in this case the benefit does not outweigh the harm which I have found.
62. The appellant also refers to the Council's Strategic Housing Market Assessment (SHMA) which he considers to be of relevance to the merits of the development. This is because the appellant and his family are members of the black community which the SHMA identifies as disproportionately affected by the shortage of affordable family sized accommodation and the problem of overcrowding.
63. The appellant sets out that his needs in terms of accommodation on the site have changed and at present the need for extra bedrooms is greater than the need for outdoor space.
64. The Executive Summary of the SHMA refers to the document providing evidence to shape planning and housing policies and to inform the production of the Council's Local Plan. Its purpose is not to influence decisions on individual planning applications or the taking of enforcement action. To that extent reference to the SHMA in the reasons for serving the notice is not necessary.
65. However, the appellant has confirmed that he and his family are members of the black community, consequently they are persons who share a protected characteristic for the purposes of the Public Sector Equality Duty (PSED)

contained in section 149 of the Equality Act 2010. The PSED sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.

66. I have had regard to the evidence relating to the appellant's family circumstances and the reasons for requiring the portacabin and the extension. Notwithstanding these important considerations, it does not follow from the PSED that the appeal should succeed, and in this instance the appellant's circumstances do not outweigh the significant harm I have found. Dismissing the appeal would mean that the appellant may have to consider other options for meeting his accommodation needs. However, there is no evidence before me to demonstrate that the appeal development is the only means by which such needs may be met. Accordingly, dismissing the appeal would be a proportionate response given the identified harm.

Conclusion

67. On the two main issues in this appeal, I have found the development which is the subject of the DPA would be contrary to the relevant development plan policies. I have carefully considered all points raised, but there are no material considerations in this case which indicate a decision other than in accordance with the development plan. Therefore, for the reasons given above, the appeal under ground (a) does not succeed and planning permission on the application made under section 177(5) of the 1990 Act as amended is not granted.

Ground (f)

68. An appeal under ground (f) is 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 those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
69. The appellants consider that the removal of the shed which is in the rear garden would be an appropriate alternative to reducing the depth of the extension as required by the notice.
70. I have considered this alternative as part of my reasoning for the ground (a) appeal, and I concluded that such action would not overcome the harm to the living conditions of the occupier of the neighbouring house. As such the removal of the shed would not remedy the injury to amenity which has been caused by the breach of planning control
71. For the reasons given above, the appeal under ground (f) does not succeed.

Ground (g)

72. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellants consider that the compliance period of six months is too short because as a consequence of their personal circumstances it will not be straightforward to reduce the extension and remodel the house. They also refer to one of the children being about to take exams.

73. The appellants request that the compliance period be extended to 12 months. However, they have provided no substantive evidence to demonstrate that it will take that length of time to carry out the works. Nevertheless, the children's education is an important consideration and in order to reduce the disruption to them in this academic year I shall extend the compliance period to 9 months.
74. For the reason set out above, the appeal under ground (g) succeeds to that extent and I shall vary the compliance period to 9 months.

Sarah Dyer

Inspector