



Appeal Decision

Site visit made on 9 March 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th April 2023

Appeal Ref: APP/M5450/C/22/3295582
208 Whitchurch Lane, Edgware HA8 6QH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Anita Patel against an enforcement notice issued by London Borough of Harrow.
 - The notice was issued on 21 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction of a first floor rear extension and roof alteration comprising hip to gable end and rear dormer (the "Unauthorised Development").
 - The requirements of the notice are to:
 - demolish the unauthorised development.
 - make good any damage caused to the host building as a result of complying with clause 4.1 above and ensure that all materials used shall match those used in the existing host building.
 - remove from the land all materials and debris arising from compliance with the aforementioned requirements of the notice.
 - The period for compliance with the requirements is: six (6) calendar months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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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Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the construction of a first-floor rear extension and roof alteration comprising hip to gable end and rear dormer at 208 Whitchurch Lane, Edgware HA8 6QH as shown on the plan attached to the notice.

The appeal on ground (d)

2. For an appeal to succeed under this ground, the appellant must show, on the balance of probabilities that, at the date that the notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by the matters stated in the notice.
3. Section 171B(1) of the Act provides that, in respect to the alleged building or other operations in, on, over or under land targeted by the notice issued on 21 February 2022, no enforcement action would have been possible after the end of the period of 4 years beginning with the date on which the operations were substantially completed. So, if the alleged operational development had already occurred before 21 February 2018 and this had been continuous since that time, and the Council could possibly have taken action in respect to it, then the appeal should succeed on ground (d).

4. The appellant says that the alleged unauthorised development was built in one operation. This comprises of the certificate of lawful development ("the LDC") issued in September 2016¹ and the planning permission granted in August 2017² ("the planning permission"). They also claim that the existing floor plans, which were submitted in a subsequent planning application³ on 29 January 2018 ("the 2018 scheme"), show the unauthorised development in situ along with the LDC and the planning permission. As such, the appellant claims they were both completed before this latest planning application was submitted.
5. Although the plans submitted as part of the 2018 scheme may have shown the unauthorised development in existence, the key test, having regard to *Sage v SSETR & Maidstone BC [2003] UKHL 22*, is whether the unauthorised development was substantially completed by 21 February 2018.
6. The Council's photographs of the site from 7 March 2018 show the presence of scaffolding around the first-floor rear extension and the dormer window to the rear. The scaffolding also extends around the front and side of the property. The photographs show that the external materials are yet to be applied to the elevations of the first-floor extension, and that the loft was not at a point whereby it would be considered to have been completed for its intended purpose as a bedroom. The loft was not occupied, nor ready for occupation and it still contained tools and equipment that evidently would be used in connection with the construction of the unauthorised development. As such, neither the LDC scheme nor the 2018 scheme were, as of 7 March 2018, substantially completed.
7. Therefore, the appellant has not demonstrated, on the balance of probabilities, that the unauthorised development subject of the notice was substantially completed for at least four years before the notice was issued. Hence, I conclude that the appeal on ground (d) fails.

The appeal on ground (a) / the deemed planning application

8. The main issue is the effect of the proposal on the character and appearance of the area.
9. The two storey demi-detached appeal property lies on the southern side of Whitchurch Lane, which is characterised by residential properties of a similar scale and massing. Several properties have been extended or altered through side and rear extensions, dormer windows in the side or rear roof planes and the addition of roof lights. The dormer windows in the rear roof planes of nearby properties are large and have a flat roof. Properties locally are finished in a variety of materials.
10. The hip to gable extension has altered the appeal property's roof form, but it respects the scale, massing and design of the host property, and the wider street scene where there are numerous examples of similar extensions.
11. The dormer window is set into the rear roof plane, which means that it does not fully occupy it. Its size and flat roof design means that it is a large addition to the property. That said, complementary materials have been used and the two windows broadly line up with those on the ground or first floor. Both windows also have a linear style which responds to others in the rear elevation

¹ Council Ref: P3962/16

² Council Ref: P/2800/17

³ Council Ref: P/0384/18

of the host property. Having regard to the locality, the dormer window reflects the numerous large dormer windows which occupy the rear roof planes of neighbouring properties on the southern side of the road near to the site. It has therefore responded to this existing character.

12. The first-floor extension projects away from the property's rear elevation, but its hipped roof form means that it is a subordinate addition, regardless of the dormer window. This extension projects no further than the ground floor extensions, and its roof form lessens its bulk. Due to its position at the rear where it is handed to one side of the property's rear elevation, together with its straightforward design and scale and massing, the first-floor extension responds to the host property and the surrounding area.
13. I recognise that the three elements collectively have changed the appeal property and increased its overall bulk, scale and massing, but I do not consider that the development has a harmful effect on the character and appearance of the dwelling or the wider area, particularly when consideration is given to the various extensions and alterations carried out nearby. As such, I disagree with the Council that they are disproportionate additions and represent an obtrusive form of development.
14. As the proposal would not harm the character and appearance of the area, I conclude it accords with aims of Policy DM1 of the Harrow Council Development Management Policies, Policy CSB.1 of the Harrow Core Strategy, Policies D3.D(1) and D3.D(11) of The London Plan, and the Residential Design Guide Supplementary Planning Document. Jointly, these seek, among other things, a high standard of design and layout, and an appropriate shape, scale and appearance with due regard to the character and appearance of the area.

Other matters

15. I have noted residents' concerns about developments being carried out in the expectation of subsequently gaining planning permission, and setting a precedent for other people, but I have considered the appeal on its planning merits having regard to the site and its surroundings. Also, my consideration has not included the use of the appeal property, and the matters such as parking provision and amenity space that potentially stem from that.
16. Comments are made about the works not being structurally safe, but there is no substantive evidence before me to support that view, and it is a matter that lies outside the scope of this appeal.

Conclusion

17. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the construction of a first-floor rear extension and roof alteration comprising hip to gable end and rear dormer as described in the notice.

Andrew McGlone

INSPECTOR