



Appeal Decisions

Site visit made on 18 July 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 August 2023

Appeal A Ref: APP/B5480/C/22/3308724

Appeal B Ref: APP/B5480/C/22/3308725

The land known as 96 Nelson Road, Rainham RM13 8AP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Pavlo Velgun and Appeal B is made by Ms Ina Krauchanka against an enforcement notice issued by London Borough of Havering.
 - The notice, numbered ENf/118/21, was issued on 9 September 2022.
 - The breach of planning control as alleged in the notice is:
 1. Without planning permission, the installation of a window in the side elevation at first floor level of the house.
 2. Without planning permission, the erection of a first floor rear extension.
 - The requirements of the notice are:
 - (1) Install obscure glass in the windows in the first floor side elevation of the building (that is, the eastern elevation). These windows must be glazed with obscure glass to at least level 4 on the standard scale and fixed shut except for any top-hung vent 1.7 metres or higher above the internal floor level; and
 - (2) Demolish the first floor rear extension, in the approximate area marked A on the attached plan; and
 - (3) Remove all materials, rubbish and debris from the site as a result of taking steps (1) and (2) above.
 - The period for compliance with the requirements is 4 months.
 - The appeals are proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - Deleting 'windows' from requirement (1) and replacing with 'window'
 - Deleting 'and' from requirement (2) and replacing with 'or'
 - Renumbering requirement (3) to requirement (4).
 - Adding a new requirement '(3) Make the first floor rear extension comply with the terms (including conditions and limitations) of planning permission reference P1582.17.'
2. Subject to the variations and correction, the enforcement notice is upheld.

Preliminary Matters

3. The property has been subject to various recent planning permissions. The Council determined that prior approval was not required for a larger single

storey rear extension¹. Planning permission was granted for a first floor rear extension² subject to conditions. A lawful development certificate was granted for a loft conversion³. A loft conversion, single storey rear extension and first floor rear extension have been constructed. The Council considers that the single storey rear extension and the loft conversion have planning permission, but the first floor rear extension was not built in accordance with the approved plans, as it has been built with a flat roof rather than a pitched roof, and includes Juliet balconies. The Council has stated in its enforcement report that it considers that the first floor rear extension was commenced within the necessary timeframes, and prior to serving the enforcement notice it sought changes to the Juliet balconies and invited an application to regularise the roof of the first floor rear extension.

Matters concerning the notice

4. I have a duty to try to get the notice in order. Part 1 of the allegation refers to 'a window' but requirement (1) refers to 'windows'. I saw on my visit that there is a window in the flank elevation of the original house, and a pair of French windows in the flank elevation of the first floor rear extension. As part 2 of the allegation relates to the first floor rear extension, and requirement (2) requires that it is demolished, only one first floor flank window will remain if requirement (2) is complied with. I therefore conclude that requirement (1) should refer to 'window' in the singular. I can correct the notice where it would not cause injustice to the parties and in this case, I am satisfied that it would be less onerous if I correct requirement (1) to refer to 'window'.

The appeals on ground (f)

5. The ground of appeal 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 constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
6. The appeals relate to requirement (2) of the notice. As this requires the first floor rear extension to be demolished, the notice seeks to remedy the breach of planning control. Lesser steps would not achieve the purpose of the notice in this regard. As there is no ground (a) appeal I am not able to consider the alternative proposal as suggested by the appellant, as there is no deemed planning application. I cannot therefore consider the planning merits of the alternative scheme put forward by the appellants, nor the existence of other extensions to dwellings in the area.
7. The appellants have also stated that they wish to return to the idea of the previously approved hipped roof form for the first floor rear extension. Although the Council states that it would no longer support a first floor rear extension due to the presence of the roof extension, the evidence submitted by the Council indicates that the first floor rear extension permitted by application reference P1582.17 was begun, and although there was a later deviation from the approved drawings, the permission is still extant. It would be an obvious alternative to the removal of the first floor rear extension in its entirety if it

¹ Ref Y0252.17

² Ref P1582.17

³ Ref E0001.18

were to be altered to accord with the approved drawings. This would achieve the purposes of the notice with less cost and disruption to the appellant. To this limited extent the appeals on ground (f) succeed and I shall vary the notice accordingly.

Conclusion

8. For the reasons given above, I conclude that the requirements are excessive to remedy the breach of planning control. I shall vary the notice prior to upholding it. The appeals on ground (f) succeed to that extent.

N Thomas

INSPECTOR