



Appeal Decision

Site visit made on 11 September 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2023

Appeal Ref: APP/A5270/C/22/3301515

Premises known as 77 Trinity Road, Southall, Middlesex UB1 1ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
- The appeal is made by Mr Jagdeep Singh Sandhu against an enforcement notice issued by London Borough of Ealing.
- The notice was issued on 19 May 2022.
- The breach of planning control as alleged in the notice is without planning permission: The construction of rear roof extensions and the construction of a single storey rear outbuilding.
- The requirements of the notice are to:
 - Alter the rear roof extension to accord with the approved drawings (references: 20_20_01 rev B, received 01/07/2020, 20_20_02 rev A, received 01/07/2020) and comply with the conditions associated with planning approval 201577FUL. A copy of the decision notice and relevant plans are attached to this notice;
 - Demolish the rear outbuilding; and
 - Remove all resulting materials, rubbish and debris from the land.
- OR
 - Demolish the rear roof extension in its entirety;
 - Demolish the rear outbuilding; and
 - Remove all resulting materials, rubbish and debris from the land.
- The period for compliance with the requirement is six months from the date the notice takes effect.
- 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.

Summary of Decision: The appeal succeeds in part only and the enforcement notice is upheld with variations in the terms, including the period for compliance, as set out below in the Formal Decision.

The Notice

1. I have a duty to get the notice in order and s176(1) of the Act grants powers to (a) correct any defect, error or misdescription in the enforcement notice, and/or (b) vary the terms of the notice, provided it would not result in injustice to the appellant or the Council. One of the requirements is to demolish the rear roof extension in its entirety (if alteration to conform with planning permission is not chosen). Requiring that the roof also be restored to its condition prior to the development subject to the notice would ensure certainty and clarity regarding the end position. I am satisfied that I can make this variation to the notice, as set out in the formal decision below, without causing injustice.

Preliminary Matters

2. A certificate of lawful use or development (LDC) was previously granted¹ for the site when it was a single dwellinghouse. It related to a proposed rear roof extension, rear roof extension to outrigger roof slope and installation of three rooflights to front roof slope. An LDC confirms that the proposed development would be lawful, if implemented on the date of the application.
3. As with any LDC, implementation of any operation which is materially different from that set out in the application would mean the LDC could no longer be relied upon. In this case, the as built roof extension has not been built in accordance with the plans submitted with the LDC application, so no longer benefits from the LDC. Permitted development rights cannot be claimed retrospectively by making changes which return the development to compliance with permitted development limits. The LDC also made clear that any window inserted in a side elevation wall must be obscure glazed and any part below 1.7m above the floor must be non-opening. The as built roof extension has a window which does not comply with this. In addition, the permitted development rights on which the LDC was granted apply to single dwellinghouses. The site is now in use as 2 flats, so the permitted development rights no longer apply. On this basis, the LDC can no longer be relied upon and does not constitute a fallback position.
4. Planning permission has been granted² for 'conversion of dwelling house into two self-contained flats; single storey rear/side extension; rear roof extensions to main roof slope and outrigger roof slope; and installation of two roof lights to front roof slope'. Although the description on the decision notice retained the words 'outrigger roof slope', the plans approved under that application, which are referenced within the Notice subject to this appeal, exclude any roof extension on the outrigger. The as built development does not comply with the approved plans, in several ways. The differences include the construction of the roof extension on the outrigger roof slope and lack of a set in from the eaves and the boundary on the roof extension.

'Hidden' ground (c)

5. The appellant has not appealed on ground (c), which is that the matters stated in the notice do not constitute a breach of planning control. However, throughout their submissions the appellant seeks to claim that the outbuilding benefits from permitted development rights. I have considered this as a hidden ground (c) appeal. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control. In this case, the appellant would need to demonstrate that the outbuilding is permitted development and hence not a breach of planning control.
6. Schedule 2 Part 1 Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) permits the provision within the curtilage of a dwellinghouse, of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to limitations and conditions.

¹ Reference 200487CLP, granted on 1/4/2020

² Reference 201577FUL, granted on 2/7/2020

7. There was a pre-existing outbuilding at the site. From the evidence presented to me and observations made during my site visit, I conclude that the current outbuilding is a new building, or has been so substantially rebuilt, extended, and altered it must be treated as such.
8. The appellant argues that the current outbuilding was finished while the site was still a dwellinghouse, so benefited from Class E permitted development rights. They also argue that the outbuilding was finished before the ground floor extension was built so the total area of ground covered by buildings within the curtilage did not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse), as required by Class E. No substantive evidence to support these claims has been provided.
9. The Council argue that the outbuilding was constructed after works to convert the site to flats was commenced. Hence, they say the site no longer benefited from permitted development rights for dwellinghouses. They also argue that works to construct the ground floor extension had started before the current outbuilding was constructed and that as a result, the total area of ground covered by buildings within the curtilage exceeded 50% of the total area, so failed to comply with Class E limitations. A photograph provided by the Council shows the pre-existing outbuilding still in place when work to construct the ground floor extension had commenced. I also note that the plans approved under the permission to convert the site into two self-contained flats and build the extensions shows no outbuilding at all and the application was assessed and approved on that basis.
10. In addition to the above, for an outbuilding to benefit from the provisions of Class E, it must be 'required for a purpose incidental to the enjoyment of the dwellinghouse'. An incidental use cannot be for a primary residential purpose, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. The appellant has stated that the outbuilding is to provide a gym and storage. At the time of my visit, the outbuilding contained a shower, sink and toilet, with the main area being empty. Photos provided by the council show the main area previously contained a kitchen unit with sink and tap. The appellant has not provided sufficient evidence that when constructed the outbuilding was required for a purpose incidental to the enjoyment of the dwellinghouse and the site is no longer a dwelling house.
11. I conclude that, the appellant has provided no substantive evidence that would allow me to conclude, on the balance of probability, that when constructed, the outbuilding benefited from permitted development rights for dwellings and met all of the limitations and conditions for Class E. Therefore, the outbuilding did not, and does not benefit from permitted development rights, and does not have planning permission, so is in breach of planning control. Accordingly, the appeal on hidden ground (c) fails.

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

12. The ground of appeal is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation. Hence, the development for which planning permission is sought, is the construction of rear roof extension and the construction of a single storey rear outbuilding.

Main Issues

13. Having regard to the reasons for issuing the notice, the main issues are the effect of the development subject to the notice on the:

- Character and appearance of the site and the surrounding area; and
- Living conditions of the occupants of 75 Trinity Road, with regard to privacy.

Reasons – Character and appearance

14. 77 Trinity Road is a two storey mid-terrace house in a street of similar properties. It has a two storey rear outrigger which is replicated in dwellings to either side and to the rear, although not all sections of the surrounding terraces have them. A gated alleyway runs along the rear of the site, separating it from the rear of dwellings along Townsend Road.

15. The development subject to the notice consists of a dormer roof extension across the full width of the property on the main roof, which is attached to a roof extension over the outrigger. Both elements of the roof extension have a flat roof, to the same height as the main roof ridge and are faced in red tiles. The outbuilding spans the width of the site and backs onto, but has no direct access to, the alley.

Roof extension

16. Roof extensions are a common feature of rear roof slopes and can be permitted development. However, as set out above, the roof extension subject to this appeal is not permitted development so needs to comply with relevant policy.

17. There are a number of flat roof dormers on main rear roofs in the immediate vicinity of the site but roof extensions on the outriggers are not a feature in the area. While the extension on the outrigger is no higher than the main roof ridge, it is significantly higher than the ridge of the outrigger roof. Due to this, the outrigger extension has the appearance of a large box perched on top of the roof. This is highly incongruous, entirely out of keeping with the form and proportions of the host building and its neighbours and fails to respond to local characteristics.

18. I have no issue with the use of hanging tiles. Notwithstanding this, the roof extension in this case, on both the main roof and the outrigger, lacks any set in or set back, meaning the tiled sides overhang and protrude beyond the eaves and walls of the building as well as extending right up to the neighbouring boundary.

19. Taken together, the above factors result in the roof extension appearing excessively bulky, overly dominant and out of scale with the host building. Although not visible from the street, the roof extension is highly visible from surrounding dwellings. Its poor design, excessive scale and lack of subservience has a negative visual impact on the character and appearance of the host building and the surrounding area.

Outbuilding

20. As set out above under hidden ground (c), I consider the outbuilding to be in breach of planning control. I have therefore considered it as part and parcel of the overall development covered by the notice and for which permission is sought under the ground (a) deemed planning application.
21. Many of the surrounding properties have outbuildings in the rear amenity space and the outbuilding subject to the appeal is only around 5 square metres larger than the pre-existing outbuilding and simple in its design. Notwithstanding this, a large single storey extension has also been constructed at the site and while it is not subject to the notice and hence not covered by the deemed planning application, its existence is relevant in considering the overall area and pattern of built form at the site.
22. The appellant claims that the single storey extension was approved by the council when the pre-existing outbuilding was in situ. However, as noted already, the approved plans³ show no outbuilding on site. The application was therefore assessed and approved on the basis of just a single storey extension and not a single storey extension in combination with an outbuilding.
23. While not visible from the street, the outbuilding, in particular its large flat roof, is visible from surrounding dwellings, despite some trees to the rear. The combination of the outbuilding and the single storey extension means that when viewed from neighbouring dwellings, the rear of the appeal site is dominated by roofs, with only a small break in built form. The view from the upper flat at the appeal site is almost entirely of roof. The remaining outside amenity space is smaller than the area covered by the outbuilding.
24. Despite the presence of outbuildings and extensions at many of the surrounding dwellings, the vast majority retain reasonable amounts of outside space. Therefore, the outbuilding cumulatively with the single storey extension has resulted in a building pattern at the appeal site which is not reflective of the area, does not respond positively to the site context and constitutes overdevelopment.

Conclusion on character and appearance

25. I conclude that the development causes unacceptable harm to the character and appearance of the site and the surrounding area. Consequently, it does not comply with Policies 7.4 and 7B of the Ealing Development Management Development Plan (Adopted 2013) (DP); Policy D3 of the London Plan (2021) (LP); and section 12 of the National Planning Policy Framework. Together these policies seek to ensure good design which is high quality, of an appropriate scale and level of development, and which responds to the existing character and site context.

Reasons – Neighbour privacy

26. Given the close arrangement of dwellings within a tightly knit urban area, there are already significant levels of mutual overlooking between properties from the rear elevation windows in upper floors. However, the window in the outrigger roof extension is in the side elevation and faces directly towards the boundary with No 75, at close quarters.

³ Under reference 201577FUL, granted on 2/7/2020

27. The window enables direct views into the garden, as well as an area of amenity space adjacent to the side of the house at No 75. This area is covered by transparent corrugated sheeting which does not protect privacy. The window also enables partial views into a ground floor habitable room. Consequently, the levels of privacy experienced by occupants of No 75 is significantly reduced by the side facing window in the roof extension.
28. At the time of my site visit, the side facing window in the outrigger roof extension was the only window serving a small bedroom. It would therefore not be appropriate to fix and obscure glaze the window to mitigate the impact of overlooking as this would result in unsuitable living conditions for the occupants of the room which the window serves.
29. I conclude that the development has an unacceptable impact on the living conditions of the occupants of 75 Trinity Road, with regard to privacy. Consequently, the development does not comply with Policies 7B of the DP and D3 of the LP, which amongst other things, seek to ensure that development achieves appropriate levels of privacy.

Conclusion on ground (a) and the deemed planning application

30. I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken other than in accordance with the development plan. Therefore, the appeal on ground (a) fails and planning permission is not granted.

The appeal on ground (f)

31. The appeal on this ground is that the steps required by the notice to be taken, 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. The notice requirements in this case seek to remedy the breach of planning control. In remedying the breach, this would also remedy any harm to amenity.
32. Regarding the roof extension, the notice gives the option of either removing it in its entirety or modifying it so it complies with the previously granted planning permission. The previous permission covers an extension to the main roof, with a modest set in and set up. As such, 'total demolition of the entire rear roof extension', is not the only option. As set out above, the LDC can no longer be relied upon and permitted development rights cannot be claimed retrospectively, so it would not be appropriate for the notice to require compliance with plans submitted with the LDC application.
33. Lowering the height of the roof on the outrigger extension would lessen the visual impact to a modest extent. However, it would not overcome all of the issues I have identified and would not make the overall roof extension acceptable. The appellant has not suggested any lesser steps regarding the removal of the outbuilding.
34. I have found the roof extension and outbuilding to be unacceptable and upheld the notice. There are no lesser steps which would remedy the breach of planning control or harm to amenity. On this basis, the appeal on ground (f) fails.

The appeal on ground (g)

35. The ground of appeal is that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The notice specifies a time for compliance of six months after the notice takes effect.
36. The appellant has requested an extension to a year. I consider this to be excessive, bearing in mind the harm and lack of policy compliance I have identified which needs to be addressed without undue delay. However, at the time of my site visit, both of the flats were occupied. In order to comply with the notice, it is likely that the occupants of at least the top flat would need to move out. I acknowledge the challenges of finding alternative affordable accommodation in the area, even if that were only for a temporary period while works were undertaken.
37. Therefore, to allow sufficient time for notice to be given to tenants, for them to look for alternative accommodation, and for the work to be undertaken, six months may well be insufficient. In balancing the harm resulting from the breach of planning control against the needs and rights of the current occupants, I consider it reasonable and proportionate to extend the compliance period to nine months.
38. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. It would be reasonable to extend the compliance period to nine months and the appeal on ground (g) succeeds. I shall uphold the notice but exercise my powers under s176(1)(b) of the Act to vary the notice accordingly, as set out below in the formal decision.

Other Matters

39. The appellant claims that the Council failed to consider expediency properly. On the basis of the submitted documents, I find that the Council made a suitable consideration of the available facts and evidence and justified their reasons for serving the notice.
40. I note some support for the development from occupants of the site and neighbour. This does not change the material considerations or my conclusion on the main matters.

Conclusion

41. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice, with variations, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on ground (f) also fails.
42. However, I conclude that the period for compliance with the notice falls short of what is reasonable. Therefore, I shall vary the period for compliance in the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Formal Decision

43. It is directed that the enforcement notice is varied as follows:

- In section 5 (what you are required to do), after the words 'Demolish the rear roof extension in its entirety', add the words 'and restore the rear roof to its condition prior to the development subject to this notice'; and
- In section 5 (what you are required to do), delete the words 'six months' and substitute the words 'nine months' as the time for compliance.

44. Subject to these variations the appeal is 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.

H Davies

INSPECTOR