



Appeal Decision

Site visit made on 17 October 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2023

Appeal Ref: APP/M5450/C/22/3305405

165 Locket Road, Wealdstone, Harrow HA3 7NY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Wing Lam against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The notice was issued on 22 July 2022.
 - The breach of planning control as alleged in the notice is without planning permission: The material change of use of the land from use as a single family dwelling house to use as two separate self-contained flats ('the unauthorised use'), and the unauthorised construction of a single storey wooden and perplex canopy structure to the rear of the dwelling house ('the unauthorised development').
 - The requirements of the notice are: 1) Cease the unauthorised use of the land as flats. 2) Remove all kitchens from the land except one. 3) Remove all bathrooms from the land except two. 4) Remove all internal partitions from the main dwelling house that enables (*sic*) the unauthorised use and altered (*sic*) the ground floor layout in accordance with the drawing no P-02 for the planning application reference P/0298/21. 5) Remove the boundary fence from the rear garden that enables the separation of the rear garden, as shown with a solid blue line on the plan attached to the notice. 6) Demolish the unauthorised development hatched in black on the attached plan. 7) 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 months.
 - The appeal is proceeding on the grounds set out in section 174 (2)(a), (b), (c), (d) & (f) 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. It is directed that the enforcement notice be corrected by deleting reference to the material change of use of the land from use as a single family dwelling house to use as two separate self-contained flats in the allegation at paragraph 3, with consequential corrections to delete steps 1 to 5 and to re-number steps 6 and 7 as steps 1 and 2 in the requirements at paragraph 5. Subject to these corrections 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.

Preliminary Matter

2. The Council referred to potentially making an application for an award of their costs in the appeal, but none has been forthcoming. I do not intend to initiate an award of costs against the appellant; there is little before me to indicate that they have behaved unreasonably resulting in the Council incurring unnecessary or wasted expense.

Ground (b) and (c) appeals

3. The grounds of appeal are (b) that the matters alleged in the notice have not, in fact, occurred and (c) that those matters (if they occurred) do not constitute a breach of planning control. In relation to both grounds it is for the appellant to show why their appeal should succeed, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains a two-storey semi-detached dwelling with single storey extensions to the side and rear. The larger part of the ground floor and first floor provides four-bedroom living accommodation. A smaller area on the ground floor provides one-bedroom accommodation and is separate from the rest of the property, with its own kitchen and bathroom. This area also has access to part of the rear garden which has been fenced off from the remainder. Like the larger part of the property, the smaller area therefore has the ability to afford to those who use it the facilities required for day-to-day private domestic existence, this being the distinctive characteristic of a dwellinghouse according to established case law¹. A timber canopy has been erected beyond the rear extension. Consequently, the matters alleged have in fact occurred and the ground (b) appeal fails.
5. Turning to the ground (c) appeal, s55 (3) of the Act states that the use as two or more separate dwellings of any building previously used as a single dwelling involves a material change of use. The definition of development at s55 (1) includes the making of any material change in the use of any buildings or other land. Planning permission is required for the carrying out of any development of land, by virtue of s57 (1) of the Act.
6. Nevertheless, other established case law confirms that the existence within a dwelling or its curtilage of separate living accommodation providing the facilities for independent day-to-day living does not necessarily result in the formation of a separate planning unit; it would be a matter of fact and degree². To support the appellant's claim that the property is used as a single dwelling three Statutory Declarations (SDs) were submitted, two of which were from the occupiers of the property, the other being from a relative of the appellant who manages the property on their behalf. The SDs were signed, dated and witnessed. These explain that the property is occupied by a single family living together and that a member of the family occupies the ground floor 'flat' with their young child, who has been diagnosed with a disability, the separate facilities enabling them to live semi-independently whilst being close to relatives who provide help and support.
7. Evidence in the SDs is supportive of the occupiers of the ground floor 'flat' sharing their living activity in company with family in the rest of the property. Other evidence, in the form of copies of the current Assured Tenancy Agreement (AST) and a recent Council Tax bill, also reflect the use of the ground floor 'flat' being as part and parcel of the use of the property as a single dwellinghouse. These documents show that the property is let to the occupiers under one tenancy and that it is not rated as more than one dwelling for Council Tax purposes. Although copies of other bills were not provided, I am given to understand that the occupiers share all utilities and services. This evidence is all supportive of there being one residential planning unit in single family occupation at the property, which continues to function as a single household, all of the accommodation being part and parcel of the use as a single dwellinghouse.
8. The appellant's evidence regarding the use of the property is sufficiently precise and unambiguous. There is little to cast doubt on the appellant's

¹ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142.

² *Uttlesford DC v SSE & White* [1992] JPL 171.

evidence or to make it less than probable. In the context of providing suitable outdoor space for use by a disabled occupier, fencing off part of the rear garden to form a separate area does not cast significant doubt on the property being used as a single dwellinghouse. In any event, provision of a separate garden on its own is unlikely to be conclusive of a planning unit having been subdivided. The appellant accepted that the property was in use as two flats prior to July 2021. In June 2022, dismissing an appeal in respect of such use the Inspector observed that the flat conversion was largely complete³. Even so, the available evidence suggests that the current use of the property post-dates the previous appeal. Any previous use as flats is of limited relevance in terms of whether the use of the property as set out in the appellant's evidence is in breach of planning control.

9. Consequently, I conclude from the evidence before me, as a matter of fact and degree and on the balance of probability, that the living accommodation is all part and parcel of the same residential planning unit in use as a single dwellinghouse and that the property is not in use as more than one dwelling. It follows that there is no material change of use and in the absence of any development no breach of planning control in this respect.
10. Erection of the canopy however amounts to a building operation falling within the definition of development. Planning permission is granted by Article 3, Schedule 2, Part 1, Class E of the GPDO⁴ to erect incidental outbuildings within the curtilage of a dwelling, subject also to the limitations in that Class being met. Whilst the appellant claimed that the canopy is a freestanding structure, I saw that there is physical attachment to the dwelling; some of the roof members are clearly fixed into the fabric of the rear extension. Even if the canopy were not physically attached, any separation between the canopy and the rear extension would be so small as to be *de minimis*. The canopy has a more intimate visual relationship with the dwelling than might be typical of a Class E building and it is seen as a further enlargement of the dwelling, not as a separate structure.
11. Accordingly, the canopy has a significant degree of attachment to the dwelling, both in physical and visual terms. The Government's Technical Guidance, which assists in interpreting the GPDO, advises that a building attached to a dwelling is not permitted by Class E and is subject to the rules governing enlargements to dwellings in Class A⁵. As the canopy clearly protrudes more than 3 m beyond the rear wall of the original dwelling, it exceeds the limitation in Class A paragraph A.1 (f) (i) and so cannot be granted planning permission by that Class either. On the balance of probability therefore, erecting the canopy constituted a breach of planning control.
12. The consequences of the above findings are that the ground (c) appeal succeeds in part. Therefore, it is necessary to correct the notice by deleting reference to the material change of use to two self-contained flats in the allegation. It is also necessary to make corrections to delete the requirements of the notice accordingly. There would be no injustice in making these corrections. The Council is not prevented from serving a fresh enforcement notice in the event of a material change in the use of the property to flats being drawn to their attention in future. The effect of these actions is that the alleged breach is narrowed down to the canopy, which falls to be considered in the outstanding grounds of appeal.

³ Appeal Ref: APP/M5450/W/21/3286556.

⁴ The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

⁵ Permitted development rights for householders: Technical Guidance MHCLG September 2019.

Ground (d) appeal

13. The ground of appeal is that it was too late to take enforcement action against the matter alleged in the notice. Where the allegation is one of unauthorised operational development, as in this case, s171B (1) of the Act provides that no enforcement action may be taken after the end of the period of four years beginning on the date those operations were substantially completed. The appellant also has to show why their appeal on this ground should succeed, the standard of proof being the same as in the previous grounds.
14. The appellant accepted that around half of the canopy was not immune from enforcement action but claimed that the other half had been in situ for more than four years prior to the date of the notice. Some of the appellant's undated photographs showed an open-sided structure located beyond the rear extension. This structure had white-painted timber upright supports and a scalloped fascia, it was covered with corrugated sheeting and was about half as wide as the property. It is highly probable that this structure was in situ for more than four years prior to the date of the notice. Google Earth images supplied by the appellant showed that a rectangular built feature with a similar footprint was present at the property by around 2006. There is little evidence to suggest otherwise.
15. Even so, the canopy is around twice the width of the structure in the photographs. The canopy also differs noticeably from that structure in terms of its appearance and construction materials. The canopy uprights and frame are a mix of natural and stained timber finishes, not painted, it has no fascia detail and the roof is covered with flat profile polycarbonate sheets, not corrugated plastic. Such marked differences in appearance and materials raise the distinct possibility that the structure in the photographs was demolished prior to the canopy being erected. Demolition and rebuilding would go beyond what would normally be regarded as repair and maintenance and most likely would have resulted in the erection of an entirely new structure. There is little before me which might indicate that the structure in the photographs was not demolished, or that more than one building operation was involved in erecting the canopy.
16. Since the Council's aerial images show that a building with a footprint similar to that of the canopy was not in situ prior to March 2020, it is highly likely that the operations involved in its erection were undertaken less than four years prior to the date of the notice. In any event, as part of the roof is not covered with roof sheets it is entirely possible that the canopy is not substantially complete.
17. Therefore, based on the available evidence and on the balance of probability, it was not too late to take enforcement action against the canopy; the appellant has been unable to show otherwise. The ground (d) appeal fails.

Ground (a) appeal

Main Issue

18. The main issue in this ground of appeal is the effect of the canopy on the character and appearance of the area.

Reasons

Character and appearance

19. The dwelling is located in an established residential area, generally consisting of evenly spaced pairs of dwellings occupying generously sized rectilinear plots. Slight variations in terms of their architectural style and external finishes aside, similarities in the dwellings' appearance provides an overall appreciable sense of visual cohesion to the locality. For the most part, residential extensions in

the vicinity are of modest scale, they do not protrude greatly beyond the original rear elevations and the external finishes are not dissimilar to that of their host dwelling. These are all factors which contribute to the pleasant, suburban character and appearance of the surrounding area.

20. With its slender uprights and frame, open sides and polycarbonate roof covering, the canopy was clearly conceived as a lightweight structure. The canopy is nevertheless of significant depth, protruding well beyond the rear extension, as well as stretching over almost all the property width, with a shallow, sloping roof. Due to its overall size and roof form, the canopy does not sit comfortably with the more modest depth and the taller, horizontal roof profile of the rear extension and it does not relate well to the original rear elevation of the dwelling. This sense of awkwardness is emphasised by the canopy materials, which fail to respect and reflect the more robust qualities and traditional external finishes on the rest of the dwelling and those used generally on nearby property and which also contribute to the structure having a somewhat utilitarian appearance. Consequently, the canopy does not integrate satisfactorily with the dwelling and the pattern of local development generally and is viewed as an obvious and alien addition.
21. Furthermore, the canopy footprint significantly reduces the area of undeveloped rear garden at the property, a greater portion of which is covered by or adjacent to built form, compared with prior to its erection. Whilst a good-sized rear garden remains, the canopy has nevertheless considerably and appreciably eroded the sense of openness that previously would have been apparent at the rear of the property. This has led to a markedly more built-up feel, entirely at odds with the greater sense of spaciousness at properties in the environs. Whilst the canopy sits alongside a neighbour's outbuilding, as far as I could see few dwellings in the vicinity have been enlarged so significantly to the rear. Although there are limited public views of the canopy, the visual harm caused is apparent from neighbouring property.
22. For the above reasons, the canopy causes unacceptable harm to the character and appearance of the area. This is in conflict with Policy DM1 of the Harrow Development Management Policies Local Plan, which seeks to resist development that fails to achieve a high standard of design and is detrimental to local character and appearance. There is no direct conflict however with Policy D3 of the London Plan, which concerns the strategic approach to design throughout the capital.

Other Matters

23. The appellant argued that there is a 'fallback' position of erecting a replacement structure with a similar footprint, height, siting and constructed in similar materials, relying on the planning permission granted by Class E of the GPDO, following compliance with the notice. To meet the limitations in Class E any replacement for the canopy would have to be a freestanding structure. Moreover, to be required for a purpose incidental to the dwellinghouse as such the size and siting of the structure would have to be as a consequence of its intended incidental function in relation to the dwelling. Since few details were supplied regarding how the requirements and limitations of Class E would be met, whether erecting a replacement structure would have similar or worse visual consequences than the canopy is unclear. Therefore, I am not persuaded that there is a realistic possibility of a similar structure being erected by relying on Class E and the fallback position is afforded limited weight.
24. The absence of harm to the living conditions of neighbouring occupiers is a neutral factor which weighs neither in favour nor against the granting of permission for the canopy.

Conclusion-Ground (a) appeal

25. The canopy harms the character and appearance of the area, in conflict with Development Plan policy and in conflict with the Development Plan taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan. Therefore, I conclude that the ground (a) appeal should not succeed.

Ground (f) appeal

26. The ground of appeal is that the notice requirements are excessive.
27. An enforcement notice can have the purpose of remedying the breach, including by restoring the land to its condition before the breach took place, or it can remedy any injury to amenity caused by the breach. The corrected notice requires the canopy to be demolished, together with removal from the property of all the resulting materials. Therefore, although the notice does not state as such, its purpose must be to remedy the breach.
28. It is also possible to remedy a breach of planning control by making the development comply with the terms, including conditions and limitations, of any planning permission granted in respect of the land. This includes where that permission is granted by the GPDO. The fallback position of erecting a replacement structure relying on the GPDO is dealt with in ground (a). In the context of ground (f), any step that stopped short of demolishing the canopy would sustain part of the breach and so would not achieve the purpose of the notice. The appellant did not suggest a further alternative to the requirements and to my mind, there is no alternative that would also remedy the breach.
29. Therefore, the notice requirements are not excessive-they are a proportionate remedy being the minimum necessary to remedy the breach. The ground (f) appeal also fails.

Conclusion

30. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Stephen Hawkins

INSPECTOR