



Appeal Decision

Site visit made on 6 November 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 December 2023

Appeal Ref: APP/M5450/C/22/3305496

Land at 104 Lynton Road, Harrow HA2 0PR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ashok Vadher against an enforcement notice issued by the Council of the London Borough of Harrow.
- The notice, numbered ENF/0269/21/P, was issued on 28 July 2022.
- The breach of planning control as alleged in the notice is the construction of a single-storey wooden and perspex extension on the Land as shown hatched on the attached site Plan ("the Unauthorised Development").
- The requirements of the notice are to:
 - a) Demolish the Unauthorised Development;
 - b) Make good any damage caused to the building as a result of the above actions; and
 - c) Remove from the Land all materials, rubbish, and debris resulting from compliance with the above requirements, and restore the Land to its condition prior to the breach taking place.
- The period for compliance with the requirements is: Six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected by the deletion of "HA2 0PR" in paragraph 2 of the enforcement notice. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld.

Preliminary matters

2. During my visit, the Council took a number of measurements of the appeal scheme, which I was able to see, and which were agreed by the appellant.
3. The appellant ticked ground (a) on the appeal form. However, the appellant has subsequently confirmed that they do not wish to continue with the ground (a) appeal. Planning merits do not, therefore, fall to be considered.

Matters concerning the notice

4. The enforcement notice describes the address as 'Land at 104 Lynton Road, Harrow HA2 0PR ('the Land'), shown edged red on the attached plan ('the Plan'). The notice was served on individuals residing at 104 Lynton Road, Harrow HA2 9NN. On the appeal form, the appellant identified the appeal address as 104 Lynton Road, Harrow, HA2 9NN. From my site visit, I saw that the postcode given by the appellant relates to No 104 Lynton Road, rather than the postcode referred to on the enforcement notice.
5. An incorrect address does not render the enforcement notice a nullity or invalid, so long as the recipient is not misled. The appellant has made a valid appeal and whilst the appeal under ground (a) has lapsed, this is because the

appellant has chosen not to pay the fee. Deleting the incorrect postcode will address the error in the notice. Since it is clear from the remainder of the address and the plan attached to the notice which property the enforcement notice relates to, I consider it can be corrected without causing injustice to either party.

Ground (c)

6. An appeal under ground (c) is made on the basis that the matters stated in the notice (if they occurred) do not constitute a breach of planning control. The main thrust of the appellant's case under ground (c) is that the appeal scheme is permitted development and does not require planning permission.
7. The appeal property comprises a mid-terrace dwelling, which fronts onto Lynton Road. The appeal scheme comprises a wooden and Perspex structure which projects around 3.5m from the rear of the property, attached to a single storey rear extension, which itself projects around 2.75m from the rear of the original dwellinghouse. Together, the single storey extension and appeal scheme project around 6.25m from the rear of the original dwellinghouse.
8. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) Schedule 2, Part 1, Class A permits the enlargement, improvement or other alteration of a dwellinghouse, subject to certain limitations and conditions.
9. Paragraph A.1. states that development is not permitted by Class A if: (f) subject to paragraph (g), the enlarged part of the dwellinghouse would have a single storey and (i) extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse, or 3 metres in the case of any other dwellinghouse. The appeal scheme projects more than 3m from the rear of the property and so does not fall to be considered under paragraph A.1.(f).
10. Paragraph A.1. also states that development is not permitted by Class A if: (g) for a dwellinghouse not on article 2(3) land nor on a site of special scientific interest, the enlarged part of the dwellinghouse would have a single storey and (i) extend beyond the rear wall of the original dwellinghouse by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse. Where a new extension is joined to an existing extension, under paragraph (ja) the limits in (f) or (g) apply to the size of the total enlargement.
11. The appeal scheme, together with the previous single storey extension, extends beyond the rear wall of the original dwellinghouse by more than 6 metres and so exceeds the limitations set out under Class A. Furthermore, where a development permitted by Class A exceeds the limits in paragraph A.1(f) but is allowed by paragraph A.1(g), the developer must comply with the conditions set out under A.4. which require the provision of specified information to the local planning authority before beginning the development. There is no suggestion that the appellant provided such information to the Council prior to carrying out the works.
12. Condition A.3. states that development is permitted by Class A subject to the following conditions- (a) the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar

appearance to those used in the construction of the exterior of the existing dwellinghouse. The materials of the unauthorised development do not match those used in the construction of the existing property. Since the appeal scheme exceeds the limitations set out under A.1, it is not necessary for me to determine whether or not the appeal scheme comprises a conservatory for the purposes of the GPDO.

13. While I appreciate the appellant may have relied upon advice provided to them by a surveyor, only a formal decision made by the local planning authority in the proper exercise of the statutory powers it has available will provide a definitive and conclusive assessment of the lawfulness of the development. There is no evidence to show that this procedure has been followed and a formal decision made by the local planning authority.
14. For the reasons given above, I find that the appeal scheme is not permitted by the GPDO and is development for which planning permission is required. Consequently, the appeal under ground (c) must fail.

Ground (f)

15. An appeal under ground (f) is made 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.
16. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms of any planning permission, by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. It is clear from the wording of the notice, that its purpose is to remedy the breach.
17. The Council has drawn my attention to *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784, which concerned an alleged material change of use and operational development. However, the main thrust of that case was that where an enforcement notice alleges a material change of use, it can require removal of works which are integral to an unauthorised use. There is no suggestion in this appeal that a material change of use has occurred, and so *Kestrel Hydro* is of limited relevance in this case.
18. The appellant's case under ground (f) largely repeats their case under ground (c). As set out above, the appeal scheme exceeds the limitations set out in the GPDO. Nevertheless, it is necessary for me to consider whether there is any obvious alternative, or lesser step, which would achieve the purposes of the enforcement notice with less cost and disruption. While the GPDO does not grant retrospective planning permission, since the appellant could choose to exercise their permitted development rights following compliance with the notice, I shall consider whether the grant of planning permission under the GPDO represents a realistic fallback position.
19. Although paragraph A.1(g) of the GPDO permits extensions which project up to 6m from the original dwelling in the case of a terraced dwelling, this is subject to a notification procedure. While the appellant suggests they have the consent

of their neighbours, I cannot be sure what the outcome of any such procedure would be. This does not, therefore represent a realistic fallback position.

20. The previous single storey rear extension projects less than 3m from the rear of the original dwellinghouse. While it may be possible to reduce the appeal scheme so that, together with the previous single storey extension, it would fall within the limitations set out within paragraph A.1(f), the additional space which would be provided by the resultant space would be so limited, I consider the appellant is unlikely to wish to exercise their permitted development rights in this way.
21. Furthermore, it would not be possible to word the requirements with sufficient precision that the appellant knows what they have to do. Consequently, I consider there are no lesser steps which would achieve the purposes of the enforcement notice with less cost and disruption and so the appeal under ground (f) must fail.
22. The appellant states that a planning application has been submitted following advice from the Council. However, I have no substantive details of any such planning application. Were the Council to grant permission, section 180 of the Act provides that where, after the service of a copy of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

M Savage

INSPECTOR