



Appeal Decisions

Hearing held on 18 October 2023

Site visit made on 18 October 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal A Ref: APP/M5450/C/23/3316669

Appeal B Ref: APP/M5450/C/23/3316670

41 Argyle Road, Harrow HA2 7AL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr & Mrs Bhavin Shah and Appeal B by Mrs Roopal Shah against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The notice was issued on 17 January 2023.
 - The breach of planning control as alleged in the notice is 1. the unauthorised construction of a first floor side extension ("the unauthorised extension") and 2. the unauthorised construction of a hip to gable and rear dormer roof extension. ("the unauthorised loft conversion"). Together referred to as "the unauthorised development".
 - The requirements of the notice are:
 - a) Demolish the unauthorised development or build in accordance with the approved drawing for planning application reference P/2648/18.
 - b) Make good any damage caused to the building as a result of the above step and ensure that all materials used shall match those used in the existing building.
 - c) 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) months.
 - Appeal A 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.
 - Appeal B is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. It is directed that the enforcement notice is varied by the deletion of the words "Six (6) months" and substitution of the words "Nine (9) months" as the period for compliance with the requirements.
2. Subject to this variation the appeals are dismissed, and the enforcement notice is upheld. In respect of Appeal A, planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Applications for costs

3. An application for costs was made by Mr Bhavin Shah and Mrs Roopal Shah against the Council of the London Borough of Harrow. This application is the subject of a separate decision.

4. An application for costs was made by the Council of the London Borough of Harrow against Mr Bhavin Shah and Mrs Roopal Shah. This application is the subject of a separate decision.

Appeal A on ground (a) and the deemed planning application

Background and Main Issues

5. The appeal site relates to a semi-detached dwelling located on the southern side of Argyle Road. Argyle Road is characterised by semi-detached dwellings of generally similar design, although some dwellings along the road appear to have been altered or extended including examples of hip-to-gable roof alterations and the construction of large rear dormers.
6. In August 2018 planning permission¹ ("the 2018 permission") was granted at the appeal property for a '*Single storey front extension incorporating front porch, first floor and two storey side extension, single and two storey rear extension*'. A lawful development certificate² was also granted in August 2018 ("the 2018 LDC") for '*Alterations to roof to form end gable, rear dormer with Juliette balcony and insertion of two rooflights in front roofslope*'. It is accepted that the works carried out on site, which are essentially a combination of these two approvals, are unauthorised and do not benefit from the necessary planning permission.
7. The Council subsequently refused a retrospective planning application³ in March 2022 for the retention of the development as built. An appeal⁴ against that decision was dismissed in June 2022, with the appointed Inspector finding harm in relation to the effect of the development on the character and appearance of the host property and the immediate locality along Argyle Road. Given that the development on site remains unchanged, the Council's reasons for issuing the notice is focused on this issue.
8. The appellants also contend that there is a legitimate fallback position which would enable the development to be largely re-instated under permitted development rights following compliance with the notice. In addition, as part of the appeals on ground (f), the appellants have advanced two alternative schemes with plans titled 'Proposed Option 01' and 'Proposed Option 02' that they assert would overcome the Council's planning objections at less cost and disruption. Although made as part of the ground (f) appeal, it is appropriate for me to consider this pursuant to ground (a).
9. Consequently, the main issues are:
 - The effect of the development on the character and appearance of the host property and surrounding area;
 - Whether there is a fallback position that would justify the development as built; and
 - Whether the proposed alternative schemes would be part of the matters stated in the notice, and if so, their effect on the character and appearance of the host property and surrounding area.

¹ Council Ref: P/2648/18

² Council Ref: P/2649/18

³ Council Ref: P/0068/22

⁴ APP/M5450/D/22/3295890

Reasons

Character and Appearance

10. A recent appeal decision relating to the development that is the subject of the notice is clearly a material consideration and regard should be had to it. Indeed, there must be very sound reasons for me to reach a different conclusion to the previous Inspector, not least because of the importance of consistency in the planning process.
11. The previous Inspector concluded that the development was harmful to the character and appearance of the host property and surrounding area. Paragraphs 13 and 14 of the Inspector's decision sets out the following findings:

In addition, the hipped roof of the extension, when seen in the context of the large gable-end side elevation and the dormer extension, appears out of character with its immediate surroundings, where gable-end elevations without side extensions have become a feature, and where two-storey side extensions have taken the form of a simple extension of the existing hipped roof. I consider that the hipped roof at the side appears incongruous and contrived in the context both of the host property and the neighbouring houses in the immediate locality. Moreover, the hipped roof at the rear of the extension, by virtue of its cutting across the face of the rear dormer, appears as a somewhat awkward feature in the overall appearance of the rear of the house.

The unsympathetic nature of the roof design of the first-floor side extension, coupled with the offset nature of the first-floor rear extension, results in a somewhat awkward and visually cluttered amalgamation of elements at first-floor and roof level, particularly as seen in conjunction with the side and rear of the dormer. I note that the side element is not an extension to an already existing gable roof, but the fact remains that the hip-to-gable alterations and new dormer have been coupled with the side and rear extensions in a manner that results in an inappropriate overall appearance in the context of the host property and the immediate surroundings along Argyle Road.

12. Whilst consistency is an important part of decision making, any material changes in circumstances and/or other considerations may enable me to reach a different conclusion to that of the previous Inspector. However, in this case there is nothing that leads me to reach a different conclusion and, based on my own observations, I find no reason to disagree with the previous Inspector's findings.
13. In view of the above, I conclude that the development is harmful to the character and appearance of the host building and surrounding area. The development is contrary to Policy CS1.8 of the Harrow Core Strategy (February 2012), Policies D3.D(1) and D3.D(11) of the London Plan (2021), Policies DM1 A and DM1 B (a), (b) and (c) of the Harrow Council Development Management Policies (July 2013), and the Residential Design Guide Supplementary Planning Document (December 2010). Together these policies seek, amongst other things, that development respects the host building, achieves a high standard of design, and responds positively to local character.

Fallback

14. By way of a fallback position, following compliance with the enforcement notice the appellants argue that very similar extensions could be built under permitted development rights. In particular, as the requirements of the enforcement notice allows the development to be built in accordance with the 2018 planning permission, it is argued that hip to gable and rear dormer roof extensions could subsequently be constructed which would result in there being no material difference visually when compared to the development subject of the notice.
15. Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ("the GPDO") provides permitted development rights for the enlargement of a house consisting of an addition or alteration to its roof, subject to several limitations. These limitations include paragraph B.1(c) which states that, as a result of the works, no part of the dwellinghouse would extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. B.1(d) also states that, for semi-detached houses, any additional roof space created must not increase the volume of the original roof space of the house by more than 50 cubic metres. Any previous enlargement to the original roof space in any part of the house must also be included in this volume allowance.
16. At the Hearing the Council accepted in general terms that following compliance with the notice, the appellants would be able to utilise their permitted development rights. It was further accepted that subject to it meeting the limitations under Part 1, Class B of the GPDO a rear dormer roof extension of some form could be constructed.
17. However, if combined with a hip to gable extension, the exact size of the rear dormer roof extension was unclear given that it was not established how much of the 50 cubic metres volume allowance would remain. The Council also disputed at the hearing whether, following the development being built in accordance with the 2018 permission, a hip to gable extension could be constructed under permitted development rights at all by virtue of the limitation set out under paragraph B.1(c). The 2018 LDC can also not be relied upon in relation to this matter, given that it relates to proposed alterations to the roof to form an end gable without the existence of the development approved under the 2018 permission.
18. I have no reason to doubt that the appellants would seek to utilise their permitted development rights in the event of the unauthorised development being removed and the notice complied with. Nevertheless, the fallback position should be identified in sufficient detail so that it can be compared to the development as built. The appellants have not provided drawings or calculations to show how large an extension could be built or clarify whether those extensions would amount to permitted development.
19. Given the lack of detail on this matter, I am unable to assess whether any fallback that may take place would have similar or worse visual consequences than that for which planning permission is sought. Nor has it been demonstrated that any such fallback would be a realistic prospect. Therefore, I am not persuaded that there is a realistic possibility of a similar development being erected by relying on Part 1, Class B of the GPDO. Consequently, this

matter does not justify granting planning permission for development which I have found causes harm to the character and appearance of the host building and surrounding area.

Alternative Schemes

20. Section 177(1)(a) of the 1990 Act provides that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. So long as there is an appeal under ground (a), I must consider whether any alternative schemes would be part of the matters stated in the enforcement notice as constituting a breach of planning control and whether it should be permitted. It is held in settled case law that whether or not an alternative scheme amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker.
21. 'Proposed Option 01' includes the retention of the rear roof dormer and the first-floor side extension being changed from a hip to a gable roof, albeit with a small sloping part of the roof being created as a feature. By virtue of these works, the ridge height of the first-floor side extension is raised to just below the main ridge of the host dwelling.
22. 'Proposed Option 02' includes the roofs associated with both the host dwelling and the first-floor side extension being altered to hipped roofs. Notwithstanding the inclusion of three rooflights on the front facing roof slope, when viewed from Argyle Road these alterations would result in the appearance of the property's roof being very similar to that approved under the 2018 planning permission. At the hearing the Council accepted that this would represent an improvement when compared to the existing first floor side extension as built. A rear roof dormer would also be retained as part of this alternative scheme.
23. With regards to 'Proposed Option 01' the scheme would entail a significant enlargement and alteration of the roof of the first-floor side extension. It would therefore involve works which are not part of the development as built, and the enlargement of the roof would make it a different development to that enforced against. Therefore, the scheme would comprise works that would not be part of the matters stated in the enforcement notice as constituting a breach of planning control.
24. Although the alterations to the first-floor side extension and retention of the rear dormer as shown in 'Proposed Option 02' could be considered as forming part of the matters stated in the enforcement notice, both alternative schemes include other works which fall outside of those enforced against.
25. The notice deals with two elements only, namely the first-floor side extension and the construction of a hip to gable and rear dormer roof extension. However, the approval of either alternative scheme would involve granting planning permission for other unlawful elements outside of those enforced against. This includes the first-floor rear extension which is proposed under both alternative schemes to be altered, with its existing roof changed to a flat roof. Consequently, when taken as a whole, the alternative schemes are patently not wholly or partly within the matters alleged to constitute a breach of planning control.

26. I can only grant planning permission for the whole or part of the matters as stated in the notice. 'Proposed Option 01' would include the construction of an entirely new roof to the first-floor side extension which would increase its volume and ridge height. Both alternative schemes also include works to other parts of the dwelling which are not attacked by the notice. All these elements amount to building operations which do not form part of the development as enforced against. Therefore, regardless of their merits, it is not open to me to consider granting planning permission for the alternative schemes under the ground (a) appeal.

Other Matters

27. I note that a number of local residents have written in support of the development, including several who live on Argyle Road. However, this does not outweigh or alter my findings on the main issues in this case.
28. The appellants have also drawn my attention to extensions at other residential properties, including 523 Rayners Lane, 92 Herga Road, 4 The Ridgeway, and 14 Anglesmede Crescent, which they consider are similar forms of development and in many cases demonstrate a lack of consistency in the Council's decision making. Except for 523 Rayners Lane, I viewed all of these properties on the day of the hearing.
29. Although I acknowledge that there are some similarities between the extensions referred to by the appellants and the appeal property, they are situated on a variety of residential streets in Harrow. None of the properties are in view of the appeal site and it is therefore not necessarily the case that their circumstances are directly comparable. In any event, I have determined the appeal on its own merits and the existence of other similar developments does not alter my findings on the main issues in this case.

Conclusion on ground (a)

30. For the reasons given above, I conclude that the appeal on ground (a) must fail. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeals A and B on ground (f)

31. For the appeals to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
32. The notice does not specify which of these two purposes it seeks to achieve. Nevertheless, the requirements are to either completely remove the unauthorised development or build in accordance with the 2018 planning permission. I am satisfied, therefore, that the purpose of the notice is to remedy the breach of planning control.
33. Case law has established that it is open to me to consider clear and obvious alternatives that would overcome the planning harm at less cost and disruption to the appellant than total demolition. The appellants have put forward two alternative schemes, which I have considered in Appeal A on ground (a).

34. However, as I have set out above it is not open to me to consider the merits of the alternatives under the ground (a) appeal because they do not form part of the matters enforced against. I therefore find that no clear alternative or lesser steps have been put forward that would remedy the breach. Accordingly, the ground (f) appeals fail.

Appeals A and B on ground (g)

35. The appeals on ground (g) are that the time given to comply with the requirements of the notice is too short.

36. The appellants argue that a compliance period of six months is too short due to the time those works would take to complete on site, along with the lead in time of finding a suitable contractor with capacity to take on the job. A compliance period of twelve months has been suggested.

37. In support of this ground the appellants have provided estimates from two building contractors, with one estimating that the works would take between 6-9 months to complete and the second estimating that a period of 22-26 weeks would be required.

38. Irrespective of whether the appellants choose to completely remove the unauthorised development or build in accordance with the 2018 planning permission the works required, and the associated disruption, will be significant. With that in mind and having regard to the time estimates provided by the building contractors, I consider that a period of nine months would be a sufficient and reasonable period of time to comply with the requirements of the notice. To that extent the appeals on ground (g) succeed.

Conclusion

39. For the reasons given above I conclude that the appeals do not succeed, save for ground (g). I have upheld the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

David Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nicholas Kingsley Smith
Bhavin Shah

Kingsley Smith Solicitors LLP
Appellant

FOR THE LOCAL PLANNING AUTHORITY:

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