



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: 11 January 2024

Appeal Ref: APP/M5450/C/23/3317183

151 Christchurch Avenue, Harrow HA3 8NS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Kamlesh Patel against an enforcement notice issued by the Council of the London Borough of Harrow.
- The notice was issued on 26 January 2023.
- The breach of planning control as alleged in the notice is without planning permission:
 - 2.1 The construction of a single storey rear extension on the land as shown hatched in red on the attached Plan ("Unauthorised Single Storey rear Extension");
 - 2.2 The construction of raised platform built without planning permission as shown hatched green on the attached Plan ("Unauthorised Raised Platform"); and
 - 2.3 The construction of fences marked in blue on the attached plan with a height in excess of 2m ("Unauthorised Fences").
- The requirements of the notice are to:
 - 4.1 Demolish the Unauthorised Single Storey Rear Extension (shown hatched in red on attached Plan).
 - 4.2 Demolish the Unauthorised Raised Platform (shown hatched in green on attached Plan).
 - 4.3 Reduce the Fence marked in blue on attached Plan to a height of 2m from natural ground level.
 - 4.4 Make good any damage to the remaining house arising from compliance with the above steps, using materials matching the appearance of the existing dwelling house.
 - 4.5 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) calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (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.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - At paragraph 2 of the notice, the deletion of sub-paragraph 2.3 and the deletion of the words 'The construction of fences marked in blue on the attached plan with a height in excess of 2m. ("Unauthorised Fence s").
 - At paragraph 4 of the notice, the deletion of sub-paragraph 4.3 and the deletion of the words 'Reduce the Fence marked in blue on attached Plan to a height of 2m from natural ground level.'
 - At paragraph 5 of the notice, the deletion of the words 'Six (6)' and the insertion of the words 'Nine (9)' as the period for compliance.
2. Subject to the corrections above, the appeal is allowed insofar as it relates to the raised platform and planning permission is granted on the application

deemed to have been made under section 177(5) of the 1990 Act as amended, for the raised platform shown hatched in green on the attached plan at 151 Christchurch Avenue, Harrow HA3 8NS.

3. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the single storey rear extension and planning permission is refused in respect of the single storey rear extension at 151 Christchurch Avenue, Harrow HA3 8NS on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

4. Notwithstanding the appellant's argument regarding the alleged raised platform, since this is how it is referred to in the enforcement notice, this is how I shall refer to it in my decision letter. This is not an indication that I have made up my mind about whether it is 'raised' for the purposes of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO).
5. Since the appeal was made, a revised National Planning Policy Framework (the Framework)(December 2023) has been published. The document has not raised any new matters which are determinative to this appeal.

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. It is for the appellant to make their case on the balance of probabilities. Section 191(2) of the Act sets out that uses and operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).

Rear extension

7. 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.
8. Paragraph A.1. 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.
9. Where a development permitted by Class A 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. The appellant has previously submitted such details to the Council for a rear extension, reference P/2173/14 and I have been provided with a copy of the approved plan.
10. I saw that the roof slope and fenestration within the extension as built are different to the plan approved under P/2173/14, with a sloping roof instead of a

flat roof and doors rather than doors and a window. Indeed, the appellant does not dispute that there are differences between the details provided to the local planning authority in support of application P/2173/14 and the development as built. However, it is asserted that the changes, which include a revised roof form and differences in the fenestration are immaterial and that the as-built extension is substantially in compliance with the approved details.

11. Paragraph A.4.(11) states that the development must be carried out (a) where prior approval is required, in accordance with the details approved by the local planning authority; (b) where prior approval is not required, or where sub-paragraph (10)(c) applies, in accordance with the information provided under sub-paragraph (2), unless the local planning authority and the developer agree otherwise in writing. There is no scope for minor differences. Where development does not accord with the approved details, it is not permitted by the GPDO.
12. Consequently, given the differences between the as built development and the plan submitted under reference P/2173/14, the rear extension is development for which planning permission is required and the appeal under ground (c) must fail in respect of the single storey rear extension.

The raised platform

13. The raised platform comprises steps which project from the rear extension and a substantial patio area beyond. The main thrust of the appellant's case is that the raised platform does not exceed 300mm when measured from natural ground level and so would be permitted by the GPDO.
14. For the purposes of the GPDO, height of a building is construed as a reference to its height when measured from ground level. Ground level means the level of the surface of the ground immediately adjacent to the building in question or, where the level of the surface of the ground is not uniform, the level of the highest part of the surface of the ground adjacent to it.
15. I saw that the steps measure around 615mm in height above the adjacent grassed area. From my observations on site, it seems likely that the steps are more than 300mm in height when measured from the level of the ground adjacent to it. Consequently, the raised platform comprises a raised platform for the purposes of the GPDO and is not permitted by Class A.
16. Furthermore, even if I were to consider the highest part of the surface of the ground to be adjacent to the rear of the original dwelling, since it is physically connected to the rear of the building and projects a number of metres further into the garden, it exceeds the limitations set out under Class A and so is not development which is permitted by the GPDO. The fact that a neighbouring property has a similar patio is not relevant to the appeal under ground (c).
17. Thus, the appeal the appeal under ground (c) must fail in respect of the raised platform.

Fencing

18. Part 2, Class A of Schedule 2 of the GPDO permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure. Development is not permitted by Class A if the height would exceed 2m above ground level. The Council suggests that the fencing measures

approximately 2.20m, when measured from the neighbouring gardens which have not been backfilled and would therefore exceed the limitations set out in the GPDO.

19. However, I saw during my visit that the fence and posts measure marginally less than 2m above ground level from within the appeal site. The appellant advises that the levels within the site slope down from north to south and this appears consistent with the evidence provided and from my observations on site. Even if the garden has been raised slightly through backfilling, given the sloping nature of the site, I consider it unlikely that the fencing exceeds 2m in height above the highest part of the surface of the ground adjacent to it.
20. Thus, on the balance of probabilities, I find that the fencing is development which is granted planning permission by the GPDO and the appeal under ground (c) succeeds in part.

Ground (a)

21. An appeal under ground (a) is made on the basis 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. Since the appeal under ground (c) succeeds in respect of the fencing, my consideration under ground (a) is limited to the single storey rear extension and the raised platform.

Main Issues

22. The main issues of the appeal are:

- The effect of the appeal scheme on the character and appearance of the area; and
- The effect of the appeal scheme on the living conditions of occupants of No 149 and 153, having regard to outlook and privacy.

Reasons

Character and appearance

23. No151 comprises a mid-terrace property which fronts onto Christchurch Avenue. Properties along this section of Christchurch Avenue have gardens which are substantial in length and which face towards the rear gardens of properties along Cullington Close. The appeal property has been extended at the rear with a single storey rear extension, with a predominantly flat roof which slopes down towards the end and steps, which lead to a paved area.
24. Policy D3 of the London Plan (2021) seeks to ensure that development responds to the existing character of a place by utilising, amongst other things, architectural features that contribute towards the local character. Policy CS1 of the Harrow Core Strategy (2012)(the CS) and policy DM1 of Harrow Development Management Policies Local Plan (2013)(the DMP) both seek to protect the character and appearance of an area.
25. The Supplementary Planning Document Residential Design Guide (2010)(SPD) advises that flat or pitched roofs will usually be acceptable on single storey extensions. However, the roof form of the rear extension is unusual and does not reflect roof design used in the main dwelling, or elsewhere in the area.

Although there are no significant public views of the extension, occupants of properties along the appeal terrace are likely to be able to see the extension.

26. The appellant suggests there are examples of other properties in the area with large rear extensions and/or outbuildings, as well as high fences and raised patios, which should be taken into account during determination of the appeal¹. While I saw that rear extensions are not uncommon in the area, I do not have full details of the examples cited and cannot be sure they are comparable to the appeal scheme. Indeed, the photographs provided by the appellant generally show flat roof structures, which would be in line with the advice contained in the SPD and more in keeping with the character and appearance of the area.
27. Given the unusual roof form, substantial height and bulk of the rear extension, it appears a prominent feature which harms the character and appearance of the area, contrary to policy D3 of the LP, policy CS1 of the CS and policy D1 of the DMP and the guidance contained in the SPD, the requirements of which are set out above.
28. The raised platform projects from the rear extension and extends up to around 615mm in height above the adjacent ground level². Although the raised platform extends over a substantial area, given its modest height, views of it from outside of the site are likely to be very limited. Consequently, the raised platform does not harm the character and appearance of the area and there is no conflict with policies D3 of the LP, policy CS1 of the CS and policy D1 of the DMP in this regard, or the SPD.

Living conditions

29. The adjoining properties, Nos 149 and 153 do not have rear extensions. During my visit, I saw that a boarded-up window at No 149 is positioned closest to the appeal extension, with patio doors at No 149 set away from the boundary with No 151. Patio doors at No 153 are positioned closest to the appeal extension. Policy D3 of the LP seeks development which delivers appropriate outlook, privacy and amenity and policy CS1 seeks a high standard of residential design and layout consistent with the London Plan. Policy DM1 of the DMP seeks to ensure development achieves a high standard of privacy and amenity.
30. The SPD advises that extensions should not cause any unreasonable loss of light or overshadowing to any habitable rooms and kitchens in neighbouring properties, or to gardens, in particular to the area immediately to the rear of the house. I visited the site around 9am and saw that the extension was casting a shadow over the patio doors at No 153. Part of the rear patio area was also cast in shadow. Although any effect is likely to be limited to the morning, during the afternoon, a shadow is likely to be cast over the window to No 149.
31. In addition, the rear extension, due to its significant height and projection, creates a sense of enclosure, which users of the rear gardens of No 149 and 153 are likely to find overbearing. The appellant asserts that their neighbours have no issue with the development. However, no comments have been received from the occupants of No 153 in response to this appeal. While I note the occupants of No 149 have raised no concern regarding the effect of the

¹ Appeal decision reference number APP/Q5300/D/13/2209053 cited.

² From the measurements taken during my site visit.

extension on their living conditions, this may, in part, reflect the relationship between the windows in the rear of the property and the extension.

32. The window at No 149 closest to the extension in the rear of the property was boarded up at the time of my site visit and patio doors positioned away from the boundary with No 151 may ensure a satisfactory outlook from the property is maintained. The double glazed doors at No 153, by contrast, are adjacent to the extension and in my view, the living conditions of the occupants are likely to be significantly adversely affected as a result of its substantial height and projection, contrary to policies D3 of the LP, CS1 of the CS and DM1 of the DMP, and the guidance contained within the SPD, the requirements of which are set out above.
33. Were I to uphold the enforcement notice, once the appellant complies with the requirements, the property would benefit from permitted development rights. However, from the evidence before me, it appears unlikely that the appellant would be able to construct the extension proposed under P/2173/14, due to uneven levels within the back garden. It would therefore be necessary for the appellant to go through the procedures set out under paragraph A.4 of Part 1, Class A of Schedule 2 of the GPDO. While neighbouring occupants may not have objected to the scheme submitted under P/2173/14, the outcome of any prior notification procedure is not guaranteed. I therefore afford this matter very limited weight.
34. There is a degree of overlooking across the rear gardens already due to the use of fences of limited height. The raised platform comprises steps, which lead down from the rear extension, to a substantial patio area. The steps are limited in depth and so I consider users of the property are unlikely to choose to spend time on them. Views of the adjoining gardens are therefore likely to be limited. The patio area is limited in height, around 21.5cm, and so any increase in overlooking of adjoining properties as a result of the use of the patio is unlikely to be significantly harmful, particularly given the height of fencing in this part of the garden.
35. As a consequence, I consider there is no harm arising from the raised platform and no conflict with policies D3 of the LP, CS1 of the CS and DM1 of the DMP, and the guidance contained within the SPD, the requirements of which are set out above.

Conclusion

36. For the reasons given above, I conclude that the raised platform does not harm the character and appearance of the area or the living conditions of neighbouring occupants and that planning permission should be granted for this part of the matters alleged in the notice. I have found that the rear extension harms the character and appearance of the area and the living conditions of neighbouring occupants and so the appeal under ground (a) fails in respect of this part and planning permission should be refused.

Ground (f)

37. 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. Since the appeal under ground (c) succeeds in respect of the fencing and the appeal under ground (a) succeeds in respect of the raised platform, my consideration under ground (f) is limited to the single storey rear extension.

38. 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. Since the notice requires the demolition of the rear extension, I consider its purpose is to remedy the breach.
39. The appellant suggests much less excessive steps could allay concerns but does not specify what those steps are. Nevertheless, I have a duty 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. The additional space afforded by the rear extension provides benefits to the occupants in terms of living standards and mental and physical wellbeing. I therefore consider it likely the appellant will wish to exercise their permitted development rights once the enforcement notice has been complied with.
40. Although I consider it unlikely that the appellant would be able to comply with the details provided in respect of P/2173/14 due to the land levels within the garden, it is likely to be possible to design a scheme which would bring the extension within the limitations set out in the GPDO. The grant of planning permission under the GPDO is an obvious alternative that could be achieved with less cost and disruption. However, since no alternative scheme is before me, it is not possible for me to frame the requirements with sufficient precision that the appellant knows what they have to do. Consequently, the appeal under ground (f) must fail.
41. 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. I shall consider under ground (g) whether it is reasonable to extend the compliance period to give the appellant the option of submitting a planning application for an alternative scheme.

Ground (g)

42. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellant requests a compliance period of 12 months to enable them to tender for a builder, agree the scope of works, allow for the lead in time for a builder to commence, to enable the appellant time to secure alternative accommodation, to allow the works to be carried out and to be inspected and for any snag work to be undertaken.
43. While I recognise the appellant is likely to wish to appoint a builder to carry out the works required by the notice, the works required are not specialist and so I consider lead in times are unlikely to be excessive. The duration of the works is likely to be limited and so while the appellant may wish to find alternative accommodation for their family, I see no reason why the appellant would have

difficulty securing temporary accommodation at relative short notice. I therefore consider 12 months to be excessive.

44. Nevertheless, as set out above, I consider the appellant may wish to put forward an alternative scheme to the Council, to remove the need to demolish the extension in its entirety. I consider it reasonable to extend the compliance period to 9 months, to give the appellant the opportunity to secure planning permission for an alternative scheme. I shall therefore vary the compliance period to 9 months. The appeal under ground (g) succeeds to that extent.

Conclusion

45. I conclude on the balance of probabilities that the construction of fences does not represent a breach of planning control by reason of a grant of planning permission by the GPDO. I shall correct the notice to exclude from the allegation the part of the development found to be lawful and make consequential corrections to the requirements.
46. I also conclude that the ground (a) appeal should succeed in part only and that the period for compliance with the notice falls short of what is reasonable. I will grant planning permission for the raised platform, but otherwise I will uphold the notice with corrections and variations and refuse to grant planning permission in respect of the other part of the matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act.

M Savage

INSPECTOR