



Appeal Decision

Site visit made on 12 December 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 May 2024

Appeal Ref: APP/A5270/C/22/3308592

29 Somerset Road, Southall, Middlesex UB1 2UA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by MR AVTAR SINGH CHAUHAN against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice was issued on 9 September 2022.
- The breach of planning control as alleged in the notice is The material change of use of the property to four flats and the construction of a part single storey part two side extension, single storey side extension and first floor rear extension.
- The requirements of the notice are to:

Within 3 months from the date this notice takes effect:

1. Cease the use of the dwelling as flats; and
2. Remove three kitchens and associated facilities and drainage connections; and

Within 6 months from the date this notice takes effect:

3. Demolish the single storey side extension; and
4. Demolish the first floor rear extension; and
5. Demolish the part single storey part two storey side extension; and
6. Restore the side and rear elevations of the dwellinghouse following compliance with steps 3, 4 and 5 above to its appearance before the breach of planning control occurred.

Or

Within 6 months from the date this notice takes effect:

Alter the building to accord with the development granted planning permission under reference number 203490/FUL subject to its terms and conditions for the 'conversion of the single dwellinghouse into two self-contained residential units; two storey side extension; single storey side / rear extension; part single and part two storey rear extension; alterations of roof from hip to gable end; rear roof extension; and installation of two rooflights to front roof slope' in accordance with drawing title number(s): 2020/29/SRS/303/C – Proposed floor plans; 2020/29/304/B – Proposed elevations, 2020/29/SRS/305/C – Existing and proposed section and block plan attached to this notice.

- The periods for compliance with the requirements are:
Steps 1 and 2 – 3 months.
Steps 3 to 6 – within 6 months
'Or' – within 6 months.
- 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 Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by:

- At section 5 of the notice '**What you are required to do**':

- Before step '1.' the deletion of the words 'Within 3 months from the date this notice takes effect;' and their substitution with the words 'Within 6 months from the date this notice takes effect.'

and

- After step '2.' and before step '3.', the deletion of the words 'Within 6 months from the date this notice takes effect;' and their substitution with the words 'Within 12 months from the date this notice takes effect;'.

and

- After '**Or**', the deletion of the words 'Within 6 months from the date this notice takes effect;' and their substitution with the words 'Within 12 months from the date this notice takes effect;'.

2. 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.

Preliminary Matters

3. It was initially intended that the site visit for this appeal would be carried out at the same time as that in respect of the neighbouring property at 27 Somerset Road¹ given the broad commonality of location, appellant and alleged breach of planning control between the two cases. However, it was not possible to arrange full access to the appeal site at that time and thus a site visit for this appeal was carried out separately as specified in the banner heading, above.
4. The appeal property's recent planning history is lengthy, with a series of applications since 2019. Of direct relevance to the matter before me is the permission granted in 2020² (the 2020 scheme) to which the notice's requirements refer. The appellant has also described an alternative scheme, together with revised drawings, that seeks retention of four self-contained flats within the building envelope as constructed, but with internal alteration and rearrangement to alter the balance of accommodation within the units. I consider this matter below with the appeal on ground (a).

The appeal on ground (a)

Main Issues

5. The main issues are the effects of the development upon:
 - The character and appearance of the appeal property and the surrounding area;
 - The living conditions of current and future occupiers, with particular regard to the amount and quality of internal living accommodation and external amenity space; and
 - Parking.

¹ APP/A5270/C/22/3304461 – site visit carried out 17 October 2023

² LPA Ref: 203490FUL – approved 18 November 2020

Reasons

Character and appearance

6. The appeal property has been much-altered by the works now enforced against and also those previously carried out but not the subject of this notice. Previously a modest semi-detached dwelling, it has been added to over time with a combination of extensions, including a hip-to-gable alteration, a large box dormer window extension to the rear and single and two storey side and rear extensions.
7. The appellant contends that there should be no concern with the alterations and extensions enforced against as the previously approved 2020 scheme also included single and two storey side and rear extensions to the property. That compliance with the 2020 scheme is set out as one of the notice's requirements is further justification, the appellant states, of the acceptability of the appeal scheme.
8. However, I do not share the appellant's view in this respect. Rather, the Council have usefully described the various elements of the as-built extensions that differ from the approved 2020 scheme and which, from my observations during the course of my visit to the appeal property, seem to me to be an accurate reflection of the building's current form.
9. I accept that, in isolation, there are elements of what has been built that are less harmful in terms of their effect on character and appearance than other parts. Thus, the two storey side extension, when viewed from directly in front, is set back from the front of the main house, its roof is set down from that of the main house albeit only slightly, and its overall width is of an appropriately subservient scale as to avoid dominating the property's frontage. However, this element has a further flat-roofed single storey side element with an articulated façade that turns the slight corner on the inside of the junction. It also juxtaposes awkwardly with a two storey side extension at the neighbouring 27 Somerset Road that is the subject of separate enforcement action by the Council and an appeal³, whilst the two storey extension's roof form is more 'mansard' or 'crown' roof style than that shown on the 2020 scheme.
10. At the rear, the various extensions and additions have created a muddled and incoherent rear elevation, which cumulatively overpower and dominate the rear of the property. It is also worth noting that, in addition to the awkward juxtaposition of the flank elevations of extensions to the appeal property and No. 27, the angle between Nos 27 and 29 results in a similarly awkward relationship at the rear. The cumulative effect of the mish-mash of extension elements is such that what is enforced against is an excessively proportioned range of extensions that harmfully erode the otherwise relatively simple character and modest appearance of the host building.
11. London Plan (2021) (LP) Policy D3 and Ealing '*Development Management Development Plan Document*' (2013) (DMDPD) Policies 7.4 and 7B together seek to secure high quality development. To achieve this aim, development should, amongst other things, compliment the surrounding area's building pattern and scale and respond to existing character, and ensure high quality architecture with appropriate levels of development on site. For the reasons I

³ Appeal Ref: A5720/C/22/3304461

have set out, the appeal scheme fails to do this and is therefore contrary to LP Policy D3 and DMDPD Policies 7.4 and 7B.

Living conditions

12. The appellant concedes that the appeal property as converted and extended is not suitable in its current configuration as four self-contained flats. The parties agree that in the current configuration they fall short of relevant internal space standards⁴ which seek to secure high quality design, provide adequately sized rooms with comfortable and functional layouts and which meet the needs of Londoners⁵. The Council's useful table showing a comparison between the appellant's gross internal area (GIA) figures, those measured from the submitted plans and the internal space standard requirements, demonstrates clearly a shortfall against the minimum standards. I have not been presented with any further evidence that would lead me to doubt these figures, or to reach a conclusion other than that the self-contained flats as configured fail to provide a suitable amount of internal living accommodation.
13. Furthermore, not only does the quantum of space fall short, the quality of some of the spaces created also leaves something to be desired. Thus, the as-built ground floor (right) flat is single aspect and has no conventional window to bedroom 2 which is instead served only by a small rooflight; the second floor flat's living area and only bedroom are both heavily compromised by sloping internal roofs that limit headroom and usable floor area; and because of the tapering nature of the plot relative to those on either side, the main outlook from the rear facing glazed door to the kitchen / living / dining area of the ground floor (left) flat is obliquely on to the flank elevation of the extension at 27 Somerset Road. For these reasons, the appeal scheme provides neither the quality nor quantity of living accommodation that the development plan seeks to secure to achieve high quality development.
14. As built, neither the smaller of the ground floor flats nor the two upper floor flats have access to the outdoor amenity space provided by the rear yard area. In previously granting planning permission for the 2020 scheme the Council accepted that only the ground floor flat would have access to this space, and that the upper floor flat would not. However, this appeared to be predicated on the basis that the upper floor flat provided a greater floor area than that required by the LP Policy D6 and the accompanying table 3.1⁴ and that it was not uncommon within the borough for upper floor flats not to have direct outdoor amenity area access.
15. However, that is not the case with the appeal scheme as built. Each of the four flats created falls significantly short of the gross internal area requirements set out in LP Policy D6 and Table 3.1. Whilst it may be possible to look beyond a shortfall with regard to the ground floor (left) flat which has direct access to the rear amenity space, the other three flats do not provide sufficient internal floorspace to offset a lack of access to outdoor amenity space. This provides a further material difference between the 2020 scheme that the Council previously considered to be acceptable and the appeal scheme now before me.
16. Thus, in the absence of sufficiently generous or spacious provision of internal living accommodation, the appeal scheme as built also fails to provide sufficient

⁴ As set out at Table 3.1 – Minimum internal space standards for new dwellings - London Plan (March 2021)

⁵ London Plan Policy D6(A) – cross-reference to Table 3.1

outdoor amenity space for the benefit of occupiers other than those of the ground floor (left) flat. The forecourt space is neither private nor usable for occupiers of the other flats as outdoor amenity space given as it is in a street-side location at the front of the property and is dedicated to the parking of vehicles. As such, the appeal scheme fails to provide appropriate or acceptable levels of outdoor amenity space. Whilst the appellant seeks to make the point that the open spaces of Jubilee Park are only a short walk away on quiet residential streets and thus provide a good standard and amount of amenity space close at hand, this does not equate to the provision of private outdoor amenity space at the flats for the occupiers of those flats.

17. For the reasons set out therefore, the appeal scheme results in the provision of sub-standard internal living conditions in terms of the quality and quantity of accommodation provided. The scheme also fails to provide external amenity space for three of the four flats created. Together, these shortcomings result in a form of residential development that would be contrary to Policies D3 and D6 of the LP, supported by LP table 3.1, and DMDPD Policies 3.5 and 7B. As the LP now post-dates the 'Technical Housing standards – nationally described space standards, it is the former rather than the latter which I find determinative in considering the matter of internal living accommodation.

Parking

18. The appeal property is located on the inside of the junction of Somerset Road and St Stephen's Close and, with the other half of the semi-detached property, effectively 'turn the corner' between the two. As a consequence, the site is sharply tapering; wide at the street frontage and tapering to a point at the rear. The result is a wide forecourt area, which has been paid to paving, with capacity for the parking of several cars.
19. The result of the appeal scheme in increasing the number of flats within the building from two to four would have had the potential to increase the demand for parking in the locality. However, it seems to me that the site's forecourt is of sufficient size to provide off-street parking that would largely offset any increase in demand for on-street car parking. Notwithstanding the site's poor PTAL score, it is within a short and easy walking distance of bus routes along Lady Margaret Road towards Southall railway station and the centre of Southall and all the services and facilities that that has to offer.
20. Matters such as cycle parking provision, refuse storage and electric vehicle charging facilities could reasonably and appropriately be secured by way of planning conditions. The size of the forecourt area is such that I am satisfied that there would be sufficient flexibility provided by this space to accommodate the competing demands posed by these provisions. As such, with suitably worded conditions, there would be no conflict with LP Policies T5 or T6.1.

The alternative scheme

21. In plans submitted with the appeal, the appellant's alternative scheme seeks to retain, in an externally unaltered form, the building envelope as extended and enforced against⁶. However, the appellant still seeks to provide a total of four self-contained flats within that otherwise unaltered exterior. Instead, the interior of the building would be reconfigured with revisions to the layouts and

⁶ Drwg No: 2020/29/SRS/314/PROPOSED

- sizes of some of the rooms which would, the appellant argues, address issues regarding the quantum of internal living space⁷.
22. However, by setting out an alternative scheme that would leave the exterior of the building unchanged the harm in relation to character and appearance that I have identified above would remain. The alternative scheme would therefore have the same disruptive and harmful effect as the scheme enforced against and would also thus be contrary to LP Policy D3 and DMDPD Policies 7.4 and 7B for the same reasons as set out above.
23. There remains dispute between the main parties as to whether the revised internal layout would fully address the shortfall in the GIA of each of the flats. The occupancy levels of the revised flats are not clear from the appellant's submission, whilst the Council appear to assume occupancy at current levels based upon the Council's 'Council Tax Inspection' notes included within its appeal submission⁸. Given the proposed layout of each of the flats and the rooms within them, and the current occupancy levels noted by the Council, it does not seem unreasonable to me that the revised scheme would provide broadly similar levels of accommodation. It may therefore be that individual rooms would be re-jigged to provide a better balance of accommodation but it has not been satisfactorily demonstrated that they would meet or surpass the figures set out in the London Plan⁹.
24. Nor are the circumstances directly comparable with the approved 2020 scheme regarding the lack of access to private amenity space for three of the four flats. Whereas one upper flat not having direct access to private outdoor space was clearly justifiable for the Council, to my mind it does not follow that because that was acceptable, it is acceptable for three flats not to have access to such outdoor space. Rather, it suggests any overly intensive form of development with little thought given to the quantum of development and internal layouts.
25. Thus, for the reasons set out, the alternative scheme would also have a harmful effect upon the character and appearance of the appeal property and the surrounding area, whilst also providing a poor quality and quantity of accommodation in terms of both internal living accommodation and outside amenity space. As such, the alternative scheme is contrary to LP Policies D3 and D6 and DMDPD Policies 3.5, 7.4 and 7B.
26. As the appellant's alternative scheme would not alter the number of flats within the appeal property or materially alter the level of occupancy it is also unlikely to materially address the parking concerns cited in the Council's reasoning for issuing the notice. However, as there are no external alterations proposed within the alternative scheme, for reasons previously set out I am satisfied that there exists sufficient space within the wide forecourt area for matters such as parking, electric vehicle charging and cycle and refuse storage to be addressed via suitably worded planning conditions, should the appeal succeed. However, this does not otherwise persuade me as to the acceptability of the alternative scheme.

⁷ Drwg No: 2020/29/SRS/313/PROPOSED

⁸ Appendix 7

⁹ As set out at Table 3.1 – Minimum internal space standards for new dwellings - London Plan (March 2021)

The appeal on ground (f)

27. An appeal under ground (f) may be brought if it is felt 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. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first purpose (s173(4)(a)) is to remedy the breach of planning control which has occurred; the second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
28. Thus, the appellant argues that the notice's requirements exceed what is necessary to remedy the breach because the alternative scheme outlined in the ground (a) appeal and set out on the revised drawings, which include the revised proposed floorplans, would remedy that breach. I disagree. The alternative scheme would result in a material change of use of the property to four flats and so would clearly not remedy the breach. Nor is that alternative scheme acceptable for the reasons set out in relation to the appeal under ground (a) and the application for planning permission deemed to have been made under that ground of appeal.
29. Thus, the notice's requirements to carry out the actions necessary to revert the property to a single dwelling or, alternatively, to implement the approved 2020 scheme are consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a), the breach being as described in the notice. The notice's requirements are therefore entirely consistent with the breach of planning control it seeks to remedy, and do not exceed what is necessary to remedy the breach of planning control. I am satisfied that the appellants are best-placed to be able to determine the appearance of the property prior to the breach of planning control occurring and so the requirements of the notice are sufficiently clear and precise. The appeal on ground (f) must therefore fail.

The appeal on ground (g)

30. There are three elements to the compliance periods set out in the notice. Steps 1 and 2 allow for 3 months for compliance with those requirements and steps 3 to 6 provide for 6 months. In addition, the alternative requirement is for the appellant to comply with the terms of the previously approved 2020 scheme within a period of 6 months from the notice taking effect.
31. These timescales are, the appellant argues, unrealistic due to the procurement period for trades and the construction time to carry out the work (steps 3 to 6) and to allow the management of existing tenants (steps 1 and 2). Periods of 12 months and 6 months are sought, respectively.
32. The Council does not object to the appellant's case with respect to steps 1 and 2 and an increase in the period for compliance to 6 months. Although not what the appellant's ground of appeal seeks in relation to the appeal on ground (g), the Council, somewhat unsurprisingly given that this is what the notice requires in any event, restates a 'no objection' to six months for implementation of the 2020 scheme.

33. I am mindful of the occupants' rights under Article 8 of the European Convention on Human Rights as the notice's requirements amount to interference with those rights. I am satisfied therefore that a longer period of 6 months for the carrying out of steps 1 and 2 seems to me to be necessary, reasonable and proportionate given the disruption likely to arise from the notice's requirements.
34. With regard to the construction works required by steps 3 to 6 and the alternative of complying with the approved 2020 scheme, the appellant has not made clear exactly what aspect of the building works it is that lie behind seeking an extension from 6 months to 12 months. Nevertheless, a broad comparison has been drawn between the timeframe taken to build the elements now being enforced against and that of the notice's requirements to remove them. I am aware that current supply-chain pressures within the construction industries are capable of causing logistical difficulties in the supply of materials and labour, and thus in obtaining quotes to ensure sufficient funds are available for the required works.
35. Against this, I am also mindful of the on-going harm arising from the continued presence of the matters enforced against, as set out in relation to the ground (a) appeal, above. Retention, for extended periods of time beyond that limited by the notice's requirements would perpetuate the harm that I have identified. Nevertheless, for the reasons set out, I am satisfied an extended period of 12 months in relation to steps 3 to 6 and the alternative requirement set out in the notice would strike an acceptable balance between resolving the breach of planning control and allowing sufficient time for the required steps to be taken. Thus, the appeal on ground (g) succeeds and I shall vary the notice accordingly.

Conclusion

36. For the reasons given above, I conclude that the appeal 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).

G Robbie

INSPECTOR