



Appeal Decisions

Site visit made on 25 June 2024

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal A Ref: APP/G5180/C/22/3313302

Appeal B Ref: APP/G5180/C/22/3313303

Land at 96 Kingsway, West Wickham BR4 9JQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mrs Catherine Khan (Appeal A) and Mr Mosharraf Khan (Appeal B) against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 14 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a first-floor rear extension measuring approximately 3m in depth and 4.5m in width above an existing 6m deep single storey extension and the erection of a two-storey side extension exceeding 3m in height within 2m of a side boundary.
 - The requirements of the notice are: (a) Remove from the land the first-floor rear extension. (b) Remove from the land the two-storey side extension or reduce to a single storey that does not exceed 3m in height to the eaves. (c) Remove from the land any resulting debris and leave the land in a tidy condition. (d) Restore the land to its condition before the breach of planning control took place.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) 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)(g) of the Town and Country Planning Act 1990 (as amended). Since the prescribed fees for Appeal B have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended has lapsed.
-

Decisions

1. It is directed that the enforcement notice be varied by in paragraph 4, step (c), deleting 'and leave the land in a tidy condition' and by in paragraph 5 substituting 'three months' with 'nine months' as the period for compliance. Subject to these variations, the appeals are 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 Town and Country Planning Act 1990.

Preliminary Matters

2. This Decision takes into account the revised National Planning Policy Framework, published on 19 December 2023.
3. Paragraph 4, step (c) of the enforcement notice requires the removal of any resulting debris (from the preceding steps) and for the land to be left 'in a tidy condition'. Since what constitutes a tidy condition is potentially subjective, the appellants would be unclear what exactly they were required to do to fully comply with this step. Along with the other steps, the first part of step (c) would be sufficient to ensure that the land is restored to its condition before

the breach took place. Therefore, I shall exercise the power available in s176(1)(b) of the Act to vary the requirements of the notice by deleting the final part of step (c). No injustice would be caused in doing so.

Appeal A

Ground (a) appeal

Main Issues

4. The main issues in this ground of appeal are:

- The effect of the extensions on the character and appearance of the host dwelling and the surrounding area.
- The effect on the living conditions enjoyed by existing and future occupiers of neighbouring residential property, having regard to outlook.

Reasons

Character and appearance

5. The appeal property contains a semi-detached, two-storey dwelling, sat in a comfortably sized, rectilinear plot. The principal elevation includes rounded bay windows and a half-timbered front facing gable, mirroring that of the attached dwelling at 94 Kingsway (No 94). Similar architectural features are characteristic of dwellings in the surrounding area, in addition to their having considerable similarities in terms of scale, roof form and external materials. Also, dwellings in the locality generally occupy plots of comparable size and are arranged in an evenly spaced fashion, set back similar distances from the street. These factors all contribute significantly to the pleasantly spacious and cohesive suburban character and appearance of the surrounding area.
6. The notice attacks a two-storey extension erected at the side of the dwelling. The extension is at or around 1m from the boundary with the neighbouring property at 98 Kingsway (No 98). This conserves the sense of space between the dwellings in the street scene and therefore complies with Policy 8 of the Bromley Local Plan (LP), which requires retention of a minimum 1m space from the side boundary for the full height and length of the building.
7. Apart from a small, decorative section of pitched roof at the front, the two-storey side extension has a flat roof. I understand that this roof form was chosen to minimise the disturbance to an existing bedroom in the original roof of the dwelling. Even so, the combination of a predominantly flat roof with a small front pitch section appears contrived, it fails to respect or reflect the distinctive pitched roof form of the host dwelling and is entirely at odds with the similarly pitched main roof slopes of most dwellings in the surrounding area.
8. Also, spanning almost the entire length of the side elevation of the host dwelling and with the line of the flat roof roughly level with that of the side eaves, the two-storey extension is of a considerable scale. Due to the subtle curvature of the street, the front and side elevations of the extension are open to view from the public realm. The small front pitched roof part together with the elongated, predominantly flat roof form gives this extension a largely box-like profile and contributes to it having an awkward appearance which relates poorly to the host dwelling.
9. Although the two-storey side extension is set back slightly from the principal elevation at first floor level, that does not assist greatly in offsetting the adverse visual impacts identified above. In any event, the substantial front porch, which protrudes well forward of the principal elevation of the host

dwelling and those of adjacent properties, gives additional emphasis to the overall scale of the extension. Most dwellings in the vicinity are unencumbered by substantial front porches. Therefore, the two-storey side extension is viewed as an obtrusive and alien addition in the street scene which fails to integrate satisfactorily with the host dwelling and the prevailing pattern of surrounding built development.

10. Additionally, the notice attacks a flat roofed extension erected at first floor level to the rear of the dwelling. This extension is immediately behind the two-storey side extension, above part of a previous single storey enlargement. The first-floor extension protrudes around 3m beyond the original rear wall of the host dwelling, spanning most of the enlarged rear elevation, the roof line being roughly level with that of the side and rear eaves. This extension is also therefore of considerable scale. Similar issues apply in terms of the elongated box-like profile and awkward appearance, together with the consequent failure to respect or reflect the pitched roof form of the host dwelling and the similarly pitched main roof slopes of most dwellings in the locality, to those raised above in relation to the two-storey extension.
11. As a result, the first-floor rear extension too is viewed as a discordant addition, failing to integrate satisfactorily with the host dwelling and being entirely at odds with the prevailing pattern of surrounding development. Whilst there are limited public views of this extension that is not a good reason to grant permission as it could be repeated, causing further visual harm. In any event, the first-floor rear extension can be seen from adjacent property.
12. In reaching the findings set out above, I am mindful of the numerous incidences of residential extensions in the vicinity. These include two-storey side and rear extensions similar in terms of their width and depth to the extensions in this appeal. However, as few details of those developments were supplied, little meaningful comparison could be made. Moreover, the available information shows that authority for these other extensions generally pre-dated adoption of the LP by the Council in January 2019, as well as the increased importance placed on achieving good design following publication by the Government of the National Design Guide in the same year. Accordingly, there is little firm evidence of any extensions in the vicinity having originated in similar circumstances to those in the appeal.
13. Furthermore, for the most part the two-storey side extensions I viewed incorporated sympathetic pitched roof treatments and were reasonably well integrated with their host dwellings and the surroundings. As far as I could see, there were few if any incidences of substantial flat roofed two-storey side extensions combined with flat roofed first floor rear extensions in the vicinity. In any event, the mere existence of outwardly similar development would not, in itself, be a good reason for granting permission for the extensions.
14. Therefore, I conclude that the extensions cause unacceptable harm to the character and appearance of the host dwelling and that of the surrounding area. This fails to accord with LP Policy 6, as the scale and form of the extensions do not respect or complement those of the host dwelling and are not compatible with development in the surrounding area. In addition, the extensions fail to accord with LP Policy 37 as they do not complement the scale, proportion and form of adjacent buildings and do not contribute positively to the existing street scene.

Living conditions

15. The side elevations of the extensions are in proximity to the boundary with No 98. However, the side elevation of No 98 is offset from the boundary by around 3m. As far as I could see, the two windows in No 98's side elevation are not principal sources of light to habitable rooms. The extensions do not

protrude beyond the ground floor enlargement at the rear of No 98. Although protruding beyond the original rear wall of No 98, the extensions are nevertheless a substantial distance from the first-floor window in the rear elevation of that property. Also, an outbuilding at the rear of No 98 assists in offsetting the apparent massing of the extensions. As a result, the extensions are not seen as oppressive built features from No 98, they have not resulted in a substantial increase in the sense of enclosure experienced and there has been no significant erosion in the levels of outlook enjoyed by the occupiers of that property. The Council did not seek to argue that there was an unacceptable adverse impact on the living conditions of the occupiers of other residential property and there is no sound reason why I should find otherwise.

16. Therefore, the extensions have not had a harmful effect on the living conditions of occupiers of neighbouring residential property. It follows that there is no conflict with LP Policy 37, which requires development to respect the amenity of occupiers of adjoining buildings. This however is a neutral factor, which does not weigh in favour of granting permission for the extensions.

Other Matters

17. Extensions similar in size or only slightly smaller than those in the notice would not be permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) at Article 3, Schedule 2, Part 1, Class A. Such extensions would, amongst other things, breach the limitation at paragraph A.1(i), being within 2m of the boundary with a height to the eaves exceeding 3m. Therefore, re-erecting similar extensions as 'permitted development' does not represent a realistic 'fallback' position in the event the notice is upheld.
18. The appellant explained that the extensions were erected to meet the needs of their family, which includes a number of young children. Whilst this is entirely understandable, it can only carry limited weight. Personal circumstances can change relatively quickly, whilst the effects of development are more permanent.
19. I am nevertheless mindful of the consequences of upholding the notice and refusing to grant permission for these extensions in relation to the appellant and their young family. At Article 8, the Human Rights Act 1998 (HRA) affords individuals the right to respect for their private and family life. These rights are qualified such that interference may be justified where it is in accordance with the law and in the public interest.
20. There is no firm evidence that upholding the notice would result in the appellant and their family becoming homeless. Demolishing the first-floor extension and part or all of the two-storey side extension would not make the host dwelling uninhabitable; since the majority of the dwelling would be unaffected it would still be capable of occupation. As it is likely that facilities in the extensions, which include a bathroom, could be relocated to the host dwelling, the appellant's family life need not be unduly affected.
21. The interference with the appellant's HRA rights would therefore be justified, being in accordance with the law and in pursuance of the legitimate aim of upholding the Development Plan and national planning policy. As there are no lesser alternatives to upholding the notice that would achieve the public interest aims, such interference is also proportionate.
22. In reaching my findings, I have taken account of case law referred to (including *South Lakeland DC v SSE* [1991] JPL 440 and *R v. Leominster DC ex parte P Potheary* [1997] EWCA Civ 2585) which, as I understand it, concern matters including proportionality in planning decisions.

23. Given my conclusions on the first main issue, it is unnecessary to consider whether the appellant intended the extensions to be unauthorised.

Conclusion-Ground (a) appeal

24. The extensions cause unacceptable harm to the character and appearance of the host dwelling and the surrounding area, 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.

Appeals A and B

Ground (g) appeals

25. The ground of appeal is that the period specified for complying with the requirements of the notice falls short of what should reasonably be allowed.
26. Demolishing the extensions would be a relatively small-scale and straightforward job for an experienced small building contractor and is unlikely to take longer than a few months at most to complete. For reasons largely set out above, any disruption to the appellants' home life during the remedial works should not be especially severe. Although the works would be costly, there is no firm evidence before me which might suggest that the appellants would be unable to raise any necessary finance, for example by taking out a further loan secured against the property.
27. A compliance period of five years would be unreasonably long. An enforcement notice would almost never specify a compliance period of more than a year, as it would unduly perpetuate the breach and would be akin to granting a temporary permission, as well as calling the expediency of issuing the notice into question. However, the appellants are entitled to assume that the ground (a) appeal in Appeal A would succeed. That being the case, the three-month compliance period specified in the notice affords them limited time in which to secure the services of a suitable contractor, to arrange for and secure any necessary finance for the remedial works and to have those works carried out and completed.
28. Consequently, taking account of the appellants' circumstances, a nine-month compliance period would be both proportionate and reasonable. It would remedy the breach as soon as is practicable whilst also minimising the disruption to the appellants as far as possible. Furthermore, the longer period would afford a window of opportunity for the appellants to explore with the Council whether the planning objections set out above could be addressed in a revised scheme. Varying the notice accordingly would cause no injustice. To this limited extent, the ground (g) appeal succeeds.

Conclusion

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

Stephen Hawkins

INSPECTOR