



Appeal Decisions

Site visit made on 10 July 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2024

Appeal Refs: APP/R5510/C/23/3319350 & 3319351

Land at 8 Hamlin Crescent, Eastcote, Pinner HA5 2SU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Kanagasabapathy Balendra and Mrs Narshika Balendra against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice, numbered HS/ENF/021553, was issued on 14 February 2023.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of single storey side and rear extensions, front porch and patio.
- The requirements of the notice are:
 - (i) Demolish and remove the front porch and remove from the land all debris, items and materials resulting from the demolition of the front porch.
 - (ii) Demolish and remove the single storey side and rear extensions and remove from the land all debris, items and materials resulting from the demolition of the single storey side and rear extensions
 - (iii) Demolish and remove the patio and remove from the land all debris, items and materials resulting from the demolition of the patio

OR

- (iv) Modify the height, depth, width and roof design of the single storey side and rear extensions and patio so as to comply with the plan numbers B71381-01-3100 Rev A; B71381-01-3102 Rev A; B71381-01-3200 Rev A; B71381-01-3201 Rev A; B71381-01-3300 Rev A and B71381-01-3500 Rev A approved by planning permission (ref; 10449/APP/2021/2558) granted on 24th August 2021.
 - (v) Remove from the land all debris, items, building materials resulting from compliance with point (iv) above.
- The period for compliance with the requirements is three (3) calendar months.
- The appeals are proceeding on the grounds set out in section 174(2) (b), (c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees 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 have lapsed.

Summary Decision: the appeals are dismissed and the enforcement notice is upheld with a variation as set out in the Formal Decisions below

Procedural matters

1. I carried out an unaccompanied site visit on 10 July 2024 during which I viewed the appeal site only from the public highway. The appeals have been primarily lodged on grounds (b) and (c), and therefore concern matters of fact together with the application of relevant case law. There is no appeal on ground (a) that would require an assessment of or judgment on the impact of

the breach of planning control, if any, on the character and appearance of the host property or the surrounding area, or on the living conditions of the occupiers of the neighbouring residential properties. I am therefore satisfied that I can determine these appeals on the basis of my site visit, the photographs of the site provided as part of the evidence before me (including of the rear of the site) and a comparison of the application drawings with which I have been provided.

2. As part of their grounds of appeal, the appellants contend that the notice is a “nullity” and should be quashed. The appellants subsequently clarified their position as contending that the notice is invalid. I have therefore considered the point on that basis. The question as to whether the notice is invalid does not fall neatly into any of the grounds of appeal set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act) and I therefore considered that as a discrete point here.
3. The appellants maintain that the Council should have served a Planning Contravention Notice (PCN) under section 171C of the 1990 Act to confirm the status of the works and the appellants’ intentions before serving the enforcement notice. In their view, this would have directed the Council towards more positive engagement with the aim of expediting the stalled building works. The appellants also point out that contrary to the Planning Practice Guidance (PPG) the Council failed to ascertain that there was a breach of planning control, the degree of harm which may be resulting and that those responsible for any breach are receptive to taking action to remedy the breach. As a result, the appellants consider that the enforcement notice that is the subject of this appeal has been served unnecessarily.
4. The powers given to a Local Planning Authority under Sections 171C(1) and (2) are discretionary and provide that, where it appears to them that there may have been a breach of planning control, they *may* serve a PCN on the owner of the land to give information on the operations being carried out (emphasis added). In this case, an enforcement investigation was commenced in November 2021 but then held in abeyance to enable the appellants to submit a planning application to retain the works carried out. The Council duly considered that application (Ref: 10449/APP/2022/1141) and on 20 January 2023 resolved that planning permission be refused. The enforcement notice subject to this appeal was issued some three weeks after that.
5. It therefore appears to me that the Council did ascertain that there was a breach of planning control and the degree of harm caused, and only then resolved that it was expedient to initiate enforcement action. I therefore do not consider the appellants’ complaint in this respect to be well founded.
6. Moreover, the point being made by the appellants goes to the expediency of issuing the notice. That is not a matter before me, it being settled case law that challenges to the expediency of taking enforcement action may only be pursued by way of judicial review.
7. On the basis of the above, I conclude that the notice is not invalid.
8. Two letters of representation have been received in relation to these appeals. For the most part, these letters understandably focus of the impact (in the author’s view) of the development that has taken place on their living conditions. These are matters that would properly fall to be considered under

an appeal on ground (a): namely, that planning permission ought to be granted for the matters stated in the notice. However, because no appeal has been made on ground (a), I am not able to take those comments into account in determining these appeals. I have, though, taken these representations into account insofar as they relate to the grounds on which the appeals have been made, including the appeals on ground (g).

The appeals on ground (b)

9. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellants to show, on the balance of probability, that the matters alleged in the notice have not occurred.
10. The breach of planning control as alleged in the notice is, without planning permission, the erection of single storey side and rear extensions, front porch and patio. The development that has taken place is precisely that. The property has been extended at single-storey level to the side and to the rear. A front porch has been constructed. A patio has been constructed.
11. The points made by the appellants in relation to this ground of appeal more properly fall to be considered under ground (c). I will therefore consider those points below.
12. I conclude that, on the balance of probability, that the matters alleged in the notice have occurred. Accordingly, the appeals on ground (b) fail.

The appeals on ground (c)

13. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. An appeal on this ground is another of the 'legal' grounds of appeal, in which the burden of proof is on the appellants to show, on the balance of probability, that the matters alleged in the notice do not constitute a breach of planning control.
14. As a pre-cursor to considering this ground of appeal, it is first helpful to set out the key differences between the development approved under planning permission 10449/APP/2021/2558 (the approved scheme) and the breach of planning control alleged in the notice (the as built scheme). I have done this through comparison of the approved drawings for planning permission 10449/APP/2021/2558 and the drawings submitted with planning application 10449/APP/2022/1141 for the retention of the as built scheme.
15. The most obvious difference is in relation to the roof over the rear extension. In the approved scheme, this featured a gable feature towards the centre when viewed from the rear, this in part being an extension of the roof slope of the main dwelling. In the approved scheme, the remaining roof of the single-storey extension was flat enclosed by a parapet-style roof of shallow pitch. In the as built scheme, the gable feature is entirely absent and the wholly flat roof of the single-storey extension is enclosed by a parapet-style roof, with the parapet roof having a steep pitch (as noted on my site visit).
16. The fenestration in the rear elevation of the single-storey extension as built is different when compared with the approved scheme. In the latter, the three

windows in the eastern section of the extension are separated by areas of solid masonry. In the as built scheme (albeit the glazing is not installed on the date on which the Council's photographs were taken), the entirety of the eastern section of the extension is shown as glazing. In the western section of the rear elevation, the pattern fenestration is different in the two schemes.

17. In the approved scheme, the footprint of the single-storey side extension is squared off at the southern end with a door in the western elevation. In the as built scheme, the single-storey side extension is chamfered at the southern end with a door in the southern elevation. The fenestration on the southern elevation is different in the two schemes, and the two rooflights present in the approved scheme are entirely absent in the as built scheme.
18. Finally, the other key difference is that the as built scheme includes a front porch whereas the approved scheme does not: the approved plans show a front door with a single step leading up to that.
19. The appellants' focus on this ground of appeal is on discrepancies between the eaves height of the roof as approved and as built. Having checked the eaves height, the appellants point out that the measurements are 3.64m and 3.68m respectively: a difference of 0.04m. The appellants submit that this variance is *de minimis* and does not warrant enforcement action. To that limited extent, I would concur with the appellants' view.
20. However, as set out above, the range and scale of the differences between the approved scheme and the as built scheme goes way beyond a minor discrepancy over eave heights. As a matter of fact and degree, these differences, both individually and cumulatively, are too extensive to be considered *de minimis*. Consequently, the as built scheme constitutes development for the purposes of section 55(1) of the 1990 Act. Section 57 of the 1990 Act states that planning permission is required for development.
21. Furthermore, as a matter of fact and degree, the as built scheme is a materially different development to the approved scheme. There is no planning permission, deemed or otherwise, in place for the as built scheme.
22. I conclude that, on the balance of probability, that the matters alleged in the notice do constitute a breach of planning control. Accordingly, the appeals on ground (c) fail.

The appeals on ground (g)

23. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three calendar months.
24. My task in relation to this ground of appeal is to balance the public interest in securing expeditious compliance with enforcement notice against the private interest bound up in the development subject to the notice. In this case, the 'public' interest is primarily the living conditions of the occupiers of the neighbouring properties. In so doing, and in the absence of an appeal on ground (a), I must start from the position that the development subject to the enforcement notice does cause the harm alleged in the reasons for issuing the notice. Indeed, evidence of the harm caused by the breach of planning control to the living conditions of the occupiers of surrounding residential properties is to be found in their letters of representation in relation to these appeals.

25. The steps required for compliance with the Enforcement provide two alternative courses of action. The first, as set out in paragraph 5 (i) to (iii) of the notice, is based on the demolition of the porch and the side and rear extensions, as well as the rear patio. The second, as set out in paragraph 5 (iv) to (v), calls for completion of the works to comply with the planning permission 10449/APP/2021/2558.
26. The appellants consider that whilst it would be possible to demolish the specified new works within the timescale, the detailed works required for site clearance and making good the remaining structure would take considerably longer. This is on the basis that the works would have implications for keeping the remaining structure weathertight and safeguarding the structural integrity of the first floor. For those reasons, the appellants suggest that the period for compliance should be extended by at least 6 months.
27. The appellants have submitted no technical evidence to substantiate that request. For example, I have not been provided with a report from a suitably qualified structural engineer that safeguarding the structural integrity of the first floor could not be achieved within the period of compliance stated in the notice. In the absence of that evidence, I have been provided with no justification for extending the period of compliance.
28. In regard to the second option, the appellants submit that completion of the works to an acceptable standard and consistent with planning permission Ref:10449/APP/2021/2558 would take considerably longer than the period of compliance of 3 calendar months stated in the notice. The appellants also indicate that they would want to agree certain minor alterations to the approved scheme with the Council, consistent with government advice as set out in the document "*Greater flexibility for planning permissions*" published in October 2010.
29. Two points flow from this. Firstly, the appellant has again submitted no technical evidence to substantiate the claim that completion of the works to an acceptable standard and consistent with the approved scheme would take considerably longer than the period of compliance of 3 calendar months stated in the notice. For example, I have been provided with no time estimates from suitably qualified builders to that effect. In the absence of that evidence, the appellant's claim remains wholly unsubstantiated.
30. Secondly, the 'Procedural Guide – Planning Appeals – England' advises that the appeal process should not be used to evolve a scheme. Extending the period of compliance to facilitate discussions around minor alterations to the approved scheme would not be consistent with the procedural guidance. This guidance supersedes the previous advice in the Government publication *Greater flexibility for planning permissions*, which was withdrawn on 7 March 2014 having been replaced by the PPG.
31. In their Final Comments, the appellants request that the compliance period to be extended to enable more detailed negotiations with the Local Planning Authority on an acceptable scheme for a full first floor to be added to the property. The same point that the appeal process should not be used to evolve a scheme applies equally to this request.
32. Moreover, in February 2022 planning permission (Council Ref: 10449/APP/2021/4170) was refused for the construction of an additional floor

to convert the existing bungalow into a two-storey dwelling. A subsequent appeal was dismissed in September that same year.

33. Consequently, there can be no guarantee that planning permission would be forthcoming for a two-storey dwelling or, if it was, what form it might take. There is also no reliable indication as to how long more detailed negotiations would take and how long any subsequent planning application would take to be determined. Moreover, in the event that the application was ultimately not successful, the time taken to submit an appeal and for that appeal to be determined would also need to be factored into the equation.
34. This level of uncertainty over timing does not provide a sound justification for extending the period of compliance. Moreover, throughout the period of time taken up by those negotiations, the harm alleged in the reasons for issuing the notice and rehearsed in the letters of representation would be ongoing. That would not be a reasonable outcome for the occupiers of the adjoining residential properties.
35. Overarching all the above, the appellants are concerned that the 3 month period for compliance effectively amounts to applying Completion Notice requirements under Section 94 of the 1990 Act, without proper consideration of the expediency of such action pursuant to paragraph (2), the proper 12 months for completion pursuant to paragraph (3) and without the safeguard of any form of appeal provided by paragraph (3) of Section 95. The appellants consider that this would be significantly detrimental to their interests, pointing out that is a well held convention that an enforcement notice cannot be used to compel the completion of an approved development.
36. The appellants' concerns in those respects are entirely unfounded. The requirement at paragraph 5(iv) of the notice does not require the extension approved by planning permission Ref:10449/APP/2021/2558 to be completed: it only requires the extension as built to be modified so that it complies with that permission. This could be at any stage of the build, including down to foundation level. Provided that the works were consistent with planning permission Ref:10449/APP/2021/2558, compliance with the requirement at paragraph 5(iv) of the notice would be achieved.
37. I do, however, accept that the wording of the requirement at paragraph 5(iv) of the notice is not particularly clear in that respect. I do not consider that this makes the notice a nullity or even invalid, but I will nevertheless vary the notice to make this requirement clearer.
38. I am satisfied that the period of compliance of three months specified in the notice is a proportionate response to the breach of planning control that has taken place. I therefore see no reason to extend that period for compliance. Accordingly, the appeals on ground (g) fail.

Conclusion

39. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation.

Formal Decisions

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

- In paragraph 5(iv) of the notice, after the words "granted on 24th August 2021" add the words "such that the development is entirely consistent with that permission at any stage of construction".

41. Subject to that variation, the appeals are dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR