



Appeal Decision

Site visit made on 8 November 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 13 January 2025

Appeal Ref: APP/F5540/C/23/3325652

201 Ellerdine Road, TW3 2PZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the "Act"). The appeal is made by Mr Sukirtha Khrisnebavan against an enforcement notice issued by the Council of the London Borough of Hounslow.
 - The notice was issued on 15 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction of a second rear extension.
 - The requirements of the notice are to:
 - i. Demolish the unauthorised second rear extension
 - ii. Remove all resultant debris from the premises.
 - The period for compliance with the requirements is: 3 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Act. 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.
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of the word "second" in paragraph 3 and paragraph 5(i) of the enforcement notice.
2. It is further directed that the enforcement notice is varied by the deletion of '3' at paragraph 5 of the notice and the substitution of '6', so that it reads '6 months after the date this notice takes effect.'
3. Subject to the corrections and variations above, 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 Act.

Matters concerning the notice

4. The enforcement notice describes the unauthorised development as a 'second single storey rear extension'. The inclusion of the word 'second' is unnecessary. The allegation is one of an unauthorised extension to the rear of the building. It is not relevant how many extensions may have been built before it. I therefore take the view that the notice can be corrected to remove the word 'second' from the allegation and requirements without causing injustice to either party.

Preliminary Matters

5. The appellant has referred to the National Planning Policy Framework (2021) in their evidence. However, since making the appeal, the National Planning Policy Framework ("the Framework") has been revised on a number of occasions with the most recent revisions being made in December 2024. I have had regard to the paragraphs cited by the appellant in their evidence and note that whilst

some of the paragraphs referred to have been re-numbered the quoted paragraphs have largely remained unaltered. As the content has not appreciably changed, I therefore did not consider it necessary to seek the parties' views with regard to the publication of the revised Framework.

Ground (a)

6. An appeal made on ground (a) is that planning permission should be granted for the breach of planning control stated in the notice.

Main Issues

7. Having regard to the reasons for issuing the notice, the main issues are the effect of the development on:-
 - i) the living conditions of occupants of a neighbouring dwelling having particular regard to their outlook; and
 - ii) the character and appearance of the host dwelling and the surrounding area.

Reasons

Living conditions

8. The appeal property is a semi-detached two storey dwelling located part way along Ellerdine Road. At its rear, a single storey extension has been constructed, which broadly spans the width of the dwelling and is set on or close to the common boundary with 199 Ellerdine Road (No.199).
9. The rear extension includes two sections. The first part of the single storey rear extension, which is not attacked by the enforcement notice, extends from the main wall of the two-storey dwelling. The unauthorised extension is positioned beyond the first part and, when taken together in combination, the extent of the rear single storey projection is an extension of some 6.93 metres in totality, taking the Council's measurements, which have not been disputed by the appellant. This figure exceeds the Council's 'Residential Extension Guidelines' which sets out that a single storey rear extension of up to 3.65 metres is acceptable on a semi-detached property.
10. Whilst the unauthorised extension includes a flat roof and a height which is lower than the height of the first part of the extension, it has added additional depth to the rear extension which, despite its shorter height, sits well above the common boundary with No.199.
11. Although the neighbouring garden is a generous size and contains some vegetation, it is mainly of a low height and even where some taller vegetation is present, the unauthorised extension remains highly visible in views both above and through the vegetation. Moreover, any screening of the unauthorised extension by vegetation in the neighbouring garden will be vastly lessened during the winter months when foliage is reduced.
12. A number of windows are positioned within the rear elevation of No.199 including a projecting bay window at first floor level. Whilst there is little information before me to explain what type of rooms are served by the windows in the rear elevation, by reason of the modest size of the neighbouring property and the large size of some of the windows which contain

clear glazing, I consider it is likely that these windows will serve habitable rooms.

13. Given that the unauthorised development is substantially taller than the existing common boundary and by reason of the resultant depth of the projection, its height and close proximity with the shared boundary, in my judgement, the unauthorised development is likely to dominate the neighbouring outlook from views from windows within the rear of the dwelling, despite their angle relative to the extension, and from their garden and patio areas. While the effect of the extension on light reaching habitable rooms in number 199 is likely to be limited due to the orientation of the property, the elongated extension is likely to be viewed as a dominating and overbearing development that causes a significant and detrimental degree of enclosure and an oppressive intrusion into the outlook of neighbouring occupants.
14. I therefore conclude that the unauthorised extension is harmful to the outlook of neighbouring occupiers and this materially compromises their living conditions. The inclusion of a flat roof and use of light-coloured cladding does not mitigate the harm that has been caused and the alteration of the external facing materials closest to the neighbouring dwelling would not overcome the harm that is caused.
15. Paragraph 131 of the Framework (formerly 126 of the 2021 Framework) sets out the Framework's aim of achieving well-designed places. However, given my findings in respect of the adverse impact on the living conditions of neighbouring occupiers, the appeal scheme fails to add to the overall quality of the area nor does it create a place which promotes health and well-being or a high standard of amenity for existing and future users, as set by paragraph 135 of the Framework (formerly paragraph 130). Similarly, in my view, the development fails to secure an improvement to the social conditions of the area as required by paragraph 39 of the Framework (formerly paragraph 38).
16. Accordingly, I find that the appeal scheme does not benefit from the presumption in favour of sustainable development and is contrary to Policies CC2 and SC7 of the London Borough of Hounslow Local Plan (2015)(LP) insofar as these policies require new development to function well in themselves and in their effect on surrounding areas and have a positive impact on the amenity of current and future residents and, in specific respect of extensions or improvements to residential properties, to minimise harm to neighbouring residents through avoiding an unacceptable loss of outlook or by creating an unacceptable sense of enclosure.

Character and appearance

17. The appeal dwelling is located within a predominantly residential area which is typically characterised by pairs of semi-detached dwellings constructed using traditional materials including textured red brick, light coloured render, and a combination of red/brown tiles. Windows and doors are a varied mix of traditional and modern materials. The inclusion of uPVC material of varying colours in the construction of dwellings is not uncommon within the area, albeit this material appeared to be predominantly used as part of the frames of windows and doors.
18. Policy SC7 of the LP seeks to ensure that, among other things, development proposals complement the original building and harmonise with adjoining

properties and where a proposal involves an extension it is expected to have regard to the quality, character, materials and scale of the principal building, be subordinate to the existing building, and not over develop the site in terms of mass and density.

19. On this side of Ellerdine Road, I observed rear gardens to be narrow and long. Given the presence of a number of access driveways positioned between pairs of semi-detached properties, a number of garage buildings are positioned within rear garden areas along with other outbuildings and structures. I saw that several properties have also been extended to the rear with a single storey extension and there is variety in terms of their size, roof form and materials.
20. I note that a previous Inspector considered the effect of a development at the appeal site described as a 'single storey rear conservatory addition onto existing rear extension' (the "2020 Appeal"). I have been provided with a copy of that appeal decision¹, the plans that accompanied the application, the officers report and the decision notice. The appellant has drawn my attention to the previous Inspector's findings in relation to character and appearance and states that the Council's reason for issuing the enforcement notice on grounds of impact on the appearance of the property and character of the wider area is unwarranted given the previous Inspector's findings.
21. However, I note that the findings of the previous Inspector were made with regard to the plans submitted with the 2020 Appeal and not the built form which had been constructed on site and which forms the unauthorised development attacked by the enforcement notice as part of this appeal. Nonetheless, the Council's reasons for issuing the notice, in character and appearance terms, is stated to be with regard to the 'cramped and excessive development on the site by reason of the size, scale and design of the extension'. Having regard to the as-built extension compared to the drawings submitted as part of the 2020 Appeal it would appear the two schemes are largely similar in terms of the position, footprint and volume of the extension.
22. Based upon my observations I saw that the resultant size of the rear garden area is constrained by the garage/outbuilding and the as-built extension. However, some neighbouring dwellings include projecting rear extensions and I saw there was little consistency in respect of the size and position of garages and other outbuildings in relation to their host dwelling. Although the resultant garden area is smaller in size than that of most neighbouring gardens, a modest sized area is retained such that the extension does not appear unduly cramped or an excessive development of the plot. My view therefore concurs with the findings of the previous Inspector in this regard.
23. Notwithstanding the Council's reason for issuing the notice on character and appearance terms, the Council have also referred to other matters affecting character and appearance within the Council's evidence. I have given these matters some consideration. Despite the previous Inspectors findings, there are some differences between the two schemes, including that the as-built extension does not step in from the boundary with No.199.
24. Whilst the height of the roof of the unauthorised extension differs to the height of the roof of the extension to which it is attached, it is at a lower height than

¹ Appeal Decision APP/F5540/D/20/3246072

the extension it is joined on to and this stepping down in heights of the built form provides a subservient appearance.

25. The inclusion of large panels of uPVC within the upper parts of walls is not something that I observed to be commonplace. Nonetheless, uPVC is a material which is commonly encountered within the construction of buildings within the locality and the host dwelling itself. I therefore find that the inclusion of uPVC as an external material is not out of keeping. Reference is also made to the use of 'smooth red brick'. Whilst there is some difference in appearance between the brick used in the construction of the extension and the red brick used in the original dwelling, the similarity of colour provides that the bricks are a part match such that the extension does not appear as an unduly inharmonious addition to the host dwelling and wider area.
26. Accordingly, I conclude that the extension is not harmful to the character and appearance of the host dwelling and the wider area. It would therefore accord with LP Policies CC1, CC2 and SC7 insofar as these policies require, among other things, new development to carefully consider external appearance, position and arrangement through the use of high quality, durable materials and finishes and careful considered detailing for building facades which add visual interest and richness to the streetscene.

Alternative Scheme

27. Section 177(1) of the Act allows for a grant of planning permission for the whole or part of the matters. Although advanced under ground (f), the appellant has provided an 'amended scheme' shown in drawings numbered MD/4037-04/MT and MD/4037 – 05/MT (the "revised drawings"). The appellant sets out that the amended scheme reduces the depth of the extension to a '*maximum projection of 6 metres*' and would '*lower the existing side brick walls and install UPVC glazing and blank panels to produce a more light weight appearance*'.
28. The amended scheme would reduce the depth of projection of the unauthorised extension and when taken in combination with the first part of the single storey rear extension a cumulative depth of rear extension of some six metres would result. However, the works required to alter the extension would necessitate the removal of the rear wall in its entirety and require the flank walls to be reduced in length. The roof would also need to be cut back and reduced in depth and new walls are likely to need to be rebuilt. Given the extent of the works necessary to make the development accord with the revised drawings, I take the view that the proposed scheme does not form part of the matters specified in the notice.

Fallback

29. While the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO) does not grant retrospective planning permission, Schedule 2, Part 1, Class A permits the enlargement, improvement or other alteration of a dwellinghouse, subject to certain limitations and conditions, and it would be open to the appellant to choose to exercise their permitted development rights following compliance with the notice. Therefore, I shall consider whether the grant of planning permission under the GDPO represents a realistic fallback position.

30. Paragraph A.1(g) of the GPDO permits extensions which project up to 6 metres from the original dwelling in the case of a terraced dwelling, however, this is subject to a prior notification procedure and as a 'larger extension' it would be subject to neighbour consultation. Although the appellant points to an absence of objection to application 00391/201/P4 from neighbouring occupiers with regards to outlook or overbearing impacts, I note that some comments from interested parties were made in the course of this appeal. Moreover, it is not possible to predict whether any objection would, or would not, be received as part of any neighbour consultation scheme and I therefore cannot be sure what the outcome of any prior notification procedure would be.
31. Whilst it may be possible to reduce the appeal scheme so that, together with the previous single storey extension, it would fall within the limitations set out within paragraph A.1(f), the unauthorised extension comprises an extension joined to an existing extension with a wall and door dividing the two areas. The space which would be provided in accordance with the revised drawings would be so limited in size and thus its useability that I consider that the appellant is unlikely to wish to exercise their permitted development rights in this way. In my view, this does not therefore represent a realistic fallback position and I afford this matter very limited weight.

Other Matters

32. I note that an interested party has raised issues about the construction and safety of the extension and suggests that the extension has been constructed on their boundary. However, issues regarding boundary infringements are private matters. Moreover, given my findings, the appeal is failing and the appellant is required to comply with the requirements of the notice and remove the extension and issues concerning safety of the construction, if any, will be resolved.

Conclusion on ground (a)

33. I have concluded that the extension has not caused harm to the character and appearance of the host dwelling and wider area. Nonetheless, I have found that the appeal scheme is unduly harmful to the living conditions of the neighbouring occupiers at No.199 Ellerdine Road. I have no evidence to show that the policies of the development plan which are the most important for determining the application are out of date. As such, the presumption in favour of sustainable development does not apply.
34. The appeal scheme conflicts with the development plan and the material considerations weighing in favour of the appeal scheme are of insufficient weight, individually and cumulatively, to justify a decision otherwise than in accordance with the development plan. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and the appeal for planning permission which is deemed to have been made under section 177(5) of the Act shall be dismissed.

Ground (f)

35. 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.

36. 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. It is clear from the wording of the notice, that its purpose is to remedy the breach of planning control.
37. Under ground (f), I am obliged to give consideration to whether there is any obvious alternative, or lesser step, which would achieve the purposes of the enforcement notice with less cost and disruption rather than removal of the entire appeal scheme. As set out above, the appellant has provided plans for an alternative scheme. However, I have found this scheme does not form part of the matters specified in the notice. Furthermore, while residential dwellings benefit from certain permitted development rights, I have found that the grant of planning permission under the GPDO does not represent a realistic fallback position in this case. There is therefore not an obvious alternative that could be achieved with less cost and disruption.
38. Consequently, I find that there are no lesser steps which would achieve the purposes of the enforcement notice with less cost and disruption and so the appeal under ground (f) must fail.

Ground (g)

39. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
40. The enforcement notice specifies a period of three months for compliance with the steps contained therein. The appellant has suggested an alternative period of six months would be required to avoid financial hardship and adverse effects on their mental and physical wellbeing.
41. The appellant references having a young family, cites pressure from the increased cost of living and indicates that the work required to be carried out is beyond the appellant's own capabilities. The works would need to be undertaken by a competent builder/electrician/plumber and the works would be likely to be disruptive to the occupants of the property. I consider an extension of the compliance period to six months would allow sufficient time to engage the appropriate person(s) and safely carry out the demolition and remediation works whilst providing sufficient time to make necessary arrangements in terms of the living accommodation for the family. Consequently, I consider six months is a more reasonable compliance period and I shall vary the notice accordingly.

Overall Conclusion

42. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall therefore vary the enforcement notice prior to upholding it. The appeal under ground (g) succeeds to that extent. I conclude that the appeal under ground (a) and ground (f) shall not succeed.

43. I shall uphold the enforcement notice, as corrected and varied, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

E Brownless

INSPECTOR