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## Appeal Decision

Site visit made on 31 January 2025

by **V Bond LLB (Hons) Solicitor (Non-Practising)**

an Inspector appointed by the Secretary of State

Decision date: 28 FEBRUARY 2025

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**Appeal Ref: APP/L5240/C/23/3326165**

**Land situated and building known as 7 Sundale Avenue, CROYDON, CR2 8RQ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Sadia Salim Rana against an enforcement notice issued by the Council of the London Borough of Croydon.
  - The notice was issued on 27 June 2023.
  - The breach of planning control as alleged in the notice is Without planning permission, the erection of a single storey rear extension.
  - The requirements of the notice are: 1) Remove/demolish the unauthorised single storey rear extension; 2) Clear all debris/rubbish from the land in compliance with step 1.
  - The period for compliance with the requirements is: Six (6) months.
  - The appeal is proceeding on the ground set out in section 174(2)(a) 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.
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### Decision

1. The appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the erection of a single storey rear extension at Land situated and building known as 7 Sundale Avenue, CROYDON, CR2 8RQ as shown on the plan attached to the notice and subject to the following conditions:
  - 1) The roof area of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area.
  - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no windows or glazed doors shall be constructed in any wall forming a side elevation of the single storey extension hereby permitted.

### Preliminary Matter

2. The revised National Planning Policy Framework 2024 came into force during the course of the appeal. Since the revisions made are not material to the main issues in this case, I have not sought comments from the main parties in this instance.

### Main Issue

3. The main issue is the effect on the living conditions of the occupants of 9 Sundale Avenue with particular regard to outlook and natural light.

## Reasons

4. The appeal property is a mid-terrace dwelling which has a single storey rear extension that is the subject of the notice. The dwelling at No 9 has not been extended at the rear and its rear elevation has window and door openings for its kitchen and dining room. The kitchen is the room nearest to the boundary with the appeal property and is a non-habitable room since it does not incorporate a dining area. The appeal extension has been built next to No 9's patio area which I would expect to be the main part of the garden used for sitting out.
5. No 9's outlook towards 11 Sundale Avenue is slightly impeded by a small conservatory structure attached to the rear elevation of No 11, but remains fairly open in this direction. Prior to the erection of the appeal extension, No 9's outlook towards No 7 was also fairly open across a boundary fence and neighbouring gardens.
6. The appeal extension is a flat-roofed structure of some 4m depth with an additional overhang of around 0.5m and measuring less than 3m in height. The appellant cites a fallback position as regards the erection of a single storey extension under permitted development ('PD') rights<sup>1</sup> for an extension of 3m in depth and up to 4m in height. In view of the appellant's clear desire to extend their property to the rear, I consider there to be a very strong likelihood that this fallback would be exercised if planning permission for the appeal development is refused in this appeal.
7. Following construction of the appeal extension, the outlook from No 9's kitchen window is now dominated by the presence of this structure, which is readily apparent in views from No 9's dining room and garden also. However, the outlook towards No 11 remains fairly open as explained above and no oppressive 'tunnelling effect' results from the appeal extension. Further, bearing in mind the relative position of No 9's rear openings and patio space, the effect is not materially different to that which would result from the appellant relying on PD rights under Class A for an extension of around one metre less depth but potentially more than one metre greater height.
8. The appellant has produced evidence seeking to demonstrate that there would be no adverse effects in terms of shadowing. The Council has not commented on this. In my view, whilst the appeal development may not result in harmful overshadowing, it still results in some loss of natural light to No 9's kitchen, dining room and patio area. That said, an extension constructed under Class A PD rights would be of not dissimilar size and so would have a very similar effect. In this context, I do not consider the effect of the appeal extension to be materially harmful in this regard.
9. While I have considered comments from interested parties in relation to the contravention of the 45 degree rule in respect of No 9's kitchen window, I am mindful that this is a relatively modest sized non-habitable room which benefits from light from both a window and glazed door. Bearing in mind also the likely similar effects from an extension built under Class A PD rights, this factor does not alter my assessment as above.

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<sup>1</sup> Contained in the Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2, Part 1 Class A ('Class A')

10. I conclude then on the main issue that, taking into account the appellant's PD fallback position, the appeal development does not have a materially harmful effect on the living conditions of the occupants of No 9 with particular regard to outlook and natural light. It complies with Policy D3 of the London Plan 2021 which seeks to ensure appropriate outlook, privacy and amenity. There is no harmful conflict either with Policies SP4.2 or DM10.6 of the Croydon Local Plan (2018) which encourage new development to enhance wellbeing, protect amenity of adjoining occupiers, and to avoid any significant loss of daylight or sunlight for adjoining occupiers.

### **Other Matters**

11. I acknowledge concerns raised in relation to fire safety of the appeal extension but I am mindful that this has been assessed by the Council as acceptable and I have no substantive evidence leading me to a different view. There is no detailed evidence indicating that the appeal extension has been constructed on land within the ownership of the occupant of No 9. Equally, there is no substantive evidence to indicate that the method of construction or arrangement of pipework has led/would be likely to lead to property damage, or that the situation would be any different if the appellant relied upon fallback PD rights.
12. I sympathise with concerns from the occupant of No 9 and his family related to the removal of a boundary fence during the course of the construction of the appeal extension and regarding the practicalities of maintaining the appellant's pipework on the boundary with No 9. Whilst I can appreciate these frustrations, they have not led me to a finding of material harm or to a different overall conclusion.

### **Conditions**

13. No commencement condition is required since the extension has already been constructed. A condition is required to prevent the roof of the extension from being used as an amenity area in the interests of the living conditions of neighbouring occupants as invasive overlooking would result from such use. In view of the position of the extension relative to side boundaries, it is necessary exceptionally in the interests of the living conditions of neighbouring occupants to restrict PD rights for the installation of openings in the side elevations of the extension since even obscure-glazed glass in these locations could result in an oppressive sense of overlooking.

### **Conclusion**

14. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the operations as described in the notice. The enforcement notice will be quashed.

*V Bond*

INSPECTOR