



Appeal Decision

Site visit made on 16 July 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2025

Appeal Ref: APP/Q5300/C/23/3325940

8 Crawley Road, Enfield EN1 2ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Bhupendra Patel against an enforcement notice issued by the Council of the London Borough of Enfield.
 - The enforcement notice was issued on 12 June 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a single storey rear extension (outlined in blue on the attached plan for identification purposes only), rear garden boundary walls in excess of the parameters set out within Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 (highlighted green for identification purposes only) and a raised patio in excess of the parameters set out within Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) (Order) 2015 (outlined in brown for identification purposes only).
 - The requirements of the notice are to:
 - 5.1 Demolish the rear extension (outlined in blue on the plan for identification purposes only);
 - 5.2 Demolish the garden boundary walls (highlighted green on the plan for identification purposes only);
 - 5.3 Demolish the rear patio (outlined in brown on the plan for identification purposes only);
 - OR
 - 5.4 Reduce the depth of the rear extension (outlined in blue on the attached plan for identification purposes) in order to comply with the parameters set out within Article 3 and Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015;
 - 5.5 Reduce the maximum height of the garden walls to 2m from original ground level to comply with the parameters set out in Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015;
 - 5.6 Reduce the maximum height of the raised patio area to 300 millimetres from original ground level to comply with the parameters set out in Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015
 - The period for compliance is three (3) calendar months after this Notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Formal decision

1. It is directed that the enforcement notice be corrected by deleting requirement 5.4. The appeal is allowed insofar as it relates to the rear garden walls and the raised patio, highlighted in green and outlined in brown, respectively on the plan attached to the notice, and planning permission is granted on the

application deemed to have been made under section 177(5) of the 1990 Act, as amended.

The appeal is dismissed and the enforcement notice is upheld as corrected, and also varied by extending the compliance period from 3 months to 9 months, and planning permission is refused for the single-storey rear extension on the application deemed to have been made under section 177(5) of the 1990 Act, as amended.

Background

2. In 2010 a lawful development certificate (LDC) under s192 of the 1990 Act, as amended (ref LDC/10/0073) was issued for a full width, flat-roofed, single-storey rear extension to the dwelling. As such, the Council had confirmed that this proposal would fall within the parameters of Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, as amended (GPDO).
3. A single-storey rear extension was subsequently built but, as it now stands, this significantly differs from that permitted as its depth is more than twice that shown for the extension on the plans assessed. Further, whereas the property's rear garden's boundaries with those of nos 6 and 10 Crawley Road had previously been by way of standard height garden fences, these now were marked by solid boundary walls, significantly higher than the fencing. In addition, an outbuilding referred to by the appellant as a greenhouse has also been erected adjoining the domestic garage, and to a similar height at the garden's rear-end. The solid wall runs along the garden until it meets the concrete greenhouse whereon the rear walls of both this and the garage demarcate the boundary with no 10.
4. At the greenhouse's nearest point steps have been constructed dropping down to its entrance door, taking account of the fact that the land levels fall southwards towards the garden's far end. Given the drop-down the height of the walling along the boundary with no 10 accords with that of the flat roof heights of the greenhouse and garage.
5. Although the greenhouse does not require the benefit of planning permission, the enlarged rear extension does, and is unauthorised, as do the boundary wall enclosures running along both the garden's side boundaries and also the raising of the land levels.
6. A planning application was made in 2022 seeking retrospective planning permission for the single-storey rear extension and the rear garden's boundary walls. The Council considered that the size and depth of the extension, the height of the boundary walls, and the raising of the land levels were all unacceptable development and planning permission was refused in June 2022 under ref 22/00979/HOU.
7. In the circumstances, the Council then saw fit to issue an enforcement notice targeting the features which had been erected or undertaken without planning permission.

Matters concerning the enforcement notice

8. It would seem from the enforcement notice, and the plan attached thereto, is targeting only a very small part of the land raised. This is termed only as a 'raised patio', whereas the main part of the rear garden has also been raised up until the point where it steps down. It seems to me that this is an inadvertent mistake on the Council's part as excluding the main part of the raised garden from a reduction in height would effectively result in a narrow gully being formed between the rear wall of the extension and the majority of the rear garden beyond. This requirement is not consistent with what must surely be the wider aim to restore the land to its previous levels. However, as it would cause the appellant injustice, I am unable to correct the requirement to include the raised garden as a whole.
9. Given the above, in the interests practicality, visual amenity, and effectiveness, requirements 5.3 and 5.6, when considering the purposes of the notice, must be drawn into doubt.
10. The notice gives the owner the option of either demolishing and removing the extension, the walls and the raised patio or, alternatively, reducing the extension's dimensions to the point where the building would fall within the parameters of the GPDO, the garden walls reduced to a height not exceeding 2m, and the patio reduced to a height not exceeding 300 millimetres above the original ground levels.
11. Requirement 5.4, which relates to the extension being modified in accordance with Class A of the GPDO is imprecise. Even if the 2010 LDC scheme was implemented the consent given under LDC/10/0073, and the building thereby considered lawful, no longer has effect. A development considered to be lawful by way of a s192 application is the subject of a decision made at that particular point in time only. Should there be a material change in circumstances – and this is clearly a case in point – the LDC no longer holds good. Accordingly, as there are now no approved drawings, any attempt to modify the extension, as described, would potentially be open to interpretation. The wording, in such circumstances, is, therefore, too vague to hold sufficient weight and I shall delete this requirement.

The Appeal on ground (d)

12. An appeal on ground (d) is that the development is immune from planning control due to the passage of time. Given that the enforcement notice was issued on 12 June 2023 the appellant must demonstrate that the breach – or in this case the three separate elements of the unauthorised operational development carried out at the site – had been undertaken, were in situ, and substantially completed by, at the very latest, 12 June 2019 (exactly four years prior to the date of issue). For reference, the four year immunity bar has since been abolished by the provisions of the Levelling Up and Regeneration Act 2023 but, given that the works were certainly complete by the date of the 2022 application for retrospective planning permission, it still applies in this instance.
13. In cases where immunity from planning control is claimed the burden of proof is on the balance of probabilities, and the onus of proof is on the applicant/appellant to provide precise and unambiguous evidence to prove their claim.

14. The appellant's representations would indicate that the single-storey extension, as now exists, was built in two stages. Photographs have been submitted which claim to show the extension, confirmed as permitted development by way of the LDC issued in 2010, was erected in its entirety that same year. Whether the permitted design's dimensions were followed at this time, though, is not clear from the photographs. Nonetheless, it was then enlarged to its current depth, without any further consent, completed and fitted out for habitable purposes.
15. Regarding the above, the appellant's claims that the extension, as originally built, has planning permission is legally incorrect. As mentioned, an LDC does no more than certify conclusively, at a point in time, that the development is lawful. The fact that the original extension has been subsumed into the larger development means that the LDC then ceased to have effect. This does not, of course, disqualify the owner/appellant, once the requirement of the enforcement notice have been complied with, from erecting a new extension. It might mirror that of the original construction – should it fall within the parameters of Class A - or, alternatively, an extension that has been granted express planning permission.
16. Turning to the unauthorised development as a whole I have referred to the application form relating to the 2022 planning application. This is dated 30 March 2022 and states that the works were completed '*roughly a year ago.*' Even with some reasonable latitude applied it is, therefore, unrealistic to expect that the works had been substantially completed by 12 June 2019, some nineteen months before March 2021 (the approximate date of construction indicated by way of the application form). That said, I note from an e-mail exchange between the appellant and the owner of no 6, it was intended to start building the new wall along the common boundary in September 2019.
17. In the circumstances the appellant has not only failed to demonstrate his claim, the entry on the said application form, presumably completed by his agent, contradicts and, moreover, convincingly disproves any assertion that the works have gained immunity from planning control due to the passage of time.
18. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) – the deemed planning application (DPA)

19. Firstly, when all the factors are taken together the works undertaken represent a flagrant breach of planning control. This is not to say that all the operational development undertaken is necessarily unacceptable in terms of their merits and impacts. It is not a criminal offence to carry out works without the benefit of planning permission but, certainly, the rear extension built bears little relationship to that shown on the drawings submitted alongside the 2010 application for which a lawful development certificate was issued. The extension's depth is more than twice that which the Council found to fall within the parameters of Class A and its modified erection was an obvious, if not deliberate, contravention.
20. Moreover, it also seems clear to me that the extension, the heightened walls and the raising of the land were all part of a comprehensive package of domestic improvements. Indeed, the appellant says that '*the works*' have provided improved security and privacy and an outdoor extension to the house. This reinforces my conclusion that I should regard it as intentional

unauthorised development. This can be taken into account as a material consideration when assessing retrospective planning applications, although I am also mindful that enforcement action taken under planning legislation is meant to be remedial rather than punitive. Nonetheless, the fact that the development is already in place should not give the appellant an advantage, and I have assessed the unauthorised development with all factors in mind.

21. Given the reasons stated as to why the Council issued the enforcement notice I must consider the main issues to be:
- 1) the effect of the development on the character and appearance of the area; and,
 - 2) the effect of the development on the living conditions of neighbouring occupiers.

Reasons

Character and appearance

22. Policy CP30 of the Council's Core Strategy (CS) is specifically concerned with maintaining and improving the quality of the built environment, and policy DMD37 of the Enfield Development Management Document (EDMD) looks towards a high quality of design. Taken together, both policies seek to achieve a satisfactory standard of development.
23. From my site visit observations I must say that the newly sculptured rear garden environment has been tastefully laid out, complemented by shrubs and planting, and in terms of design and appearance – its depth aside - the single-storey rear extension is an attractive addition to the dwelling.
24. I note the Council's point that the development is generally out of character with its surroundings, and I must agree with this. However, the property is something of an anomaly in that the topography of the land and the vegetative screening on the boundary with no 6's rear garden has allowed for the land to be raised and boundary enclosures slighter greater than the standard 2m high garden fencing to be erected without unacceptable general obtrusiveness.
25. Given the above, I am satisfied that the various elements of the development, and taken together, are not harmful to the character and appearance of the surrounding area, and I find no material conflict with the aims and requirements of policies D3 and D4 of the London Plan (LP), EDMD policies DMD8, and DMD37, nor CS policy CP30. Whilst, as mentioned, the extension is fine in terms of appearance the provisos of EDMD policy DMD11, which relate to the effects on neighbouring properties and their occupiers, are less pertinent here, relating more to the second main issue, below.

Living conditions

26. Policy DMD11 is specifically concerned with residential extensions and, understandably, its main objective is that there should be no impact on the amenities of the original building and its neighbouring properties.
27. The policy goes on to say that single-storey rear extensions must not exceed 3m in depth beyond the dwelling's original rear wall of terraced properties such as this. It also says that the depth must not exceed a line taken at 45 degrees from the mid-point of the nearest original ground floor rear window to any of

the adjacent properties. As mentioned, the single-storey addition has extended the rear building line by more than twice the prescribed 3m maximum depth. Whilst 3m might seem somewhat limited and a 'one size fits all' approach, I am mindful that the extension sits immediately south west of no 6's rear elevation and the harsh impact is perfectly illustrated by a photograph supplied by the appellant which shows the physical relationship between the two dwellings and the substantial degree of over-shadowing and sunlight restriction due to the extension's excessive depth. The said 45 degree line is also heavily contravened, here.

28. Even if the appellant does have a cordiale relationship with the owner of no 6 this does not mean that at some point no 6 might be sold and new occupiers then resident. The extension's significant adverse impact would then come to the fore to the detriment of the occupiers.
29. Turning to the raising of the land levels, this - and certainly not the 'raised patio' - cannot reasonably be considered as being harmful to the living conditions of the occupiers of either neighbouring property. Further, the walling, although, relatively high, due to the prevailing topography, is not unduly harmful to either of these properties.
30. To reinforce my findings as to the effect of these two elements I note that there were no written objections advanced from any interested parties to either the retrospective planning application or the current appeal. Admittedly, this would also tend to indicate that the neighbours are indifferent to the rear extension but, on this, my observations as to the resultant impact were clear-cut and the photographic evidence was most telling.
31. To conclude, therefore, I have found that the rear extension flies in the face of policy DMD11 and, due to the relative orientations, has given rise to an unacceptable degree of overshadowing due its excessive depth and a resultant loss of sunlight entry. Accordingly, the extension is unduly harmful to the living conditions at no 6.
32. In contrast, I have found that the other two elements of the identified breach have had no significant impact on the occupiers of either nos 6 or 10 and are acceptable on planning grounds. Accordingly, there is no material conflict with LP policies D3 or D4, EDMD policies DMD8 or DMD37, nor CS policy CP30.

Conclusion on the DPA

33. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

The appeal on ground (f)

34. An appeal under ground (f) is that the stipulated requirement set out in the enforcement notice go beyond what is reasonably necessary to remedy any harm caused by the breach of planning control. Given that planning permission is hereby granted for the boundary walls and the raised patio the only consideration here is whether the requirement to demolish the extension is excessive.
35. I have already explained the need to delete requirement 5.4 and, as the purpose of the enforcement notice is clearly to remedy the breach, along with my findings, I must uphold requirement 5.1 which necessitates the extension's

demolition. The appellant's points as to financial viability and 'trauma to the environment' hold little weight in this context. Besides, it appears that the breach as a whole was deliberate rather than accidental.

36. The appeal on ground (f) does not, therefore, succeed.

37. I acknowledge that domestic extensions, considerably deeper than 3m, can be accepted as permitted development by way of the Town and Country Planning Prior Notification procedure, but there are certain provisos, one being that the works, have not already been carried out.

38. Clearly, from the appellant's representations he is looking to retain as much of the extension as is reasonably possible although, for reasons already mentioned, I have to uphold the requirement that the extension be demolished. Nonetheless, this does not prohibit the appellant opening negotiations with the Council prior to any demolition in an attempt to arrive at an acceptable alternative.

39. It would be beyond my remit to make specific recommendations on such, though, and this will instead need to be the subject of formal negotiations between the appellant and the Council.

The appeal on ground (g)

40. The appeal under ground (g) is that the required time period for compliance is unreasonably short. Given the disruption and inconvenience which removal of the extension will cause, the fact that we are now approaching the latter part of the year, and the expectation that the appellant will be seeking to modify the extension and reduce its footprint by way of an agreed alternative scheme, I consider that the compliance period is too short, and I intend to extend it.

41. Bearing in mind that new plans will need to be drawn up, with the possibility of submitting a new planning application or an application for a LDC, I shall extend the compliance period to no more than nine months from the date of this decision.

Overall Conclusions

42. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for two parts of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with a correction and a variation and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect insofar as is inconsistent with the permission which I will grant by virtue of s180 of the 1990 Act, as amended.

Timothy C King

INSPECTOR