



Appeal Decision

Site visit made on 11 September 2025

by **Diane Lewis** BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 September 2025

Appeal Ref: APP/G5180/C/24/3344588

Land at 36 Horley Road, Mottingham, London SE9 4LE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Horley Road Estates Ltd against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The notice was issued on 15 April 2024.
 - The breach of planning control as alleged in the notice is: Without the required planning permission, the erection of a single storey rear extension at the above Land.
 - The requirements of the notice are:
 - a) Demolish the single storey rear extension at the above Land and,
 - b) Remove from the Land any resulting debris and,
 - c) Restore the Land to its condition before the breach of planning control took place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) 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.
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DECISION

1. 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 1990 Act as amended.

REASONS

Preliminary Matters

2. On 27 May 2021 the Council confirmed that prior approval was not required for a proposed extension at the property comprising a single storey rear extension, extending beyond the rear wall of the original house by 6 metres (m), for which the maximum height would be 3m and for which the height of the eaves would be 3m (ref. DC/21/02003/HHPA). The decision notice drew attention to the appellant's responsibility to ensure that the proposal meets all of the criteria to be permitted development.

3. In the legal grounds of appeal, grounds (c) and (d), the onus is on the appellant to prove their case on the balance of probability.

Appeal on ground (c)

4. The issue is whether the single storey rear extension constitutes a breach of planning control.

5. The appellant in the grounds of appeal stated: "The extension enjoys planning permission under the GPDO and there is a legitimate expectation that the extension

may be retained.” No further explanation or detail was provided by the appellant until the Final Comments stage in the appeal process, when further information was provided on the history of the development.

6. The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission in article 3 for the classes of development set out in Schedule 2 of the Order. Part 1 of Schedule 2 concerns development within the curtilage of a dwellinghouse. Even though not specifically stated, it appears the appellant is relying on Class A within Part 1, where the permitted development is ‘the enlargement, improvement or other alteration of a dwellinghouse.’ Permitted development rights only apply when all the limitations and conditions are met. In the representations attention has focused on the height and depth of the extension.

7. The appellant accepted that as built the depth of the extension was 6.35m, not 6m, and the height 3.15m rather than 3.0m. The appellant stated the height was subsequently reduced to 3m and a planning application was made retrospectively in respect of the additional depth. Planning permission for the extension was refused on 5 April 2023. Works were then carried out to reduce the depth of the extension around the beginning of May 2023.

8. The enforcement notice was issued on 15 April 2024. In the appellant’s version of events, attempts were made to agree the depth of the extension with the local planning authority. The position was reached where the local planning authority accepted a reduction had been made but that the depth still exceeded 6m by 1-2cms. The appellant submits this discrepancy is de minimis.

9. The appellant’s narrative confirms the extension was not carried out in accordance with the information submitted with the prior approval. Consequently, the entire extension as built was a breach of planning control and unlawful, not just the element that exceeded the required dimensions. The appellant has not demonstrated that, as a result of subsequent works, the structure extends beyond the rear wall of the original dwellinghouse by no more than 6m. The limitations on the size of development are expressed precisely in the GPDO and no ‘de minimis’ infringement is tolerated. Furthermore, permitted development rights cannot be claimed retrospectively by the removal of an element to return the residual development to the permitted tolerance.

10. In conclusion the single storey rear extension does not benefit from permitted development rights under Class A, Part 1 of Schedule 2 of the GPDO. The extension is not authorised by a separate planning permission. The extension constitutes a breach of planning control. The legitimate expectation aspect of the appellant’s case will be considered under ground (d). The appeal on ground (c) does not succeed.

Appeal on ground (d)

11. The issue is whether the extension is immune from enforcement action, because the time for enforcement action has expired or for any other reason.

12. The appellant’s ground (d) appeal stated: “No enforcement action can be taken because the departure from the approved scheme is de minimis and there is also a legitimate expectation that the extension may be retained.”

13. I have explained in the ground (c) appeal that the de minimis argument has no weight. The appellant has not claimed that the extension has become lawful through

the passage of time. The evidence confirms that substantial completion of the extension was within the time limit for taking enforcement action against operational development. Legitimate expectation remains to be considered.

14. The appellant's case is that they had a legitimate expectation that the extension would be acceptable once reduced. The appellant relies on email correspondence between the appellant's agent and officers in the Council's planning division dating back to 11 May 2022. The final items of correspondence from 22 May 2024 refer to a roof extension, a separate development which is of no relevance to my determination of this enforcement appeal regarding the single storey rear extension.

15. The main points of the correspondence over the earlier period are as follows. Options were set out for the appellant's consideration, following discussion between a planning officer and the appellant's agent. The Council asked to be informed which course of action the appellant chose to take. The Council made clear any planning application would be treated on its merits. After planning permission to retain the single storey extension was refused on 5 April 2023 the appellant was informed enforcement action would be considered. The appellant proposed a reduction in the depth of the extension and was requested by the Council to provide a schedule of works and timings. The agent's response was to indicate the date of commencement of the work, the scope of the works and a likely time period for completion. No schedule of works was submitted to the local planning authority, no confirmation was provided of the completion of the works and no evidence produced to demonstrate the depth had as a matter of fact been reduced to a maximum of 6m (the appellant's proposal).

16. The email correspondence resumed on 7 May 2024, after the appellant had received a copy of the enforcement notice. The main points to highlight are the agent's repeated confirmation that works were carried out at the end of April 2023 to reduce the depth of the extension to "within 6m" and the appellant's awareness of the appeal process against the enforcement notice. No supporting evidence was submitted to demonstrate the stated reduction in depth. Subsequently, by cover of an email dated 14 May 2024, photographs of the reduction works and information on expenses and cleaning were submitted to the Council (not submitted as part of the appeal documentation). The reduction works were said to have been undertaken in May 2023, earlier emails gave a date at the end of April 2023, and no confirmation was provided in the agent's email of the depth after completion of the works. The Council visited the site and by email from the agent dated 22 May 2024 the 1-2cm discrepancy was highlighted. The agent refers to the de minimis principle and expressed the view enforcement action was unlawful, matters which have been pursued through the appeal.

17. I conclude from this email trail the Council maintained the extension exceeded 6m, even after alteration works. At no time did the Council provide any written assurances about the acceptability of the extension. The appellant has not demonstrated the extension was reduced to a maximum of 6m.

18. The law relating to the concepts of legitimate expectation and estoppel in the sphere of land use planning has been considered by the courts. As to legitimate expectation, case law demonstrates the principle that there is only a very limited scope for any expectation that a waiver of the statutory requirements will be legitimate in the context of town and country planning. The public nature of town and country planning has to be remembered at all times and it is not a matter for private agreement between private developers and local planning authorities. It has long been held that planning

law is contained in a comprehensive code, with statutory procedures in place to confirm lawfulness of uses and operations. With such mechanisms in place no reliance should be placed on informal views expressed in discussion and correspondence. The evidence leads me to conclude that the actions of the local planning authority did not justify a legitimate expectation on the part of the appellant that the extension was lawful or enforcement action would not be pursued.

19. The appellant also submitted the local planning authority was estopped by convention by advising the appellant to reduce the depth of the extension. To support their case the appellant drew attention to a judgement *Hillingdon LBC v ARC Ltd (No.2)* regarding a claim for compensation from Hillingdon London Borough Council for compulsory purchase of part of the claimant's land.

20. The courts have held it is unhelpful to introduce private law concepts into planning law, although case(s) do exist where, on the facts, the court found a local planning authority could not resile from views previously expressed and were thus estopped from issuing an enforcement notice. The facts in the current appeal, as can be derived from the email evidence, have been outlined above. My understanding from a plain and straight forward reading of the correspondence is that the local planning authority did not set out an agreed procedure leading to a specific outcome and no undertaking was given about pursuing enforcement action. The options suggested resulted from a discussion with the agent. The appellant was able to decide what course of action to take and in fact decided initially to "chose a mixture of the two options"¹ and reduced the height of the extension. As it turned out, the works to reduce the depth of the extension have not been shown to comply with the 6m limit. The appellant could have applied for a certificate of lawfulness immediately after the works were completed but did not do so.

21. In conclusion, I do not accept legitimate expectation and estoppel by convention apply to the facts relating to the development in this appeal. The appellant has not shown the single storey rear extension is immune from enforcement action, either because the time for enforcement action has expired or for any other reason. The appeal on ground (d) fails.

Appeal on ground (a)

22. The development for consideration in the deemed planning application is derived directly from the description of the breach of planning control, namely the erection of a single storey rear extension.

23. The main issues are the effect of the extension on the character and appearance of the host dwelling and its immediate surroundings and the effect on the living conditions of neighbouring occupiers.

Character and appearance

24. Horley Road is located in a settled suburban residential area. Number 36 is within a short terrace of small scale two storey houses, built of brick with tiled roofs. The plot of number 36 is somewhat irregular in shape at the back. The surrounding houses and gardens are in close proximity because of the compact layout of the neighbouring plots.

¹ Appellant's Final Comments paragraph 4

25. The original principal dwelling, like others in the terrace, is of modest and respectful proportions. It has a regular shaped footprint and a modest two storey eaves height, where the eaves line corresponds with the top of the first floor window openings.

26. The extension is a basic, rectangular box-like shape with a flat roof, which extends across the full width of the house and occupies the full width of the garden. A confined area of garden remains. The southern side wall is faced in brick but not the side wall adjacent to number 34, as shown on the Council's photographs. The rear wall is rendered in a white colour and the elevation is punctuated by two doors and two windows. This full width single storey extension that exceeds 6m is out of proportion with the host dwelling and the adjacent dwellings in the terrace. The materials used in the exterior work are not consistently of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

27. A small area of amenity space outside the residential properties, at the corner of Kimmeridge Road and Horley Road, enables views of the extension. The atypical size of the rear addition, the poor quality brickwork and the lack of finishing detail to the eaves line lead to an unattractive structure that is intrusive in the street scene and visually over-dominant in relation to its neighbours. A sense of spaciousness, important to the quality of the residential environment, has been badly affected. The size and quality of the new extension compares poorly with the respectful, smaller rear extension at 33 Kimmeridge Road.

28. In conclusion the scale, form and materials of construction do not respect or complement those of the host dwelling and are not compatible with development in the surrounding area. The space between dwellings, which makes a positive contribution to the character of the area, has not been respected. The residential extension fails to satisfy criteria in Policy 6 of the Bromley Local Plan. The extension also fails to comply with Policy 37 of the Bromley Local Plan that requires development to be attractive, of a good architectural quality that complements the scale, form, proportion, layout and materials of adjacent buildings and makes a positive contribution to the street scene.

Living conditions

29. Number 38 is on the south side of the appeal site and at the end of the terrace. The front door is on the side elevation and the garden wraps around the house. The private garden space is confined to a small area at the back and side. The long side wall of the extension along the common boundary is hard against the boundary fence and is immediately north of the neighbouring garden. The brick wall results in a harmful degree of enclosure and is overbearing for the neighbouring occupiers because of the tightness of the garden spaces and the layout of the plots. The reasonable enjoyment of their garden would be seriously harmed.

30. The adjacent house to the north, number 34 has a slightly longer garden than number 36 but the narrow width means the amenity space is quite confined. The mass of the side wall has been built on the boundary with no inset at all. Consequently, there is no space for any separate treatment along the common boundary to mark ownership and private space. The extension, by being so close to the rear ground floor living space and the outdoor patio would be overbearing, reduce light and result in an unacceptable degree of enclosure. Building across the full width of the plot has made the impact on the neighbour very oppressive and intrusive into their living and amenity spaces. This relationship highlights the cramped over-development referred to in the enforcement notice.

31. The development's harmful impact on the living conditions of residents living in adjacent houses conflicts with Policy 37 that requires development to respect the amenity of occupiers of neighbouring buildings.

Conclusions

32. The extension fails to comply with Policies 6 and 37 of the Bromley Local Plan. These policies are consistent with the National Planning Policy Framework that confirms the importance of achieving good design. The extension is not visually attractive and does not display good architecture and layout. The development adds nothing positive but rather detracts from the overall quality of the area.

Fallback

33. The fallback identified by the appellant is achieving a prior approval once more, as in 2022. This description is not totally accurate – the decision, made in 2021, was no prior approval was required (ref. DC/ 21/02003/HHPA), but the fallback is a consideration.

34. The main reason no prior approval was required was because no objection was received from an owner or occupier of neighbouring premises within the statutory period, as set out on the decision notice. The probability is objections would be received if another application was made, as indicated by the representations on the appeal and in view of the events and experience since 2021. The Council probably would reconsider the impact on the amenity of adjoining premises if the proposal was exactly the same as before and may well require the applicant to submit further information.

35. The harmful effect of the fallback, with a proposal that was exactly the same as in 2021, would be similar but slightly less than the extension that currently exists.

36. My conclusion is that the fallback is not sufficient justification to allow the current extension, which is not acceptable when assessed against development plan policy. A proposal for a rear extension significantly less in size and with a smaller footprint would be less harmful and would not justify allowing the current development.

Conclusion on ground (a)

37. The rear extension fails to comply with the development plan and is unacceptable. Other considerations do not indicate the determination should be other than in accordance with the development plan. The appeal on ground (a) fails and I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal on ground (f)

38. The issue is whether the requirements are excessive to achieve the purpose of the notice.

39. The appellant's case is, because the departure is immaterial, the removal of the entire extension is excessive. No lesser steps have been suggested.

40. The purpose of the notice is to remedy the breach of planning control. Steps that require demolition of the extension, removal of resulting debris and restoration of the land to its previous condition do no more than meet the purpose and are not excessive.

The steps are precise and clearly specified. No obvious acceptable alternative scheme exists or has been specified. The appeal on ground (f) fails.

Appeal on ground (g)

41. The issue is whether the compliance period of three months is reasonable and proportionate.

42. The appellant submitted that a minimum of 9 months will be required because the property is occupied by tenants.

43. The National Planning Policy Framework states that effective enforcement is important to maintain public confidence in the planning system. The extension causes visual harm, harm to neighbours' living conditions and is contrary to the development plan.

44. A period of three months would be adequate to arrange for and carry out works to demolish the extension and clear the site of resulting debris, having regard to the timescales for undertaking earlier works and the scale of the extension. No information has been submitted to show otherwise.

45. The demolition works would be disruptive for occupiers of the property. When I visited the site the extension was divided into two rooms of accommodation. However, the appellant has not provided details of the tenancies or nature of occupation of the property. Only the extension would have to be removed, the main dwelling would remain. A further consideration is the period of disruption to neighbours, which should be kept to a minimum.

46. All matters considered a period of three months strikes the appropriate balance. The appeal on ground (g) fails.

Conclusion

47. For the reasons given above, the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Diane Lewis

Inspector