



Appeal Decision

Site visit made on 15 December 2025

by Timothy C King BA(Hons), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 January 2026

Appeal Ref: APP/M1595/C/24/3344414

3 Oak Road, Grays, Essex RM17 6JX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Saleem Malik against an enforcement notice issued by Thurrock Borough Council.
 - The enforcement notice was issued on 19 April 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of a single storey extension located at the Land immediately to the rear and side of Oak Road.
 - The requirements of the notice are to:
 - (i) Demolish the unauthorised extension;
 - (ii) Remove from the land all materials, including foundations and utility installations, associated with the unauthorised extension;
 - (iii) Restore to its original level and condition the land upon which the unauthorised extension has been erected; and
 - (iv) Restore the fencing between the Land and adjoining property at no 5 Oak Road at its original height.
 - The period for compliance with the requirements is six months from the date this notice takes effect (being 17 May 2024).
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice be corrected by deleting requirement (iv). Subject to this correction 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.

Preliminary Matters

2. In his representations the appellant makes considerable reference to what amounts to a grievance with the Council as he considers he was given misleading advice when, having been refused planning permission upon an application submitted retrospectively, he indicates he was seeking to secure retention of the rear extension by way of modifying the structure through a revised application.
3. My remit is limited to assessing the grounds of appeal relating to the extension as built and enforced against. I cannot comment as to the Council's decision making processes or any pre-application advice given. These matters have no direct bearing on the effect of the extension erected or my assessment of such, and they must remain an issue between the two main parties.
4. The appellant says that the enforcement notice was issued without him being previously made aware of the Council's intentions. I acknowledge that the Council

could have first served a planning contravention notice as a precursor to the enforcement notice, and this would have indicated such an intention. However, it is not a statutory requirement and, besides, the appellant was aware of the planning position given the unsuccessful applications to retain the unauthorised development, receipt of related e-mails, and also site visits made by Council officials.

The enforcement notice

5. Requirement (iv) goes beyond what is necessary to remedy the actual breach, and it places a positive requirement upon the appellant. This is unreasonable and, accordingly, I shall correct the enforcement notice by deleting this particular requirement.

The appeal on ground (e)

6. An appeal under ground (e) is that copies of an enforcement notice were not served as required by s172 of the 1990 Act, as amended.
7. In many cases, ground (e) appeals cannot realistically succeed because of the provisions in s176(5). These indicate that where a person required to be served with a copy of the notice was not served the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve them. In this particular instance I understand that all the relevant parties were served and, importantly, it appears that the appellant received his copy on 19 April 2024, the date of issue.
8. Irrespective of whether other parties received their copies at a slightly later date I have been supplied with correspondence of 26 April 2024 which confirms that Woodgrange (Solicitors) were, at that date, instructed to act on the appellant's behalf. Subsequently, as agent, Woodgrange, lodged the appeal on 15 May 2024, - earlier than when the notice was due to take effect - which was supported by comprehensive representations.
9. In the above context, the appellant's claim that the mortgagor did not have the full 28 days to respond – whether or not this is the case – the fact that an appeal had been lodged two days before the effective date means that no substantial prejudice occurred. Incidentally, with reference to the judgement of *Dyer v SSE and Purbeck DC* [1996] JPL 740, an Inspector's decision that a ground (e) appeal should fail was upheld where the enforcement notice was allegedly served only three working days before it came into effect.
10. In the circumstances described, the appeal under ground (e) does not succeed.

The appeal on ground (c)

11. In appealing on ground (c) the appellant accepts that the allegation stated on the enforcement notice is correct but claims that it does not constitute a breach of planning control as no planning permission was, or is, required for the use to lawfully continue.
12. Class A, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (GPDO) is concerned with the enlargement, improvement or other alteration of a dwellinghouse. Under this, paragraph A.1(f) says that development is not permitted by Class A if the enlarged

part of the dwellinghouse would extend beyond the rear wall of the original dwellinghouse by more than 3 metres in the case of a dwellinghouse as part of a terrace.

13. In this particular instance the single-storey extension, at a height of some 3 metres, extends 5.9 metres back from the rear wall of the original dwelling and, in the above context, the appellant says that should the extension be reduced to a depth not exceeding 3 metres it would benefit from permission under Class A. Accordingly, he argues that requirement (a) of the enforcement notice, in stipulating that the extension be demolished in its entirety, would unlawfully take away his permitted development entitlement.
14. In this regard he cites the case of *Mansi v Elstree Rural DC* [1964] 16 P&CR 153. Here, an enforcement notice unlawfully – either inadvertently or otherwise - attempted to take away ancillary use rights. The judgement confirmed that the Council had, by its actions, erred in law, and this became known as the Mansi principle.
15. However, this principle is not directly applicable to the legal position regarding the current appeal. To explain, in the judgement of *Garland v MHLG* [1968], the Court of Appeal ruled that if any part of a building operation exceeds that which would amount to permitted development the entire structure becomes unlawful allowing local planning authorities to enforce removal of the whole building, not just the non-compliant part, establishing a principle that development must be considered as a single whole.
16. The above case means that tolerances within permitted development rules are defining features so that anything built beyond them makes the whole construction a breach of planning control. Accordingly, developers cannot claim partial compliance.
17. Concessions under the GPDO are not concerned with matters of planning merit or whether any measured failure to comply with a condition or limitation is large or small.
18. The appellant also appears to take issue with the Council's method of calculating the height of the extension. With reference to the 'Interpretation' section in the GPDO it says that 'ground level' for the purposes of taking measurements means the level of the surface of the ground immediately adjacent to the building in question or, where the level of surface of the ground in which it is situated is not uniform, the level of the highest part of the surface of the ground adjacent to it.
19. The above, though, is something of a sideshow given the extension's depth of 5.9 metres, which is the defining factor.
20. The ground (c) appeal must therefore fail.

The appeal on ground (d)

21. An appeal under ground (d) is that the Council was too late in taking formal enforcement action as the development targeted at the time the notice was issued enjoyed immunity from planning control due to the passage of time.
22. The onus of proof rests with the appellant to prove the case for such on the balance of probability. Here, the appellant says that the single-storey, rear, infill extension

was in situ and completed in September 2020. This means that, at the time the enforcement notice was issued in April 2024, it would not have been immune from planning enforcement action.

23. The appellant goes on to say, though, that the platforms and steps '*at the starting and at the end point...existed as a part of the original construction of the building*'. It is not clear what exactly is meant by this, and no compelling evidence or past photographs have been put forward to illustrate and explain this claim, or to show that the attached steps were not rebuilt. Nonetheless, with regard to *Garland*, the claim does not support the appellant's case to the extent that it would safeguard the extension from demolition or modification.
24. The ground (d) appeal, therefore, similarly fails.

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

Main Issues

25. Firstly, given the date the enforcement notice was issued, the appellant is able to afford himself of an appeal under ground (a). That said, two previous applications as an attempt to retain the extension; the first of which relating to that as built, and the second one which showed a modification to the extension's roof, were both refused planning permission in 2022. Neither decisions were appealed to the Secretary of State.
26. With reference to the enforcement notice's stated reasons for service I must agree with the Council that the main issues here are:
- 1) the effect of the development on the living conditions if the occupiers at the neighbouring property, no 5 Oak Road; and
 - 2) the effect on the character and appearance of both the host dwelling and the associated terrace.

Reasons

Living conditions

27. As mentioned, the extension, at a height of 3 metres, runs to a depth of 5.9 metres from the rear wall of the original dwellinghouse. When considering the extension's dimensions, its proximity to the common boundary with no 5, and the relative positioning of two neighbouring windows – one of which apparently lights a habitable room – I must consider that the current physical relationship between the two properties is to the detriment of no 5 which is now subject to an enclosing and oppressive form of development. This runs contrary to the aims and requirements of policy PMD1 of the Thurrock Core Strategy development plan (CS), advice within the Council's Residential Extensions and Alterations Supplementary Planning Document (SPD) and paragraph 135(f) of the National Planning Policy Framework (the Framework).

Character and appearance

28. The Council considers that the materials used in the construction of the extension are makeshift and inappropriate. However, my view is that the extension's appearance, given its size, positioning and contextual setting, show a structure that

is not unreasonably out place, but only insofar as it would not unduly impact on the character and appearance of the host building or the surrounding terrace.

29. The design is not actually ideal but I am satisfied that it is not so poor as to be significantly in conflict with CS policies CSTP22 and PND2, the said SPD and relevant advice within the Framework.

Other considerations

Human Rights and personal circumstances

30. I have found that the extension is unacceptable given its positioning and depth relative to its neighbouring property. Dismissing the appeal would interfere with the appellant's and their family's rights to peaceful enjoyment of their possessions, and to a private and family life and home, under Article 1 of the First Protocol and Article 8 as set out under the Human Rights Act 1998. Nonetheless, interference with these qualified rights in instances such as this would accord with the law and be in pursuance of a well-established and legitimate aim as the enforcement notice's requirements serve a clear planning purpose in attempting to protect the living conditions of no 5's occupiers.
31. In such circumstances it is proportionate and necessary to refuse to grant planning permission. From the evidence before me I would suggest that the extension, as built, constitutes intentional unauthorised development which is also a material consideration to be taken into account. All in all there is no violation of the appellant's human rights. The protection of the public interest cannot be achieved by means that are less interfering with his rights.
32. The appellant indicates that personal circumstances are a consideration to be taken into account in assessing a scheme's planning balance. However, the government's planning practice guidance (PPG) says that, in most cases, personal circumstances are not a material consideration in planning decisions. Perhaps in limited, specific situations, involving unique needs, such as a severe medical condition requiring a purpose-built, adapted dwelling in a particular location close to a support network – and that is not the case here - personal circumstances might be a deciding factor.
33. It is for the decision maker to decide what weight to give to all material considerations and, on this matter, the appellant's representations are somewhat tenuous and unconvincing. As such, I afford them limited weight.

Compliance/modification

34. In terms of any possible physical modifications made as an attempt to lessen the impact of the development I have not been presented with any plans or drawings to this end. Further negotiations between the two main parties are not precluded but, in the absence of a satisfactory resolution otherwise, the enforcement notice's requirements hold good.

Representations from interested parties

35. I have had regard to the document dated 15 September 2024 from Stella Akande, the owner of no 5. She indicates that she does not object to the development, and I acknowledge this. However, that does not mean that, should Ms Akande vacate the property at some future point, any subsequent occupier would feel the same.

Instead, given my findings, I am of the view that, should I allow this appeal and grant planning permission for the extension, new occupiers would be significantly prejudiced by the development's impact.

Conclusion on the DPA

36. For the above reasons, and having had regard to all matters raised, I have found that, the first main issue which is concerned with the effect on no 5, outweighs the character and appearance issue. No other material considerations raised suggest that the impact on no 5 should itself be outweighed. Accordingly, I conclude that the appeal under ground (a) should not succeed and planning permission is refused on the DPA.

The appeal on ground (f)

37. An appeal under ground (f) is the appellant's consideration that the requirements of the enforcement notice go beyond what is reasonably necessary to remedy the harm arising from the identified breach.
38. I have found that the extension in situ is unacceptable with regard to its adverse effect on the neighbouring property. I note the appellant's representations on this ground but, as I have already mentioned, the description given of the platform, steps and their respective levels has not been confirmed with illustrative evidence. I am, though, satisfied in the circumstances that requirements (i), (ii) and (iii), taken together, are of standard general wording when enforcing against such breaches of control.
39. However, as mentioned, I am correcting the notice by deleting requirement (iv) as it goes beyond what is necessary to remedy the breach. The appeal is allowed to this extent.

Timothy C King,

INSPECTOR