The Planning Inspectorate

Appeal Decisions

Site visit made on 26 July 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2022

Appeal A Ref: APP/B5480/C/20/3264950
Appeal B Ref: APP/B5480/C/20/3264951
18 Crowlands Avenue, Romford, RM7 9JB

- Appeals A and B are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Stockley Ayinde (Appeal A) and Mrs Oluwatoyin Monilola Ayinde (Appeal B) against an enforcement notice issued by London Borough of Havering.
- The notice, numbered ENF/365/20, was issued on 27 November 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a first floor rear extension.
- The requirements of the notice are to:
  (i) Demolish the first floor rear extension as shown in the approximate location hatched in black on the attached location plan and reinstate the roof in line with the original roof profile and in materials to match the host property; or
  (ii) Carry out alterations to the first floor rear extension, so that it conforms fully with the proposed plans approved under planning application P1217.18 attached as Appendix 1 to this notice, including drawing numbers G77-1, G77-2, G77-3, G77-4 and G77-5 with respect to the proposed elevations and floor plan; or
  (iii) Carry out alterations to the first floor rear extension so that it conforms fully with existing plans submitted under planning application P1217.18 attached as Appendix 1 to this notice, including drawing numbers G77-1, G77-2, G77-3, G77-4 and G77-5 with respect to the existing elevations and floor plan; and
  (iv) Remove from the site all materials rubbish and debris as a result of taking step (i) or step (ii) or step (iii) above.
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (c), (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.
- Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Appeal C Ref: APP/B5480/W/20/3261914
18 Crowlands Avenue, Romford, RM7 9JB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Stockley Ayinde against the decision of London Borough of Havering.
- The application Ref P1132.20, dated 5 August 2020, was refused by notice dated 14 October 2020.
- The development proposed is retention of changes to the rear elevation.

Decisions

Appeals A and B

1. It is directed that the enforcement notice is varied by replacing 'three' with 'nine' in section 6.

2. Subject to the correction, Appeals A and B are dismissed and the enforcement notice is upheld.

Appeal C

3. The appeal is dismissed.

Appeals A and B - The Enforcement Notice

4. A notice must be drafted fairly to tell a recipient what he has done wrong and what he must do to remedy it[1]. I have noted the concerns expressed by the appellants, but the allegation is factually accurate and sufficiently specific.

5. The appellants are critical of the Council for issuing an enforcement notice in the particular circumstances of the case. However, the question of whether it was expedient to take enforcement action would have been one for the courts; it is not a matter for me in these appeals. Furthermore, an application for costs has not been made and I have no reason to believe that the Council has acted unreasonably.

Appeals A and B on Grounds (b) and (c)

6. The ground (b) appeals are that the breach of control alleged in the enforcement notice, namely the erection of a first floor rear extension, has not occurred as a matter of fact. The ground (c) appeals are that those matters alleged do not constitute a breach of planning control. For both grounds the onus is on the appellants to make their case on 'the balance of probabilities'.

7. The appeals relate to a two storey terrace dwellinghouse. The appellants acknowledge that a pre-existing flat-roofed, first floor rear extension has been replaced to create a roof extension with a gable end. The appeal on ground (b) must therefore fail as it is accepted that the alleged development has occurred.

8. It is not argued that the alleged extension is not development as defined by s55 of the Town and Country Planning Act 1990 as amended (the 1990 Act). Nor is argued that it benefits from permitted development rights. Indeed, an application for express planning permission, described as the 'retention of changes to the rear elevation', was refused on 14 October 2020[2].

9. Planning permission was granted in October 2018, under reference P1217.18, for a first floor rear extension. The approved plans show that previously the dwelling had an asymmetrical pitched roof, with the eaves on the rear elevation extending almost down to first floor level. The pre-existing first floor, flat roof dormer was positioned within that roof pitch, just above eaves level and set in on both sides.

[1] S173 of the 1990 Act
[2] Reference: P1132.20, which is the subject of Appeal C

10. The approved plans show a hipped roof added to the dormer and its width being increased so that its northern side aligned with the main side elevation of the dwelling. Even with those changes, the proposed form remained that of a dormer.

11. In contrast, the first floor extension, as built, has resulted in the loss of the pre-existing eaves with the rear wall aligning with the main back wall of the ground floor. The extension also runs to the full width of the dwelling and presents a gable end to the garden with a higher pitched roof. Its form and appearance is therefore materially different to the pre-existing dormer and the approved alterations to it, rather than a *de minimis* change as argued by the appellants.

12. Due to the alignment of the walls, it is likely that the alleged extension includes little, if any of the pre-existing dormer structure or of its approved altered form. Indeed, the appellant acknowledges that the pre-existing extension has been replaced. The correct approach in the circumstances is to consider the development as a whole, rather than its component parts. On the balance of probabilities, the alleged first floor extension amounts to a single act of development. It follows that the development in its entirety amounts to a breach of planning control.

13. Consequently, I do not agree that issuing an enforcement notice against the erection of a first floor rear extension has no legal validity in this case.

14. The appellants submit that there is a legal difference between alleging a breach of an operational planning development and a breach of the terms (including planning conditions and limitations) attached to any planning permission granted for that development and that the two are mutually exclusive for enforcement purposes. However, the enforcement notice was issued under s171A(1)(a) of the 1990 Act, namely the carrying out of development without the required planning permission, which may also include development carried out not in accordance with a planning permission, where it is materially different. Given the material differences between what was approved and what was erected, reference is to s171A(1)(a) is correct.

15. The appeals on grounds (b) and (c) fail.

Appeal A on Ground (a) and Appeal C

Preliminary Matters

16. The Council has confirmed that since making its decision on the planning application and issuing the enforcement notice, the Core Strategy and Development Control Policies Development Plan Document (adopted 2008) has been replaced by the Havering Local Plan (2016-2031) (HLP). As my decision must be made on the basis of the development plan in place at the time of my decision, the appellants have been offered opportunity to comment on that material change in circumstances.

17. The description of development in the application form for Appeal C is '*retention of changes to the rear elevation'*. However, '*retention'* is not development within the meaning of s55 of the 1990 Act. If my decision was to allow the appeal, I would have adopted the description from the enforcement notice.

Main Issues

18. Appeals A and C relate to the same development. The main reasons for issuing the enforcement notice are largely the same as the reasons for refusing the planning application. My reasoning therefore relates to Appeals A and C, unless otherwise stated.

19. The main issues are the effect of the development on:

- the character and appearance of the site and surrounding area; and
- the living conditions of the occupiers of neighbouring dwellings with particular regard to outlook and light.

Reasons

Character and appearance

20. Crowlands Avenue is largely characterised by groupings of semi-detached and terrace dwellings of two storey scale, laid out in a linear pattern of development with a consistent building line and pitched main roofs running parallel to the road.

21. Due to the tight grain of development, the rear first floor extension is not visible from Crowlands Avenue. However, that, in itself, cannot justify development that is harmful, not least because such arguments could be repeated all too often to the overall detriment of the character of an area. In any case, it is visible from the rear garden of the appeal site and from neighbouring properties, despite the presence of trees on part of each boundary.

22. I accept that neighbouring dwellings have been altered at the rear and include extensions and dormers of varying size and design. Nevertheless, a unifying element is derived from roofs running at right angles to, and sloping up from the rear gardens, with a largely consistent main eaves line. Whereas there was previously a rear eaves line at the appeal dwelling, albeit beyond the main rear building line and at a lower level, that has been lost to a gable elevation running to the full width of the plot. Although the main pitched roof form of the appeal dwelling remains, it cannot be readily seen due to the scale and design of the first floor extension. Indeed, the combined form of the first floor extension with that of the ground floor visually consumes the rear elevation of the dwelling.

23. For the reasons explained under grounds (b) and (c) of Appeals A and B, the differences between the approved first floor extension and that which has been built are not *de minimis* or minor as argued. By being set in on one side and set back from the eaves with a hipped roof, the approved changes to the pre-existing dormer were more in scale with the appeal dwelling and visually less imposing. In contrast the extension as built appears disproportionally large in relation to the modest form of the host dwelling whilst the gable end expressed to the rear garden appears out of character and visually imposing. The use of brick also draws more attention to the extension given its context where render and pebble dash are the predominant finishing materials.

24. Consequently, even if planning permission P1217.18 remains a lawful fallback position, it is clearly preferable in terms of its effect on the character and appearance of the site and surroundings, compared to the existing extension.

25. The appellant also refers to a certificate of lawfulness of proposed use or development (LDC) granted at the appeal site for a loft conversion with rear dormer, Juliette balcony and three roof lights to the front roof pane [sic][3]. The plans for the same show a cascading arrangement with the LDC dormer sitting above and behind the pre-existing dormer. It would be slightly wider than the lower dormer with misaligned fenestration. I have seen no evidence to suggest there has been any material change in circumstances to render unlawful what would have been lawful had it been done at the date of the LDC application.

26. Taken in isolation, that would be more harmful to the appearance of the appeal dwelling than the current extension, but its context is such that it would sit between two similarly positioned dormer extensions and would be less visually imposing. Nevertheless, in overall terms the existing extension would amount to a better form of development and thus is a preferable outcome in that regard.

27. However, if I were to dismiss the appeals, the appellant would achieve a very similar level of accommodation by modifying the existing development to accord with the 2018 planning permission, whereas the fallback position would involve creating additional living accommodation in the roof space. If there is such a need or intention, then it is reasonable to assume that the first floor extension would not have been built in the form it has. That is because the position of the pitched roof would preclude provision of the LDC dormer, or, at the very least, make it much more difficult than it could have been if the provision of additional accommodation was likely to be required.

28. That suggests that there isn't a real prospect of the LDC being implemented, should the appeals fail. Nevertheless, I am mindful that the appellant has recently invested time and money in making an application for an LDC. Accordingly, I attach limited to moderate weight to that fallback. Moreover, the first floor extension represents a benefit in visual terms insofar as it precludes the erection of the second floor dormer.

29. However, bringing the above together, I find that the first floor rear extension results in unacceptable harm to the character and appearance of the area, contrary to HLP Policy 26 and the Residential Extensions and Alterations Supplementary Planning Document (REA SPD), which, amongst other matters, support development proposals that are of a high architectural quality and design.

Living conditions

30. The adjoining property at No 20 Crowlands Avenue forms part of the same terrace as the appeal dwelling. As it has not been extended at first floor level, the outlook from its nearest habitable window will be affected by the first floor extension. Indeed, it is likely to breach the 45-degree rule set out in the Council's REA SPD, which is a commonly used indicator intended to protect the

[3] Ref: D0315.18 – granted 11 October 2018

living conditions of neighbouring occupants on matters relating to outlook and light.

31. However, that would also likely be the case for the approved first floor extension. Although the harm arising would be less from the approved scheme, as it is set in slightly from the boundary with a hipped roof, in overall terms the relative effects on the outlook from that window would not be sufficient to warrant refusal on that issue alone. Nevertheless, it does add weight to the other harms found.

32. An existing ground floor canopy type extension at No 20 will protect the outlook from the ground floor windows from any overbearing effects. Moreover, the existing dormer at No 20 is not unacceptably affected because of its elevated position and because the pitched roof slopes up and away from the nearest window.

33. Due to its siting on the boundary, combined with its height and gable end, the extension will appear visually imposing from the rear garden of No 20. Although, the approved extension would result in some overbearing harm, the degree of harm would be materially less as it would be off-set from the boundary, with a lower overall height and hipped roof form, thereby reducing the overall mass and bulk of the extension when viewed from No 20. As No 20 is situated to the south of No 18, no material overshadowing or loss of light will arise.

34. The dwelling at No 16 Crowlands Avenue is situated to the north and will experience overshadowing and loss of light at the closest rear windows and in the area in and around the rear door of that dwelling. The extension will also appear visually imposing when viewed from those positions. Indeed, despite the small gap between the two properties, the extension will again likely break the Council's 45 degree rule.

35. However, the approved extension would be similarly aligned with the main side wall of the dwelling and although not as high, would result in similar effects on outlook and loss of light. The difference between the two would not be material or unacceptable.

36. I appreciate that the ridge line is lower than that which would arise from the second floor LDC dormer, but that would be set back in the roof plane in a similar arrangement to the flanking properties and therefore would not materially affect outlook from neighbouring residents. Nor would there be a comparable overbearing effect.

37. I appreciate that first floor extensions are common in the London Boroughs. Indeed, the appeal dwelling benefits from such an approval. Nevertheless, that which has been built materially differs from that approval and results in unacceptable harm to the occupiers of No 20.

38. I note the examples cited by the appellant but end of terrace properties are not directly comparable to the appeal property, which due to the proximity of No 16 is more akin to a mid-terrace dwelling. Moreover, the new house at Westerdale Road does not extend across the full width of the plot at the rear and again is not directly comparable. I therefore attach limited weight to the examples submitted.

39. For the reasons explained, the first floor extension results in unacceptable harm to the living conditions of the occupants of No 20 in terms of outlook, contrary to HLP Policies 7 and 26 and the REA SPD, which, amongst other matters, seek to ensure that the amenity and quality of life of existing and future residents is not adversely impacted.

Other Matters

40. I note the concern raised by the neighbouring occupants regarding the description of development for Appeal C. Indeed, if was to allow the appeal I would have modified the description in line with that alleged in the enforcement notice. Nevertheless, I have considered all aspects which are suggested as a more accurate representation. I also note the concerns raised regarding the application form and the information contained in the plans. Nevertheless, I have made my decision based not only on the supporting documents but also my own site visit.

41. The neighbouring residents at No 20 have raised further concern over the resultant inability to discharge water from their roof through the land of No 18. However, that is a matter between the parties. Reference is also made to the installation of an air conditioning unit but that does not form part of the alleged matters of Appeals A (and B), or part of the Appeal C development. Consequently, it is beyond the scope of that before me.

42. Moreover, the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests, such as loss of private rights to light, cannot be a material consideration.

43. I very much sympathise that the appellants' health has been impacted as a result of the enforcement action taken by the Council. However, having regard to my above conclusions, I do not consider the Council's actions, in respect of Appeal A, to be punitive as stated.

44. I appreciate that the appellants trusted their builders to comply with the approved scheme without supervision but I find it unlikely that the differences would not have been obvious, and probably more expensive as a result.

Conclusions on Appeal A on Ground (a)

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

Conclusion on Appeal C

46. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Appeals A and B under Ground (f)

47. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or the injury to amenity caused by the breach.

48. In this case, the alleged breach is the erection of a first floor extension. The requirements of the notice essentially provide three options to the appellants.

The first option, which is consistent with remedying the breach, is to demolish the extension and reinstate the roof in line with what is described as the original roof profile. The second option, which is aimed at remedying injury to amenity, is to carry out alterations to the first floor rear extension, so that it conforms fully with the proposed plans approved under planning application P1217.18. The third, which is to remedy the breach, is to carry out alterations to the first floor rear extension so that it conforms with the existing plans submitted under planning application P1217.18, thereby restoring the dwelling to its pre-existing condition.

49. If the first option was the only option, it would exceed what is necessary to remedy the breach because the appellants would be worse off than the pre-existing arrangement, which included a first floor dormer extension. However, it isn't the only option, and the appellants are also able to choose to carry out alterations in accordance with requirements (ii) or (iii). Although unlikely, the appellants may not want to pursue either of those options so requirement (i) provides an additional choice. As none of the requirement options conflict, no injustice is caused.

50. The enforcement notice is not therefore prejudicial to the appellants as stated. Indeed, the second option allows the appellant to comply with the approved plans of the 2018 planning permission, which is now time expired. Compliance with that option[4] would bring s173(11) into effect and planning permission would be treated as having been granted for the extension.

51. Again, for the reasons explained, the difference between that built and that approved is not *de minimis* and given the harm I have found under ground (a), I am satisfied that the enforcement notice is remedial and not punitive or disproportionate as argued. I also see no reason why any health and safety risks associated with complying with the notice cannot be acceptably managed and mitigated.

52. It is submitted that the appellants face a collapse of family unit if I were not to allow the appeals. Although that isn't explained further, I am very mindful of the likely financial consequences to the appellants. Whilst clearly a matter for the Council as the planning authority, it occurs to me that there may be a further, less costly and disruptive option, that might satisfactorily overcome the harm I have found to the character and appearance of the area and to the living conditions of neighbouring occupants.

53. I am not in a position to specify such an option as an alternative notice requirement, but it might involve altering the gable end to create a hipped roof with an eaves line appropriately placed above the first floor windows. It could further involve setting the southern side of the first floor extension in from the boundary to align with that approved under planning permission P1217.18. Such a course of action would allow the main back wall and the northern side wall to remain in their current location, although the roof pitches are likely to require alteration to create a symmetrical form. However, I would stress again that consideration of such a scheme would be entirely a matter for the Council to consider, in the light of all material considerations, including any further representations from interested parties.

[4] As well as requirement (iv) to remove all residual materials

54. Nevertheless, the ground (f) appeal fails.

Appeals A and B on Ground (g)

55. The ground (g) appeal is that the three months given to comply with the notice is too short. The appellants request a period of 12 months.

56. Although the COVID-19 restrictions referred to are no longer pertinent, I accept that the appellants will likely need to organize finance and to find, tender and appoint a reliable builder to carry out the works. Whilst a period of 12 months is disproportionate, extending the period for compliance to nine months would strike a reasonable and proportionate balance between any difficulties the appellant may encounter and the public interest in this case. Nine months would also provide sufficient time to submit an application for an alternative scheme, should the parties be receptive to that course of action.

57. I note the Council's argument that the appellants could have used the time since the enforcement notice was issued to prepare for compliance. However, the appellants are entitled to assume success on any ground in an appeal under s174 of the 1990 Act. Consequently, any suggestion that the period for compliance should not be extended because of time afforded during the appeal proceedings must be rejected.

58. I shall vary the enforcement notice accordingly prior to upholding it. The appeal on ground (g) succeeds to that extent.

Richard S Jones

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/B5480/C/20/3264950	Mr Stockley Ayinde
Appeal B	APP/B5480/C/20/3264951	Mrs Oluwatoyin Monilola Ayinde
Appeal C	APP/B5480/W/20/3261914	Mr Stockley Ayinde