



Appeal Decisions

Site visit made on 9 August 2022

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29th AUGUST 2022

Appeal A Ref: APP/B5480/C/21/3274041

Land at 103 Suttons Lane, Hornchurch RM12 6RR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Salma Khodabaksh against an enforcement notice issued by the Council of the London Borough of Havering.
 - The notice was issued on 9 April 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of an additional extension to the rear extension.
 - The requirements of the notice are: (i) Demolish the additional extension attached to the extension rear; and (ii) Remove all other debris, rubbish or other materials accumulated as a result of taking steps (i) above.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) 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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Appeal B Ref: APP/B5480/W/21/3274033

Land at 103 Suttons Lane, Hornchurch RM12 6RR

- 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 Ms Salma Khodabaksh against the decision of the Council of the London Borough of Havering.
 - The application Ref P0098.21, dated 19 January 2021, was refused by notice dated 25 March 2021.
 - The development proposed is described as "*retrospective application for the erection of lean-to to rear of the property*".
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Decisions

1. Appeal A-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 construction of an additional extension to the rear extension at 103 Suttons Lane, Hornchurch RM12 6RR as shown on the plan attached to the notice.
2. Appeal B-The appeal is allowed and planning permission is granted for the erection of lean-to to rear of the property at 103 Suttons Lane, Hornchurch RM12 6RR in accordance with the terms of the application, Ref P0098.21, dated 19 January 2021 and the following plans: Plan number 100/001; Pre-Existing Plans; OS Map; Area Plan; Site Location Plan.

Preliminary Matters

3. The revised National Planning Policy Framework (the Framework) came into force during the course of these appeals. The main parties have been given an opportunity to comment on the implications of the Framework and I have taken it into account in my decisions on the ground (a) appeal in Appeal A and in Appeal B.
4. The Havering Local Plan (LP) was adopted during the course of these appeals. Policy DC61 in the former plan referred to in the reasons for issuing the enforcement notice (Appeal A) and the reasons for the refusal of planning permission (Appeal B) has therefore been superseded by LP Policies 7 and 26. After seeking comments from the main parties, I have determined the ground (a) appeal in Appeal A and Appeal B in accordance with the LP.
5. The description of development in the Appeal B banner heading is taken from the application form. As "retrospective application" does not describe an act of development, I have omitted reference thereto from my decision.

Appeal A

Ground (c) appeal

6. The ground of appeal is that the matter alleged in the notice does not constitute a breach of planning control. The appellant has to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
7. The appeal property contains a detached two storey building, currently used as a children's nursery. The building has been enlarged in the past, including by a substantial single storey wrap around side and rear enlargement, a subsequent rear addition and lean-to structures at the side. Also, there is a single storey flat roof outbuilding adjacent to the rear boundary.
8. There is no dispute that the building has at some stage been further enlarged by the erection of an additional extension to the rear elevation of the wrap around side and rear enlargement. Erecting the additional extension has involved building operations amounting to development as defined in s55(1) of the Act. The subsequent undertaking of works to this structure has no bearing on whether its initial erection involved development. The effect of s57(1) of the Act is that development requires planning permission.
9. In October 2019, planning approval was granted at appeal for works described in the Inspector's decision letter as "enclosing the south-eastern porch for safety reasons"¹. It is well-established that a planning permission should stand by itself and the meaning should be clear within the four corners of the document. Relevant case law² confirms that a planning permission is a public document which may be relied on by parties unrelated to those originally involved. When interpreting a permission, the correct approach is to consider what the reasonable reader would understand the words to mean in the context of the overall purpose of the permission and with common sense.
10. Applying the above principles, there is nothing in the decision letter that is suggestive of the approval in question having authorised the additional

¹ Appeal Ref: APP/B5480/W/19/3226546.

² *Trump International Golf Club Scotland Ltd v the Scottish Ministers* [2015] UKSC 74.

extension. The description of the development granted permission refers only to the south-eastern porch, i.e., a structure on the opposite side of the building's rear elevation. There is no reference to the additional extension in the description. The lack of reference thereto indicates that the additional extension does not benefit from the above approval. To construe otherwise would be to incorporate development into the approval by omission. This would introduce uncertainty to an approval that is otherwise clear on its face in terms of what is permitted and would run counter to the approach endorsed by case law. As a result, when read in a reasonable and common sense fashion, the approval does not provide any support for the appellant's argument.

11. The approval references drawings that, amongst other things, depict a structure similar in terms of its size and location to the additional extension. The approved drawings only show the works to the south-eastern porch described in the approval. No works are shown in relation to the additional extension, it is simply depicted as an existing built feature together with the rest of the building as it existed at the time. For the appellant's argument to carry more force, it might perhaps be expected that the additional extension would be shown on the 'proposed' drawings only, or otherwise have been distinguished from the remainder of the 'existing' building in some fashion. However, that is clearly not the case. Just because a structure is shown on an approved drawing does not mean it automatically benefits from that approval. Moreover, on the approved drawings the elevational appearance of the additional extension differs appreciably from that of the structure currently in situ. As a result, the approved drawings cannot reasonably be read as suggesting that the approval is any wider than the description of development.
12. For the above reasons, I am not persuaded that the additional extension benefits from the approval referred to. No other grant of permission in respect of the structure was drawn to my attention. At s171A(1)(a), the Act defines a breach of planning control as carrying out development without the required planning permission.
13. Therefore, the appellant has been unable to show that the structure does not constitute a breach of planning control and the ground (c) appeal fails.

Ground (d) appeal

14. The ground of appeal is that it was too late to take enforcement action against the breach of planning control alleged in the notice. The appellant also has to show why their appeal should succeed on this ground, the same test of the evidence applying as set out above.
15. The time limit for taking enforcement action in respect of building operations is no more than four years beginning with the date on which those operations were substantially completed. Relevant case law³ confirms that in the instance of a single operation, such as the building of a house, the four-year period does not begin until the whole operation is substantially complete.
16. The appellant supplied a Statutory Declaration in which they asserted that the additional extension has been in situ since at least September 2015, with no subsequent changes to its dimensions or roof form having been made. Even if that were the case, the available evidence suggests it is highly likely that prior

³ *Ewen Developments Ltd v SSE & North Norfolk DC* [1980] JPL 404.

to April 2018 the structure was a largely open-sided affair, with corrugated plastic sheets hanging from the rear and on part of one side elevation. At some later stage, probably around May 2020 when the appellant suggested that works to the structure were carried out, external walls of solid timber and rigid polycarbonate sheeting were constructed on both of the side elevations and the rear elevation to fully enclose the additional extension.

17. To my mind, construction of the external walls is likely to have been part of a single, continuous building operation comprising the erection of the additional extension. There is little evidence before me that might indicate otherwise. The external walls are an integral part of the structure. The time between the structure originating and construction of the external walls does not necessarily indicate that more than one operation has taken place. It is not uncommon for works comprised in a single development to be undertaken in stages, for example as further financing becomes available. Consequently, in my view as a matter of fact and degree the additional extension was not substantially complete until the external walls were erected, i.e., less than four years before the date of the notice.
18. Therefore, the appellant has been unable to show that the structure is immune from enforcement action and the ground (d) appeal also fails.

Appeal A, Ground (a) and Appeal B

Main Issue

19. The main issue in these appeals is the effect of the additional extension on the character and appearance of the surrounding area.

Reasons

20. The building external walls are mostly finished in cream painted render, with the roof slopes largely tiled. The property occupies a corner plot adjacent to the junction of residential streets. The plot is bounded at the sides by close board fencing around 1.8 m high. Although residential in origin, successive enlargements of the building, car parking areas at the front and side as well as signage have given the property an appreciably more commercial feel, as distinct from the mainly suburban residential character of its environs.
21. Protruding around 3 m from the rear elevation of the wrap around enlargement, the additional extension is viewed as a further incremental increase in the overall size of the building. Even so, the structure has a relatively small footprint and a low-profile roof, the highest part of which adjoins the fascia of the wrap around extension. As a result, the structure is of quite modest scale when compared to the overall size of the building. The structure is open to views from the street, as well as views from adjoining residential property. However, the positioning slightly away from the rear corner of the wrap around enlargement, set well back from the edge of the street behind close board boundary fencing, offsets the visual impact as well as the apparent scale of the structure. Consequently, the additional extension is largely seen as a modest-sized built feature in the context of the more substantial overall scale of the building.
22. The sense of the structure as a small-scale, further addition is reinforced by the external finishes. The polycarbonate sheeting and stained timber walls contribute to a lightweight, insubstantial feel when compared to the more

robust elevations of the building, whilst the dark coloured roofing felt has a neutral quality. The timber walls are finished a similar colour to the boundary fencing. The wall and roof finishes contrast with the external finishes of the building, but not jarringly so; they sit comfortably alongside those finishes and assist in creating a sense of the additional extension as a secondary or ancillary structure. The overall appearance is not unlike other subsidiary structures erected at the property where complementary materials have also been utilised. It is not dissimilar to a conservatory, garden outbuilding or fencing, i.e., built features commonly found in the wider context. As a result, the additional extension has external finishes clearly differing from but nevertheless complementary to those on the remainder of the building.

23. Successive enlargements of the building have over time reduced the extent of open space at the property. Nevertheless, in the context of the already more commercialised characteristics of the property, the additional extension has not created a markedly greater built-up or cluttered feel in the environs compared to the pre-existing situation. The outdoor play and vehicle parking areas retain significant open space unencumbered by built form following erection of the additional extension.
24. The overall depth of the structure from the rear wall of the original building in combination with the previous enlargements is greater than 4 m, at odds with advice set out in the Council's Residential Extensions and Alterations Supplementary Planning Document (SPD). Additionally, the structure does not reflect SPD advice regarding when complementary materials should be used. Be that as it may, due to the findings set out above in this instance such inconsistencies are not indicators of visual harm.
25. Given the above factors, the additional extension integrates sufficiently well with the building and although visible, it is seen as an unassuming and subservient built feature, thereby not being obtrusive and not causing unacceptable harm to the character and appearance of the area. This is in accordance with criteria in LP Policy 26, as the structure is informed by, respects and complements the distinctive qualities, identity and character of the locality, it respects, reinforces and complements the local street scene, it respects the visual integrity and established scale of the building and is built of materials that integrate well with surrounding buildings. LP Policy 7 largely concerns the living conditions of existing and future residential occupiers, being of little relevance in this matter. Even so, by contributing to a well-designed place the structure is also consistent with chapter 12 of the Framework.

Conditions

26. No conditions are necessary.

Conclusions

27. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the additional extension to the rear extension as described in the notice.
28. For the reasons given above, I conclude that Appeal B should be allowed.

Stephen Hawkins

INSPECTOR