The Planning Inspectorate

# Appeal Decision

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: 08 November 2022**

**Appeal Ref: APP/B5480/C/21/3282848**
**The land known as 29 Percy Road, Romford, RM7 8QX**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr T Din against an enforcement notice issued by London Borough of Havering.
- The notice, numbered ENF/89/20, was issued on 3 September 2021.
- The breach of planning control as alleged in the notice is, without the benefit of planning permission, the construction of a single storey rear extension.
- The requirements of the notice are to:
  1. Demolish the single storey rear extension; and
  2. Remove all building materials and debris from the site as a result of taking step 1 above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

## Decision

1. It is directed that the enforcement notice is varied by:

   - Deleting the word 'and' between paragraph 5.1 and 5.2 and substitute with 'or'.

   - Deleting paragraph 5.2 and substituting with 'Modify the single storey rear extension so that it conforms fully with the proposed plans submitted under prior approval application reference Y0026.19 for a single storey rear extension with an overall depth of 6.0 metres, a maximum height of 3.0 metres, and an eaves height of 3.0 metres, as shown on associated drawing numbers A04 Rev A, A06 Rev A, A07 Rev A and A08 Rev A'.

   - Inserting a new paragraph 5.3 as 'Remove all building materials and debris from the site as a result of taking step 1 or step 2 above'.

2. Subject to the variations, 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

3. The Council has confirmed that since 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the enforcement notice, the Core Strategy and Development Control Policies Development Plan Document (adopted 2008) has been replaced by the Havering Local Plan (2016-2031) (HLP).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. No response was received.

## The Appeal on Ground (a)

### Main Issues

4. The main issues are the effect of the alleged development on the character and appearance of the area and the living conditions of the occupiers of neighbouring dwellings.

### Reasons

5. The appeal relates to a two storey, end of terrace dwelling situated within an established residential area. The plans provided show that the dwelling had previously been extended with a wraparound extension to the side and rear, running to the full width of the plot.

6. On 27 February 2019 the Council decided that prior approval was not required for a single storey rear extension to the dwelling with an overall depth of 6m, a maximum height of 3m and an eaves height of 3m[1]. The plans show that extending from the side boundary with No 31 Percy Road, across the rear of the dwelling, up as far as the original side wall. As part of that scheme, the pre-existing extension beyond the original side and rear wall of the dwelling was to be removed.

7. A subsequent planning application for a part two storey side and rear extension and retention of single storey extension, was dismissed at appeal on 11 November 2020[2]. The latter retrospective aspect is the focus of the enforcement notice.

8. The Inspector for that appeal noted at her site visit that a number of neighbouring properties had been subject to various extensions, most of which were generally at ground floor level, and that the neighbouring property at No 27 Percy Road had a double and single storey rear extension. However, it was apparent to the Inspector, having seen the extension in situ, that its cumulative scale is considerably larger than those associated with the surrounding properties. That is consistent with my own observations.

9. In taking the development already implemented and the additional development proposed, the Inspector considered *"it would result in a disproportionate development which would result in harm to the character of the wider area, particularly when viewed from neighbouring rear gardens and the access track to the rear of the property, which is clearly used by many local residents."* Even without the additional development at first floor level, I find no reason to arrive at differing conclusions in respect of the alleged development.

10. The Council's reason for issuing the enforcement notice also refer to an adverse effect on the amenities of adjacent occupiers. However, as alluded to by the appellant, by determining that prior approval was not required for the 6m deep extension, the Council will have considered the effect of that development on neighbouring occupiers to be acceptable.

[1] Application Ref: Y0026.19
[2] Appeal Ref: APP/B5480/D/20/3251235

11. Given that the additional built development is positioned on the opposite boundary, the effects on the occupiers of No 31 are largely the same as that which would arise from the prior approval scheme and unacceptable harm, in terms of outlook and loss of light is avoided.

12. Although the focus of the additional built element (beyond the prior approval scheme) is closer to No 27, it is separated by an access track. Moreover, No 27 has a two storey extension on its nearest boundary that runs to part of the length of the alleged extension. The outlook from No 27 is not therefore unacceptably affected.

13. I accept the area of extension that is either not part of the prior approval scheme or part of the pre-existing dwelling is relatively small compared to the overall footprint. However, those combined aspects do not represent a lawful fallback position because the prior approval scheme relies on removing part of the pre-existing extension projecting beyond the main side wall of the original dwelling.

14. The part of the extension beyond the prior approval scheme is visually intrusive and has an undue presence when viewed from the adjacent track. The cumulative effect of the additional built form creates an extension which is disproportionally large relative to the scale of the original dwelling and is harmful to the character and appearance of the site and surroundings, contrary to Havering Local Plan 2016-2031 (HLP) Policies 7 and 26. Those polices state, amongst other things, that residential development should be of a high design quality.

15. The harm to the existing dwelling would still occur even if the appellant was able to utilise Class E permitted development rights to build an outbuilding in the rear garden, as is the case in other neighbouring properties. It follows that the removal of those permitted development rights by way of condition would not make the development acceptable in planning terms, even if there is a real prospect of those rights being utilised. Indeed, a smaller extension to the house and a fairly large outbuilding to the rear of the garden would be more in keeping with the existing character of the area.

16. The removal of the area of extension that is not either part of the prior approval scheme or part of the pre-existing dwelling would not be sufficient on its own to mitigate the unacceptable harm I have found, even with additional screening and/or the removal of Class E permitted development rights by way of condition.

17. Restricting the development to that of the prior approval scheme would result in a meaningful reduction in the scale of the extension where it is most visible and has the greatest visual impact. The appearance and relationship of the extension with the appeal dwelling and its surroundings would be materially improved so that unacceptable harm to the character and appearance of the area and conflict with above cited HLP Policies 7 and 26 would not arise. I also note the Council's precedent concerns, but similar development would be subject to the prior approval procedure.

18. Nevertheless, the prior approval scheme cannot properly be considered to be part of the matters alleged; it is just a different scheme. I cannot therefore grant planning permission for it pursuant to the deemed application and, as I

have found the development unacceptable as built, the ground (a) appeal must fail.

**Other Matters**

19. I saw that part of the extension is used as a bedroom and I sympathise that the loss of that space would impact on the accommodation offered to the family. However, it has not been shown that it would not be possible to reconfigure the layout of the house to absorb that loss thereby avoiding unacceptable harm to the character and appearance of the area.

20. The appellant raises issues relating to the competency of arguments presented on his behalf in respect of the previous appeal. However, even on the basis of the evidence now advanced, I have arrived at the same conclusions insofar as they relate the single storey extension.

21. I have noted the appellant's explanation as to why the unauthorised development was carried out, including the length of time taken to determine the previous application and pressure from builders. However, the appellant's decision to proceed was at his own risk.

**The Appeal on Ground (f)**

22. An appeal on ground (f) is that the requirements of the enforcement notice are excessive to remedy the breach of planning control or, as the case may be, the injury to immunity caused by the breach.

23. As acknowledged by the appellant, the extension was not carried out in accordance with the prior approval scheme. Consequently, the extension as a whole is unlawful, not just the parts that exceed that scheme. Nevertheless, the enforcement procedure is intended to be remedial rather than punitive, and it would serve no useful planning purpose to require the demolition of the single storey rear extension if a significant part of it could be rebuilt in accordance with the prior approval scheme. In that regard, Class A of Part 1 of Schedule 2 of the GPDO does not include a requirement that larger rear extensions must be completed in three years as suggested by the appellant and it has not been shown that there are any conditions to that effect. Indeed, the Council decided that prior approval was not required.

24. Given the multi-generational occupation of the dwelling, and that a number of applications have been made to extend it, there is a real prospect of that fallback position being utilised. Therefore, requiring the extension to be modified to accord with the prior approval scheme represents an obvious alternative that could be achieved with less cost and disruption. That extent of that scheme is clearly discernible from the plans submitted with the prior approval application.

25. As I have found through my consideration of ground (a) that there is a solution short of a complete remedy of the breach, which is acceptable in planning terms, I shall vary the requirements of the notice to include the option to modify the single storey rear extension in accordance with the prior approval scheme.

26. The appeal on ground (f) succeeds.

## The Appeal on Ground (g)

27. The ground (g) appeal is that the three months given to comply with the notice is too short. The appellant requests a period of 6 months on the basis that is difficult to procure the services of a builder and because of the nature of the work and structural implications.

28. In response, the Council suggest that the period since the notice was served has provided the appellant ample time to formulate actions in the event of the appeal being dismissed. However, the appellant is 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.

29. Although I note the Council do not envisage difficulties in appointing builders, I consider six months would strike a reasonable and proportionate balance between any difficulties the appellant may encounter in carrying out the requirements of the notice and the public interest in this case.

30. I shall vary the enforcement notice accordingly. The appeal on ground (g) succeeds.

*Richard S Jones*

INSPECTOR