Appeal Decisions

Site visit made on 14 November 2017

by Nigel Burrows  BA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 February 2018

Appeal A: APP/Z5060/W/17/3176862
15 Rosslyn Avenue, Dagenham, RM8 1JR

- 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 Mrs B Sanusi against the decision of the Council of the London Borough of Barking & Dagenham.
- The application Ref 17/00170/FUL, dated 23 January 2017, was refused by notice dated 2 May 2107.
- The development proposed is described as ‘Demolition of existing garage and retention of double storey side/rear extension converted to a ground and first floor flat.’

Summary of Decision: The appeal is dismissed

Appeal B: APP/Z5060/C/17/3170512
Land and premises at 15 Rosslyn Avenue, Dagenham, Essex, RM8 1JR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs B Sanusi against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
- The enforcement notice ref: 16/00387/NOPERM was issued on 1 February 2017.
- The breach of planning control as alleged in the notice is ‘Without planning permission, the unauthorised subdivision of the property into two residential units.’
- The requirements of the notice are:
  - Cease use of the property as two residential units.
  - Return the use of the property to a single-family dwelling house.
  - Remove all fittings and alterations related to unauthorised use as two residential units.
  - Remove all subsequent waste material from the property.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Decision

Procedural Matters

1. At the site inspection it was evident that the design of the extension which had been constructed did not reflect that shown on the drawings lodged with Appeal A. There also appeared to be some ambiguity about which drawings were determined by the Council.

2. In the context of Appeal B, I observed that a ground floor internal link existed between the ‘new dwelling’ and the host property. Furthermore, I saw the ‘new dwelling’ did not appear to have any facilities for the preparation or cooking of food.

3. As indicated in the bullet points above, the enforcement notice is directed at the subdivision of the property into two dwellings. The Council has not provided a statement

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of case in relation to Appeal B. Given what I observed at the site visit, it was unclear whether the breach of planning control had been correctly identified in the notice. In any event, although the notice requires the unauthorised use to cease, it does not require the removal of the extension. On the evidence before me, it was unclear whether this was an oversight or whether it was the Council’s intention to ‘under-enforce’ in this instance.

4. Following the site visit, the Planning Inspectorate wrote to the main parties (on two occasions) in order to seek further clarification of the uncertainties identified above.

5. The Council confirms the planning application was determined on the basis of drawing SDC/ROS/01 Rev A (proposed floor plans/elevations). An informative upon the refusal notice also indicates this was the drawing under consideration. Drawing SDC/ROS/02PL (original floor plans/elevations) also appears to have formed part of the application.

6. Drawing SDC/ROS/01 Rev A shows the provision of a flat-roofed side extension. However, the structure ‘as built’ has a pitched roof; the upper floor is also recessed in a similar manner to the adjacent extension at 17 Rosslyn Avenue. Be that as it may, I intend to consider Appeal A on the basis of the drawings that were subject of the Council’s decision.¹

7. With respect to the link between the ‘new dwelling’ and the host property, the submissions for the appellant state it ‘has been installed at the request of Building Control in order to issue the Completion Certificate.’ The Council indicates this work was carried out after the enforcement notice was issued; the second kitchen was also removed. The Council contends the property had been subdivided into two dwellings at the time the enforcement notice was issued. This does not appear to be in dispute.² I intend to consider Appeal B on this basis.

8. With respect to under-enforcement, the Council indicates there is an extant permission for a two-storey extension to the property which can still be implemented.³ Apparently, the Council will review the position if the works do not accord with the approved plans.

**Background**

9. The appeals relate to a two-storey, end-of-terrace property situated upon the north side of Rosslyn Avenue, within a predominantly residential area of Dagenham.

10. The Planning Officer’s report on the application sets out the planning history of the property. An application was refused in 2014 for works including a single/two-storey side extension, apparently because the first floor element abutted the side boundary with 17 Rosslyn Avenue.⁴ An application was approved in 2015 for what is described as ‘erection of front porch and part single/part two storey side and rear extension’. The Council says the first floor element of this scheme was inset 700mm from the side boundary. I assume this is the extant permission which has been referred to by the Council (see paragraph 8 above).

**Appeal A**

11. Having regard to the Council’s reasons for refusing the application, I consider there are two main issues in this appeal.⁵ The first is the effect of the proposal on the character and appearance of the property and the street scene. The second is whether it provides a satisfactory standard of accommodation, especially in terms of size and amenity space.

**Issue 1: Character and Appearance**

12. The Council indicates the gaps between the properties in the area have been protected with the exception of 17 Rosslyn Avenue. The Council indicates the side extension to

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¹ For the avoidance of doubt, more legible copies of the relevant drawings were forwarded to me after the site visit
² The appellant has not lodged the appeal against the notice on grounds (b) or (c)
³ Ref: 15/00081/FUL
⁴ Ref: 14/01255/FUL
⁵ The Council’s reasons for refusing the application are materially different to the reasons given for issuing the enforcement notice (which cites concerns about loss of family housing, loss of amenity to neighbours and car parking)
this neighbouring property was approved in 2004. It pre-dates the adoption of new design guidance for extensions in 2012 which seeks to protect gaps between houses.6

13. The Council’s stance is that the proposal closes the gap between 15 and 17 Rosslyn Avenue, contrary to the adopted design guidance. However, bearing in mind that fairness is one of the yardsticks against which development proposals can be measured, it is necessary for me to consider the overall context of this particular proposal - which includes the fact that a neighbouring first floor extension directly abuts the side boundary.

14. In this instance I consider that it would be unreasonable to expect the appellant to provide a significant first floor gap wholly within her curtilage. Moreover, it is not obvious to me that the retention of a small gap (such as the 700mm referred to by the Council) would make any material difference to the character and appearance of the street scene.

15. To my mind, a more significant concern is the poor design of the proposed extension. The ground floor of the structure would line up with the adjacent front wall of the building and it would project well beyond the main rear wall. The first floor would be substantially recessed. However, the structure would have a flat roof. The transom level of the first floor windows would roughly correspond to the cill level of the first floor windows upon the host building. The outcome would be an awkwardly proportioned extension that would significantly harm the architectural composition of this property.

16. I conclude the extension would harm the character and appearance of the property to an unacceptable degree and it would detract from the visual qualities of the street scene. In this respect, it conflicts with the relevant development plan policies, including BP8 and BP11 of the Council’s Borough Wide Development Policies DPD (March 2011), insofar as they require all development to have regard to the local character of an area and seek to ensure that the design and layout of proposals provide attractive high quality architecture.

**Issue 2: Standard of Accommodation**

17. The Council’s reasons for refusal allege the proposal does not meet the minimum internal space standards for a new dwelling. According to the Planning Officer’s report, the proposal is deficient in a number of respects when assessed against the space standards for new housing issued by the government in 2015.7 The report identifies, amongst other things, the proposal fails to comply with the minimum gross internal floor area; it is also deficient in terms of built-in storage and bedroom accommodation.

18. A characteristic of the proposal is the narrow, linear layout of accommodation. The ground floor appears to consist of a small lounge plus a long, narrow corridor extending past the staircase to what appears to be a toilet/shower room at the rear. The internal staircase occupies a significant proportion of the ground floor. The upper floor would be arranged as two bedrooms. A troubling aspect of the proposal is that the plans do not appear to show the provision of any facilities for the preparation or cooking of food.

19. The submissions for the appellant appear to focus upon the development ‘as built’. However, that is not the proposal shown on the application drawings. It is suggested that a new dwelling would contribute to the housing needs of the Borough. However, this consideration is clearly outweighed by the deficiencies of the accommodation. In this respect, I conclude the proposal conflicts with the relevant development plan policies cited by the Council, including policy 3.5 of the London Plan (March 2016).

20. The Council also alleges the amenity space provision would be deficient, not least because the area available8 would be shared by the occupiers of the two dwellings. The appellant contends that a substantial area would be available which could be sub-divided if required. I observed that adequate amenity space appears to be available to serve the day-to-day needs of the occupiers of both units; furthermore, it should be possible to sub-divide this

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6 ‘Residential Extensions and Alterations’, adopted 22 February 2012
7 Technical housing standards - nationally described space standard (issued by the DCLG in March 2015)
8 About 97m² according to the Council

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space, thereby ensuring some degree of privacy. Whilst the arrangement might be less than ideal, to my mind this would not constitute a decisive objection to the proposal.

Conclusions

21. The relevant planning policies which seek to protect the character and appearance of the area and the living conditions of residents are broadly consistent with the Government’s objectives for the planning system. Paragraph 14 of the National Planning Policy Framework (March 2012) sets out the presumption in favour of sustainable development. The economic, social and environmental dimensions of sustainable development should be addressed. Paragraph 9 also makes it clear that pursuing sustainable development includes seeking positive improvements in the quality of the environment and improving people’s quality of life. I find the development before me conflicts with these objectives.

22. It is not obvious to me that the objections to this particular proposal could be overcome by any planning conditions. I therefore conclude that Appeal A should be dismissed.

Appeal B

23. The enforcement notice is concerned with the subdivision of the property into two residential units. The appeal against the notice is proceeding only on grounds (f) and (g).

The ground (f) appeal

24. The issue under the ground (f) appeal is whether the steps required by the enforcement notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the development.

25. The manner in which the Council has prepared the enforcement notice against the development, including the formulation of its requirements, indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4)(a) of the Act.

26. The submissions for the appellant do not appear to advance any specific arguments to indicate what lesser steps might be substituted for the requirements of the notice. However, the second requirement of the notice is troubling, namely to ‘Return the use of the property to a single-family dwelling house’. An enforcement notice cannot require a use to be revived or carried on - it is sufficient to require the breach of planning control to cease. Consequently, I intend to vary the notice by deleting the second requirement.

27. The ground (f) appeal succeeds to this limited extent. In other respects, given the purpose of the notice, I conclude that its requirements are not unduly onerous or excessive. It is not obvious to me that there are any lesser steps which might remedy the breach of planning control or which would satisfy the purpose in section 173(4)(a).

The ground (g) appeal

28. The appellant claims the 3-month period given to comply with the requirements of the notice is too short and suggests that a period of at least 6 months should be given. The basis for this claim appears to be that more time is required to find a reputable builder to undertake the works and the occupiers will need to find alternative accommodation.

29. In my view it would be reasonable to increase the compliance period, especially as the current occupiers may need to look for suitable alternative accommodation. I conclude that a period of 6 months would be a reasonable and proportionate response to the breach of planning control. The appeal on ground (g) succeeds to this extent.

Conclusions

30. I have taken into account all the other matters raised in the written representations. However, I find they do not alter or outweigh the main considerations that have led to

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9 Lipson v SSE [1976] 33 P&CR 95

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my decisions. For the reasons given above, Appeal A will be dismissed. However, Appeal B succeeds in part and the enforcement notice will be upheld with variations.

Formal Decisions

Appeal A: APP/Z5060/W/17/3176862

31. The appeal is dismissed.

Appeal B: APP/Z5060/C/17/3170512

32. The enforcement notice is varied by :-

(a) The deletion of the second bullet point of paragraph 5 (WHAT YOU ARE REQUIRED TO DO).

(b) The deletion of ‘3 months’ in paragraph 6 and the substitution of ‘6 months’ as the period for compliance with the notice.

33. Subject to these variations, the enforcement notice is upheld.

Nigel Burrows

INSPECTOR