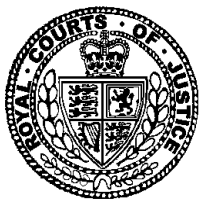

Neutral Citation Number: [2021] EWHC 3028 (Admin)

Case No: CO/1008/2021

**IN THE HIGH COURT OF JUSTICE**
**QUEEN'S BENCH DIVISION**
**PLANNING COURT**

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 15 November 2021

**Before** :

**MRS JUSTICE LANG DBE**

- - - - - - - - - - - - - - - - - - - - -

**Between :**

**OLGUN KULAH** **App**

**- and -**

**(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT**

**(2) LONDON BOROUGH OF WALTHAM FOREST** **Respon**

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**Andrew Fraser-Urquhart QC** (instructed via the Direct Access scheme) for the **Appellant**

**Ryan Kohli** (instructed by the **Government Legal Department**) for the **First Respondent**

The **Second Respondent** did not appear and was not represented

Hearing date: 26 October 2021

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**Approved Judgment**

**Mrs Justice Lang :**

1.
This is an appeal under section 289 of the Town and Country Planning Act 1990 ("TCPA 1990") against the decision of an Inspector, made on behalf of the First Respondent ("the Secretary of State"), on 18 February 2021, dismissing the Appellant's appeal against an enforcement notice issued

by the Second Respondent (“the Council”) in respect of a side extension at his home at 18, Rosslyn Avenue, Chingford, London E4 6DX (“No. 18”).

2.
The Appellant’s Notice was filed and issued for service in time, on 18 March 2021. An unsealed copy was served on the Secretary of State at that stage because it is the Court’s practice, in appeals under section 289 TCPA 1990, not to seal the Appellant’s Notice until permission to appeal has been given. Permission to appeal was granted on the papers by HH Judge Jarman QC, sitting as a Deputy High Court Judge, on 22 April 2021. By an order dated 5 August 2021, Martyn Cowlin, Administrative Court Lawyer, gave directions for service of a sealed copy of the Appellant’s Notice, and it was duly served on the Secretary of State. Therefore, I am satisfied that there was no procedural irregularity in the issue and service of the Appellant’s Notice.

**Planning history**

3.
The planning history is extensive, and a summary will suffice for the purposes of this appeal.

4.
No. 18 was built as a bungalow. It has a projecting bay window at the front, with its own roof. A garage was added in 1948 with the approval of the Council.

5.
A single storey rear extension was approved in 1976.

6.
On 29 December 2014, an application for a Lawful Development Certificate (“LDC”) was approved by the Council in relation to a proposed single storey side and rear extension. Works commenced, and in March 2015 the Council stated that the construction required planning permission as it was not permitted development.

7.
In October 2017, the Council granted planning permission for the retention of the single storey rear extension.

8.
A dormer roof extension was constructed at the rear of No. 18 in 2015 without planning permission. The Council found it was not permitted development. In July 2020, the Council decided not to take enforcement proceedings in respect of the dormer roof extension.

9.
The development which is the subject of this appeal is the single storey side extension erected in 2015, adjacent to the boundary with the bungalow at 16, Rosslyn Avenue.

10.
In 2017 and 2019 applications were made for Certificates of Lawful Use and Development in respect of the side extension. Although neither application was successful (for reasons which are not material for present purposes), in each case the Council accepted that the eaves height of the side extension was less than that of the roof of the existing property.

**Enforcement notice**

11.
On 5 April 2019 the Council issued an Enforcement Notice which alleged a breach of planning control, namely, the erection of a single storey side extension without planning permission. The Notice required removal of the rear section of the single storey side extension, as marked on the plan attached to the Notice.

**Appeal to the Inspector**

12.
The Appellant appealed the Notice on the grounds set out in section 174(a), (c) and (f) of the TCPA 1990.

13.
The appeal was dealt with by way of written representations. The Inspector made an accompanied site visit on 3 December 2020 accompanied by Mr Mike Harry, the Appellant's agent and Ms Ritu Kalia, a representative from the Council's planning enforcement department.

14.
In contrast to the Council's position in the previous LDC applications, one of the arguments advanced by the Council was that the height of the eaves of the appeal extension exceeded the height of the eaves of the existing dwellinghouse, contrary to the limitation at A.1(d) of Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 that was in force at the relevant time ("the September 2015 GPDO").

15.
In preparation for the site visit, the Appellant placed a rod against the outside wall of the existing house, next to the bay window and adjacent to the side extension. Holes were drilled to allow the rod to continue up through the structure of the roof and out through the roof surface. A second rod was placed horizontally across to the roof of the extension. The Appellant contended that the horizontal rod extended above the surface of the appeal roof extension.

16.
During the site visit, the Inspector observed the rods in place and made notes. She did not ask questions and did not ask for other measurements of the eaves to be taken.

17.
By a decision letter ("DL") dated 18 February 2021 the Inspector (D. Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC) dismissed the appeal and upheld the enforcement notice.

18.
On the ground (c) appeal, the Appellant contended that there was no breach of planning control. The Inspector found, on the balance of probabilities, that the height of the eaves of the side extension roof exceeded the eaves height of the existing house. The side extension did not meet the limitation at A. 1(d) of Class A of the September 2015 GPDO (DL 13).

19.
On the ground (a) appeal (the deemed planning application), the Inspector found, at DL 21 – 31, that the side extension significantly harmed the living conditions of the occupiers of the house next door (No. 16 Rosslyn Avenue) because of the loss of daylight and sunlight through their kitchen windows. She rejected the Appellant's contention that he would be entitled to re-build the exact same extension, under his permitted development rights, and therefore that was the fall-back position with which the

current extension should be compared. The Inspector found that the Appellant's proposed fall-back would not comply with permitted development limits. A side extension which did comply with permitted development limits would have a lesser impact on the living conditions of the occupiers of No. 16.

20.
On the ground (f) appeal, the Inspector found that removal of the rear section of the extension, as required by the Enforcement Notice, did not exceed what was necessary to remedy the injury to amenity for the occupiers of No. 16. The Appellant did not put forward any alternative proposal, merely relying on his claimed permitted development rights to re-construct the exact same extension.

**The Inspector's witness statement**

21.
The Inspector made a witness statement in response to the Appellant's appeal to the High Court, on 19 April 2021. It stated:

"3. On 3 December 2020 I carried out a site visit to the appeal property at 18 Rosslyn Avenue, Chingford, London E4 6DX, in order to view and assess the side extension built by the Appellant.

4. While on site, I took a photograph of the front of the property from the public highway immediately outside, showing both the original dwellinghouse and the side extension. That photograph is appended marked "DB1".

5. I was not asked by either the Appellant or the Council's representative to take measurements in respect of either the eaves height of the existing house or the eaves height of the side extension during my visit to the property.

6. It is not standard practice for Inspectors of the Planning Inspectorate to take or refer to measurements unless these are agreed by both parties. I was not provided with agreed measurements in respect of the height of the eaves cited above on the occasion of my site visit.

7. I therefore relied on my visual assessment of the property to determine that the eaves height of the side extension was higher than the eaves height of the existing dwellinghouse.

8. The Appellant has exhibited photographs to the witness statement of Mr Mike Harry, his Exhibit 9. These photographs were taken after my site visit and were not before me at the time I determined the appeal.

9. It is my view that the photographs in Exhibit 9 are misleading. In particular, the position of the white strip on the roof slope in photograph A does not take into account the diminishing nature of the way that the roof tiles are laid. In my opinion, the horizontal black line shown by the Appellant would be significantly lower, as the lower tile visible on that roof slope or an even lower tile would represent the correct point at which to measure the eaves."

**The Position Statement**

22.
When HH Judge Jarman QC, sitting as a Deputy High Court Judge, granted permission, he also ordered the parties to file a joint Position Statement containing agreed measurements of the eaves of the existing dwellinghouse and of the side extension. The parties arranged a site visit, at which measurements were taken, and a joint Position Statement, accompanied by a plan and photographs,

was filed on 30 July 2021. In a preliminary ruling, I rejected Mr Kohli's submission that the Position Statement was inappropriate because the Court was only concerned with material which was before the Inspector. The Position Statement was useful to the parties as it enabled them to identify which factual matters were agreed, and which were in dispute, and thereby narrow the issues. I had well in mind that the Inspector did not have the benefit of the measurements which were in the Position Statement.

23.
The key points in the Position Statement were as follows:

i)
The parties were in agreement that the height of the eaves of the side extension was 3055 mm on the left end nearest the house, and 3045 mm on the right end.

ii)
The parties did not agree the point at which the eaves of the existing dwellinghouse should be measured for the purposes of the September 2015 GPDO. Various measurements were taken.

iii)
Measurement B was 2900 mm. It was the height from the ground to the top of the roof tile directly above, at the point where the wall of the existing house meets the wall of the side extension. It was agreed by all parties that this point represents the former outer corner of the front and side wall of the existing house, before the extension was built.

iv)
All parties agreed that, at the site visit and in her decision, the Inspector determined the height of the eaves of the existing dwellinghouse by reference to measurement B. The Secretary of State and the Council were in agreement that measurement B on the plan was the correct point at which to measure the height of the eaves. However, the Appellant disagreed.

v)
Measurement C was 3060 mm. It was the height from the ground level (at the base of the front elevation of the outside wall) to the point where the outside wall would meet the upper surface of the roof slope but at a point 18 cm to the left of the point used for measurement B.

vi)
Measurement D was the point at which the Appellant inserted rods into the roof at the time of the Inspector's site visit. He contended that this was the correct point at which to measure the height of the eaves. It was higher up the roof slope than measurement C. It was agreed between the parties that this measurement exceeded the height of the eaves of the side extension, and therefore there was no need to measure it.

**Legal framework**

**Planning permission**

24.
Section 57(1) TCPA 1990 provides that planning permission is required for development of land. By section 55(1) TCPA 1990, "development" means the carrying out of building, engineering, mining or other operations in, on, over or under land or the making of any material change in the use of land.

25.

Section 58(1) TCPA 1990 provides for two routes by which planning permission may be obtained: first, by development order; and second, by a grant of planning permission from the local planning authority.

**The September 2015 GPDO**

26.
Section 59 TCPA 1990 provides for the making of development orders by the Secretary of State. The development order which governs this case is the September 2015 GPDO. Article 3(1) of the September 2015 GPDO grants planning permission for the classes of permitted development as described in Schedule 2 to the September 2015 GPDO.

27.
Class A of Part 1 of the September 2015 GPDO provides:

“The enlargement, improvement or other alteration of a dwellinghouse”

28.
Paragraph A.1 to Schedule 2 to Part 1 of the September 2015 GPDO imposes certain conditions and limitations on the statutory grant of planning permission. It provides:

“Development is not permitted by Class A if –

…

(d) the height of the eaves of the part of the dwellinghouse enlarged, improved or altered would exceed the height of the eaves of the existing dwellinghouse.”

29.
The Ministry of Housing, Communities and Local Government’s publication ‘Permitted Development Rights for Householders’ Technical Guidance’ (September 2019) (“the Technical Guidance”) provides guidance on the measurement of eaves height. It provides:

“For the purpose of measuring height, the eaves of a house are the point where the lowest point of a roof slope, or a flat roof, meets the outside wall.

The height of the eaves will be measured from the ground level at the base of the external wall of the extension to the point where the external wall would meet (if projected upwards) the upper surface of the roof slope. Parapet walls and overhanging parts of eaves should not be included in any calculation of eaves height.”

30.
This guidance is illustrated with a diagram, and the following accompanying text:

“Eaves height is measured from ground level at the base of the outside wall to the point where the wall would meet the upper surface of the roof slope ….”

31.
The Technical Guidance then states:

“Where the existing house has eaves of different heights, then the restriction on the height of the eaves for the part of the house enlarged, improved or altered is measured against the highest level of eaves on the existing house …”

32.
In Waltham Forest Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 2816 (Admin), Vincent Fraser QC (sitting as a Deputy High Court Judge) considered the definition of the term “eaves” in a different context to this at [15], in the context of a dispute about:

“The term "eaves" is usually taken to mean the overhanging or projecting part of the roof which projects beyond the wall below. Various dictionary definitions of the term are provided in the materials before me and I am satisfied that they support this understanding of the word. The Oxford English Dictionary for example refers to "the projecting edge of a roof etc. which overhangs the side - anything that projects or overhangs slightly" whilst Oxford Dictionary of Architecture refers to the "lowest part of a pitched roof projecting beyond the ... wall below". In a similar vein the Chambers Technical Dictionary defines the term as "the lower part of a roof which projects beyond the face of the wall." I have not been referred to any legal authority which has had directly to consider the definition of the term but it is clear from cases where the term has been used by the courts that it has been used in this manner (examples include Truckell v Stock [1957] 1 WLR 161 and Williams v Usherwood (1983) 45 P&CR 234). The defendant accepted before me that this was the common and normal meaning of the term.”

**Enforcement notices and appeals to the Secretary of State**

33.
By section 171A(1) TCPA 1990, carrying out development without planning permission constitutes a breach of planning control. Section 172(1) TCPA 1990 empowers a local planning authority to issue an enforcement notice where it appears to them that there has been a breach of planning control, and that it is expedient to issue the notice.

34.
Section 174(1) TCPA 1990 permits a person having an interest in land to appeal to the Secretary of State against the notice. An appeal may be brought on the grounds set out in section 174(2) TCPA 1990. This provides, so far as is material:

“An appeal may be brought on any of the following grounds—

(a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;

….

(c) that those matters (if they occurred) do not constitute a breach of planning control;

…

(f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach;

…”

**Appeals to the High Court**

35.

Section 289 TCPA 1990 provides for a right of appeal to the High Court against a decision of an Inspector on a point of law.

36.
The general principles of judicial review are applicable to a challenge under section 289 TCPA 1990. Thus, the Appellant must establish that the Secretary of State misdirected himself in law or acted irrationally or failed to have regard to relevant considerations or that there was some procedural impropriety.

37.
The exercise of planning judgment and the weighing of the various issues are matters for the Inspector and not for the Court: Seddon Properties Ltd v Secretary of State for the Environment (1981) 42 P & CR 26; Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759, per Lord Keith at 764G-H; per Lord Hoffman at 780 F-H.

38.
An appeal under section 289 should not be used as an opportunity for a review of the planning merits (see per Sullivan J. in Newsmith v Secretary of State for the Environment, Transport and the Regions [2001] EWHC Admin 74, at [6] – [8]).

39.
A decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well-informed reader who understands the principal controversial issues in the case: see Lord Bridge in South Lakeland v Secretary of State for the Environment [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in Clarke Homes v Secretary of State for the Environment (1993) 66 P & CR 263, at 271; Seddon Properties Ltd v Secretary of State for the Environment (1981) 42 P & CR 26, at 28; and South Somerset District Council v Secretary of State for the Environment (1993) 66 P & CR 83.

**Ground of challenge**

40.
At the hearing of the appeal, the Appellant relied upon Ground 1 (as amended) and Ground 4. He no longer pursued Grounds 2 and 3.

**Ground 1**

**Submissions**

41.
On the ground (c) appeal, the Appellant submitted that the Inspector erred in law in failing to have regard to the fact that No. 18 had eaves of different heights. He submitted that the pitched roof over the bay window ran at a steeper plane than the plane of the pitched roof on the rest of the building, which meant that the height at which the outer wall met the roof slope was higher than in other locations on the house.

42.
Therefore, the Inspector ought to have considered and applied the passage in the Technical Guidance which provided:

“Where the existing house has eaves of different heights, then the restriction on the height of the eaves for the part of the house enlarged, improved or altered is measured against the highest level of eaves on the existing house …”

43.
In failing to consider and apply this passage in the Technical Guidance, the Inspector failed to have regard to a significant material factor, which would have led to a decision in the Appellant’s favour in the appeal.

44.
In response, the Secretary of State submitted that the Inspector correctly directed herself in accordance with the terms of the September 2015 GPDO and the Technical Guidance. As was apparent from the photographic evidence, the existing house did not have eaves of different heights. The submission now made by Mr Fraser-Urquhart QC was never put to the Inspector in the appeal before her, and therefore she cannot be criticised for not addressing it.

**Conclusions**

45.
I accept the Secretary of State’s submissions. The Inspector correctly referred to paragraph A.1(d) of Class A of the September 2015 GPDO, and the Technical Guidance (DL 9 and 10). She explained why she considered that the Council’s assessment of the relative height of the eaves at the time of the LDC applications in 2017 and 2019 was incorrect (DL 11). She then set out her own assessment at DL 12 and 13:

“12. At the site visit the appellant’s agent highlighted that a black rod had been inserted through the hipped roof of the bay window to indicate the eaves height of the existing house. Nevertheless, based on my observations that rod did not indicate the point of where the lowest point of a roof slope meets the outside wall considering the hipped nature of that roof. The agent also highlighted that the flat roof level of the side extension was indicated by the line of the junction between the white and grey parts of its front parapet. The Council’s representative did not dispute that assertion and I have no reason to disagree. I consider the lowest point of the roof slope of the existing house is where it would meet, if projected upwards, the corner of the front and side walls that adjoin the side extension. I observed that the height of the eaves level of the existing house, taking into account my findings on the lowest point of the roof slope, appears to be below that of the eaves level of the side extension.

13. Consequently, based on the above and my observations at the site visit, it appears, on the balance of probability, that the height of the eaves of the flat roof of the side extension exceeds the eaves height of the existing house. The side extension does not therefore meet the limitation at A.1(d) of Class A of the September 2015 GPDO.”

46.
I consider that the Inspector’s exercise of judgment on this issue is unassailable. Applying the wording of paragraph A.1(d) of Class A, and the Technical Guidance, she correctly assessed the height of the eaves, by reference to the lowest point of the roof slope of the existing house, where it met the corner of the front and side walls adjoining the extension.

47.
One can see from the measurements in the joint Position Statement that the height of the eaves of the existing house (measurement B) was significantly lower than the height of the eaves of the side

extension (measurement G). Therefore, it is unsurprising that the Inspector was able to make a reliable visual comparison between the two; it was not necessary for her to measure it.

48.
At the Inspector's site visit, the Appellant erroneously positioned the rod part way up the roof (measurement D), which was above the eaves and above the lowest point of the roof slope where it met the outside wall. The Inspector was entitled to reject the Appellant's positioning, as it was contrary to paragraph A.1(d) of Class A and the Technical Guidance.

49.
The Appellant and his planning consultant did not, at any stage, submit to the Inspector or the Council that the existing house had eaves of different heights. There was agreement among all parties that the assessment of height should be conducted at the bay window roof, presumably because the dormer roof and the rear extension made it difficult to undertake it at any other point. The photographs of the existing house before the dormer extension show that the eaves were at a uniform height throughout. The photograph taken by the Inspector at her site visit also shows the eaves at a uniform height (save for the dormer roof which was to be disregarded for this purpose). Therefore there was no reason for the Inspector to consider the passage in the Technical Guidance which refers to houses with eaves of different heights, nor to address this issue in her decision letter.

50.
The Judge in the Waltham Forest case helpfully drew together various definitions of the term "eaves", confirmed in the authorities cited. The common and normal meaning of the term "eaves" is the lowest part of a roof which projects beyond the wall below, which is reflected in the Technical Guidance. In the light of the meaning of the term "eaves", I am unable to find any sound basis for Mr Fraser-Urquhart QC's submission that, because the pitched roof above the bay window has a steeper plane than that of the pitched roof on the main building, it necessarily follows that the existing building has eaves of different heights, when measured from the ground.

51.
For these reasons, Ground 1 does not succeed.

**Ground 4**

**Submissions**

52.
On the ground (a) appeal, the Appellant submitted that the Inspector failed to consider the appropriate fall-back position, namely, a side extension which complied with permitted development limitations, and erroneously identified the fall-back position as being a reconstruction of the existing side extension.

53.
Mr Fraser-Urquhart QC referred me to the case of Coln Park LLP v Secretary of State for Communities and Local Government & Anor [2011] EWHC 2282 (Admin) in which Collins J. summarised the fall-back argument at [31]:

"31. It is common ground that the correct test to be applied in considering a fall-back argument is whether there is a reasonable possibility that if planning permission were to be refused, use of land, or a development which has been permitted, would take place, and such use or development would be less desirable than that for which planning permission is sought. …"

54.
In R(Mansell) v Tonbridge & Malling BC [2017] EWCA Civ 1314, Lindblom LJ considered the status of a fall-back development as a material consideration at [27], confirming that the decision-maker must determine as a matter of judgment whether there was a "real prospect" that it would be reverted to.

55.
The Secretary of State submitted that the fall-back position which the Appellant contended for in his appeal submissions was the demolition of the unauthorised side extension and the re-erection of "the exact same extension", in reliance upon his permitted development rights (pages 4-5 of the Appellant's Appeal Representations to the Inspector). The Inspector correctly gave that fall-back position little weight.

56.
The Secretary of State further submitted that the fall-back position of a smaller GPDO-compliant side extension was considered by the Inspector, despite the fact that it was not put forward by the Appellant. The Inspector concluded that the existing side extension caused additional significant harm to the living conditions of the occupiers of No. 16 than a GPDO-compliant extension would do, and so gave it little weight. That was a conclusion she was entitled to reach in the exercise of her planning judgment.

**Conclusions**

57.
I accept the Secretary of State's submissions. The Appellant, who had the benefit of advice from a planning consultant, clearly stated in his Appellant's Appeal Representations to the Inspector (at pages 4-5) that to comply with the enforcement notice he would "demolish the unauthorised extension" and then "re-erect the exact same extension … in reliance upon its restored development rights". The Council responded in its Final Comments, explaining the flaw in the Appellant's reasoning on the fall-back position, in particular, that it did not consider that the existing side extension complied with the limitations in the September 2015 GPDO (pages 5-7). However, the Appellant persisted in the same approach in his Final Comments, stating the existing side extension complied with the September 2015 GPDO and that "the extension would be re-built in its exact current form if it was demolished as a result of the EN" (page 10). He adopted the same approach in the Ground (f) appeal – see DL 36.

58.
The Inspector correctly summarised the Appellant's written representations at DL 25. At DL 26, she found it was highly likely that the Appellant would wish to retain or replace the side extension because it contained the kitchen.

59.
Then at DL 27 she explained that the existing side extension was not permitted development within the September 2015 GPDO, because of her earlier finding that it did not comply with the eaves height requirements in paragraph A.1(d) of Class A.

60.
The Inspector went on to find, at DL 27 – 28, that part of the roof of the side extension joined the pre-2014 rear extension, and so the width of the total enlargement (the enlarged part together with any existing enlargement of the original dwellinghouse to which it will be joined) would exceed the aggregation limits in paragraph A.1(ja) and sub-paragraph A.1(j)(iii). These limits were added by an

amendment to the GPDO in 2017, and so would be applicable to any new build, though they were not in force when the existing side extension was constructed.

61.
In my view, the Inspector was entitled to conclude, at DL 29, as a matter of fact and law, that there was no realistic prospect that the Appellant could re-erect “the exact same extension”, as it would not benefit from permitted development rights, and she was entitled to give it little weight as a fall-back position.

62.
In the appeal before the Inspector, the Appellant did not put forward any proposals for a smaller side extension which did comply with the limitations of the September 2015 GPDO. Nevertheless, the Inspector did consider a GPDO-complaint extension as a potential fall-back in the course of her decision.

63.
The Inspector identified as the main issue “the effect of the side extension upon the living conditions of the occupiers of No. 16 having regard to daylight and sunlight” (DL 20).

64.
The Inspector acknowledged, at DL 22, the other factors which would have influenced daylight and sunlight levels, and then went on to consider the impact of the side extension upon No. 16. She said, at DL 23 - 24:

“23. Nevertheless, as the side extension is positioned largely to the west of and in close proximity, to the kitchen windows, it is likely that there has been a further loss of direct sunlight at certain times of the day received in the kitchen. The side extension is appreciably taller than the existing boundary treatment and a boundary treatment that could be erected without planning permission under permitted development rights.

24. As the amount of sunlight and daylight received in the kitchen was already restricted it is more likely than not that further reductions in the amount of sunlight and daylight cause significant harm and detracts from the living conditions of its occupiers. Those reductions in sunlight and daylight are likely to have made the kitchen a dark space that it is difficult to work in without an electric light on and the outlook when in that room is highly likely to be experienced as oppressive. No technical evidence has been submitted, but my assessment of the appeal site and the side extension as built lead me to conclude that it is likely that the development materially reduces the sunlight and daylight received by the kitchen windows of No. 16”

65.
The Inspector then considered the impact of a smaller GPDO-compliant side extension at DL 29 and concluded:

“…even if a similar side extension could be built as permitted development it is likely to have a lesser impact on the living conditions of the occupiers of No. 16 ….”

66.
The reference in DL 23 to the boundary treatment was a response to the submissions of the parties regarding the boundary fence. The Council said (at page 7 of its Final Comments):

“6.11 Finally the appellant suggests that a 2m fence would be PD and implies that this would restrict views. However, the extension as built is almost 3m high. There is, in terms of effect on light into the Rule 6 party’s kitchen, a world of difference between a 2m fence and a 3m wall. The difference can be seen in the photos at Appendices 25 and 26 … of the Council’s appeal appendices….”

67.
In my judgment, the Inspector was entitled to reach these conclusions in the exercise of her planning judgment. Although they were briefly stated, they were sufficient to meet the standard required (South Buckinghamshire District Council v Porter (No 2) [2004] 1 WLR 1953, per Lord Brown, at [36]), particularly since this was not a point which was relied upon by the Appellant before her.

68.
For these reasons, Ground 4 does not succeed.

**Final conclusion**

69.
The appeal is dismissed, for the reasons given above.