
Appeal Decision

Site visit made on 11 October 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 7 November 2016

Appeal Ref: APP/A5270/C/16/3153200

32 and 34 Thames Avenue, Perrivale, Middlesex UB6 8JL

- 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 Mr Sebastian Zalecki against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 16 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a first floor rear extension to the rear of the properties at 32 and 34 Thames Avenue.
 - The requirements of the notice are A. Remove the first floor rear extensions from 32 and 34 Thames Avenue in their entirety; and B. Remove all resultant debris.
 - 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.
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Decision

1. 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 erection of a first floor rear extension to the rear of the properties at Nos 32 and 34 Thames Avenue, Perrivale, Middlesex UB6 8JL, referred to in the notice.

Preamble

2. The Council granted planning permission in August 2011 for a first floor rear extension that spanned Nos 32 and 34 Thames Avenue. The approved drawings show that each rear bedroom was to be enlarged over the full depth of existing ground floor extensions to each property and that the flat roof of the extension was to be cut into the main roof of each property above the eaves line. In addition, the external treatment was to include brick panelling bordering the new windows.
 3. A condition imposed on the grant of planning permission stipulated that work on the extension should begin before August 2014. The appellant submits that by starting work on building the extension before that date it was lawfully implemented. The Council accept that works began on an extension in June 2012 but as that extension differs significantly from that which was approved the planning permission was not lawfully implemented and the whole of the extension is unauthorised. The appellant disagrees but has not submitted an appeal on ground (c).
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4. The appellant though, does argue that the extension as built varies only in small ways from the approved plans and that this is a valid consideration for the ground (a) appeal. I consider the previous grant of planning permission is a material consideration for the ground (a) appeal and the deemed planning application. This is because the Council were satisfied in 2011 that the effect of the extension on the living conditions of neighbours and the character and appearance of the area was acceptable. Although the policy background has changed since 2011 the basic requirements of the policies have been carried forward into the more recently adopted policies. As such, I have had regard to it in determining the appeal.
5. The Council also submit that the appellant sought intentionally to conceal his development by not building it in accordance with the approved plans. However, the advice from Government¹ sets out that intentional unauthorised development is that which has been undertaken in advance of obtaining planning permission. In order to succeed in this respect the Council would need to demonstrate that the appellant had acted in such a way as to positively deceive it. Based on the evidence I consider he did not as, for example, he obtained building control approval for the development.

The ground (a) appeal and the deemed planning application

Main Issues

6. The main issues are the effect of the development on i) the character and appearance of the host properties and the surrounding area; and ii) the living conditions of neighbouring occupiers, having regard to light and outlook.

Reasons

Character and appearance

7. The appeal site lies within an established residential area. Thames Avenue is largely composed of evenly spaced, short terraces of four houses with front and rear gardens. Detached garages and other outbuildings have been built in some of the rear gardens and these are accessed from a communal rear service lane that runs the length of the avenue. This lane is also used by the residents of Medway Drive, which is parallel to Thames Avenue, and has a similar layout of houses and outbuildings. The rear of all these properties is visible from Woodhouse Avenue, a spine road running through the estate which is on slightly higher ground. The open expanse of the long line of rear gardens, together with the pleasing design and regular layout of the houses, contributes towards the agreeable appearance of the area.
8. The appeal concerns two adjoining properties with No 32 being in the middle of a short terrace and No 34 being at the end of the terrace. Each of these properties has a full width, rear extension. They also each have a rear dormer with the former hip roof at No 34 being changed to a gable end roof. Each property also has an outbuilding adjacent to the rear boundary. The appellant has erected a first floor, rear extension to each property along the line of their shared party wall to provide enlarged rear bedrooms and an additional toilet at No 34. The addition extends to just over half the width of both properties. It has been erected in one operation and appears as one structure.

¹ Department of Communities and Local Government letter to Chief Planning Officers dated 31 August 2015

9. The Council and the appellant are at variance as to the actual size of the extension compared to the approved plans. It seems to me though that there are three principle differences between what is built and the approved drawings. These are the width of the extension at No 34, which is greater to include the toilet, the addition of a toilet window and the absence of the brick panels, as the whole of the extension has been rendered. With regard to the alleged increase in the depth of the extension, as the approved plans show it would be built across the full depth of the single storey additions I consider there is either no increase in depth, as it has been built as shown, or the plans are incorrectly drawn.
10. With regard to the width of the extension at No 34, I consider its size has not caused material harm to the visual relationship and appearance of Nos 34 and 36. This is because a proportion of the rear main wall of No 34 is still visible as this is the location of a new, smaller, family bathroom window. There is also still a discernable distance between the flank wall of the extension and the flank wall of the main house and No 36.
11. With regard to No 32 and No 30, nothing has changed from the approved plans. The extension is positioned along the same line as shown on the plans and cuts into the main roof above the eaves. There is a noticeable gap, advised as 1.9m by the appellant, between the flank wall of the extension and the boundary with No 30, thus the integrity of each dwelling is preserved. The size and shape of the family bathroom window within the main rear wall of No 32 has not changed and is similar in size and shape to the adjacent window at No 30.
12. The Council are concerned that the extension, as built, is not symmetrical due to the additional toilet, with window, at No 34. However, this would only be visible to immediate neighbours and overall I consider the loss of symmetry, whilst harmful, is only marginal. There are also concerns that the development fails to complement the original terrace house but I consider as the extension spans both properties, which each have a dormer, single storey extension and outbuilding, that a balance has been achieved. Furthermore, the omission of brick panels is not significant. This is because the ground floor extension at No 32 has a rendered finish and the rear walls of both houses at first floor level have been rendered. In long distance views from Woodhouse Avenue neither the size nor the symmetry of the extension are obvious as the appeal site is positioned about half way along the road. The Council are also of the view that the extension is a discordant feature, out of place with the prevailing pattern of development in the area. Whilst not common in the area, I saw that first floor rear extensions are not unknown and can easily be seen from the public realm in the vicinity of the appeal site.
13. For these reasons I conclude that the character and appearance of the host properties and the surrounding area is preserved by the development. Therefore the development accords with Policies 7.4 and 7.6 of The London Plan² and Policies 7.4 and 7B of Ealing's Development Plan Development Plan Document (DPD) adopted 10 December 2013. These policies, which are all concerned with different aspects of design, require, amongst other matters, that new development should complement an area's scale and detailing.

² The London Plan, Spatial Development Strategy for Greater London March 2015

Living conditions

14. The neighbouring properties to the appeal site are either directly aligned with it, as No 30 is part of the same terrace, or broadly in line as at No 36, the end property of the next terrace. Neighbouring properties also have single storey rear extensions that are similar in depth to those at the appeal site. Consequently the nearest windows that would enable a view of the development are at first floor level. At both neighbouring properties these are obscure glazed, bathroom windows but these are not habitable rooms. The nearest habitable rooms are adjacent to these and thus further away from the extension. The bedroom window at No 36 is more distant from the appeal site than that at No 30 due to the gap between the flank walls of No 34 and No 36, which allows pedestrian access alongside each property.
15. The occupier of No 36 states that the extension reduces the light to and the outlook from her property. I saw that No 34 lies to the south of No 36 which means that there is the potential to affect the amount of sunlight enjoyed by the occupiers of the property. This however is minimal given the distance between the extension and the bedroom window, the open aspect to the rear and the lack of any trees nearby, which would create shade.
16. With regard to the effect of the development on levels of daylight, the appellant submits a letter from a daylighting consultant. This explains the principles behind assessing the effect of development on daylight levels but does not provide a formal assessment. The author's professional view is that any loss of daylight would be negligible. This is because the analysis of daylight is carried out at the midpoint of a window pane and would take account of the full 180 degrees arc of light that would be available to that window.
17. I consider the majority of light entering the bedroom window at No 36 comes from the garden to that property and the outlook from the room is across a fairly open aspect. Given the distance between the extension and the bedroom window the change in light levels, whilst viewed as harmful by the neighbour, is not significant. Furthermore, given the depth of the extension I find that the open aspect enjoyed by the occupiers of No 36 is largely still preserved.
18. I turn now to consider the effect of the extension on the occupiers of No 30. This property is positioned to the south of the appeal site. Although it adjoins the appeal site the distance between the bedroom window and the extension is still significant and has not changed from 2011. The Council's Supplementary Planning Document³ advises that two storey rear extensions should be set back from boundaries shared with neighbouring properties to minimise any potential impact. I find that this advice is also applicable to the development at the appeal site and that the appellant has had regard to it. Any loss of light or outlook therefore is minimal due to the distance between the properties and the open aspect over the gardens.
19. For these reasons I conclude that the development does not have a harmful effect on the living conditions of neighbouring occupiers, having regard to light and outlook. The development therefore accords with Policy 7B of the DPD which requires new development to have good levels of light and a positive visual impact.

³ SPD 4 Residential Extensions

Conditions

20. No conditions have been suggested by the Council in the event of planning permission being granted and since the development was substantially complete when the notice was issued, none are necessary.

21. The appeal on ground (a) succeeds.

Conclusion

22. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

D Fleming

INSPECTOR