
Appeal Decision

Site visit made on 13 December 2016

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 30 December 2016

Appeal Ref: APP/T5150/C/16/3149438

110 Dollis Hill Avenue, London NW2 6RA

- 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 Zeinab Hosseini Milani against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/14/0126, was issued on 22 March 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a basement, side, rear and roof extensions at the basement, ground, first and second floor levels of the premises.
 - The requirements of the notice are: STEP 1: demolish the basement, side, rear and roof extensions, fill in the void underneath the house and restore the property back to its original condition before the unauthorised development took place and; STEP2: Remove all items, debris and materials from the premises that has arisen during compliance with STEP 1.
 - The period for compliance with the requirements is six months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (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 basement, side, rear and roof extensions at 110 Dollis Hill Avenue, London NW2 6RA referred to in the notice.

Procedural Matters

2. The enforcement notice was issued on 01 May 2016. Subsequently, a planning application was submitted to the Council which sought planning permission for the retention of the development that has been carried out, subject to a number of variations. The Council granted planning permission in relation to that application on 07 October 2016¹. Under the provisions of section 180(1) of the Town and Country Planning Act 1990 where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as is inconsistent with that permission.
3. In other words, the notice only continues to have effect in relation to any parts of the development that are inconsistent with the planning that has been

¹ LPA reference 16/3484

granted. I have been provided with the delegated officer report in relation to the recently approved scheme, along with copies of the plans and the decision notice. The officer report succinctly identifies the differences between the approved scheme and the development, as built. To summarise:

- i) The basement has been approved as constructed, subject to a condition to prevent use as a separate unit of accommodation and to restrict the use of the basement to purposes that are incidental to the enjoyment of the dwellinghouse;
 - ii) The two storey side to rear extension has been approved, subject to an alteration in the roof form that would see a curved roof juncture, at the point where the extension connects to the original dwelling, replaced with a more conventional valley gutter;
 - iii) The single storey flat roofed rear extension has been approved as built;
 - iv) The dormer window has been approved as built;
 - v) The raised timber decking has been approved in its current form but with amendments that would require the erection of a balustrade/ fencing which is aimed at limiting use to the central portion of the decking, away from the boundary of the property at each side.
 - vi) The approved plans also show that the steps from the decking into the garden would be centrally placed, as opposed to the current position adjacent to the boundary with No. 112 Dollis Hill Avenue;
 - vii) The current panelled fence that encloses each side of the balcony is shown to be replaced by a lower 1.2m high timber panel; and
 - viii) Two projecting steel beams would be removed from the single storey extension at the rear.
4. Thus, the only substantive difference between the scheme as built and as approved relate to the roof structure and the rear balcony, steps and fencing. Aside from those matters, planning permission has been granted and the notice ceases to have effect insofar as it is inconsistent with the planning permission that has been granted. Given the clear implications of the Council's decision to grant planning permission I have taken the matter into account when reaching my decision.
5. An appeal on ground (b) is made on the basis that the matters alleged in the notice have not occurred as a matter of fact. There is no dispute that the extensions to the property have been erected and, therefore, the matters alleged have clearly occurred. Having read the grounds of appeal, and the Council's response, it is clear to me that the appellant is seeking to argue that, at the time the extension was constructed, planning permission had been granted for certain elements of the proposal, such that there had not been a breach of planning control. Those comments are made in relation to the fact that the Council granted planning permission for extensions to the property on 16 December 2011 under planning application reference 11/2749. Arguments as to whether there has been a breach of planning control are more appropriately dealt with under ground (c) and that is how I have considered the appeal in this instance.

The Appeal on Ground (c)

6. I have been provided with a copy of the decision in relation to application 11/2749, along with the approved plans. It is clear that what was erected did not comply with those plans. A basement has been added when none was shown on the approved plans, the roof form is different, the depth of the two storey and single storey rear extensions is greater, the proportions of the dormer window are greater, and the raised platform to the rear has been built across the full width of the property, whereas it was contained centrally within the site under the originally approved scheme.
7. Having regard to the differences noted above it is clear to me that what has been erected does not comply with the terms of the planning permission granted under reference 11/2749. Almost each element of the scheme is materially different when compared with what was approved and, when viewed in the round, I conclude that what was built comprised a fundamentally different scheme than that which was approved. Therefore, I conclude that the development did not benefit from planning permission granted under reference 11/2749. No planning permission existed for the development as built which therefore represented a breach of planning control. Consequently, the appeal on ground (c) must fail.

The Appeal on Ground (a)

8. An appeal on ground (a) is made on the basis that planning permission should be granted for what is alleged in the notice. In this case, permission is sought for the erection of basement, side, rear and roof extensions, as described in the banner heading above. The fact that the Council has granted planning permission for a slightly revised scheme does not alter the scope of the ground (a) appeal which, in effect, seeks planning permission for the retention of the development as built. However, for the reasons explained above, the fact that planning permission has been granted for certain elements of the proposal represents a material consideration in the determination of the appeal.
9. Having regard to the information before me, I consider that the main issues in the determination of the ground (a) appeal are the effect of the development on the character and appearance of the host property and the surrounding area and the effect on the living conditions of neighbouring residents.

Character and Appearance

10. As noted above, after the service of the enforcement notice, the Council granted planning permission for the retention of the extensions at the site, subject to alterations to the roof and rear balcony. The officer report in relation to that decision notes that the basement extension is not visible from the public realm and is not considered to harm the character and appearance of the dwelling or the street scene. The Council has also accepted that the two storey side and rear extension, the dormer window and the single storey rear extension do not cause any material harm to the character of the house or the surrounding area. I see no reason to depart from that view. When viewed from the street, the side extension is subservient to the original dwelling in terms of its scale, being set back behind the original front elevation, with a ridgeline that is below that of the original dwelling. The rear extensions are not visible from public vantage points such that the impact upon the wider area is negligible. Moreover, matching materials are used throughout the extension.

11. The varied roofline, use of hipped gables and staggered building lines ensure that the extension does not dominate the original property. The somewhat unusual curved roof profile at the intersection of the extension and the main roof is not prominent in the public realm and does not significantly alter the outward appearance of the extension when viewed from the rear of the site due to the steep angle of view up to the roof as a result of the change in land levels. Accordingly, although unusual, I find that the design of that aspect of the roof does not cause any harm to the character and appearance of the dwelling of the area.
12. The Council's concerns with regard to the raised decking/ timber platform appear to relate to the effect upon the living conditions of neighbouring residents as opposed to its visual appearance. That element is at the rear of the site, not visible from the street and, in terms of its depth is not unduly large, being approximately one metre deep. I am satisfied that its impact, in design terms, is acceptable
13. Therefore, in terms of its proportions and outward appearance, I am satisfied that the extension, as built, conforms to good design principles, as set out within the Council's Supplementary Planning Guidance Note 5 'Extending and Altering Your Home' (2002). It also represents good design, as required by section 7 of the National Planning Policy Framework (the Framework) and conforms to the aims of policies BE2 and BE9 of the Brent Unitary Development Plan (2004) (the UDP).

Effect on Living Conditions

14. The enforcement notice refers to the effect of the development on the living conditions of neighbouring residents by virtue of loss of light and privacy. In terms of loss of light the Council's appeal statement does not elaborate on which element of the development is alleged to cause harm, nor does it specify which property is considered to be affected. In granting planning permission for application 16/3484 the delegated officer report concludes that the development, as proposed in the plans submitted in relation to that application, would not cause harm to the occupiers of Nos. 108 or 112 by way of outlook, daylight or privacy.
15. The scheme approved by the Council is largely the same as the 'as built' scheme in terms of the physical size and scale of extensions and the relationship with neighbouring dwellings. Therefore, it is unclear, from the information before me, which element of the as built scheme is considered to cause harm by way of loss of light. The only difference in that respect appears to be the fencing at each side of the timber decking; the recently approved scheme shows the current fence panels to be replaced by lower panels of a height of 1.2m. However, having viewed the current fence panels I am satisfied that they do not cause any undue loss of light and their impact is no greater than could reasonably be expected in relation to a boundary treatment in an urban environment. Moreover, having regard to the scale of the extension and orientation in relation to neighbouring dwellings I am satisfied that the development has not caused harm to living conditions as a result of loss of light.
16. As noted above, the depth of the balcony is limited and it seems to me that the platform is designed more as a means of accessing the staircase which leads to the garden below than a space where residents are likely to sit or dwell for

prolonged periods. It would be difficult to accommodate an outdoor dining table for example due to the restricted depth of the platform. Having stood on the balcony I was able to obtain views into neighbouring gardens but those views were restricted by the fence panels at each end and established vegetation. The extent to which I could see into adjacent gardens was limited and no more than could reasonably be expected in an urban environment where a degree of overlooking between gardens is not unusual. Consequently, I am satisfied that the use of the raised decking/ balcony has not resulted in any significant harm to the living conditions of neighbouring properties.

17. Accordingly, the development complies with a core principle of the Framework, set out at paragraph 17, which is that planning should seek to secure a good standard of amenity for all existing and future occupiers of land and buildings and with the aims of policy BE9(e) of the UDP.
18. Given that I have not identified any harm in relation to the development I am satisfied that no conditions are necessary to make the development acceptable in planning terms. I note that the Council attached a condition to planning permission reference 16/3484 which seeks to prevent the basement from being used as a separate self-contained unit of accommodation. There is no reason to suppose that the extension is intended to be used in any way other than as part of the single dwellinghouse at the site. It is a relatively small space and currently houses the boiler in relation to the dwelling. In any event, the creation of a new unit of self-contained accommodation would be development that would require planning permission and a condition is therefore unnecessary.
19. For the reasons set out above I conclude that the appeal on ground (a) should succeed and that planning permission should be granted for the development, as constructed, which is acceptable in planning terms. I shall therefore grant planning permission and quash the notice.

The Appeals on Grounds (f) and (g)

20. Given that the notice will be quashed as a result of my decision to grant planning permission under ground (a) it is unnecessary for me to consider the appeals under grounds (f) and (g).

Chris Preston

INSPECTOR