
Appeal Decision

Site visit made on 7 February 2017

by Stephen Hawkins MA MRTPI

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

Decision date: 21 February 2017

Appeal Ref: APP/T5150/D/16/3165913
44 Wentworth Hill, Brent, Wembley HA9 9SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Muntathar Kubah against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/3418, dated 2 August 2016, was approved on 6 October 2016 and planning permission was granted subject to conditions.
 - The development permitted is a two storey side and rear extension.
 - The condition in dispute is No 5 which states that: *"No further extensions shall be constructed within the curtilage of the dwellinghouse subject of this application, notwithstanding the provisions of Class B of Part 1 Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015, (or any order revoking and re-enacting that Order with or without modification) unless a formal planning application is first submitted to and approved by the Local Planning Authority"*.
 - The reason given for the condition is *"to prevent an overdevelopment of the site"*.
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Decision

1. The appeal is allowed and the planning permission Ref 16/3418 for a two storey side and rear extension at 44 Wentworth Hill, Brent, Wembley HA9 9SG granted on 6 October 2016 by the Council of the London Borough of Brent, is varied by deleting condition No 5.

Background and Main Issue

2. The Council's delegated report recommended a condition removing permitted development rights in respect of additions to the roof of the dwelling under Class B of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, the reference in the condition as it appears on the decision to 'no further extensions' also has the effect of restricting permitted development rights to enlarge the dwelling under Part 1, Class A.
3. Taking the above background into account the main issue in the appeal is whether condition No 5 is necessary and reasonable, having regard to the character and appearance of the area.

Reasons

4. The appeal property is a semi-detached dwelling on a suburban street mainly comprising similar properties in terms of their age, appearance and spacing. Some properties have been extended in a similar manner to the extensions granted planning permission.
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5. Once built, the size of the permitted extensions would be required to be taken into account in the assessment of whether any future extension to the dwelling or addition to its roof would fall within the size limitations under Classes A and B. Consequently, any future enlargement of the dwelling otherwise permitted under Classes A and B would be quite small in scale. Other limitations in Classes A and B would have the effect that in order to be permitted development, any future enlargement could not be located at the front of the dwelling. Also, any enlargement would have to use similar external materials to those of the dwelling. As a result, any future enlargements to the dwelling under the above Classes would not appear as incongruous additions, they would not make the dwelling appear overly large in comparison with nearby dwellings and would not erode the spacious qualities of the street.
6. It therefore follows that the permitted extensions together with future enlargements under Classes A and B would not harm the character and appearance of the area and would accord with Policy BE2 of the adopted Brent Unitary Development Plan (UDP). There would not be an excessive infilling of space between buildings, thus according with UDP Policy BE7. The design, scale massing and height of the extensions and future enlargements would be appropriate to their location, thereby according with UDP Policy BE9. The distinctive suburban character of Brent would be protected in accordance with Policy CP17 of the adopted Brent Core Strategy. I have not seen anything to suggest that future enlargements under Classes A and B would be inconsistent with advice set out in the Council's adopted Supplementary Planning Guidance No 5 'Altering and Extending Your Home.'
7. The Planning Practice Guidance on the use of planning conditions advises that conditions restricting permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances¹. I have not found that there are any exceptional circumstances in this case that would make condition No 5 necessary in the interests of the character and appearance of the area. The requirement to submit a planning application for development which would otherwise be permitted by the GPDO would therefore place an unjustifiable and disproportionate burden on the appellant. Consequently, condition No 5 is neither necessary or reasonable.

Conclusion

8. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition.

Stephen Hawkins

INSPECTOR

¹ Paragraph: 017 Reference ID: 21a-017-20140306.