

Appeal Decision

Site visit made on 12 April 2017

by G Powys Jones MSc FRTPI

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

Decision date: 05 May 2017

Appeal Ref: APP/M5450/D/17/3169324

106 Fernbrook Drive, Harrow, Middlesex, HA2 7ED

- 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 Mr Joseph Anderson against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/4370/16, dated 1 September 2016, was refused by notice dated 2 December 2016.
 - The development proposed is a single storey side to rear extension; raised decking with balustrade and steps; outbuilding at rear (demolition of garage, side extension and shed).
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Decision

1. The appeal is dismissed.

Preliminary matter

2. Since it is more accurate and precise than that used in the application form, I have used the Council's version of the description of the proposed development.

Main issues

3. The main issues are the effect of the proposed development on (a) the character and appearance of the host property and its surroundings, and (b) on the living conditions of the residents of the neighbouring property at 104 Fernbrook Road with particular reference to privacy.

Reasons

Character & appearance

4. The appeal property is set within a street comprised of bungalows, many of which have been modified. The Council is content with the size and scale of the proposed side and rear extension, and with the proposed outbuilding. I have no reason to disagree with these assessments.
 5. However, officers consider the proposed secondary door on the front elevation:

'to be an inappropriate feature which is out of character with the surrounding area and therefore is considered to be unacceptable. The creation of an additional front door results in a cluttered appearance when viewed at the front elevation, resulting in a contrived appearance which is considered to be detrimental to the host dwellinghouse and the streetscene.'
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6. The door in question, designed for pedestrian use, would, in effect, replace a painted, metallic garage door of a rather utilitarian appearance. A small window would be set alongside the new door. To my mind, the design change represents a visual improvement on what already exists, and the effects attributed to this feature by the Council seem exaggerated.
7. I conclude that the proposal would sit acceptably in its visual context, without harming local character or the character and appearance of the host property. Accordingly, there is no conflict with those provisions of policy 7.6B of the London Plan (TLP) and policy DM1 of the Harrow Development Management Local Plan Policies (LP), which, in combination, require new development to be of a high standard of design, respectful of local architecture and character.

Living conditions

8. The Council has made me aware of its enforcement action in respect of unauthorised development next door at 104 Fernbrook Drive, including a raised deck. The appellant proposes a similar raised decking. The Council considers that its future use would result in overlooking and subsequent loss of privacy to the residents of No 104. I agree that, without appropriate mitigation, overlooking and loss of privacy would occur to an unacceptable level.
9. The appellant raises several points in support of the proposal, and also claims that the decking does not require planning permission. However, a section 78 appeal is not the appropriate vehicle to pursue such a claim given the ready availability of other administrative avenues.
10. The most persuasive point made by the appellant relates to the potential for screening, a factor that the Council did not appear to take into account in its determination. The appellant considers such a requirement could be imposed by condition.
11. I thought it prudent to obtain the Council's view on the possible imposition of a condition. The Council said in response:

The Council considers that given any proposed screening would need to be at least 2m in height above the proposed decking to prevent any direct or perceived overlooking. Taking into account the height of the proposed decking being some 1m the overall height of any structure along this boundary would be approx. 3m above the natural ground level. It is the local planning authority's opinion that the neighbouring properties should be consulted on such, to give them opportunity to make any representation should they wish. As such, it is considered that this matter cannot be dealt with by condition.

Furthermore, the extension and decking at 104 Fernbrook Drive is the subject of an Enforcement Notice (copy attached) which requires the unauthorised extension and decking to be removed. In which case, any 3m high screening along the common boundary could give rise to potential harm on the amenities of this neighbouring occupier.

12. In my view, the erection of a screen of an appropriate height alongside the raised decking would effectively eliminate any unacceptable overlooking and consequent loss of privacy.
13. However, given the proposed height of the decking and that it would extend onto the common boundary, I share the Council's view that in order to prove effective the top of any screen would need to be set approximately 3m above

ground level. This is significantly above the height allowed as permitted development.

14. Such a screen was not part of the original proposals, and the neighbours at 104 Fernbrook Drive have not therefore been made aware of the possibility of a 3m high screen being erected along their side boundary. I find that the imposition of a condition to give effect to such a screen would be inappropriate and contrary to the rules of natural justice without prior consultation, which has not taken place. It is quite possible that the appellant's neighbours would not raise an objection to the erection of such a screen, but it would be wrong for me to presume this.
15. In the circumstances, I conclude that the use of the proposed decking would give rise to an unacceptable level of overlooking and loss of privacy for the residents of 104 Fernbrook Drive. A conflict therefore arises with those provisions of TLP policy 7.6B and LP policy DM1 designed to protect neighbouring residential amenity.

Other matters

16. I have noted that the residents of 104 Fernbrook Drive did not object to the proposal at application stage. However, this is not decisive in my considerations given the level of unacceptable overlooking entailed.
17. I have also noted the applicant's personal circumstances, but these do not outweigh the considerations that led me to my overall conclusions. I find little merit in the appellant's '*fall-back*' argument since it relies on the possible actions of others.
18. I have taken account of all other matters raised in the representations, but none is of such strength or significance as to outweigh the considerations that led me to my overall conclusions.

Overall conclusions

19. I find for the appellant in respect of the first main issue, that of the effect of the development on the character and appearance of the host property and its surroundings. However, I find against him on the other main issue, the effect on neighbouring living conditions. This is sufficient reason to dismiss the appeal.

G Powys Jones

INSPECTOR