
Appeal Decisions

Site visit made on 11 April 2017

by Simon N Hand MA

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

Decision date: 8 June 2017

Appeal A: APP/T5150/X/17/3167445 **137 Chatsworth Road, London, NW2 5QT**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Saloria Investments Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/4261 dated 29 September 2016, was refused by notice dated 21 November 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is insertion of new window and Juliet balcony that are of similar appearance and material to those used in the construction of the house.
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Appeal B: APP/T5150/W/17/3167910 **137 Chatsworth Road, London, NW2 5QT**

- 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 Saloria Investments Ltd against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/3550, dated 11 August 2016, was refused by notice dated 21 November 2016.
 - The development proposed is erection of part single storey, part two storey rear extension, two storey side extension, loft conversion, roof lights and demolition of the garage.
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Application for costs

1. Applications for costs were made by the appellant against the Council for both appeals. These applications are the subject of a separate Decision.

Decisions

Appeal A – 3167445

2. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Appeal B – 3167910

3. The appeal is dismissed.

Appeal A – 3167445

4. The LDC applied for is a Juliet balcony on the front elevation. The existing standard bedroom window would be removed and the wall below cut away to enable French windows to be inserted fronted by a Juliet balcony. The Council refused the application because the balcony would project beyond the elevation of the front façade and there is no evidence the materials would match.
5. The General Permitted Development (England) Order 2015 at Part 1, Class A allows for the “*enlargement, improvement or other alteration of a dwellinghouse*”. Development is not permitted if it fails various criteria at A.1. One criterion A.1(e) is that “*the enlarged part of the dwellinghouse would extend beyond a wall which— (i) forms the principal elevation of the original dwellinghouse*”. In my view the proposal would not lead to an “*enlargement*” of the dwellinghouse as the dwelling would be no larger than before. It would therefore be an “*improvement or other alteration*” and so is not subject to the restriction of A.1(e).
6. A.1(k) prevents the installation of a balcony, but the PPG suggests this does not include a Juliet balcony. This is not reflected in the actual wording of the GPDO which clearly refers to balconies without any provisos. However, neither party has raised this issue and I shall say no more.
7. A.3 of the same class, applies conditions to any work, one of which at A.3(a) says “*the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse*”. The appellant says the materials will match those used on the existing dwelling. However, he also says the balcony will be constructed of aluminium painted to match the materials on the facade and glass. As I saw on my site visit the front façade was built of brick and render with a tiled roof. The windows appeared to be uPVC frames and glass. It seems therefore the materials will be “similar in appearance” to those used and so the proposal would be permitted development. I shall issue a lawful development certificate to that effect.

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Preliminary Matters

Plans

8. There has been some confusion between the appellant and the Council regarding which plans to consider. The original plans showing the elevations and layouts were replaced by a second set numbered 160301-01-P1 and 160301-02-P1. These showed a large flat roof dormer and the use of sun tunnels to provide light to some of the interior spaces. After discussion with the case officer revised plans were submitted redesigning the dormer and removing the sun tunnels, followed by another set of plans with very minor changes to the ridge which had been left off the previous set by mistake. The relevant final plans are numbered 160301-01-P2 and 160301-02-P3.
9. Hearing the case officer had been replaced by a new member of staff the agent e-mailed the new case officer with the “latest” set of plans, presumably to avoid confusion. Unfortunately he actually appended 160301-01-P1 and 160301-02-P1 which showed the flat roof dormer and sun tunnels, to which the

Council had already objected. The poorly designed dormer is included in one of the reasons for refusal.

10. It seems clear to me the substitute plans were provided by mistake, the latest plans had been seen by the previous case officer and do not change the design significantly so as to prejudice any third parties who may have wished to comment on it. I shall deal with the appeal on the basis of the latest plans 160301-01-P2 and 160301-02-P3.

Certificates

11. The proposed side extension extends across the boundary of the neighbour at No 135. Originally a certificate B was appended, as the wall was on the neighbour's land. The Council queried this as they thought No 135 was also owned by the appellant and therefore the site plan was wrong. It appears that the appellant, Saloria Investments owns No 137, the appeal property, but No 135 is owned by Mr and Mrs Vekaria, who are shareholders in Saloria Investments. Thus the owners of No 135, have an interest in No 137, but not the other way around. The certificate B was therefore accurate. However, for reasons that are not explained, the case officer insisted on a certificate A and the agent withdrew the certificate B and replaced it with a certificate A.
12. The Council now argue the application was invalid as it was accompanied by the wrong certificate. However, they have determined it and the neighbours at No 135 are clearly well aware of the proposal and have not objected to it, because, I am informed, they are planning a similar extension themselves and hope to use the new wall as a party wall, rather than building two separate, but touching extensions. I do not think the mix-up with the certificates invalidates the appeal.

Flats

13. Finally this appeal deals with the extension of the dwelling. A number of local residents have written to express concerns that it will be turned into flats. However, there is no proposal for flats before me and such a proposal would require a separate planning permission. I shall deal with the proposed extension on its merits.

Policies and Issues

14. The Council's policies are contained in the Brent Local Plan 2016, but at the time the Council took its decision the 2004 UDP was still in force. The policies it relied on are similar, except for BE7(a) of the UDP which specifically restricted the "*excessive infilling of space between buildings...*" However, I consider this is adequately expressed by DMP1 of the up to date plan which explains that development will be acceptable if it is "*(a) of a scale.... detailing and design that complements the locality*".
15. The main issue is therefore whether the proposal would be disproportionately large and appear incongruous in the streetscene.

Reasons

16. The proposal is a two storey enlargement of the dwelling. This would wrap around the side and rear and include a dormer window on the rear elevation. The redesigned dormer answers the Council's comments and brings the rear

elevation more closely in line with the attached neighbour at No 139 which has already been extended. The removal of the sun tunnels also helps the design fit in with the street scene.

17. The Council are also concerned about the loss of the side door, or tradesman's entrance, which would be a loss of character, and the removal of some of the chimneys. I do not consider the side door to be an important part of the character of the dwelling. I note that at other dwellings the side door is hidden by gates or planting and they play little or no part in the character of the area. Similarly I noted that a number of other dwellings had either different chimney patterns or had chimneys removed without any harm to the character of the area. The main central chimney stack would remain and this is sufficient so that the proposal would not stand out due to the loss of chimney stacks.
18. The main concern therefore is with the width of the proposal. Chatsworth Road contains mostly large semi-detached houses, of which No 137 is one. No 139 is its neighbour and they are separated by a pair of drives with garages set back to the rear of the houses. There have been a number of enlargements down the street, some more successful than others, but all seem to have left at least one drive width between the pairs of semis. The openings between the houses are an important part of the streetscene. They not only space out the built form but allow for views through the buildings. The houses behind are some distance away, separated by a railway line which is not visible from the road, with well treed gardens in between, giving a sense of spaciousness to the houses and adding to the general feeling of openness along the road. The loss of these spaces would be harmful to the streetscene and the creation of terracing that would occasion such a loss would be equally harmful and appear to be overdevelopment.
19. No 135 had planning permission for a similar extension to No 137, extending up to its boundary. This permission has lapsed, but the owners have applied to renew it. It would seem it is in anticipation of success of that renewal application that the current appeal shows the proposed side wall to be beyond the boundary of No 137 so that it can be used as a shared wall when No 135 is extended. There is a clear relationship between the two owners as explained above, hence the lack of objection from No 135. If both extensions were to be built then a massive terrace would be created, blocking views through the buildings and significantly harming the streetscene.
20. Notwithstanding the commercial relationship between the owners of 137 and 135 if the owner of No 135 knows they cannot extend they may be less keen on allowing No 137 to straddle their boundary. I do not know what has happened about the renewal of the planning permission for no 135, but while it remains a possibility that it could be built it would be irresponsible to allow another large extension for No 137. However, if I assume there will be no extension to No 135, then that proposed at No 137 would still be disproportionately large. Although it overhangs the boundary by only the width of a wall this would be clearly noticeable in the context of the separate drives, whilst the narrowing of the gap to less than a single drive width would harmfully erode the space between the houses and would be in danger of creating a canyon effect as I saw further along the road.
21. I note the Council's design guide SPG5 "Altering and Extending Your Home", considers that first floor side extensions should be set back by 2.5m from the

ground floor which this proposal does, but that advice does not take account of specific instances where the gaps between the houses are important.

22. In my view therefore, the proposal is contrary to policy DMP1 and to the advice in the NPPF concerning good design. I shall refuse appeal B.

Simon Hand

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 29 September 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: they would be permitted development in accord with Class A of the General Permitted Development (England) Order 2015.

Signed

Simon Hand

Inspector

Date: 8 June 2017

Reference: APP/T5150/X/17/3167445

First Schedule

Insertion of new window and Juliet balcony that are of similar appearance and material to those used in the construction of the house

Second Schedule

Land at 137 Chatsworth Road, London, NW2 5QT

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.