The Planning Inspectorate

Appeal Decision

Site visit made on 13 August 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2019

Appeal Ref: APP/T5150/C/18/3216943
25 Hazelmere Road, London NW6 7HA

- 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 & Mrs L Jackson against an enforcement notice issued by Council of the London Borough of Brent.
- The enforcement notice was issued on 14 September 2018.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a dormer window and an outrigger roof extension over the rear projection and the demolition of the rear part of the outrigger roof extension to form a roof terrace.
- The requirements of the notice are STEP 1 Demolish the dormer window, demolish the outrigger roof extension over the rear projection and reconstruct the rear part of the outrigger roof extension ensuring that the roof terrace is removed in its entirety. Ensure that the roof of the house and the outrigger extension is restored back to its original condition before the unauthorised development took place. Remove all associated debris and materials arising from that demolition from the premises. OR STEP 2 Alter the unauthorised development so that it complies with the approved plans in the Certificate of Lawfulness application reference 15/0382.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Preliminary Matter

1. The enforcement notice includes within the alleged breach of planning control reference to the formation of a roof terrace. The Council acknowledge that this feature has subsequently been granted retrospective planning permission following a successful appeal regarding the same development[1]. Section 180 of the Act states that 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 inconsistent with that permission. Consequently the notice ceases to have effect with regard to the roof terrace because it benefits from planning permission, subject to any conditions imposed, and is therefore lawful for planning purposes. I therefore take no further action with regard to the merits of this element of the alleged breach and accordingly shall delete from the notice references to it in the allegation and the requirements.

[1] Ref APP/T5150/D/18/3207431 (appeal decision dated 31 October 2018)

Main Issues

2. The appeal on ground (a) is that planning permission should be granted. The main issues are the effect of the development on i) the living conditions of the occupiers of the neighbouring property at No 23 Hazelmere Road with particular regard to outlook and ii) the character and appearance of the host dwelling and wider area.

Reasons

Living Conditions

3. The Council raises the concern that the design, height and bulk of the development results in an unacceptable sense of enclosure and reduction of outlook in relation to the adjoining terraced property at No 23 Hazelmere Road. At ground floor level No 23 and the appeal property have both been extended to the same level of projection. At upper floor level, No 23 also has a dormer roof extension and extension over the rear outrigger. However these extensions appear to differ from the appeal site in that they are set back marginally from eaves level and because the outrigger extension is not as deep or as tall.

4. No 23 has a rear facing window in the main elevation of the dwelling at first floor level. Its recessed position means that the outlook from this window is most impacted by the outrigger extension to No 25. However from the information before me and my visit it is apparent that outlook from this first-floor window would be relatively limited, in any event, due to the neighbour's own extension over the No 23 outrigger, and because of the outrigger roof of the appeal site. I do not therefore find harm to outlook from the window in question.

5. The rear facing windows in the dormer and outrigger extension of No 23 would be even less effected, as they are, respectively, not as recessed and at a higher level compared with the aforementioned first floor window. A side facing window in the neighbour's outrigger extension is obscure glazed. The extensions do not therefore result in an adverse effect on this window in terms of outlook.

6. The Council says that the appellant has failed to construct the roof extension in accordance with permitted development rights granted by The Town and Country Planning (General Permitted Development) (England) Order 2015, in relation to which a Certificate of Lawfulness was previously granted by the Council. The cause of the discrepancy was essentially a failure to set the roof dormer extension back by a margin of some 20 centimetres from the eaves level of the roof. Whilst this discrepancy is regrettable, I am not persuaded that the net additional impact on outlook from No 23 is significant.

7. I conclude that the development does not result in harm to the living conditions of the occupiers of No 23 with particular regard to outlook. Accordingly there is no conflict with Policy DMP1 of the London Borough of Brent Development Management Policies Development Plan Document 2016 (DPD) insofar as it seeks to secure high levels of internal and external amenity or in this regard with the Council's Residential Extensions and Alterations Supplementary Planning Document 2 2018 (SPD).

Character and Appearance

8. The appeal site is within a residential area characterised by two and three storey terraced properties. It is in a mid-terrace position of two storey properties with back to back rear outrigger additions. The properties in the terrace have relatively small yards to the rear.

9. The Council has set out in its statement that the extensions result in harm to the visual amenity of the locality. The dormer and outrigger extensions are screened from the highway to the front by the main building. Although the rear of the property is visible at distance from Charteris Road running perpendicular to the terrace, its relatively central position within the terrace, combined with dark external materials, and the presence of mature garden planting gives the extensions a recessive rather than eye-catching appearance. Furthermore the presence of rear roof extensions to other properties nearby (including similar L-shaped dormer / outrigger designs), serves to further mitigate visual impact, ensuring that the development does not appear as an incongruous or alien feature.

10. Accordingly, the extensions are not prominent within the public domain. The parties acknowledge that, unlike the adjoining property at No 23, the dormer extension at the appeal site has not been set back from the eaves level of the main roof. However, when taking into account the recessive position of the development, when viewed from the public domain, the relative benefits of the extension being constructed in accordance with such limitations, would be very limited in this particular case.

11. Furthermore, the set back of the extensions from the back of the rear outrigger, means that they do not appear bulky or incongruous from neighbouring or nearby properties to the side. Nor, when taking into account the limited depth of rear yards, the height of the development, intervening garden planting and the presence of similar extensions, do I consider that they would appear visually discordant or obtrusive from, and in relation to, nearby rear garden areas.

12. I conclude that the development does not result in harm to the character and appearance of the host building and the street scene. It is not therefore in conflict with Policy DMP1 of the DPD insofar as it seeks that development should complement the locality. Whilst the extensions would not accord with specific guidance set out in the Council's SPD, due to the failure to adhere to margins for set back from the ridge and eaves level of the main roof and the general resistance to extending rear outriggers, the development is considered to be acceptable in this case for the reasons set out above.

Other Matters

13. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed on ground (a), subject to the notice being corrected to delete the relevant

allegation and requirement for one part of the matter the subject to the notice. With these corrections I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

15. It is directed that the enforcement notice be corrected by the deletion of the words "and the demolition of the rear part of the outrigger roof extension to form a roof terrace" in Schedule 2, and the deletion of the words "and reconstruct the rear part of the outrigger roof extension ensuring that the roof terrace is removed in its entirety" in Schedule 4.

16. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. 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 dormer window and an outrigger roof extension over the rear projection on land at 25 Hazelmere Road, London NW6 7HA referred to in the notice.

Roy Merrett

INSPECTOR