



Appeal Decision

Site visit made on 12 August 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2019

Appeal Ref: APP/T5150/C/18/3214275 62 Dunster Drive, London NW9 8EL

- 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 Dr. Ali Kafaji against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 12 September 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the alteration and partial demolition of a dwellinghouse, amounting to the erection of a building containing self-contained flats. ("the unauthorised development")
 - The requirements of the notice are: STEP 1 Demolish the unauthorised development, remove all associated debris, items and materials arising from that demolition and all materials associated with the unauthorised development from the premises. STEP 2 Reconstruct the dwellinghouse using identical materials and finishes to exactly replicate the dwellinghouse as shown in plans (DRG. No. 001, 002, 003 and 004) and photographs attached to this notice.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a variation.

Preliminary Matter

2. The enforcement notice concerns both building operations and the resultant use of the building as self-contained flats. Indeed, three reasons are cited by the Council for issuing the enforcement notice which relate to the use of the building. I therefore raised with the parties whether it would be necessary to include a requirement for the use to cease. However, the Council did not consider this was necessary and I agree with the appellant that it could in any event lead to injustice as it would be more onerous. I have therefore considered the appeal on the basis of the enforcement notice before me.

The ground (a) appeal

Main Issues

3. The main issues are the effects of the development on the:
 - i. provision of family sized accommodation;

- ii. living conditions of occupants of the first and second floor flats having particular regard to the provision of private outside space;
- iii. character and appearance of the area; and,
- iv. provision of on-street parking.

Reasons

- 4. The site is situated on a reasonably prominent corner at the junction with Dunster Drive, Hill Drive and Glenwood Grove. The surrounding area is predominantly characterised by stepped two-storey semi-detached houses, a number of which have been altered and extended. The site itself accommodated a detached bungalow which has since been altered and extended to provide three flats.

Family sized accommodation

- 5. In order to maintain and provide a balanced housing stock there is a need to protect existing accommodation that meets known needs and also by ensuring that new housing appropriately contributes towards the wide range of household needs within the borough. Based upon the evidence before me, at least 25% of new homes should be family sized, which is to say they should contain three-bedrooms or more.
- 6. Based upon the submitted floor-plans, the original bungalow contained four-bedrooms, including those within the roof-space. There is no compelling evidence to indicate that the original bungalow amounted to anything other than a family sized dwelling, which is defined in Policy DMP17 of the London Borough of Brent Development Management Policies Document, 2016 (the LBBP), as being 130sqm or more.
- 7. The development has resulted in three units of accommodation with the ground and first floors each consisting of two-bedroom units and the second floor a one-bedroom unit. Given the loss of the original bungalow as a family dwelling, Policy DMP17 of the LBBP requires the provision of at least one three-bedroom unit. There is also little evidence to indicate that the amenity of the original bungalow was so deficient that family occupation would have been unlikely.
- 8. Given the identification of a need for family sized accommodation within the borough, the loss of the original bungalow, without adequate re-provision, has adversely affected the local housing stock. I also have little evidence to persuade me that the provision of three smaller units of accommodation, in terms of any identified or overriding need, outweighs this particular loss.
- 9. I conclude that the development is harmful to the provision of family sized accommodation and contravenes Policy DMP17 of the LBBP and Policies CP2 and CP21 of the Brent Core Strategy, 2010 (the BCC). These policies, amongst other things, require such developments to provide at least a 3-bedroom dwelling; identify the need for at least 25% of new homes to have 3-bedrooms or more; and, seek to maintain and provide a balanced housing stock in Brent.

Living conditions

- 10. Planning decisions should ensure that developments promote health and well-being, with a high standard of amenity for existing and future users.

11. Policy DMP19 of the LBBP makes it clear that all new dwellings, including flats, will be required to have external private amenity space of a sufficient size and type to satisfy resident's needs. This is normally expected to be 20sqm per flat. Whilst the ground floor unit has access to a private garden area, which is adequate in terms of its size and relationship with neighbouring properties, the other units do not have any access to private outside space.
12. I have little evidence to indicate how or where the needs of occupiers of these flats, including future occupiers, would be met in this regard, such as to persuade me that private outside space for these two units is not required to be provided.
13. It has also been suggested by the Council that the second-floor flat is particularly poor with a proportion of the internal floor area having headroom less than 1.5m. However, I could see during my site visit that adequate circulation and storage space was afforded within this unit and so living conditions in this regard are adequate.
14. I nevertheless conclude that the development is unsatisfactory and so harmful to the living conditions of occupants of the first and second floor flats, having particular regard to the failure to provide private outside space. This is in contravention of the aforementioned requirement of Policy DMP19 of the LBBP. Similarly, it fails to accord with the achieving well-designed places objectives of the National Planning Policy Framework (the Framework).

Character and appearance

15. During my site visit I could see that since the issue of the enforcement notice further works have been undertaken; notably fenestration alterations, different colour rendering and that the bricks have been dyed a darker and less uniform colour. The porch has also been demolished. It is however incumbent upon me, for the purposes of my assessment, to consider the building as it existed at the time the enforcement notice was issued. Nevertheless, I will address these alterations later in my decision.
16. Being on a corner plot, and consisting of a detached building, the appeal site is somewhat differentiated from others within the immediate vicinity.
17. Planning permission was granted¹ on 15 December 2016 (the 2016 permission) for various works to the original bungalow which resulted in a two-storey dwelling with rooms in the roof. However, a scheme was built that involved departures from the approved plans as well as internally the building comprises three flats. The parties differ in respect of the extent of the departures between the 2016 permission and what has been built. Nevertheless, the Council has granted planning permission for substantial works to the original bungalow, resulting in a change in its character and an increase in overall height.
18. Based upon my site visit the building did not appear to be significantly higher in terms of its eaves or ridge height than the neighbouring property at No 2 Glenwood Grove, which is situated immediately adjacent to the appeal building and thus has the closest direct relationship. Whilst buildings in the area are of staggered heights, this appears to relate more closely to semi-detached properties and in particular those along Hill Drive, which follows the inclined slope of the natural landscape.

¹ Council Ref 16/2057

19. I appreciate the building is more imposing than the original bungalow, given its height, but in light of its individual location on a corner plot, and overall mass, the building is not bulky and does not result in it having a dominating presence. It therefore does not appear out of scale with the proportions and pattern of neighbouring buildings. In my view it does not readily read as a three-storey building given its overall proportions and roof line.
20. The dormer window is sited on an inconspicuous roof slope. This reduces the perception of its size and proximity to the main roof ridge. It therefore does not add unnecessary volume at roof level that is harmful when viewed from the street. I also observed during my site visit a number of box style dormer windows on properties in the immediate area. Whilst they may have been permitted development, they were nevertheless visible within the street-scene. The building therefore does not relate poorly to the surrounding streetscape, despite its reasonably prominent location.
21. The Council has also been critical of the detailed design of the building and use of materials when it issued the enforcement notice. Based upon the evidence before me, the porch, fenestration and use of materials resulted in a poor-quality building that had a cluttered and disjointed appearance. The colour of the materials also made it appear particularly conspicuous which did not complement the locality.
22. On this basis I conclude the building was harmful to the character and appearance of the area and so conflicts with Policy DMP1 of the LBBP and Policies 7.4 and 7.6 of the London Plan². These policies, amongst other things, require development to be of a design that complements the locality; have regard to form, function and structure of an area; and, comprise details and materials that complement the local architectural character. For the same reasons it conflicts with the aims of Supplementary Planning Guidance No.17 – Design Guide for New Development, 2001, the emerging Brent Design Guide Supplementary Planning Document, 2018, and the good design objectives of the Framework; although I do not find conflict with Policy CP21 of the BCC in this regard as it relates to maintaining a balanced housing stock.
23. However, the appellant has gone to considerable efforts to alter the fenestration of the building and the appearance of the materials that have been used. I am satisfied that these changes can reasonably be regarded as forming part of the development and thus can be considered under the deemed planning application.
24. The fenestration and wider design detailing are therefore no longer awkward or of a poor quality in terms of size, ratio or positioning and the porch has been demolished. Accordingly, the building now complements and respects the local context and streetscape. The painted render and muted brickwork also reflect that of buildings within the immediate vicinity. On the basis of what I observed during my site visit, the building is no longer conspicuous or harmful to the character and appearance of the area. It consequently now accords with the aforementioned policies, supplementary planning documents and the good design objectives of the Framework.

² The London Plan, The Spatial Development Strategy for London Consolidated with Alterations since 2011, March 2016

On-street parking

25. I could see during my site visit that some immediate roads in the area have demarcated parking areas with only limited parking restrictions. I have been provided with little in the way of evidence concerning parking saturation within the immediate area, or indication of other planning harms, to persuade me that the increase in demand for on-street parking arising from the development would be unsatisfactory, or that existing demand cannot be met. Some on-site parking provision has also been retained.
26. I conclude that the development is not harmful to the provision of on-street parking and so accords with Policies DMP1 and DMP12 of the LBBP. These policies, amongst things, require development to be satisfactory in terms of parking and to not add to on-street parking demand where on-street parking spaces cannot meet existing parking demand. For the same reasons it would accord with the parking objectives of the Framework.

Conclusion

27. I appreciate the appellant has made considerable efforts to engage with the Council and subsequently made changes to the building in an effort to address their concerns. I have found that those changes have resulted in a building that is not harmful to the character and appearance of the area. I also did not find harm in respect of additional on-street parking demand. However, the breach of planning control which has been enforced against also relates to what the building contains, namely self-contained flats. Given the number of flats, three, I found there are unsatisfactory living conditions and that the development has failed to re-provide family sized accommodation. These harms are not outweighed by the provision of three smaller units of accommodation or the absence of other planning harms.
28. In terms of an appeal against an enforcement notice I am largely restricted to the breach that existed at the time the enforcement notice was issued; namely the erection of a building containing self-contained flats. I therefore cannot consider the alternative scheme proposed as it does not form part of the development alleged. This would be tantamount to granting planning permission for something completely different to that enforced against and thus would likely prejudice both parties as well as local residents. There is also no appeal against a refusal of planning permission for an alternative scheme before me.

The ground (f) appeal

29. The enforcement notice principally requires that all the building works that have been undertaken be demolished and the original bungalow be reconstructed.
30. The purpose of the enforcement notice is to remedy the breach of planning control. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control and propose alternatives.
31. To this effect the appellant has not proposed specific alternative requirements but has sought to list solutions that also include measuring the building in order to identify all the discrepancies with the 2016 permission and negotiate a

solution. However, it goes beyond the remit of an appeal against an enforcement notice to negotiate a solution unless practicable or specific alternative steps are before me.

32. However, the 2016 permission provides a viable fallback position for the appellant, which is specific as that permission, which includes elevations and floor-plans, is before me. It would also provide an obvious alternative to remedy the breach of planning control.
33. I will therefore vary the requirements of the enforcement notice to enable the 2016 permission to be constructed, as an alternative to the Council's requirement for the reconstruction of the original bungalow, and so to this extent the appeal on ground (f) succeeds.

Conclusion

34. Whilst I have not identified harm to the character and appearance of the area arising from the built form of that now constructed, I cannot allow it to remain as I have insufficient specific alternative steps and information before me. I therefore cannot consider varying the requirements of the enforcement notice in order to address my concerns. Whilst my decision will therefore come as a disappointment to the appellant, it does not preclude him from exploring further options with the Council, noting both my findings and the period for compliance that is otherwise afforded by the enforcement notice. The compliance period of 12 months therefore allows the appellant sufficient time to explore his options and/or comply.
35. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Formal Decision

36. It is directed that the enforcement notice be varied by:

- Within SCHEDULE 4, following the requirements detailed in STEP 2, include the words:

OR

STEP 1a Make alterations to the building, including any necessary demolition, so that internally and externally it strictly accords with the submitted plans and details granted planning permission on 15 December 2016 under Council reference 16/2057.

STEP 2a Remove all materials and debris resulting from carrying out step 1a of this Notice from the land affected.

37. Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul T Hocking

INSPECTOR