



Appeal Decision

Site visit made on 6 November 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th January 2020

Appeal Ref: APP/M5450/C/19/3223771

Land at 217 Malvern Avenue, South Harrow HA2 9HG

- 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 Mike Cronin against an enforcement notice issued by the Council of the London Borough of Harrow ('the notice').
 - The enforcement notice, numbered ENF/0021/18/P, was issued on 18 January 2018.
 - The breach of planning control as alleged in the notice is without planning permission:
 - a) the material change of use of the single family dwellinghouse on the land to use as three self-contained flats ("Unauthorised Flats").
 - b) the construction of a single storey front extension incorporating a front porch ("Unauthorised Development").
 - The requirements of the notice are to:
 - (1) Cease the unauthorised use of the main dwelling as three self-contained flats and return the use of the main dwelling back to a single family dwelling;
 - (2) Remove all kitchens from the main dwelling except (1) one;
 - (3) Remove all bathrooms from the main dwelling except (2) two;
 - (4) Remove all internal installations and partitions from the dwellinghouse that enable the use of the main dwelling as three self-contained flats;
 - (5) Demolish the Unauthorised Development;
 - (6) Make good any damage caused to the existing building as a result of step 5 and ensure that all materials used shall match those used in the existing building; and
 - (7) Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
 - The period for compliance with the requirements is six (6) calendar months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by substituting '2019' for '2018' in the date of the notice. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. The notice states that the date of issue was the 18 January 2018. The evidence before me points to this being a typographical error, and this should read '2019'. As the appellant was able to make his appeal in time and has used 2019 in his appeal form, it is reasonable to assume that any other prospective appellant would have been able to do the same. As no party has been prejudiced by the error, the notice is not a nullity. The mistake can, therefore, be corrected.

Ground (a) appeal

Main Issues

3. The main issues in the appeal are:

- the effect of the development on the living conditions of existing and future occupants of the flats having regard to the layout of the flats and their size; and
- the effect of the single storey front extension on the character and appearance of the area.

Reasons

Living Conditions - Layout of flats

4. The Council seeks to ensure that the vertical alignment of flats is such that bedrooms in one flat do not overlap living rooms, kitchens and bathrooms on other floors. This is known as stacking, and its purpose is to minimise noise transfer between homes. The Council's approach is set out in paragraphs 4.55 and 5.12 of its Supplementary Planning Document: Residential Design Guide 2010, (RDG).
5. The front bedroom in the first-floor flat that is served by a bay window overlaps the living/dining room in Flat 1, on the ground floor. It is suggested that as the first-floor bedroom is above a living room, rather than below it, this is acceptable. The appellant describes this as an "area of subordinate disturbance/noise".
6. However, there is no differentiation in the RDG between bedrooms being below or above other rooms and noise can travel in either direction. Noise generated below would result in ill-effects to the users of the bedroom above and, as such, I am not persuaded by this argument. This is the case notwithstanding the claim that the Council has approved numerous similar arrangements. However, I was given no substantive evidence of these.
7. The first-floor room annotated as a 'dressing room' on drawing number P-217 MA-04, Revision A, 'Existing Plans', was in use as a bedroom when I visited the site. Access to this room was via a door from the first-floor landing, in the manner set out in drawing number P-217 MA-02, 'Pre-Existing Plans'. Despite being outside the front door to the first floor flat, and thus physically separate from it, it was apparent that it was being used in connection with that flat.
8. Parties were subsequently invited to make any comment on this matter by 17 December 2019. The appellant confirmed its use in connection with the first-floor flat, and set out that the intention is to use it as a dressing room/storage area for the first-floor flat. I received no comments from the Council.
9. Although this room situated above the entrance lobby that is shared with Flat 1, rather than the rooms described in the RDG, the same issues relating to stacking and noise generation arise. Its use as a bedroom would lead to the same ill-effects that I have described, above, whereas its use as a dressing room/store would accord with the RDG. However, as the appeal is dismissed for other reasons, there is no need to comment further on the matter.

10. My finding on this issue is that the layout of the flats is such that the occupants of the first-floor flat are likely to suffer from the adverse effects of noise emanating from the flat below. This is contrary to the terms of Policy DM26 of the Harrow Council Development Management Policies, July 2013, (DMP) that requires the separation of bedrooms and other room uses to prevent noise transference, reflecting the guidance in the RDG. Therefore, the layout of flats in the property is not of the high standard required by DMP Policy DM1 and Policy CS1 of the Harrow Core Strategy, (CS).

Size of the flats

11. The Existing Plans describe Flat 1 as a Studio Flat; however, its layout is such that it should be considered as a one bedroom flat. The plan shows that it has a floor area of 45.5sqm. The Government has set out minimum size standards for residential units in its Technical Housing Standards – Nationally Described Space Standard, March 2015 (the Standards). The Standards sets out that the minimum size for this type of flat is 50sqm, with at least 1sqm of storage space. The Standards are mirrored in Table 3.3 of The London Plan, 2016, (LP) and the RDG. Adherence with this minimum figure is required by London Plan Policy 3.5C and Policy DM26 of the of the Harrow Development Management Policies Local Plan, 2013 (DMP).
12. The appellant proposes that this flat be changed to a studio flat, which would accord with the Council's space requirements. However, I have not been provided with evidence as to how this might be appropriately achieved. Therefore, given this doubt, this is not a matter that could be conditioned.
13. I find that Flat 1 is of an insufficient size to provide suitable living accommodation. It is thus contrary to the terms of DMP Policy DM26 and London Plan Policy 3.5C that reflect the Standards, RDG and Table 3.3 of the London Plan, 2016.

Character and Appearance – the front extension

14. Most of the properties on Malvern Avenue had a porch on their front elevation, some of which are quite large. Many had pitched roofs, some of which presented gables towards the road in a manner like that of the Unauthorised Development.
15. A common theme amongst these, including those at 140 and 142 Malvern Avenue, is that these porches are lower than the first floor window cills to the host building. This is not the case with the porch that has been erected at the appeal site. Its gable end projects markedly higher than the property's first floor cill level. Whilst a contemporary design, the asymmetrical roof form of the extension is out of keeping with the street scene. Its effect is exacerbated by its degree projection from the front of the property.
16. My finding on this issue is that, as a result of its size, bulk and design, the front extension does not relate well to the host building and causes significant visual harm to the character and appearance of it and the wider street scene. It is, therefore, contrary to the terms of London Plan Policies 7.4 and 7.6 that require development proposals to accord with local character and be of a high-quality design, respectively. The terms of those policies are mirrored in

CS Policy CS1, DMP Policy DM1 and guidance on extensions in the RDG, with which the unauthorised development also conflicts.

Other matters

17. Although the flats might accommodate small families or professionals in a location close to large family-based neighbourhoods and local amenities, this does not outweigh the harm identified, above. I find similarly with regards to the fact that they have dual aspects, sufficient amenity space, cycle and parking provision and that a suitable bin area could be provided.
18. The plans submitted with the appeal sought to amend the ridge of a previously approved extension to the property. Planning law¹ sets out that planning permission granted in an enforcement notice appeal is restricted to the matters referred to in the alleged breach. As this extension is not referred to in the alleged breach, this matter cannot be approved in an appeal against the notice.

Conclusions

19. For the reasons given above, and having regard to all other matters raised, I conclude that the ground (a) appeal fails, that planning permission is refused for the deemed application and the notice is upheld.

Roy Curnow

INSPECTOR

¹ Section 177 of the Town and Country Planning Act 1990 (as amended)