
Appeal Decision

Site visit made on 17 December 2019

by Rajeevan Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 January 2020

Appeal Ref: APP/T5150/C/19/3235445

3 Wykeham Hill, Wembley HA9 9RY

- 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 Zahir Ebrahimi against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 9 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a part single/part two storey rear extension, a part two storey/part single storey side extension, a front extension and a roof extension.
 - The requirements of the notice are:
 - Step 1: Demolish the part two storey/part single storey rear extension.
 - Step 2: Demolish the part two storey part single storey side extension.
 - Step 3: Demolish the front extension.
 - Step 4: Demolish the roof extension.
 - Step 5: Remove all associated items, debris and materials arising from the demolition of the unauthorised development.
 - Step 6: Restore the premises back to its original condition before the unauthorised development took place.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be:
 - varied by deleting the words "3 months" within schedule 5 (Time for Compliance) and its replacement with "6 months".
2. 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.

Background and Preliminary Matters

3. Planning permission was granted for the "demolition of existing rear conservatory & extension and erection of a two storey side and rear extension; new windows to front elevation and 1 x front rooflight to side extension roofslope of dwellinghouse"¹. A certificate of lawfulness was also approved for a

¹ Council ref:18/4185 granted on 3 April 2019.

hip to gable end loft conversion with rear dormer window and two front rooflights and front porch to dwellinghouse². The appellant accepts that the development was not built in accordance with these approvals, which resulted in the serving of the enforcement notice. I shall therefore deal with the unauthorised works, as alleged within the notice, below.

4. Within the appeal on ground (a), the appellant states that a permitted development fall-back position exists for the rear dormer. However, this would be more akin to a ground (f) appeal. As the Council have provided detailed comments on this, I am satisfied that neither party would be prejudiced by the inclusion of this under ground (f). I have therefore determined the appeal on this basis.
5. The appellant has put forward revised drawings at the appeal stage illustrating new works which they consider would overcome the harm as alleged. However, there is no mechanism for incorporating these amended plans when considering the appeal under ground (a) and the deemed planning application which are constrained to the development constituted by the matters stated in the notice.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

6. The main issues are the effect of the development on:
 - the character and appearance of the host building and the surrounding area; and
 - the living conditions for the occupiers of Nos 1 and 5 Wykeham Hill with particular regard to light and outlook.

Character and appearance

7. The property is a two storey semi-detached dwelling, located in a residential area characterised by semi-detached houses set back from the road behind generous front gardens. The properties in the street include details such as double storey bay windows, hipped roofs and chimneys. The layout and style of the properties in the road provides a rhythm and harmony to the street scene.
8. The two storey side extension attached to the part single and part two storey rear extension together with the front extension and rear dormer as erected extends the building considerably. There are no other similar sized two storey rear extensions, and rear dormers to neighbouring properties, and in this regard, the scale, bulk and height of the extensions introduce an overly dominant and visually discordant feature.
9. Whilst there are other two storey side extensions, in the street with similar first floor setbacks, the two storey side extension is clearly connected to the part single, part two storey rear extension. As such it is clearly integrated to the rear element of the extensions which is unacceptable, and not clearly severable from it. The development diminishes unacceptably the integrity, character and appearance of the host building with consequent harm to the character and appearance of the surrounding area.

² Council ref: 18/2155.

10. Therefore, in relation to the first main issue, the development has a harmful impact upon the character and appearance of the host building and surrounding area. The development is therefore contrary to Policy DMP 1 of the London Borough of Brent Local Plan Development Management Policies, 2016 (LP), which amongst other things, states that development will be acceptable provided it is of a siting, layout, scale, type, density, materials, detailing and design that provides high levels of internal and external amenity and complements the locality.
11. The development also runs contrary to the advice contained within the Supplementary Planning Document 2: Residential Extensions and Alterations 2018, which amongst other things requires extensions to be of a size, shape and height that complement rather than dominate the existing house. Finally, the proposals would not meet the aims of part 12 of the National Planning Policy Framework, 2019 (Framework), which requires development to be sympathetic to local character and history.

Living conditions for the occupiers of Nos 1 and 5 Wykeham Hill – light and outlook

12. The flank wall of the part single, part two-storey side/rear extension has been constructed along to the boundary with No 5, and the Council and the neighbouring occupier of this property have raised an objection to the development on grounds of loss of light and outlook to the side facing window of this neighbouring property. However, having regard to the location of this window, on the flank wall of the existing single storey rear extension at No 5 close to the side boundary with No 3, and given that the Council have previously granted approval for a 6m deep full width single storey flat roof extension at No 3, along this shared boundary, in my opinion, the additional unauthorised works carried out, namely the additional extension at first floor level and the enlarged rear dormer, has not led to any significant loss of light and outlook to the occupiers of No 5.
13. Similarly, the unauthorised works do not cause unacceptable harm to the living conditions of No 1 because, the two storey element of the proposal and the rear dormer are positioned sufficiently far enough away from the windows and garden at No 1. As such I find no conflict against Council's adopted Policy DMP 1 of the LP, which amongst other things, seeks to ensure that new development provides high levels of internal and external amenity. However, this is just one matter in the overall assessment of the development and does not alter my judgement set out earlier.

Other Matters

14. The Council and the neighbouring occupiers have also raised objections that the rear extension encroaches onto the adjoining land at No 5 Wykeham Hill and the rear dormer extends into the adjoining loft space at No 1 Wykeham Hill. There appears to be inconsistency between the original survey drawings carried out and the development as built, since the approved drawings show the boundary with the adjacent property at No 5 is straight/parallel, whereas it appears from my site visit that the boundary where the two storey rear extension is built is not. However, I have already found above that the development is unacceptable with regards to the character and appearance of the existing building and the surrounding area. As such it is not necessary for me to consider this further as it would not change the outcome of this appeal under ground (a).

Conclusion on Ground (a) and the Deemed Planning Application

15. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

16. The appeal on this ground is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. The enforcement notice requires the demolition of the unauthorised development, and as such, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity. I have found under ground a) that the unauthorised development is harmful to the character and appearance of the building and the surrounding area. It is not therefore excessive to require the unauthorised development to be demolished.
17. The appellant proposes two options, which both take into account the previous planning approval at the site³. Under s173(4) of the 1990 Act, where development has taken place that is not in accordance with a planning permission, the notice may require compliance with the terms of the permission, including any conditions and limitations. However, as mentioned above, inconsistency between the original survey drawings and the development as built, in relation to the two storey rear extension along the boundary with the adjacent property at No 5, raises serious doubts as to whether the development can be implemented in accordance with the approved planning permission. As such on the evidence before me, it is not clear that there is a valid and implementable planning permission and therefore, I am unable to conclude that either option proposed by the appellant would be realistically achievable or effective in terms of remedying the breach of planning control alleged.
18. Furthermore, under ground a) the appellant considers that the rear dormer could be modified and reduced in size to comply with permitted development rights. It has been held that the prescribed tolerances in the GPDO should not be regarded as limitations but as part of the definition of the permitted development. An extension built which exceeds the tolerances of the GPDO is entirely outside permitted development rights. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. I therefore consider that there are no obvious solutions which would overcome the harm identified and there is also no obvious 'fallback' position.
19. On this basis, the Ground (f) appeal fails.

Ground (g)

20. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from three to six months, in order to raise the necessary funds and to hire suitable and reliable tradesmen, which must be booked in advance, to complete the required works.

³ Council ref: 18/4185.

21. I have identified under ground (a) that the development results in harm to the character and appearance of the surrounding area. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, the six months requested by the appellant would strike a more reasonable and proportionate balance in these circumstances in order to obtain quotations, appoint a contractor and carry out the works. I shall therefore extend the period from three to six months for compliance with the notice.
22. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

23. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan

INSPECTOR