
Appeal Decision

Site visit made on 4 February 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th March 2020

Appeal Ref: APP/T5150/C/19/3232463

1 Priory Avenue, Wembley HA0 2SB

- 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 Alshad Ladha against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 30 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a rear dormer window.
 - The requirements of the notice are:
Step 1: Demolish the unauthorised development and reinstate the roof to its original condition to before the unauthorised works took place.
Step 2: Remove all waste, materials and debris associated with the compliance of Step 1.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) 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.
-

Decision

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

Procedural Matters

3. The appellant has put forward 'as built' drawings at the appeal stage, which also shows a number of new works. 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 (c)

4. This ground of appeal is that the development enforced against did not constitute a breach of planning control. The burden of providing relevant facts

in this appeal rests with the appellant, and the test of the evidence is the balance of probability.

5. The Council state that the unauthorised development does not comply with the requirements for permitted developments under Article 3, Schedule 2, Part 1, B.1 (b) and (c) of the Town and Country Planning [General Permitted Development] Order 2015 [GPDO 2015], as the development, exceeds the height of the highest part of the existing roof [contrary to B1. (b)] and extends beyond the plane of an existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway [contrary to B1. (c)].
6. The appellant disagrees with the Council's assessment and considers that the development complies with these relevant sections of the GPDO 2015. The evidence submitted in support of this relies predominantly on photographs taken from google.com and bing.com showing the subject terrace before the works were carried out, as well as photographs taken by the appellant of the subject building after the development was carried out.
7. The photographs submitted demonstrate that the eaves height of the appeal property and adjoining property at No 3 Priory Avenue differed prior to the current development, the subject of this appeal, being carried out. The photographs also show that the pre-existing ridge height of No 1 Priory Avenue was already higher than that of No 3. I also observed that there is some variation in ridge heights in the subject terrace. Notwithstanding this, the photographic evidence submitted fails to demonstrate with any degree of accuracy that the ridge height of the appeal site has not been further raised, as a result of the current dormer development.
8. For instance, no accurate detailed drawings of the extension have been submitted, and the drawings which have been submitted contain a number of discrepancies which do not accurately reflect what is built on site. This includes the insertion of a side window in the flank wall, where none currently exists, inward opening French doors and a Juliet balcony on the rear elevation, where currently the French doors open outwards with no Juliet balcony installed. The drawings also show that the chimney has been retained, which is not the case. Nor have any detailed survey drawings of the pre-existing building been submitted illustrating what the size and dimensions of the original roof was prior to the works being carried out. As such, it has not been satisfactorily demonstrated that the current ridge height does not exceed the highest part of the pre-existing roof. I cannot be satisfied that the development complies with Part B1.(b).
9. Furthermore, the photographic evidence submitted by both parties and my own observations during the site visit appear to show that the development extends slightly beyond the plane of the existing front roof slope which forms the principal elevation of the dwellinghouse, fronting the highway. This appears particularly so, when viewed against the front roof of the adjacent property at No. 3 Priory Avenue. Again, the photographic evidence¹ submitted by the appellant, showing the condition of the roof prior to the works, does not demonstrate, with any degree of accuracy that this is not the case. It has therefore not been satisfactorily demonstrated that the development does not extend beyond the plane of an existing roof slope which forms the principal

¹ Photographs taken from Bing.com and Google.com

elevation of the dwellinghouse and fronts a highway. In this respect it has not been demonstrated that the development complies with Part B1.(c).

10. Furthermore, the rear dormer also includes French doors opening outward onto the flat roof of the recently constructed two storey back addition. As such, the works therefore create a raised platform, which is also contrary to Article 3, Schedule 2, Part 1, Class B, (e) (i) of the GPDO 2015. The appellant contends that the works have not been fully completed and it is intended to install a Juliet balcony surrounding the doors. However, the development was currently occupied at the time of my site visit and the fact that the existing doors have been installed outward opening does not support the view that it is intended to install a Juliet balcony around these doors. Furthermore, 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 which exceeds the tolerances under this Part is entirely outside permitted development rights.
11. On the balance of probability and based on all the evidence before me, the development does not fall within Article 3, Schedule 2, Part 1, B.1 (b), (c) and (e) (i) of the GPDO 2015, for there to be deemed planning permission for the development as built. Therefore, planning permission is required for the development, and there is none in place. There has therefore been a breach of planning control and the appellant has not discharged the onus on him to demonstrate otherwise.
12. Accordingly, the appeal on ground (c) must fail.

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

Main Issues

13. 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 residential occupiers of No 3 Priory Avenue and Harrow Road with particular regard to light, outlook and privacy.

Reasons

Character and appearance

14. The property is a two storey end of terraced property, located in a residential area characterised by terraced houses set back from the road behind modest sized front gardens. The properties in the street, made from brick and render with red/brown tiles roofs, are characterised by gabled or hipped two storey bay windows, chimney stacks and two storey back additions. The subject property, being end of terrace, has a clearly visible end gable feature and has recently been extended with a full width two storey back addition².
15. The principle of extending the property in the loft space is accepted by the Council, but must comply with Policy DMP 1 of the London Borough of Brent Local Plan Development Management Policies, 2016 (LP). The London Borough of Brent's Residential Extensions & Alterations SPD 2, 2018, is a

² Approved in Council ref: 15:3738.

Supplementary Planning Document (SPD) to Brent Council's LP. Whilst the SPD is guidance only, its emphasis on good design is consistent with the National Planning Policy Framework, 2019 (the Framework).

16. This SPD states that rear dormers should be set down from the ridge by at least 0.3m and must be set up from the eaves line by at least 0.5m measured along the roof plane and should be mainly glazed. Contrary to this guidance the development has not been set down by the main ridge by at least 0.3m and is not set up from the eaves by at least 0.5m. In addition, the dormer as built is predominantly hung in grey slate/tiles and is therefore not mainly glazed.
17. Whilst I appreciate that the rear dormer extension increases the usable internal floor space by approximately 7.5sq.m, when taking into account the previous rear dormer addition, the current dormer when combined with the existing full width two storey back addition, extends the building considerably. In particular, the scale, bulk and height of the extension introduces an overly dominant and visually discordant feature in the area. Furthermore, the extension is particularly prominent in public views from Priory Avenue and from Cherry Tree Close. In this respect, the extension diminishes unacceptably the integrity, character and appearance of the host building with consequent harm to the character and appearance of the surrounding area.
18. 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 LP, and policies 7.4 and 7.6 of the London Plan, 2016. Amongst other things, these 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, and that buildings should be of the highest architectural quality and make a positive contribution to the character of a place.
19. The development also runs contrary to the advice contained within the Supplementary Planning Document 2: Residential Extensions and Alterations 2018, as outlined above. Finally, the proposals would not meet the aims of part 12 of the Framework, which requires development to be sympathetic to local character and history.

Living conditions for neighbouring occupiers on Priory Avenue and Harrow Road – light, outlook and privacy

20. The Council has raised an objection to the development on grounds of loss of light and outlook to neighbouring occupiers. The nearest properties to the development are No 3 Priory Avenue and Nos 955-957 Harrow Road. From my observations on site, I am satisfied that, the unauthorised works does not cause unacceptable harm to the living conditions of these neighbouring occupiers, since the rear dormer is positioned sufficiently far enough away from the windows and gardens of these neighbouring properties.
21. Furthermore, with regards to overlooking/privacy issues resulting from the French doors within the dormer which currently provide access on to the flat roof of the existing back addition, I note that the appellant states that they intend to install a Juliet balcony preventing access on to the flat roof. I agree that this would overcome any harm in terms of loss of privacy and intrusive overlooking to neighbouring occupiers of Harrow Road and No 3 Priory Avenue.

If the appeal were allowed, a condition would be attached requiring a Juliet balcony to be installed around the French doors. I am therefore satisfied that subject to this condition the rear dormer window does not result in any harmful overlooking to neighbouring occupiers on Priory Avenue and Harrow Road.

22. I therefore conclude that subject to a condition requiring the installation of a Juliet balcony, the development does not result in harm to the living conditions for residential occupiers of No 3 Priory Avenue and Harrow Road with particular regard to light, outlook and privacy. 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.

Conclusion on Ground (a) and the Deemed Planning Application

23. 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.

The Appeal on Ground (g)

24. 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 allow time for the existing occupiers of the property be rehoused, according to the terms of their tenancy agreements and to complete the required works.
25. I have identified under ground (a) that the development results in harm to the character and appearance of the host property and 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 allow the existing occupiers to seek alternative accommodation and for the appellant 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.
26. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

27. 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