
Appeal Decision

Site visit made on 24 February 2020

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 13th March 2020

Appeal Ref: APP/T5150/C/19/3235516
76 Holmstall Avenue, Edgware HA8 5JJ

- 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 Pritam Bhuvra (Bhuvra Properties Limited) against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/18/0020, 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 storey and two storey side and rear extensions, rear dormer, new roof, the addition of roof lights and the change of use of the premises to three flats ("the unauthorised development").
 - The requirements of the notice are
 - STEP 1 Cease the use of the premises as flats
 - STEP 2 Demolish the part two storey/part single storey side extension
 - STEP 3 Demolish the part two storey/part single storey rear extension.
 - STEP 4 Demolish the roof extensions
 - 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 6 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] and the prescribed fees have been paid within the specified period, an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, and the enforcement notice is upheld.
2. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (a) and the Deemed Planning Application (DPA)

3. An appeal under ground (a) is on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to have been granted.

Main Issues

4. The main issues are:

- The effect of the part single storey and two storey side and rear extensions, rear dormer, new roof and roof lights on:
 - The character and appearance of the site and the surrounding area
 - The living conditions of the occupiers of adjoining properties with particular regard to outlook and light.
- Whether or not the development provides acceptable living conditions for occupants with regard to the internal arrangements, bin and cycle storage, external amenity space and access.
- The effect of the use as 3 flats on:
 - the living conditions of adjoining and nearby residents in terms of the potential for noise and disturbance and access to on-street car parking;
 - the character of the surrounding area; and
 - the supply of family housing.

Reasons

Character and appearance (extensions)

5. 76 Holmstall Avenue (No. 76) occupies a prominent corner plot at the crossroads with Stag Lane and Beverley Drive. The vicinity of the site is characterised by two storey semi-detached and linked detached houses of varying design, although the limited colour palette of red brick and tiles give the wider area a pleasant, homogeneous appearance.
6. No. 76 is a typical semi-detached house; however, it differs from its neighbours as a result of a large part two storey/part single storey extension to the side adjacent to Stag Lane. Where other buildings in the area have been extended the extensions are generally of smaller single storey scale. This results in the extensions to No. 76 appearing as an anomaly in the street scene.
7. When viewed from and along Stag Lane the impact of the extensions is exaggerated by the proximity of the side wall of the extensions to the pavement edge. This is in stark contrast to the set-back building line and front gardens of the adjacent rows of houses on both sides of the lane.
8. The appellant accepts that the extensions to the house have not been carried out in accordance with the plans which the Council has already approved for a part single storey and two storey side and rear extension (Council Reference: 16/3571) (the 2016 extension). The differences in the dimensions of the extensions are not significant in themselves, however taken together the changes result in a substantial increase in the scale and mass of the extensions, including the expanse of the hipped roof. In particular the increase in width takes the extension closer to the Stag Lane.
9. The approved scheme would have altered the original house and its contribution to the street scene at the junction of Holmstall Avenue and Stag Lane radically, given the limited scale of extensions to houses in the area more

widely. Nevertheless, the scheme as built has an even greater impact and one which has an adverse impact on the street scene.

10. There are examples of flat roof dormers in the vicinity of the site and rooflights are not an unusual feature in the street scene. Thus, these features are not harmful to the character and appearance of the area.
11. I conclude that whilst the rear dormer and rooflights are acceptable, the part single storey and two storey side and rear extensions and new roof have a harmful impact on the character and appearance of the site and the surrounding area. The development is contrary to Policy DMP1 of Brent's Development Management Policies (the Brent DMP). This policy requires that development is of a scale and design that complements the locality. For similar reasons the development does not accord with Brent Council's SPD2: Residential Extensions and Alterations (2018) (the Extensions SPD) which recommends that two storey side extensions should be of a size and shape that complement the original house and the National Planning Policy Framework (the Framework) which seeks to achieve well-designed places.

Living conditions of adjoining residents (extensions)

12. No. 76 forms one half a semi-detached pair of houses and it is attached to No. 74 Holmstall Avenue (No. 74). The photographs provided by the appellant show that there is a single storey flat roof extension to the rear of No. 74 which has a much shorter depth than the single storey extension to No. 76. There appear to be windows in the end wall of the extension to No. 74 and depending on the way in which the garden is used there is the potential for the extension to No. 76 to have an overbearing impact on the outlook from No. 74 and within its garden.
13. The Council has also expressed a concern about the loss of light to No. 74 arising from the extension to No. 76. However, unlike the overbearing impact there is no evidence before me in relation to this effect on the living conditions for the occupier of No. 74.
14. The Council has determined that prior approval under the Town and Country Planning (General Permitted Development) Order 2015 (the GDPO) is not required for an extension 6 metres deep to the rear of No. 76. It says that no representations were made in respect of the application and it was determined on that basis (Council Ref: 15/3644) (the PA extension). The PA extension would have had a similar impact on the living conditions of the occupiers of No. 74 to that part of the extension which is currently adjacent to the boundary in terms of its overbearing effect.
15. However, the Council disputes that the PA extension was constructed in advance of the rest of the extensions and considers that both the PA extension and the current extension were constructed in one building operation. It has produced evidence in the form of aerial photographs which show that the house did not have the part single storey and two storey side and rear extension in April 2017 but that it did in July 2018. Whilst for reasons of efficiency and cost it is more likely than not that the extensions were carried out in a single operation, the aerial photographs do not provide unequivocal evidence of that.
16. Drawing all of these strands together I conclude that the extension has some enclosing effect on the rear facing windows and garden serving No.74.

Nevertheless, given that the PA extension could have been erected and would have had a similar impact on the boundary with No. 74 to the extensions that have been built the effect on living conditions is not harmful. The other elements of the extension do not have an adverse impact on No. 74 in terms of being overbearing.

17. I conclude that the part single storey and two storey side and rear extensions, rear dormer, new roof, the addition of roof lights do not have a harmful effect on the living conditions of the occupiers of adjoining properties with particular regard to outlook and light. The development is in accordance with Policy DMP1 of the Brent DMP which requires that development is of a scale and type that provides high levels of amenity.

Living conditions of existing and future occupiers

18. The Council is concerned that the internal layout of the building results in the kitchen/living areas in one flat being stacked above a bedroom in another. In this case the kitchen is small which would limit the amount of noise which would be generated by its use and it forms part of an open-plan living space the majority of which sits above the living areas in the lower flat. On this basis I am not persuaded that the internal arrangements provide unacceptable living conditions for residents.
19. There is space for wheelie bins to the front of the building. The Council criticises the lack of personal bin storage but there is no supporting evidence to explain what provision is required or how the current arrangements effect the living conditions of occupiers.
20. The rear garden has been subdivided into three small, fenced areas serving the three flats. Whilst access is direct for one ground floor flat, the other two flats share a passageway around the side of the building. The appellant says that there is space for cycle parking in the rear garden spaces. The original rear garden was larger than some of the neighbouring gardens but the extensions which have been built have reduced its size and result in a very convoluted access to garden space for two of the flats. The subdivision has resulted in very small individual gardens which in two cases are inconvenient to access both in terms of use for outdoor amenity and cycle parking. These spaces are overlooked from the rear facing windows to the extent that the privacy of users is adversely affected.
21. I conclude that whilst the development provides acceptable living conditions for occupants with regard to internal arrangements and bin storage, the provision which is made for external amenity space, cycle parking and access is unacceptable. The development is therefore contrary to Policy 3.5 of the London Plan and Policy DMP1 of the Brent DMP which require that new development provide a high level of external amenity and satisfactory access for all.
22. I do not find that Policy DMP16 of the Brent DMP which relates to the loss of residential units to be directly relevant to this main issue. Neither do I find, on the basis of the evidence that has been presented that the development does not accord with the Technical Housing Standards.

Living conditions of adjoining and nearby residents (change of use)

23. No. 76 shares a boundary with No. 74 such that the comings and goings associated with the use of the flats affects the living conditions of the occupiers of No. 74. This is particularly evident in terms of the arrangements for external space. Although as the appellant notes the external space serving only one of the ground floor flats forms the boundary with No. 74, the size and shape of the space and its intensive use by the occupiers of the flat is such that people using the garden would generate high levels of noise and disturbance to the occupiers of No. 74. This effect is compounded by the similarly small size and intensive use of the adjacent spaces serving the other two flats. Overall the use of the external spaces by the occupiers of the flats would generate a level of noise and disturbance that would adversely affect the occupiers of No. 74.
24. The occupation of No. 76 by multiple households would also generate more comings and goings both in terms of residents and servicing. This would further contribute to the disturbance of the occupiers of No. 74.
25. The Council also refers to the effect of the change of use on the demand for on-street car parking. However, there is no substantive evidence to support this view. I observed that there was some availability of on-street car parking in the vicinity of the site and that many of the houses have off-street parking facilities in the form of driveways and garages. The appellant confirms that each flat has a parking space in either a garage or on a driveway. In the absence of any information regarding the Council's expectations for parking or a quantified assessment of the parking demand in the area, I do not find that the living conditions of adjoining and nearby residents are harmed in this regard. It follows that the change of use is not contrary to Policy DMP12 of the Brent DMP which resists development which would harm existing on-street parking conditions.
26. I conclude that whilst the use as 3 flats does not have a harmful effect on the living conditions of adjoining and nearby neighbours in terms of access to on-street car parking, it is harmful in terms of its potential for generating noise and disturbance. The development is contrary to Policy DMP1 of the Brent DMP which requires development to safeguard against increasing exposure to noise and general disturbance.

Character of the area (change of use)

27. Whilst Holmstall Avenue and many of the roads leading off it are characterised by rows of housing, there are commercial uses further along Stag Lane and a medical centre on the opposite quadrant of the junction of Holmstall Avenue, Stag Lane and Beverley Drive. The road junction itself dominates the immediate vicinity of the site. As such the overall character is distinctly urban with mixed uses.
28. Given the character of the area and in particular the proximity of the road junction, the subdivision of No. 76 and the associated more intensive use of the site does to have a significant impact on the character of the area in general. Whilst the Council says that this was in part one of its reasons for serving the notice there is no evidence to support its view in this regard.
29. I conclude that the use as 3 flats does not have a harmful effect on the character of the surrounding area. The development accords with Policy DMP1

of the Brent DMP which requires that new development complements the locality.

The supply of housing

30. Policy CP21 of the London Borough of Brent Core Strategy (2010) (the Core Strategy) seeks to maintain and provide a balanced housing stock in Brent by protecting existing accommodation which meets known needs and ensuring new housing contributes towards the wide range of household needs. Policy DMP17 of the Brent DMP supports the conversion of family sized dwellings subject to two criteria which relate to floorspace and access to amenity space.
31. As extended the building meets the criteria in terms of floorspace but it does not provide for at least a 3-bedroom dwelling with direct access to a garden/amenity space which is the second arm of Policy DMP17. The appellant argues that the development provides for three high quality homes replacing a single unit of accommodation which is unaffordable to rent or buy. However, there is no information show that the current arrangement is more affordable or a means by which that affordability could be secured in the future. Furthermore, there is no substantive evidence to demonstrate that there is a particular need for the type of accommodation provided as a result of the change of use.
32. I conclude that on the basis of the evidence, the use as 3 flats would not contribute towards the maintenance and supply of family housing. The development is contrary to Policy CP21 of the Core Strategy and Policy DMP17 of the Brent DMP.

Other matters

33. The appellant considers that the two-bed ground floor flat which has direct access to the garden, a garage and parking space would make comfortable home for a family of four. This unit does have better quality facilities than the other two flats. However I must consider the development as a whole and in consequence the comparatively better quality of the accommodation provided by this flat does not outweigh the harm that I have found in relation to the effect of the extensions on the character and appearance of the site and the surrounding area or the living conditions of the existing and future occupiers of the flats.

Conclusion in respect of ground (a) and the DPA

34. For the reasons given above, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

Ground (f)

35. An appeal under ground (f) is on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
36. The appellant suggests two options as appropriate alternatives to full compliance with the notice. The first option is for the use as flats to cease but for the extensions to remain. However, this option would not overcome the

harm that I have identified in respect of the impact of the extensions on the character and appearance of the site and the surrounding area.

37. The second option which the appellant suggests is to cease the use and to revert the extensions back to what was approved as the PA extension and the 2016 extension. However, there are no details before me to show how the building could be modified in this way. It appears to me that such works would be extensive and the feasibility of them being implemented successfully has not been demonstrated.
38. In summary, it has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that these requirements exceed what is necessary. For these reasons the appeal under ground (f) fails.

Ground (g)

39. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that in order to enable the works to be carried and to ensure that current tenants have adequate time to find alternative accommodation, the period for compliance should be extended to 12 months.
40. There is no evidence before me to demonstrate that specialist contractors are in short supply in the area or that the extensions would take an extended time period to be demolished.
41. As the building is occupied as residential accommodation, the notice would cause the loss of someone's home or other accommodation. Therefore, the right set out under Article 8 of the Human Rights Act 1998 is engaged. However, save for the disruption that finding alternative accommodation would cause the residents, including infants, with which I have great sympathy, there is no evidence before me to suggest that such accommodation could not be found within the 6-month compliance period of the notice. As the Council states it has the power to extend the compliance period should this prove necessary.
42. Taking all of these matters into consideration I find that the 6-month period afforded by the notice does not fall short of what is a reasonable period of compliance. For the reasons given above, I conclude that the appeal on ground (g) should fail.

Conclusion

43. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Sarah Dyer

Inspector