
Appeal Decision

Site visit made on 23 June 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

Appeal Ref: APP/T5150/C/20/3247179

84 Windermere Avenue, Wembley HA9 8RY

- 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 Said Haji against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 10 January 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a rear and side extension to the premises.
 - The requirements of the notice are:
 - Step 1
Demolish the rear and side extension to the premises. For the avoidance of doubt, this includes the canopy, raised platform and lean to extension.
 - Step 2
Remove all items, materials and debris arising from that demolition and remove all the materials associated with the unauthorised development from the premises.
 - 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.
-

Decision

1. The appeal is dismissed and the enforcement notice is upheld. The application for planning permission deemed to have been made under Section 177(5) of the Act as amended is refused.

The appeal under ground (a) and the deemed planning application

2. The main issues are the effect of the development upon (i) the character and appearance of the appeal property and the surrounding area and (ii) the living conditions for the occupiers of 86 Windermere Road (No 86) with particular regard to light and outlook.

Character and appearance

3. Windermere Avenue has a residential character and is largely made up of two storey dwellings. The appeal property is a semi-detached dwelling that has been previously extended including a single storey side extension that was granted planning permission in 2003¹. The development is to the other side of a rear conservatory with the main element being a raised platform which includes steps from the garden and extends around the side of the dwelling to

¹ Ref 03/1666

- the boundary with No 86. The raised platform is largely grey decking with a canopy made up of corrugated roofing with black PVC underneath. The decking extends to the side of the appeal dwelling and the boundary with No 86 and has a canopy supported by a wooden frame. The sides of the development are partially open with some glass elements as well as a perspex moveable screen.
4. However, the different elements with a variety of materials means the development lacks cohesion in terms of its design and construction. As a result, the development is out of character with the appeal dwelling which has white framed windows and a white conservatory with UPVC windows. The Council indicates that the development is around 5.5 metres wide and extends around 4.7 metres from the rear wall of the appeal dwelling so that the development projects further into the garden than the conservatory. I do not share the appellants view that the development is modest in scale. The development appears disproportionate in terms of scale and size to both the original dwelling and the conservatory.
 5. The appellant considers that the principle of a raised platform has been established. A raised platform to provide a small seating area and access to the garden was added after the construction of the conservatory. However, the size of the raised platform was increased and the canopy and lean to extension created to form the development that is now being enforced against. Under ground(a), I am assessing the planning merits of the development that is being enforced against as opposed to any previous development that no longer exists.
 6. Although the development is to the rear of the appeal dwelling, there would be some views of it particularly from No 86 due to both its height and its position against the common boundary. The scale, depth and overall size of the development does result in an incongruous feature which is not in keeping with the appeal property or the local area where extensions where they exist are largely in keeping with the original dwelling in terms of appearance. I therefore do consider that the development does harm the character and appearance of the appeal property and the surrounding area.
 7. The development is therefore contrary to Policy DMP1 of the Brent Development Management Policies Document (November 2016)(the Local Plan) which, amongst other things, states that development will be acceptable provided it is of a siting, layout, scale, type, and design that complements the locality and development of garden spaces will not be acceptable that do not respect the settings of existing dwellings. It is also contrary to Supplementary Planning Document 2: Residential Extensions and Alterations 2018 (SPD2) which, amongst other things, states that rear extensions should be designed to respect the character and size of houses and that the maximum depth normally permitted is 3.0 metres from the wall of the house.
 8. The appellant has asked under ground (f) that the wording of the requirements of the notice be revised to demolish the canopy and the lean to extension but to retain the raised platform. Essentially, the appellant is asking for planning permission to be granted for part of the development and there is power under S177(1) of the Act to grant planning permission "in relation to the whole or any part of those matters". However, I agree with the appellant that the power to grant planning permission for all or part of the matters stated in the notice control is more appropriately dealt with under ground (a) rather than (f).

9. Nevertheless, the raised platform with the grey decking material is a prominent feature of the development. Simply removing the other elements of the development would not address the harm that I found with regard to character and appearance, particularly the use of materials, scale and the depth of the raised platform which extends beyond the conservatory.

Living conditions of 86 Windermere Avenue

10. Although the Council has referred to loss of light to No 86, given the position of existing built development at No 86 close to the common boundary, I do not consider that the development does result in a loss of light for the occupiers of No 86.
11. The development is on the boundary with No 86. SPD2 states that single storey extensions should be set in from the boundary by 1 metre to protect neighbouring residential amenity but the development is not set in from the boundary. Whilst there is some openness to the side, the style of the development particularly the side elements including the corrugated roof does, in my view, appear dominant and overbearing for the occupiers of No 86 causing harm to their living conditions due to loss of outlook.
12. The appellant has suggested the use of obscured glazing to the side to mitigate any impact to neighbours. However, I share the Council's view that adding to the development is likely to make the existing structure more visually prominent and is likely to increase the sense of enclosure for No 86.
13. As I have found harm as a result of loss of outlook for the occupiers of No 86, the development does not therefore comply with Policy DMP1 of the Local Plan which amongst other things refers to development providing acceptable levels of external amenity. It is also contrary to paragraph 127 of the National planning Policy Framework which states that development should create high standards of amenity for existing and future users.

Conclusion on ground(a) and the deemed planning application

14. I have found that the development does harm the character and appearance of the appeal property and the surrounding area and I have also found harm with regard to loss of outlook. There are no material considerations to outweigh the conflict that I have identified with the development plan. For the reasons given, I conclude that the appeal on ground (a) fails and the deemed planning application should be refused.

The appeal under ground (f)

15. This ground relates to whether the steps required by the notice exceed what is necessary to remedy the breach of planning control. An enforcement notice is required to set out the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in Section 173(4) of the 1990 Act. The notice alleges the erection of a rear and side extension to the premises. The steps required are to demolish the rear and side extension to the premises which includes the canopy, raised platform and lean to extension and to remove all items, materials and debris arising from that demolition and remove all the materials associated with the unauthorised development from the premises. The purpose of the notice is to remedy the breach of planning control. Consequently, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. I have already addressed

under ground (a) the appellant's request to grant planning permission to retain part of the development. The ground (f) appeal must therefore fail.

The appeal under ground (g)

16. This ground relates to the period of compliance. The Council has allowed a period of 3 months for compliance and the appellant has requested 6 months. The appellant indicates that he would not be able to carry out the work himself and would need the services of a joiner and would need to raise funds. However, as the appellant states the works are not excessive and I have found harm to the living conditions of No 86. I therefore do consider that the period for compliance is reasonable. Whilst the appellant has referred to Covid 19 restrictions, the development is to the rear of the property and access can be achieved to the side of the dwelling. The Council does, however, have powers under Section 173A of the Act which allows the Council to extend the compliance period should it be satisfied that there were justifiable reasons to do so. The appeal under ground (g) therefore fails.

Other matters

17. The appellant has referred to his particular family circumstances and the need to provide outdoor space for family members and foster children. However, any grant of planning permission would run with the land rather than being personal to the appellant and I do not find that the personal circumstances of the appellant overcome the harm that I have identified.
18. Although the appellant refers to the presumption in favour of development contained in the National Planning Policy Framework, the presumption only applies where development accords with the development plan and I have not found that to be the case.

Conclusion

19. 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 application deemed to have been made under Section 177(5) of the 1990 Act as amended.

E. Griffin

INSPECTOR