



Appeal Decision

Site visit made on 22 July 2020

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03 August 2020

Appeal Ref: APP/T5150/C/20/3246030 14 Parkfields Avenue, London, NW9 7PE

- 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 Emon Kahn against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/19/0656, was issued on 23 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a dwellinghouse.
 - The requirements of the notice are STEP 1 demolish the unauthorised dwellinghouse. STEP 2 remove all items, materials and debris associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is 6 months.
 - 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. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a dwellinghouse on land at 14 Parkfields Avenue, London, NW9 7PE referred to in the notice, subject to the conditions in the attached annex.

The Appeal on Ground (a)

2. The appellant received planning permission for a single storey dwelling in the back garden of No14 and proceeded to construct it. Unfortunately it was built in the wrong place and to the wrong height. After some discussion with the Council it is accepted the dwelling is nearer to the rear boundary of the site, and so closer to the neighbour at No17 Doreen Avenue than it ought to be. The ground floor level is also raised higher than it should be, although the dimensions of the dwelling are otherwise as granted planning permission.
3. There is no dispute the original planning permission was valid and is still implementable so this forms a fallback position. The only potential negative impact of the new position and height is on the occupier of No17 and so the main issue is whether the dwelling as constructed harms the amenities of the neighbour at No17 bearing in mind the likely fall-back position.

Reasons

4. The actual difference between the plans and the dwelling as built is that it has been moved closer by 75cm towards the neighbour at No17 and the floor level height has been increased by 1 block, or 30cm. The plans provided by the architect for the appeal show that nevertheless the ridge height of the dwelling, where it faces No17 is the same as that granted planning permission.
5. Ordinarily it would be difficult to see how these minor discrepancies would have any effect at all, but the dwelling has already been allowed within 2m, at its closest point, to the rear boundary of the site, well within the usual minimum limits suggested by Council policy. Thus by bringing it even closer to that boundary the impact on No17 is magnified. However, as I was able to see when visiting No17, the reduction in amenity is really caused by the construction of the dwelling itself. The top of the side wall of the dwelling and the roof are now dominant in views from the small back garden and rear windows of No17 where before, I should imagine, was open sky. However, the effect of repositioning the dwelling would be marginal. As it can be built anyway to pull it down and start again, for the sake of 75cm does not seem to me a sensible outcome, nor would it provide any material improvement for the occupier of No17.
6. A fence has been erected between the two properties that screens views from the side windows of the new dwelling into No17. These windows serve as secondary light for a dining room and are obscure glazed. With obscure glazing and the fence there is no opportunity for overlooking of No17. The fence was measured on site to be between 1.95m and 2.09m above ground level and I consider any increase over the 2m maximum ordinarily allowed by permitted development rights to be de minimis and acceptable.
7. I note the distance between No17 and the new dwelling as built still enables the ridge to be within the Council's 30degree rule and the top of the fence still allows the 45degree to the ridge rule to be observed. Consequently, I consider the dwelling as built is not contrary to the Council's policy DMP1 nor to the SPD on good design.
8. The Council have suggested conditions to be attached including ones to prevent the loss of small family dwellings to HMOs, to prevent further extensions or windows and to ensure the obscure glazed ones remain and details of landscaping, bin storage and cycle facilities to be agreed. All these are necessary – there is a shortage of small family dwellings, the site is constrained and should not be over-developed, the obscure glazing is important for the neighbour's privacy and the remaining details are needed to ensure they are provided in accordance with the Council's requirements.
9. I shall quash the notice and grant planning permission for the dwelling subject to the conditions suggested.

Simon Hand

Inspector

Conditions Annex (4 conditions)

- 1) The dwelling hereby approved shall at no time be converted from C3 residential to a C4 small HMO, notwithstanding the provisions of Schedule 2 Part 3 Class L of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order) without express planning permission having first been granted by the Local Planning Authority.
- 2) No further extensions or buildings shall be constructed within the curtilage of the property subject of this application, notwithstanding the provisions of Class A , B, D and E of Part 1 Schedule 2 of the Town & Country Planning General Permitted Development Order 2015, as amended, unless a formal planning application is first submitted to and approved by the Local Planning Authority.
- 3) No further windows shall be installed on the west elevation of the premises (facing No17 Doreen Avenue) and the existing windows approved at ground floor level to the west elevation shall be obscure glazed and non-opening up to 1.7m and maintained as such thereafter.
- 4) Details of the front garden layout shall be submitted to and approved in writing by the Local Planning Authority prior to the occupation of the premises. All detailed works shall be carried out as approved prior to the occupation of the building/extension hereby approved. Such details shall include:
 - (i) planting of the front garden areas for both properties with at least 30% soft landscaping;
 - (ii) details of the front garden and rear boundary treatments between the proposed rear gardens;
 - (iii) off-street car parking for 3 cars, the defined points of access and the surfacing materials to be used;
 - (iv) waste and recycling storage facilities;
 - (v) full details including materials of the secure undercover parking storage for bicycles.

Any planting that is part of the approved scheme that within a period of five years after planting is removed, dies or becomes seriously damaged or diseased, shall be replaced in the next planting season and all planting shall be replaced in the same positions with others of a similar size and species, unless the Local Planning Authority first gives written consent to any variation