



Appeal Decision

Site visit made on 3 August 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 21 September 2020

Appeal Ref: APP/T5150/C/20/3247016

5 Rydal Gardens, London NW9 0DS

- 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 B Stanakzai 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 single storey rear extension and raised platform to the rear of the premises
 - The requirements of the notice are to:
 - STEP 1 Demolish the single storey rear extension to the premises.
 - STEP 2 Demolish the raised platform to the rear of the premises.
 - STEP 3 Remove all items, materials and debris arising from the demolition and remove all 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. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act fall to be considered.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. 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

Main issues

2. The main issues in this appeal are the effect of the development on:
 - the character and appearance of the appeal property and surrounding area;
 - the living conditions of neighbouring occupiers as regards outlook, light and privacy.

Reasons

Character and appearance

3. The Council gave planning permission on 28 May 2019 (ref 19/0983) for the 'Erection of a single storey side to rear extension, including conversion of

garage to a habitable room and replacement of garage door with window to dwellinghouse' (the approved scheme).

4. The appeal development is materially different to the approved scheme in several respects. The extension projects 3.5m beyond the rear wall of the property (as opposed to 3m as approved), and it has a maximum flat roof height at its rear elevation of 3.6m (as opposed to the 2.7m eaves height and 3m parapet wall height approved). I do not agree with the appellant that these differences are marginal. In combination, the increased depth and height of the development over the approved scheme creates significant extra bulk and scale to the rear of the property which appears harmfully disproportionate even when taking into account the pre-existing alterations to the property. The significant visual harm is exacerbated further by the substantial added bulk of built form contributed by the raised decking (not part of the approved scheme) which rises more than a modest height from the garden and extends across the entirety of the width of the plot. Further, while I accept that there may be examples of extended properties with differing coloured brickwork locally this does not satisfactorily mitigate against the added visual harm created by the use of strongly incongruous coloured materials in the case of the appeal development. In particular the orange brick colour of the extension contrasts harmfully against the brown brick of the original dwelling and the red brick of the roof extension.
5. There are other properties on Rydal Gardens with single storey flat roof rear extensions, some of which can be seen from the rear of the appeal property. The appellant says that such local examples have flat roof heights greater than 3m due to the fall in land level at the rear of the properties. Notwithstanding this, I have seen very limited evidence of the height of these structures and it was not clear to me on my site visit that they were at least as high or materially similar in height to the appeal development. However it was clear to me on my visit, and from the photographs in the appeal papers, that the rear elevation of the appeal extension is noticeably higher and extends deeper into its plot than the rear elevation of the adjacent rear conservatory at 7 Rydal Gardens (no 7) reinforcing the overall impression of overdevelopment. In any respect, it is the total impact of the development as set out in the paragraph above which is unacceptably harmful. For this reason, I give very limited weight to evidence presented by the appellant of approvals by the Council of a 3.3m high single storey rear extension at 11 Rydal Gardens (no 11) and a 3.5m deep extension (2.91m rear elevation height) at 13 Rydal Gardens (no 13).
6. The Council's Supplementary Planning Document SPD2: Residential Extensions and Alterations (the SPD) is a material consideration in this appeal to which I give significant weight due to its relevance to the development. It says that single storey rear extensions should have a maximum depth of 3m from the rear wall of the house, should be set in from the boundary by a metre for each metre of an extension's depth which exceeds 3m, and have a maximum flat roof height of 3m on the boundary. The appeal development exceeds each of these requirements.
7. The benefit of the decking in providing a level and fully accessible outdoor area for all occupants of the property does not outweigh the visual harm it causes. Further, while there may be raised levelled patio areas to other properties locally, it is the height, depth and width of the decking in combination with the

scale of the associated extension which causes an unacceptable visual impact in this case.

8. I give very limited weight that the appeal development cannot be seen from the street as, for the reasons I have given and notwithstanding the size of the remaining portion of undeveloped rear garden, it represents inharmonious overdevelopment when viewed from the rear including from neighbouring properties.
9. I therefore find, for all of the reasons given, that the appeal development causes significant harm to the character and appearance of the appeal property and surrounding area. As such, it is in conflict with Policy DMP1 of the London Borough of Brent Development Management Policies (DMP) as supported by the SPD which seeks to ensure amongst other objectives that character and appearance is protected. It is also contrary to the design principles of the National Planning Policy Framework (the Framework).

Living conditions, neighbouring occupiers

10. As a result of the appeal extension materially exceeding the dimensions of the adjacent conservatory at no 7, both in rear elevation height and in depth, it creates a close and overbearing structure of hard brick-built form above the boundary fence which causes unacceptable harm to the neighbour's outlook from the conservatory notwithstanding the presence of blanking panels in its side elevation. Although outlook from the conservatory also encompasses that property's garden, the proximity and scale of adjacent built form creates an unacceptable sense of enclosure. For the same reasons, notwithstanding the conservatory's orientation to the south-east of the development, the close and unacceptably large brick structure in my judgement materially reduces natural light entering the conservatory.
11. Further, the decking creates an elevated position which enables close views into the conservatory of no 7 and into its garden and that of no 3 Rydal Gardens (No 3). This creates an unacceptable and significant loss of privacy to the occupiers of those properties. The appellant has suggested that planning permission could be conditioned so that 1.8m privacy screens are added to the top of the decking to reduce the impact of the loss of privacy. However, whatever the design and materials selected for the screens they would exacerbate the harm to outlook and natural light levels I have described by creating a fence of approximately 3m close to the conservatory. In-setting the screens inside the boundary would not sufficiently mitigate the harmful effects so as to be acceptable.
12. Therefore, for all of the above reasons, the appeal development causes significant harm to neighbouring occupiers as regards outlook, light and privacy. As such, it is conflict with Policy DMP1 of the DMP as supported by the SPD which seeks to ensure amongst other objectives that living conditions are protected. It is also contrary to the design principles of the Framework.

Conclusion on ground (a) and the deemed planning application

13. Accordingly, the appeal under ground (a) fails and I refuse to grant planning permission on the deemed application.

Ground (f)

14. It is clear from the way the requirements of the notice have been drafted that the Council is pursuing the purpose of remedying the breach of planning control rather than remedying injury to amenity.
15. Notwithstanding this purpose, the appellant has put forward alternative requirements whereby the raised decking platform would be removed and replaced with a narrower stepped access leading from the doors in the rear elevation of the extension as shown in plans submitted with the appeal.
16. However, this alternative to what is required in the notice would not remedy the breach of planning control. Further, even had I found that the purpose of the notice was to remedy injury to amenity caused by the breach, the alternative scheme would not achieve this. Such steps involving changes to the decking alone would not provide a satisfactory solution to remedy the harm I have identified caused by the impact of the extension itself upon character and appearance and upon living conditions.
17. Therefore, while declining to use my powers under ground (a) to grant planning permission for the development in whole or in part, I will also not vary the notice under ground (f) as no lesser steps are possible to remedy the breach of planning control than as required in the notice. Therefore, the appeal under ground (f) fails.

Ground (g)

18. For an appeal to be successful under this ground, I must be satisfied that the time given to comply with the notice falls short of what reasonably should be allowed.
19. The appellant says that 6 months is needed due to financial hardship, and that more time is needed to hire a contractor(s) without stress. However, very limited substantive evidence has been submitted to support this and I find that the 3-month compliance period of the notice is a reasonable period for the requirements to be undertaken including finding a contractor(s) and undertaking the works. Accordingly, the appeal under ground (g) fails.

Conclusion

20. 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.

Andrew Walker

INSPECTOR