
Appeal Decision

Site visit made on 23 September 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 November 2020

Appeal Ref: APP/M5450/C/20/3246862

302 Whitchurch Lane, Edgware, London HA8 6QX

- 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 Gerald Chjukwuma Anozia against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice is dated 9 January 2020.
 - The breach of planning control as alleged in the notice is: without planning permission:
 - (1) the material change of use of the land from single family dwellinghouse (C3) to a mixed use for a flat (C3) and hotel (C1) ("the Unauthorised Use"); and (2) the unauthorised: a. construction of a single storey rear extension ("the Unauthorised Extension"); and b. construction of a timber decking in the rear garden of the property ("the Unauthorised Timber Decking"); and c. enlargement of an existing front, side and rear dormer ("the Unauthorised Loft Extension"); and d. construction of a garden building for use as a self-contained one-bed flat ("the Unauthorised Garden Building").
 - The requirements of the notice are: 1) Cease the unauthorised use. 2) Demolish the unauthorised extension. 3) Demolish the unauthorised timber decking. 4) Demolish the unauthorised loft extension. 5) Make good any damage caused to the building as a result of the above steps 1-4 and ensure that all materials used shall match those used in the existing building. 6) Demolish the unauthorised garden building. 7) Remove all internal partitions that enable the unauthorised use. 8) Remove all bathrooms except (2) two from the dwelling house, and 9) Remove from the land all materials and debris arising from compliance with the aforementioned requirement of the notice.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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 as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be varied by deleting from the requirements the text 'Demolish the unauthorised loft extension' and its replacement with the text 'Return the loft extension to its former design and dimensions'.
2. Subject to the variation, the appeal is allowed insofar as it relates to the specified part of the development being permitted and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for timber decking in the rear garden at 302 Whitchurch Lane, Edgware, London HA8 6QX.
3. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to the dormer extension, the single storey rear extension and the

garden building and planning permission is refused in respect of the dormer extension, the single storey rear extension and the garden building on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for costs

4. Applications for costs were made by Mr Gerald Chjukwuma Anozia against the Council of the London Borough of Harrow, and by the Council of the London Borough of Harrow against Mr Gerald Chjukwuma Anozia. These applications are the subjects of separate Decisions.

Procedural Matters

5. The appellant states that the unauthorised changes of use at the appeal site have ceased. That being the case, he is not seeking planning permission for any change of use under ground (a). However, deemed planning permission is sought for the rear extension, the timber decking, the loft extension and the garden building. Since lodging the appeal, the appellant has decided not to pursue ground (b). I have thus assessed the appeal in the light of these factors.

The appeal on ground (a)

Main issues

6. The main issues are the effect of the development on:
 - the living conditions of neighbours, with particular regard to privacy and outlook; and
 - the character and appearance of the appeal site and the surrounding area.

Reasons

Living conditions

7. The appeal site is a semi-detached building in a residential area of similar dwellings. The Council's document entitled 'Supplementary Planning Document - Residential Design Guide' (SPD) sets out principles for householder developments which take account of design and the living conditions of neighbours.

Rear extension

8. The main parties agree that unauthorised single storey rear extension projects approximately 6m beyond the back wall of the house. According to the Council, the flat roofed structure has an eaves height of around 3.1m, whereas the appellant states that it has an eaves height of around 2.73m and a total roof height of 3.03m.
9. Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) sets out provisions and limitations for development within the curtilage of a dwellinghouse. In the case of an extension that would be within 2m of the boundary of the curtilage of the dwellinghouse, as is the case here, the height of the eaves of the enlarged part must not exceed 3m. As the eaves height here exceeds 3m, the extension is

not permitted development within the context of the lawful use of the site as a single dwelling.

10. Turning then to the Council's objection, they are concerned that the excessive rearward projection of the development results in a loss of outlook and increased sense of enclosure for the neighbours at 304 Whitchurch Lane, which adjoins the appeal site. I have been provided with a site photograph dated 24 July 2018 which shows the rear elevation of No 304 in context with the appeal site, with construction works under way. This shows a sizeable window on the ground floor of No 304 which sits close to the boundary with No 302.
11. There are no photographs of the former boundary treatment between the properties. However, the appellant states that the previous boundary fence was 1m high and therefore offered no privacy to No 304. That being the case, the lower fence would have offered a significant degree of openness and outlook across the rear plot of No 302. By contrast, the introduction of a wall of a substantial height and area, in close proximity to the ground floor window, intrudes on any wider views towards No 302, resulting in an increased sense of enclosure. Furthermore, the amount of natural daylight reaching the ground floor room at No 304 has been reduced by the close proximity of the new wall, which also fails to meet the 45 degree rule. The appellant acknowledges both these points.
12. Similarly, the garden area immediately to the rear of No 304 has been significantly more enclosed by the new extension. The visual impact of the tall, blank elevation, extending to a depth of around 6m, is oppressive to those using the garden area closest to the house. This combination of factors leads me to conclude the development results in unacceptable harm to the living conditions of existing or future occupiers at No 304.
13. The appellant points to the fallback position whereby prior approval regulations may allow rear extensions of up to 6m in depth by up to 4m in height in the case of semi-detached dwellings. I note that a prior notification application (ref: P/0647/18/PRIOR) was approved in 2018 for a single storey rear extension of 6m deep with a maximum height of 3.07m, and eaves height of 2.7m at the appeal site. However, there is no evidence that this approval was implemented or that it remains extant.
14. That being the case, if the appellant wishes to take advantage of the permitted development rights, it is open to him to submit a new prior approval notification. However, the outcome of the prior approval procedure cannot be guaranteed in the same way as permitted development without a pre-commencement condition. Neighbours may change, and so may the opinions of neighbours. Therefore, the weight I can afford to such a fallback position is significantly limited.
15. As the extension has no windows facing No 304, there can be no adverse effect on the privacy of residents. Nevertheless, I am satisfied that the rear extension has an unacceptably harmful effect of the living conditions at No 304.

Garden building

16. The single storey flat-roofed garden building is located in the rear plot of No 302, close to the boundary with the neighbouring 300 Whitchurch Lane. The appellant confirms that the structure is around 10.2m deep, 3.65m wide

and 2.43m high, with an eaves height of approximately 2.13m. It is finished in white painted render with a black roof and black rainwater goods. The main elevation is along the side facing into the plot of No 302, with window and door openings and an overhanging eaves feature.

17. The SPD gives advice on the location of new outbuildings. It states that these should normally be located away from the boundary of the site by 2m. However, if the outbuilding is within 2m of any boundary, as is the case here, then a maximum height of 2.5m is recommended. In terms of height, the outbuilding therefore accords with the SPD guidelines. On my visit, I saw that the fence adjacent to the outbuilding is close in height to that of the outbuilding, but steps down towards the rear of the plot.
18. The Council are concerned that the outbuilding appears imposing and overbearing when viewed from the immediate garden area and rear windows of No 300. However, there is little evidence to show that this is the case. It is likely that the higher section of fence shields much of the outbuilding from views from the ground floor of No 300, and from the area immediately to the rear of the house. Where the fence lowers in height, the back wall of the outbuilding will be partially visible from the garden of No 300. However, as it is within the recommended height limit and set slightly away from the boundary, it is unlikely that its visual impact is so harmful as to be unacceptable.
19. In the absence of firm evidence to the contrary, I am satisfied that the garden building does not have an unacceptably adverse impact on the living conditions of residents at No 300. For clarity, this is notwithstanding my findings on the garden building below with regard to the issue of character and appearance.

Decking

20. An area of wooden decking has been erected beyond the rear extension. The decking is around 4m wide by 2.95m deep, with a height of around 0.58m. The Council officer's report makes reference to the rearward projection and siting in relation to the low boundary treatment with No 304, which they say leads to direct overlooking of the private amenity area and rear garden at No 304.
21. On my site visit, I saw the close boarded fence that has now been erected on the boundary with No 304. The fence is approximately 2m high, and so taking into account the height of the decking, is around 1.6m high along the section adjacent to the decking. Although the Council maintain that the fence still permits overlooking of the outdoor area of No 304, I did not find this to be the case when I inspected the decking area. I was not able to see the garden of No 304 at all. Therefore, I am satisfied that there is no adverse impact on the privacy of neighbours arising from the presence of the decking.

Character and appearance

The loft

22. The SPD sets out guidelines for roof alterations, including dormer windows. Dormer windows should complement the original street character and should not dominate buildings or impair their proportion or character. Dormers should generally be subordinate features in the roof. It is advised that a clearly visible

- section of roof should be retained around the dormer window, so that it is visually contained within the profile of the roof.
23. Specific guidance is given for rear dormer extensions. These should be set in at least 500mm from a shared boundary with an attached house, at least 1000mm from the gable end, and set back at least 1000mm from the roof eaves, measured externally along the roof slope.
 24. The appellant's Appendix 4 shows a close-up photo of the roof dormer. He says that the distance between the edge of the dormer and the eaves of the main roof is filled by five roof tiles. Appendix 6 contains a copy of the building quote for the roof works undertaken by SIG Roofing. The roof tile used for the works was Redland Rosemary Classic Tile 6501 Red 80. The manufacturing specifications for the tile are attached at Appendix 7. The width of the tile is shown as 165mm. Therefore, the appellant argues, the approximate length between the edge of the dormer and the eaves is 825mm.
 25. Five tiles are indeed visible from the eaves to the bottom edge of the dormer, but they have been laid to overlap in the usual manner. Due to this significant overlap, the true distance between eaves and dormer is likely to be somewhat less than the 1m recommended distance set out in the SPD.
 26. In any case, the dormer achieves minimal setbacks from the sides of the roof, and there is no set down at all from the original ridge height of the building. Although the appellant asserts that the existing setback from the eaves is sufficient, he offers little justification as to why it should fall short of the recommended setback of 1m. Therefore, although the rear dormer does not quite subsume the whole rear roof slope, it occupies a substantial proportion of the rear slope, leaving almost none of the original roof visible. Its box-like form dominates the rear elevation, appearing neither sympathetic nor subsidiary to the modest scale and appearance of the existing property.
 27. I note that the Council make reference to the effect of the loft on the visual amenities of neighbouring occupiers. However, there is little evidence that it has had an adverse impact on living conditions such as outlook or overbearing, which have a visual component.
 28. In support of his case, the appellant refers to works including the retiling of the dormer, the replacement of fenestration, and the removal of a side window. However, these works could have been carried out independently of the unauthorised enlargement, and do not outweigh the harm I have identified.
 29. Thus, I conclude that the loft development unacceptably harms the character and appearance of the surrounding area.

The garden building

30. The Council allege that the garden building was used as a self-contained flat, and thus required planning permission as it was not incidental to the unauthorised use of the appeal site as a hotel. By the same token, it would not qualify as permitted development in the context of the lawful use of the appeal site as a single dwelling as long as it offered primary accommodation.
31. The appellant states that the building is now used for plant, storage and a home office. On my visit, I saw no evidence that the flat use was still ongoing, and so I shall consider the garden building on that basis.

32. Policy DM 1 of the Harrow Council Development Management Policies (DMP) states that all development must achieve a high standard of design and layout. In terms of materials and detailing, the appearance of the garden building generally reflects that of the rear of the main building. However, regard is also to be had to the context provided by neighbouring buildings and the local character and pattern of development.
33. The appellant asserts that there are many examples of garden buildings in the vicinity of different shapes, sizes and styles. He includes as his Appendix 15 a photograph of the garden building in context with a number of the rear plots of neighbouring properties. Although a number of outbuildings are indeed visible, none appear to be of the same scale as the unauthorised structure and are in fact considerably smaller. Furthermore, the neighbouring examples are confined to the rear parts of the gardens, leaving the majority of the plots undeveloped. This is in line with the advice on outbuildings in the SPD that they should be located in the final quarter of the garden.
34. DMP Policy DM1 also requires the provision of appropriate space around buildings for setting and landscaping. In this case, the unauthorised building dominates the rear plot of No 302, leaving an awkward L-shaped garden space. This contrasts with the more open, spacious neighbouring plots, which appear to be the prevailing form of development in the area.
35. The appellant states that there was previously a garage in this location, but little evidence has been produced relating to the appearance or scale of this structure. In any case, the outbuilding is a new development and so it must be assessed on its own merits.
36. In terms of a fallback, the appellant contends that, if the garden building is demolished, it could be replaced with an identical building under Schedule 2, Part 1, Class E of the GPDO. However, paragraph E.1(b) provides that development is not permitted if the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).
37. The 'Permitted development rights for householders - Technical Guidance' document¹ clarifies that the 50% limit covers all buildings, so will include any existing or proposed new extensions to the original house under Class A of the permitted development rules or that have been granted planning permission, as well as existing and proposed outbuildings.
38. In the absence of detailed and quantifiable evidence, I cannot be certain that a new garden building identical to the unauthorised structure would meet paragraph E.1(b). This circumstance limits the weight I can give to the fallback position with regard to the garden building.
39. The garden building conflicts with the advice given in the SPD, and departs from the characteristic grain of outbuilding development in the vicinity. I am therefore satisfied that the garden building unacceptably harms the character and appearance of the surrounding area.

¹ September 2019, Ministry of Housing, Communities and Local Government

Rear extension

40. The SPD states that rear extensions should be designed to respect the character and scale of the original house and garden. In terms of materials, the white painted render finish and the fenestration of the rear extension reflect those of the rear elevation of the main building.
41. In term of scale, the footprint of the rear extension appears to be somewhat less than that of the main building. Furthermore, I saw on my site visit that the projection of the extension is similar to that of No 300. I saw that it visually blends with the backdrop of the main building, and it is not particularly obtrusive within the wider area.
42. Drawing these factors together, and notwithstanding my conclusion with regard to living conditions above, I find that the rear extension is acceptable in terms of its effect on the character and appearance of the surrounding area.

Planning balance and conclusion on ground (a)

43. The loft has an unacceptably adverse effect on the character and appearance of the surrounding area, contrary to the requirements of DMP Policy DM1 insofar as it requires a high standard of design, and the advice given in the SPD. It further fails to accord with Policy 7.4 of the London Plan (LP), which relates to local character, and LP Policy 7.6, insofar as it seeks to secure design that is appropriate to its context.
44. The garden building has an unacceptably adverse effect on the character and appearance of the surrounding area, contrary to the requirements of DMP Policy DM1 relating to design, and the advice given in the SPD. It further fails to accord with Policy 7.4 of the London Plan (LP), which relates to local character, and LP Policy 7.6, insofar as it seeks to secure design that is appropriate to its context. However, I find no material harm to living conditions arising from the garden building, and to that extent, it complies with DMP Policy DM 1 insofar as it seeks a high standard of privacy and amenity.
45. I conclude that the rear extension unacceptably harms the living conditions of existing and future neighbouring residents at No 304, contrary to the requirement of DMP Policy DM1 to achieve a high standard of amenity for neighbouring occupiers. However, I have found that the rear extension is acceptable in terms of the character and appearance of the surrounding area, and so to that extent, I conclude that it accords with the requirements of DMP Policy DM 1 relating to design, LP Policy 7.4, which relates to local character, and LP Policy 7.6, insofar as it seeks to secure design that is appropriate to its context.
46. The London Plan Housing Supplementary Planning Guidance seeks to support family life, but this does not negate the need for development to comply with the development plan. Whilst NPPF paragraph 127 seeks to optimise potential of development sites, it is unclear exactly now this has been achieved in this particular case.
47. With reference to NPPF paragraph 127, the appellant argues that the works will meet the needs of a large family over the lifetime of the development. However, the paragraph states that developments should function well and add to the overall quality of the area. Whilst the works may well offer some

benefits to the property in connection to its lawful use as a dwelling, these would be private benefits that would not outweigh the harms I have identified.

48. Finally, I have concluded that the timber decking is acceptable in terms of its effect on the living conditions of neighbours, and so it accords with DMP Policy DM 1 insofar as it seeks a high standard of privacy and amenity, LP Policy 7.4, which relates to local character, and LP Policy 7.6, insofar as it seeks to secure design that is appropriate to its context. To that extent, the appeal on ground (a) succeeds and deemed planning permission for the timber decking is granted. I have directed that the enforcement notice be varied accordingly.

The appeal on ground (f)

49. Ground (f) is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections.
50. The purpose of the enforcement notice is to remedy the breach of planning control and injury to amenity and to enable the land to be restored to its condition before the breach took place.
51. The appellant's case is that the requirement to remove the garden building and the rear extension are excessive. I have discussed the fallback positions with respect to these structures above and found them to be unconvincing. Moreover, the householder permitted development rights would only be available to the appellant once the notice has been complied with. The requirements of the notice would not preclude the appellant from exercising those rights once the notice has been complied with, but the purpose of the notice cannot be achieved until that point is reached. I am therefore satisfied that the requirements are commensurate with the aim of the notice.
52. The notice requires the removal of all but two bathrooms from the building. The appellant argues that the building is occupied by a family of eight and so it is excessive to require any bathrooms to be removed.
53. Under section 173(5), a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement, so that the land is restored to its condition before the change of use took place.
54. The courts have held that such works must have been integral to or part and parcel of the making of the material change of use. There is no evidence to show that these works were undertaken for any other purpose, or for any lawful use, and so it must be assumed that they were carried out to facilitate the unauthorised use of the hotel. This is similarly the case for the partitions in the garden building.
55. With regard to the dormer extension, the enforcement notice requires its demolition. As a lesser step, the appellant suggests that the set back of the loft structure from the back eaves could be increased to 1m, in line with the advice of the SPD. The courts have held that the purpose of the enforcement regime is remedial rather than punitive. Therefore, if it appears that there is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal, then this should be considered.

56. In this case, it seems to me that returning the loft extension to its dimensions prior to the breach would be sufficient to overcome the objections in this particular case. To that extent, the appeal on ground (f) succeeds and I have directed that the requirements of the enforcement notice should be varied accordingly.

Overall conclusion

57. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the timber decking, and refuse to grant planning permission in respect of the dormer extension, the single storey rear extension and the garden building. Otherwise I will uphold the notice with a variation to reflect the partial success of ground (f) with regard to the dormer extension. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Elaine Gray

INSPECTOR