



Appeal Decision

Site visit made on 17 August 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 September 2021

Appeal Ref: APP/N5090/C/21/3267727

Land at 23 Prospect Road, London NW2 2JU

- 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 Mrs Laura-Lisa Esterkin against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 16 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the creation of a second-floor rear extension to an existing rear dormer.
 - The requirements of the notice are:
 - 1 Remove the unauthorised roof extension to the existing rear dormer. Restoring the roof to its previous state as depicted in drawing no. PROS/401/02 of application reference, 20/4671/RCU.
 - 2 Permanently remove all materials resulting from the necessary works carried out from 1. from the site.
 - The period for compliance with the requirements is four 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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Formal Decision

1. It is directed that the enforcement notice is varied by:
 - (1) The addition of the following words to requirement number 1, after 20/4671/RCU: *Or, carry out remedial works to the roof extension so that it complies with the terms of planning permission reference 21/1908/HSE dated 2 June 2021.*
2. Subject to this variation, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. Since the appeal was submitted the Government has published a revised National Planning Policy Framework (the Framework). Both the appellant and the Council were given an opportunity to comment on any relevant implications for the appeal, and any comments received have been taken into account.
4. The Council referred to Policy D3 of The London Plan (2021) in their statement however, this was not referenced in the reasons for issuing the notice. Since the appellant has addressed the policy, I shall consider it in so far as it is relevant to the reasons for issuing the notice.

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

5. The main issue is the effect of the extension on the character and appearance of the house and area generally.
6. 23 Prospect Road is a traditional house located in a terrace of properties which to the front have a pleasing and well-maintained uniform appearance. To the rear, many of the houses on both sides of the street, include dormer extensions which occupy almost the entire roof slope, with a small number which project beyond the face of the main rear elevation.
7. The appeal development is an extension above an existing outrigger, adjoining an existing dormer, the result being what could be described as an L-shaped dormer. Whilst at my visit I saw those L-shaped dormer extensions referred to by the appellant, at 14 and 21 Prospect Road, such extensions are not characteristic of the immediate locality.
8. The extension extends close to the eaves of the existing dormer roof and occupies a significant proportion of the outrigger roof slope. As a result of its scale and box-like form, the extension has a bulky and dominant appearance within the roof slope, poorly related to the dwellings character. It does not therefore represent high quality design.
9. The extension is visible from a private car park to the rear and glimpsed between buildings on Finchley Road. Whilst not readily seen in wider public views, the extension will be visible from the rear windows and some gardens of neighbouring and surrounding dwellings and in such views the extension would appear as a discordant feature. The use of materials to match the existing dormer does little to ameliorate this harmful effect.
10. The appellant does not seek to establish that the extension constitutes permitted development. Although they did refer to what could be built as permitted development, there are no details before me about what this would look like, as such this is a matter of limited weight. Planning permission has however, since the appeal was submitted, been granted for a roof extension (ref: 21/1908/HSE).
11. It appears to me that the approved extension would result in the loss of the fourth bedroom, as a result of the reduction in height consequently, it is not clear whether the permitted scheme would be implemented. Nevertheless, there is an extant planning permission and therefore a potential fallback position to which I attach significant weight. However, the approved extension would be materially lower in height and as such it would have a less dominant appearance. Consequently, I consider the fallback would be less harmful than the appeal scheme.
12. Whilst those extensions at numbers 14 and 21 are similar they are not as tall as the appeal development and therefore not directly comparable. That at no.1 is of a materially different appearance, with a mansard type roof and constructed partly of brick to match the original house. This and the side extension to no.22, being a side extension, are not comparable.
13. In any case, whilst the appellant stated that at no.21 constitutes permitted development, I do not know the circumstances of those others being permitted. Furthermore, their existence does not significantly undermine my observation

that such extensions are not a feature and do not define the character of the street scene.

14. Overall, for the reasons given I conclude that the extension causes harm to the character and appearance of the house and the surrounding area contrary to Policies DM01 of the DMP¹, Policy CS5 of the Core Strategy² and Policy D3 of The London Plan (2021) which together require high quality design which preserves or enhances local character and respects the appearance of surrounding buildings and local context.
15. There is also conflict with the design aims of the Framework which requires development to be visually attractive as a result of good architecture and which is sympathetic to local character and history, including the surrounding built environment. It also conflicts with the Council's Residential Design Guidance Supplementary Planning Document 2016 in respect of scale.
16. The appellant referred to paragraph 120(e) of the Framework however, this refers to using airspace above existing residential and commercial premises for new homes and as such is not directly relevant.
17. The Council referred to Policy CS1 of the Core Strategy 2012 which is a general, strategic policy that is not directly relevant to the detail of this proposal. Similarly, in the absence of explanation I find that Policy DM02 of the DMP and the Sustainable Design Guidance Supplementary Planning Document 2016, also referred to, are not directly relevant to the appeal development.

Other matters

18. That the house is not a listed building, in a conservation area nor identified as a building of historic significance and there is no harm to the living conditions of neighbouring occupiers, are neutral matters which cannot outweigh my findings.
19. I note the appellant's concerns regarding potential disruption to their family and neighbours during the carrying out of any necessary remedial works. However, since any disturbance would be for a temporary period only this is a matter of limited weight.

Conclusion on ground (a)

20. The extension is contrary to the development plan when taken as a whole and in this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
21. I therefore conclude, having regard to all other matters raised, that the appeal on ground (a) fails and that planning permission will not be granted.

Ground (f)

22. There is no appeal on ground (f) however, I have a duty to consider whether any requirements are excessive for the purposes of the enforcement notice. In this case the enforcement notice requires the extension to be removed and as such I find its purpose is to remedy the breach of planning control.

¹ Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012

² Barnet's Local Plan (Core Strategy) Development Plan Document September 2012

23. However, there is an extant planning permission for a smaller extension (21/1908/HSE), and it seems to me that it would be possible to modify the extension to comply with that permission.
24. Consequently, since the purpose of the enforcement regime is remedial rather than punitive and whilst the requirements in the notice as issued do not exceed the purpose behind the notice, an obvious alternative would be to make the development comply with an extant planning permission which would remedy the breach of planning control. There would also be less cost and disruption than as a result of total demolition.
25. I therefore find that it would be reasonable to vary the notice, to require that either the extension be removed or, that it is modified to comply with the aforementioned planning permission. I am satisfied that varying the notice on this basis would cause no injustice to either of the main parties.

Conclusion

26. For the reasons given above, I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR