
Appeal Decision

Site visit made on 20 October 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 16 November 2021

Appeal Ref: APP/T5150/C/21/3273037

55 and 55a Dorchester Way, Harrow HA3 9RQ

- 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 Hansa Patel against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, issued under ref E/20/0637, was issued on 30 March 2021.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a hip to gable roof extension and a rear dormer window to the premises AND The development is not being built in accordance to the approved plans and conditions of p.p. 19/1272 dated 06/09/2019.*
- The requirements of the notice are to:
 - (1) Demolish the unauthorised hip to gable extension and rear dormer window from the premises;
 - (2) Demolish the unauthorised outbuilding to the rear of the premises;
 - (3) Demolish the unauthorised single-storey rear extension from the premises;
 - (4) Restore the premises back to its (*sic*) condition... before the unauthorised works took place;
 - (5) Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises;OR
 - (6) Implement planning permission reference 19/1272 granted by the London Borough of Brent on the 6th September 2019 so that the development is in accordance with the approved plans [which are listed in and attached to the notice].
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. (A duplicate appeal for which the fee was not paid has lapsed accordingly.)

Summary Decision: the appeal is allowed in part, and permission is granted on that part, and the enforcement notice is upheld with corrections and variations.

Preliminary Matters

1. I wrote to the parties following my site visit of 20 October 2021 to express a number of concerns as to the drafting of the notice and seeking comments as to whether I could, or should, exercise my powers under section 176(1) of the 1990 Act so as to make corrections and/or variations to the notice. The Council responded almost immediately although in doing so did not answer a number of the questions I had raised. The appellant's response appears to contend that the roof alterations are permitted development, and contends that development has taken place in accordance with approved plans with further works then carried out. This is to introduce an appeal on ground (c); namely that the matters alleged in the notice do not constitute a

breach of planning control. Given my findings on this set out below, I have not considered it necessary to revert to the Council for their views. The appellant is confident that works could lawfully be carried out again if the enforcement notice is complied with. This could amount to a contention that the requirements of the notice are excessive, which would fall to be considered under ground (f), but it appears to me here that it is really being put as a 'fall-back' argument to the existing ground (a) appeal, and I shall deal with it accordingly where appropriate.

2. My principal concern about the notice is that the second strand of the allegation, concerning 'the development' not being built according to plans, raises considerable uncertainty especially when read against the relevant grant of planning permission and the requirements of the notice. (It is however necessary to read it against the planning permission in order to make any sense of it at all.) The 2019 permission itself was expressed in terms so as to allow the "Demolition of rear outbuilding and erection of a single-storey rear extension to Nos. 55 & 55a and conversion of the existing self-contained flat (55a) into a 2-storey dwellinghouse (1 bedroom) involving subdivision at first floor of No. 55".
3. At the time of my site visit a roughly L-shaped single-storey outbuilding lay to the rear of the property (or rather, properties). It is reasonably clear from the Council's appeal statement and response to my note that they consider this outbuilding to constitute a breach of planning control by reason of not according with the plans attached to that 2019 permission. However, as my note pointed out, there is no condition of the 2019 permission requiring the demolition of the outbuilding – its demolition is permitted, but it is not required (in the absence of a completion notice). I am uncertain as to whether the outbuilding presently on site constitutes an entirely new building, or is an extended version of the one pre-existing. It appeared to be in the process of construction and so I do not believe it to be the outbuilding that existed on the site at the time of the 2019 permission without alteration. Either way, the outbuilding on site does not result from any breach of the 2019 permission. This is not to say that it (or part of it) could not amount to any other breach of planning control, but the Council have not enlightened me about that.
4. The Council's response to my note conceded that the notice was badly drafted but it was suggested that it could be corrected without prejudice to any party. It was suggested that the relevant strand of the allegation could be re-written to say:

The development has not been built in accordance with the approved plans and conditions of p.p. 19/1272 dated 06/09/2019, in breach of condition 2 of that permission. (the breach of condition)

5. This does not answer my point about the lack of a condition requiring the demolition of the outbuilding, and nor does it answer my question about what constitutes 'the development' in the allegation. There were three principal aspects to the development permitted: (i) the demolition of the outbuilding (ii) the erection of a single-storey rear extension and (iii) the conversion works to reconfigure the delineation between the two dwellings on the site. It is unclear from the Council's response whether they say that

there has been a breach of control in relation to each aspect of the development permitted. It appears unlikely that there has been because, as far as I can ascertain, the outbuilding may not have been demolished, and there is nothing in the Council's reasons for issuing the notice or appeal statement to suggest that there is any objection to the way in which the internal works have been carried out (leaving aside for the moment the separate allegation as to the roof, which has enabled the expansion of the living space).

6. It is my duty to put the notice in order where possible and, notwithstanding what the Council otherwise had to say in response to my note, their suggested re-writing to refer to what "has not been built" in accordance with the plans can only sensibly refer to the works carried out to construct the single-storey extension. I shall therefore leave the other elements aside and recast the allegation to refer to the erection of a single-storey extension without complying with condition 2 of the 2019 permission requiring construction of it in accordance with the approved plans. Thus I will proceed to deal with the deemed planning application as limited by that description of the alleged breach (as well as to the roof works which are alleged to have been carried out without permission). Any concerns as to any other failures to comply with condition 2 or as relate to the outbuilding would have to form the subject of separate consideration.
7. I am satisfied that this change can be made without prejudice to the interests of either party. Essentially it cuts down the allegation in the notice and clarifies the basis for alleging a breach of control, and does not introduce anything new. It does not prevent the Council from revisiting the question of the outbuilding. It will unfortunately not give either party an outcome on the status of the outbuilding, but that could not have resulted anyway from the Council's original allegation. (If I were clearer about what has happened, and I were to amend the allegation to say that the outbuilding has been constructed, altered, extended or retained in breach of condition 2 then I should not have been able to uphold such an allegation because the condition itself does not prohibit any of those things. Nor could the deemed planning application in that regard have resulted in a permission for the outbuilding, for essentially the same reason.)
8. Although the remaining allegations are covered in one notice, the result is that I consider there are two distinct elements to the deemed planning application that falls for consideration. The first is an application for planning permission for the roof works (the hip to gable extension and the construction of a rear dormer window, as alleged). Its corollary would be section 73A of the 1990 Act, which deals rather straightforwardly with retrospective applications for planning permission. The second is an application to develop the land, again retrospectively, without complying with the conditions attached to a previous grant of planning permission. The corollary here would be section 73. However, any permission would not release the 'plans' condition in its entirety (and the original permission would in any event remain intact and unamended) but only insofar as works have been carried out to construct the single-storey extension that have deviated from those plans.

The appeal on ground (c)

9. Taking the roof works first, the appellant contends “we have got planning permission so I do not understand the breach, the loft is under permitted...” and “the erection of the loft is... now two dwellings and falls under permitted development”. Overall I understand this to mean that the appellant considers that the roof works are permitted development, with the relevant volumetric assessment now applying to two dwellings rather than one.
10. A lawful development certificate has previously been applied for and refused by the Council although apparently in relation only to no. 55A. The Council’s assessment of the application did not consider whether the dimensions of the roof works that had been carried out would not in themselves have complied with the terms of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (“the Order”). The Council’s sole reason for refusing the application was that it considered the development not to be authorised by the Order in any event. Article 3(5) of the Order provides that the permission granted by the Order does not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of the building are unlawful. It was held in *Evans v SSCLG* [2014] EWHC 4111 (Admin) that the rights can be disapplied in respect of a building where the operations to construct only part of it are unlawful.
11. Therefore whether the roof works were unauthorised depends on whether the other building works taking place were unauthorised. It has not been asserted that the roof works took place at a time before the other works (and if they did then at that time no. 55A would still have been a ground floor flat rather than the house that it now is).
12. Permission was granted to carry out conversion and extension works to both properties and these works appear to have been carried out simultaneously. The Council’s allegation in the notice is that the ground floor extension works do not comply with the approved plans, and this is explained in their appeal statement to say that the extension has been built ‘wider’ than the approved plans. This may refer only to the part of the extension at no. 55A, but the relevant works appear to have been carried out as a whole, single operation and it is not asserted otherwise. Therefore if the works are unauthorised then they will be unauthorised in relation to both properties to which the permission as a whole relates.
13. The appellant’s agent makes the bare assertion that “There is not breach as my client have built to approved plans”. My observations on site accord with the Council’s view that the single-storey extension is ‘wider’ than shown on the approved plans, appearing to encroach onto what is shown, on drawing no. 55 P 53 Rev 3, as part of the rear garden area of no. 55A.
14. Therefore I find in relation to ground (c) that the works to construct the single-storey extension were not in accordance with the approved plans, and hence were unauthorised. This being the case, the roof works could not have been authorised by the Order by reason of the operation of article 3(5).
15. The ground (c) appeal therefore fails.

Main Issues on ground (a)

16. Both elements of the deemed application raise the same principal issues. These are the effects of the developments on the living conditions of the occupiers of the host and neighbouring properties; and the effects of the developments on the character and appearance of the area.

Reasons

Living conditions

17. Although other policies are referred to in the Council's appeal statement, insofar as it relates to living conditions the notice cites conflict only with policy DMP1 of the Brent Development Management Policies document of 2016 and with elements of the adopted SPD of 2018 concerning residential extensions and alterations, together with national policy in the Framework. Policy DMP1 is permissive of developments that result in high levels of internal and external amenity and which complement the locality. The supporting text explains that the surroundings of the site will be an important consideration and in particular the quality of the development and how it would relate to existing buildings and spaces together with its impact on neighbouring occupiers. Outlook, daylighting, shadowing and amenity space are all issues for consideration in the creation of high quality environments.

The roof works

18. As a result of previous extensions, the properties at no.s 55/55A and 57 lie close together, separated only by the width of pedestrian passages. The property at no. 57 lies on the diagonal on a footprint that is considerably forward of no. 55, no. 53 and the properties to the south on Dorchester Way. Thus the rear windows of no 57 face towards the back of the property at no.s 55/55A. The rear gardens of these properties are rather more constrained than many of their neighbours, as they accommodate the corner plots.
19. Thus the site context requires a sensitive approach in order to produce an acceptable effect of development upon the amenities of the neighbours at no. 57. The effect of the works to construct the gable end to no. 55A and the full width dormer have, from the point of view of the neighbours at no. 57, had the effect of adding a further storey in height to the property neighbouring them to the south. The resulting effect is rather more overbearing than before, which is augmented by the southern aspect of the development that results in some overshadowing of the bay window to the rear upper floor room of no. 57 for part of the day.
20. Thus I find there is some limited adverse impact on the living conditions of the neighbours at no. 57. The rear upper floor room is said to be presently used for studying but ordinarily would be used as a bedroom where daytime shadowing is of less concern than it would be in principal living rooms such as the drawing room or kitchen. I am mindful also, however, of the Council's refusal to issue a lawful development certificate only because other works were being carried out without authorisation. It appears from the evidence

before me that this was correct. However, once steps have been taken to achieve compliance with the enforcement notice, even if I uphold this aspect of it, both properties would become 'lawful', for the purposes of article 3(5) of the Order. I have no reason not to assume that such steps will be taken. In that case, permitted development rights would then become available to construct roof alterations similar to those that have been built.

21. Therefore on balance I am satisfied that the effect on the living conditions of the neighbours at no. 57 does not warrant dismissing the appeal. The works are not wholly compliant with the provisions of policy DMP1 and the development plan for the area, but the fall-back position of carrying out the same or similar works as permitted development in the future persuades me that the impact on the living conditions at no. 57 does not warrant refusal.

The single-storey extension

22. No matters in support of retaining the single-storey extension, insofar as it differs from the approved plans, are put forward by the appellant. The Council's concerns are bound up with its concerns about the retention of the outbuilding, about which I shall not express a view given my findings as to the scope of the enforcement notice. The concern, however, is that the extended footprint of the single-storey extension together with the outbuilding reduces the overall amenity space available to the occupiers of the properties at no.s 55 and 55A to a space that is unacceptably small.
23. With the outbuilding in its current form, the rear garden area is extremely cramped, especially so given that it relates to two dwellings and not one. I am uncertain as to whether there could be any requirement to demolish the outbuilding in its entirety but, even if there could, the amenity space available to these properties would remain very limited. In order to provide an acceptable amount of private garden area to each of the properties, I consider it necessary to limit the built footprint of the extension to that permitted by the relevant plans. Otherwise the high quality environment sought by policy DMP1 would not result.

Conclusion on living conditions

24. Overall I find that the roof works are not unacceptable for the reasons I have given. However the single-storey extension results in inadequate outdoor amenity space available to the host properties and is unacceptable for that reason.

Character and appearance

The roof works

25. Permission was granted a number of years ago to construct a side extension to what was then a single dwellinghouse. The property has since been subdivided, but the lawful extent of the lesser dwelling (55A) was, prior to any development implementing the 2019 permission, in the form of a ground floor flat. Therefore at the time of the 2019 permission the whole of the roof appertained to no 55. The effect of the conversion works as a whole has been to turn no. 55 into a mid-terraced house.

26. Viewed in its immediate context, the gable and dormer window roof extension provides some symmetry to the adjoining property at no. 53, where similar works have been carried out. Unlike no. 53, however, the property at no. 55/55A lies very close to its neighbour at no. 57 which is itself built on the diagonal where its attached neighbour fronts onto Melcombe Gardens, a street lying at right angles to Dorchester Way. The effect of previous extensions is that these two properties abut each other much more closely than most of the other properties in the vicinity, many of which are separated by vehicular driveways rather than, as here, the width only of pedestrian passages.
27. The effect of the works is thus to create a rather more intensive form of development at this locus than is generally found in the vicinity. That would have been the case before the works had been carried out, given the existing extensions, but the roof works have had the effect of closing what was already a relatively small gap between the properties at roof height thus somewhat detracting from the generally open and spacious character of the area.
28. The Council seeks support in this regard from policy DMP1 of the existing Brent Development Management Policies document 2016 and related policies in the existing and emerging Local Plan, as well as from existing guidance about residential extensions and alterations (SPD2 – January 2018) issued supplementary to policy DMP1. The policy seeks to secure high quality design that complements the locality, and the guidance offers some prescription as to what is and is not acceptable. The guidance suggests that hip to gable roof extensions are not acceptable on existing side extensions, although does not specify why. On this property, the side extension has simply extended the width of the original house; it has not been constructed so as to achieve a subordinate relationship with the original dwelling. Although there is a departure from the guidance, and some diminution of the spacious character of the area, overall given the symmetry that is created with no. 53 I do not consider that the impact of the development on the character and appearance of the area is unacceptable.

The single-storey extension

29. As to the single-storey extension, this is not readily visible from public vantage points. The Council does not take specific issue with the extension (rather than with the roof works) on the grounds of its impact on local character or appearance, and nor would I.

Conclusion on character and appearance

30. I would not dismiss the appeal in relation to either aspect on the basis of adverse impact on the character and appearance of the area. The ground floor extension has no material impact beyond the site itself. Although the roof works somewhat detract from the spacious character of the area, they do create a symmetry with the works that have been carried out to the house next door at no. 53 and so on balance I do not find them harmful in this regard.

Conclusion and Formal Decision

31. Although I would not dismiss the appeal on the grounds of harmful impact to character or appearance, I do not consider that the works have created an overall benefit in this regard. Whilst I have found the roof works to be on balance acceptable, I find the single-storey extension works to conflict with the development plan by reason of the unacceptable impacts on the living conditions of the occupiers of the host properties. No material considerations indicating a decision other than in accordance with the development plan for the area have been brought to my attention in this regard.

32. Therefore I shall uphold the enforcement notice with corrections and variations. I shall refuse to grant planning permission on the deemed application insofar as it relates to the single-storey extension. I shall however grant planning permission for the retention of the roof works for the reasons I have given. No conditions have been suggested, and I consider that none are required. Although upholding the notice, section 180 of the 1990 Act will have effect in relation to those requirements relating to the roof works which, in summary, means that the planning permission will prevail over the terms of the notice.

33. It is directed that the enforcement notice be corrected and varied as follows:

- In the first paragraph, insert "and (b)" after "Section 171A(1)(a)"
- From schedule 2, delete the text between (but excluding) "AND" and "(the unauthorised development)" and replace it with "the erection of a single-storey rear extension without complying with condition no. 2 of planning permission 19/1272 dated 6 September 2019"
- From schedule 4 step 1 add "and restore the roof of the premises to its condition before the unauthorised development took place"
- From schedule 4, delete the text of step 2 and replace it with "[nil]".
- From schedule 4 step 3 add "and restore the ground floor rear external walls of the premises to their condition before the development to construct the single-storey rear extension was carried out OR alter the single-storey rear extension so as to comply with condition no. 2 of planning permission 19/1272 dated 6 September 2019 and the plans referred to in that condition"
- From schedule 4, delete the text of step 4 and replace it with "[nil]".
- From schedule 4 step 5 delete "that demolition" and replace it with "the works to comply with steps 1 and 3 above"
- From schedule 4, delete step 6.

34. Subject to these corrections and variations the enforcement notice is upheld. Planning permission for the erection of a single-storey rear extension without complying with condition no. 2 of planning permission 19/1272 dated 6 September 2019 at 55 and 55A Dorchester Way, Harrow HA3 9RQ is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended. The appeal on ground (a) fails to that extent.

35. Planning permission is however hereby granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the erection of a hip to gable roof extension and a rear dormer window to the premises at no.s 55 and 55A Dorchester Way, Harrow HA3 9RQ. The appeal on ground (a) succeeds to that limited extent.

Laura Renaudon

INSPECTOR