



Appeal Decision

Site visit made on 17 November 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 01 December 2021

Appeal Ref: APP/R5510/C/20/3257824

5 Dorset Way, Uxbridge UB10 0JR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Derek Lewis against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 9 July 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a two storey side extension, part two storey, part first floor, part single storey rear extension, first floor side extension, raising and enlargement of roof including two rear dormers.
- The requirements of the notice are:
 - A. (i) Demolish and remove the two storey side extension, part two storey, part first floor, part single storey rear extension, first floor side extension and reinstate the property including the roof alteration to resemble as far as is reasonably practicable the external appearance of the property as shown on drawings labelled DW/05/10 rev A1 "Existing Front Elevation", DW/05/11 rev A1 "Existing Side Elevations", DW/05/12 rev A1 "Existing Rear Elevation" which were submitted with approved planning application 73445/APP/2018/2045, and (ii) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the dismantling works listed above; OR
 - B. (i) Implement and erect the extension in strict accordance with the approved plans under planning permission reference 73445/APP/2018/2045, and (ii) Remove from the land the debris, items, fixtures and fittings, furniture, building materials, plant and machinery resulting from the amendment works listed above.
- 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 1990 Act as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is allowed in the terms set out below in the Formal Decision.

Background

1. Planning permission was granted on 23 August 2018 for extensions to the property (Ref 73445/APP/2018/2045). The development has not been built in accordance with the approved plans and the Council is seeking either the demolition of the extensions and reinstatement of the former building or alterations in order that the development accords with that approved.
2. The Council describes the deviations from the plans as follows. The approved plans show the distance between the principal elevation of the two-storey side extension to the boundary with No 3 Dorset Way to be 1.5 metres (m),

whereas it was measured at 1.28m. At its narrowest point, a 1m separation distance between the two-storey side extension and the boundary with No 3 was approved, but this was measured at approximately 0.6m. The approved plans show that the single-storey side extension would be set in by 0.5m from the two-storey side extension. This was measured at 0.76m. In addition, the plans show a gap between the single-storey rear extension and the boundary with No 3 Dorset Way, which has not been achieved. Furthermore, the Council noted that the eaves of the two-storey extension overhung the boundary line. The approved plans show one dormer at the rear but two have been built. Finally, there are some differences to the fenestration of the side elevation.

3. The appellant further explains that the main roof depth is 0.76m greater than approved and 0.79m wider, and the width of the main house is larger by 0.15m. The first floor rear extension is 0.3m deeper. It is acknowledged that the development is closer to the boundary with No 3 but argued that this arose from an inaccurate survey, which failed to show the tapering boundary line. A second dormer window was added to provide an additional source of light.
4. For the avoidance of doubt, I have considered the development on the basis of the following plans, which show the development as built: 2020-56 EX00, EX01, EX02, EX03, EX04, EX05, EX06 and EX07. During my site visit, I saw that the roof has been altered so the eaves no longer overhang the boundary with No 3.

The Ground (a) appeal and the deemed planning application

Main Issues

5. The main issues are the effect of the development on (i) the character and appearance of the area and (ii) the living conditions of neighbouring occupiers at No 3 Dorset Way, with regard to light and outlook.

Reasons

6. The appeal property is a detached house located towards the end of a cul-de-sac in a residential area. Dorset Way comprises individually designed detached and semi-detached houses and bungalows of varying form and detail. The development has considerably altered the appearance of the house and the extensions are relatively extensive. However, it is necessary to compare what has been built against the approved plans, as opposed to the original dwelling.
7. The two-storey element is closer to the boundary with No 3 and the 1m gap sought by the Council is not wholly achieved. The requirement flows from Policy DMHD1, which stipulates all residential extensions and buildings of two or more storeys in height should be set back a minimum of 1m from the side boundary of the property. This requirement aims to ensure that adequate visual separation and views between houses are maintained.
8. As set out above, the boundary line between the houses is not straight but extends rearwards at an angle. This means the separation distance is not consistent and the gap is wider, and policy compliant, at the front. While part of the two-storey element is within 1m, I saw that there remains a visual separation between the houses. The appeal property is set further back in the plot than the adjoining house, which accentuates and maintains the view between the houses. Hence, despite the apparent conflict with the Policy, I find that its aims are achieved.

9. The cumulative effect of the deviations from the approved plans must be considered. However, the differences are relatively minor. The size and scale of the roof is greater, but the resulting house is not inconsistent with other development in the immediate vicinity. The proportions of the house are balanced and the design details are in keeping with the age and architecture of the host dwelling and others nearby. The nearness to the side boundary does not result in a terracing effect. The alterations to the side fenestration are not material and have little effect on the overall appearance of the development. The dormer windows are modest and do not detract from the appearance of the rear elevation or the wider street scene.
10. It is agreed that the extension is closer to the boundary with No 3. However, I do not consider that the differences between the approved scheme and that built are of such an extent that the development as a whole should be considered unacceptable. The part of the two-storey extension within 1m of the boundary lies alongside the largely blank gable wall of the neighbouring house. The overhanging eaves have been addressed by alterations. Although the resulting house is larger than approved, its effect on the neighbour at No 3 is limited by the size and scale of the houses in relation to each other, which is comparable, and their siting within the plots. I do not consider that the deviations are likely to result in a material loss of light or outlook. Although the single-storey element abuts the boundary, this is unlikely to have any greater effect on living conditions than the approved scheme.
11. The Council has suggested conditions, which it considers should be reimposed. Nos 1 (commencement) and 2 (materials to match) are not necessary since the development has been built. No 4 concerns windows facing No 7 Dorset Way, however, the wording is vague and it is not clear which windows are referred to. The only windows on the side elevation are rooflights from which views would be limited. I do not consider it necessary or appropriate to impose the suggested condition, therefore. The removal of permitted development rights to prevent overlooking is not considered necessary since any such windows would only allow limited views, due to the layout and relationship of the houses. Any first floor windows or roof lights would either face a gable wall or a roof, and any ground floor windows would not result in a material loss of privacy. I agree that the condition restricting the use of the flat roof is necessary as any such use could impact on the neighbours' living conditions with regard to privacy.

Other Matters

12. An interested party has raised several other matters, which can be summarised as follows. The wall which extends into the boundary with No 3 will cause inconvenience, the development has invaded the air space in the garden of No 3 and adversely affected light levels, the development is not in accordance with the plans, smoke from the boiler flue fogs up the adjoining windows, the overhanging gutters are unacceptable, there has been repeated damage to boundary wall, the development has led to a loss of privacy and it has impacted on the value of the neighbouring house.
13. As explained, I must consider the differences between the development as built compared with what was approved. The relatively minor increase in the size of the roof and first floor extension is unlikely to result in a loss of light or outlook over and above the effects of the approved scheme. Similarly, the second rear

dormer would be unlikely to allow more extensive views into the adjoining gardens than the window which was approved. It is also unclear whether any wall damage resulted from the deviations to the plans or is a matter that would have to have been resolved in any event given the proximity of the previously approved scheme to the boundary.

14. The development has been altered to correct the overhanging guttering. The proximity to the boundary, and emissions from the boiler flue, may be inconvenient but these are not reasons that would render the whole scheme unacceptable. Neither is a departure from the approved plans a reason to refuse planning permission in itself. The enforcement regime is remedial and not punitive. Finally, there is no evidence that the development has affected house prices. It would be argued that the reverse is true.

Conclusion

15. I conclude that the development does not have an adverse effect on the character and appearance of the area or the living conditions of adjoining occupiers. It accords with Policy BE1 of the Hillingdon Local Plan: Part One - Strategic Policies (November 2012), and Policies DMHD1 and DMHB11 of the Hillingdon Local Plan: Part Two - Development Management Policies (January 2020) which, among other things, seek to ensure development is built to a high standard, while incorporating good design and preserving the amenity of neighbouring occupiers. The development accords with the revised National Planning Policy Framework insofar as it seeks to promote high quality design and preserve residential amenity.

Conclusion

16. For the reasons given above, I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not, therefore, need to be considered.

Formal Decision

17. 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 two storey side extension, part two storey, part first floor, part single storey rear extension, first floor side extension, the raising and enlargement of the roof, including two rear dormers on land at 5 Dorset Way, Uxbridge UB10 0JR referred to in the notice, subject to the following condition:

- 1) Access to the flat roof over the single-storey rear extension hereby approved shall be for maintenance or emergency purposes only and the flat roof shall not be used as a roof garden, terrace, balcony, patio or similar amenity area.

Debbie Moore

Inspector