
Appeal Decision

Site visit made on 11 October 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2021

Appeal Ref: APP/T5150/C/20/3259731

37 Lydford Road, London NW2 5QN

- 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 Robert Lawee against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 13 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a dwellinghouse and the erection of a timber outbuilding to the premises.
 - The requirements of the notice are:
STEP 1 Demolish the dwellinghouse and the timber outbuilding.
STEP 2 Remove all associated items, debris and materials arising from that demolition from the premises.
 - The period for compliance with the requirements is 9 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.
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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 Step 1 of the requirements, after *outbuilding*: *Or, carry out alterations to the dwellinghouse so that it complies with the terms of planning permission reference 14/2952, dated 14 November 2014 and demolish the timber outbuilding.*
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 the 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 London Plan The Spatial Development Strategy for Greater London March 2021 (the London Plan) has been adopted since the enforcement notice was issued. Both the appellant and Council were given an opportunity to provide any policies and comments on such policies which they consider are relevant to the appeal, and the responses have been considered.

5. The Council referred to Policy BHC1 of their Local Plan Regulation 19 Consultation Document however, I have no details about the extent of any unresolved objections to the policy. Nevertheless, since the emerging policy seeks to replicate Policy DMP7 of the Council's adopted Local Plan (DMP)¹ and is broadly consistent with the Framework, it attracts modest weight in decision making terms.
6. The timber outbuilding, subject of the notice, has since the enforcement notice was issued, been removed. However, and whilst the appellant has not sought to argue the merits of this development as it was allegedly a temporary building used by the builders, I must determine the appeal on the basis of the site as it existed at the time the notice was issued.

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

Background

7. Planning permission was previously granted for a development described as *Demolition of existing office to builders' yard and erection of a 3-bedroom, three storey (including basement) dwellinghouse*, planning permission reference 14/2952. This permission would have expired on 14 November 2017 unless a material operation was carried out.
8. There is no dispute between the parties that the dwelling that has been erected and subject of this appeal, has not been built in accordance with that planning permission. However, the appellant contends that the planning permission was begun and therefore remains extant and a legitimate fallback. The Council disputes that the permission was begun.
9. The main parties' evidence on this matter is very limited. Nevertheless, given the appellant's case, particularly that under ground (f), that the requirements be varied to enable the dwelling to be altered in accordance with the planning permission, it is necessary for me to make a judgement on this matter.

Whether the approved development was begun within the statutory period

10. For the purposes of the 1990 Act, development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out (section 56(2)). Section 56 is an objective test and the intention of the person carrying out the development is irrelevant.
11. It is an established principle that it is possible to commence a development for the purpose of s56 and thereby meet a deadline forming a condition of the planning permission, and then later to deviate from the permitted works in a manner that later became an enforcement issue without retrospectively altering the fact that the commencement of the development had occurred for s56 purposes. However, it is necessary for the works carried out to be comprised in the planning permission and more than de minimis.
12. In subsection (2) of s56(4) it is set out that a "material operation" means, amongst other things, [(aa) any work of demolition of a building;].
13. The appellant's evidence consists of an email from the Councils CIL/s106 Infrastructure Planning Officer, stating that it appeared that work had started.

¹ London Borough of Brent Local Plan¹ November 2016 Development Management Policies

Attached to the email were Google Street View images indicating that the *garage* was demolished sometime between Oct 2015 and June 2016. The appellant confirmed that the *garage* is the *office* referred to in the application and that no other buildings existed on the site.

14. In this case the office building was of a large domestic garage size and in my view its demolition was work likely to be undertaken by a builder. Further, it is fair to say it is comprised in the development since it was on the site where the approved dwelling would be sited and would need to have been demolished, with its demolition being specifically referred to in the description on the decision notice.
15. The planning permission was subject to a number of conditions precedent. It appears from the planning history set out in the Council's statement that details were submitted in accordance with and approved by the Council in respect of those conditions, reference 15/1031.
16. Consequently, notwithstanding information contained in the appellant's CIL application, by demolishing the office, the appellant carried out a material operation under s56(4)(aa) and so based on the evidence before me and the balance of probabilities, the development authorised by the planning permission was begun before the deadline.
17. As such, and whilst I note the significant level of concern regarding the planning permission, it remains extant and therefore a potential fallback to which I attach significant weight.

Main issues

18. The main issues are (i) whether the development preserves or enhances the character or appearance of the Mapesbury Conservation Area; and (ii) the effect of the dwelling on the living conditions of neighbouring occupiers with particular regard to outlook.

Character and appearance

19. The appeal site is located on Lydford Road within The Mapesbury Conservation Area. As set out in the Mapesbury Conservation Area Design Guide (SPD) the Conservation Area is characterised and is significant because it remains largely unaltered.
20. The detailing of individual houses is well designed, with the houses being predominantly constructed from red brick, with some render evident, and either detached or semi-detached. However, as stated in the SPD, whilst the detailed architectural finishes vary between streets and groups of buildings, the scale of the buildings, the quality of architecture and detailing combined with the largely unaltered nature of the majority of the building frontages enable the area to retain its rather grand and traditional character. This is consistent with my observations at my visit where I noted little in the way of contemporary design.
21. The appeal site was formerly in use as a builders yard however, I have few details about the former use including its level of intensity. Based on the submissions I can see that the use was contained behind tall boundary walls with a pitched roof building projecting above those walls. As a builders yard

- located in a predominantly residential area, its use would have made little contribution to the significance of the Conservation Area.
22. In any event, since the site constitutes previously developed land there appears to be no in principle policy objection to the erection of a dwelling. Similarly, whilst the appellant defends the siting of the dwelling, with regard to the impact on views across the gardens, the Council identified no harm in this regard, their concerns relate to the dwellings scale and appearance.
23. Consequently, whilst I had regard to the dwelling at 30 Lydford Road, referred to by the appellant, that dwelling although it has a similar siting to the appeal development, has an appearance which reflects the character and appearance of houses in the Conservation Area. As such it is not comparable to the appeal scheme.
24. The appellant has not sought to demonstrate why the dwelling, as built, is appropriate to its context or to explain how the context led to the design of the dwelling. Their argument is essentially that the differences from the previously approved scheme are limited such that there is no significant change in the impact on the Conservation Area.
25. The approved dwelling is evidently of a contemporary design and that erected is broadly similar in terms of shape, form, and materials. It is however larger, primarily in terms of height and in this regard, I note the dimensions provided by the appellant which are not disputed by the Council.
26. Notwithstanding the precise height differences, the dwelling as built extends above the boundary walls by a substantial and appreciable amount compared with the approved scheme. This overall increase in height and massing has resulted in an overly bulky and obtrusive form which rather than appearing subordinate within, dominates the streetscene. In my view, the resulting dwelling, viewed in this predominantly traditional context, has a discordant appearance which detracts from and therefore neither preserves nor enhances the character or appearance of the Conservation Area.
27. The approved dwelling has more modest proportions with more of a horizontal emphasis and would be less dominant in the streetscene. Indeed, in the Design and Access Statement which accompanied the approved planning application, it is stated that the dwelling is designed so that the overall massing is subordinate to the houses along the primary streets. As such, the approved dwelling would, in my view, be less harmful.
28. The appellant under their appeal on ground (f) proposed, as an alternative to demolition, the reduction in height of the parapet walls by 0.22m. However, this modest reduction in height would not overcome the identified harm.
29. I can see from the submissions that the timber outbuilding had a rudimentary appearance which was poorly related in terms of design and materials to its surroundings. It therefore caused harm to and did not preserve or enhance the character or appearance of the Conservation Area.

Public benefits

30. Given the scale of the proposal within the context of the Conservation Area as a whole, I consider the harm to be less than substantial. Nevertheless, I am mindful that in the Framework it says great weight should be given to the

conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.

31. Paragraph 202 of the Framework states that where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits including, where appropriate, securing its optimum viable use. This requires a balancing exercise of harm against the public benefits of the development.
32. In this case there are benefits associated with the use of previously developed land to contribute an additional dwelling to the supply of housing. However, such modest public benefits do not outweigh the great weight that I am required to attach to the heritage asset's conservation.
33. Overall, for the reasons given I conclude that the development does not accord with Policy DMP1 and DMP7 of the DMP, Policies D3 and HC1 of the London Plan and Policy BHC1 of the emerging Local Plan. Together these policies require development to conserve or enhance the significance of heritage assets and to contribute to local distinctiveness by good quality, contextual, subordinate design. It also fails to accord with the heritage protection aims of the Framework and guidance contained in the Council's Design Guide SPD1 Nov 2018 (SPD).

Living conditions

34. I am aware of significant neighbour concerns about the development, and I was able at my site visit to view the relationship between the appeal site and the windows and gardens of neighbouring properties. Undoubtedly the outlook from those nearest neighbouring dwellings and gardens has changed because of the development, as it would have had the approved dwelling been erected.
35. The dwelling is sited between the rear of 88 Teignmouth Road and 27 St Gabriels Road. Whilst it is taller and located closer to the shared boundary with 88 Teignmouth Road, than that approved, given the achieved separation distances from both the ground and first floor parts, I find there is no materially harmful overbearing impact on the outlook from within the dwelling or garden at no.88.
36. In respect of 27 St Gabriels Road, the dwelling is, at ground floor level, located close to the shared boundary albeit around 0.37m further away than that previously approved, with the first-floor element being set further away. On the other side of the boundary, at no.27, there appears to be a parking area. Given the separation distance from the rear of the dwelling at no.27 and much of the garden, I find there is no harmful overbearing impact on the outlook from within the dwelling or garden.
37. The SPD requires new development to protect the privacy and amenity of existing residents. It requires that where proposed development adjoins private amenity/garden areas the height of new development should normally be set below a line of 45 degrees at the garden edge, measured from a height of two metres.
38. The west elevation of part of the ground floor section is located in close proximity to the shared boundary with the rear garden of 90 Teignmouth Road, with the remainder of the ground floor and the first-floor section being set further away. As built the dwelling projects above the boundary with no.90 by

a reasonably significant amount and it appears that it does not comply with the guidance in the SPD.

39. Nevertheless, the garden at no.90 is reasonably generous and the dwelling is located towards the bottom end of the garden furthest away from the property. Based upon my site observations and given that the outlook from a large proportion of the garden is unaffected, I consider there is no materially harmful overbearing impact on the outlook from the garden at no.90. There is therefore no conflict with the overall aims of the SPD to ensure the amenity of existing residents is protected.
40. At my visit I was invited to view the development from 92 Teignmouth Road. Whilst the dwelling is visible from the house and garden at no.92, the separation distances are such that there is no overbearing impact on the outlook from within the house or garden.
41. Overall, for the reasons given I conclude that the dwelling causes no material harm as a result of an overbearing impact on the outlook from those nearest neighbouring dwellings and gardens. Therefore, there is no conflict with the amenity protection aims of Policy DMP1 of the DMP, Policy D3 of the London Plan, the SPD or Framework.

Other Matters

42. Third parties raised concerns about loss of privacy. However, the dwellings are located in a suburban environment where some mutual overlooking of homes and gardens is inevitable, in particular the overlooking of gardens from upper floor windows.
43. Views from the ground floor windows in the dwelling are limited by the tall boundary walls. Whilst the dwelling adds to the number of overlooking upper floor windows, it does not in my estimation significantly affect the levels of privacy in the back gardens. Furthermore, given the angles and distance to the nearest neighbouring dwellings, there is no materially harmful loss of privacy to those dwellings. Indeed, the dwelling would have had a similar effect if the development had been carried out as approved and I note that the Council identified no harm in this regard.
44. Concerns were raised about overshadowing. The dwelling is located broadly north of Teignmouth Road and east of the rear gardens to those dwellings. Consequently, there will be no materially harmful overshadowing of the dwellings or gardens on Teignmouth Road. Although located broadly south of the dwellings and gardens on St Gabriels Road, given the separation distances and in the absence of substantive contrary evidence, I find there is no harm as a result of overshadowing of those dwellings and their gardens. I note there was no objection from the Council in this regard.
45. The Council referred to Policy D1 of The London Plan however, this is a strategic policy which I consider is not directly relevant to the detailed considerations in this case.

Conclusion on ground (a)

46. My conclusions in respect of the effect on living conditions do not overcome the harm I have identified in respect of the effect of the development on the

Conservation Area. Therefore, for the reasons given above the appeal under ground (a) is dismissed and the deemed planning application is refused.

The appeal on ground (f)

47. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
48. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
49. In this case the enforcement notice requires the dwellinghouse and timber outbuilding to be demolished. As such I find its purpose is to remedy the breach of planning control.
50. The appellant proposed two alternatives firstly the reduction of the height of the parapet walls by 0.22m. However, I have considered this under ground (a) and found that this would not overcome the identified harm.
51. The appellant also argued that as there is an extant planning permission that it is unreasonable to require complete demolition of the dwelling and that a reasonable requirement would be for the dwelling to be altered in accordance with the planning permission reference 14/2952.
52. The purpose of the enforcement regime is remedial rather than punitive. Consequently, it is open to me and I am required, to consider whether there is an obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal.
53. While 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.
54. I therefore find that it would be reasonable to vary the notice, to require that either the dwellinghouse be demolished or, that it is modified to comply with the aforementioned planning permission. I shall vary the requirements to reflect my findings on this matter and to this extent the appeal on ground (f) succeeds.

Conclusion

55. 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