
Appeal Decision

Site visit made on 23 November 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 December 2021

Appeal Ref: APP/T5150/C/20/3265152

8 Sidmouth Road, London NW2 5JX

- 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 Abbas Shirafkan against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 10 November 2020.
 - The breach of planning control as alleged in the notice is:
Without planning permission, the erection of an extension and raised patio to the rear of the premises AND Without planning permission, the erection of a hip to gable end roof extension, rear dormer window, and insertion of rooflights to the premises AND Without planning permission, the erection of an outbuilding to the rear of the premises.
 - The requirements of the notice are:
STEP 1 Demolish the unauthorised extension and raised patio to the rear of the premises.
STEP 2 Demolish the unauthorised hip to gable end roof extension and rear dormer window.
STEP 3 Remove all unauthorised rooflights.
STEP 4 Demolish the unauthorised outbuilding.
STEP 5 Remove all associated debris and items arising from that demolition and remove all materials associated with the unauthorised development from the premises.
STEP 6 Re-instate the premises to its former state before the unauthorised works were carried out.
 - The period for compliance with the requirements is three 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.
-

Decision

1. The appeal is allowed 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 erection of an extension and raised patio to the rear of the premises and the erection of an outbuilding, at 8 Sidmouth Road, London, NW2 5JX.
2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the erection of a hip to gable end roof extension, rear dormer window, and insertion of rooflights and planning permission is refused in respect of the hip to gable end roof extension, rear dormer window, and rooflights on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Preliminary Matter

3. In their statement the Council referred to Policy D1 of The London Plan The Spatial Development Strategy for Greater London March 2021 (the London

Plan), adopted since the enforcement notice was issued. However, this is a strategic policy which I consider is not directly relevant to the detailed considerations in this case.

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

Background

4. Two Lawful Development Certificates (LDC) (proposed operations) have previously been issued for a hip to gable roof extension, rear dormer window and front rooflights, reference 17/0163 and a proposed outbuilding, reference 18/0062. An application for Prior Approval was also submitted and subsequently approved for a single storey extension, reference 17/4754.
5. An enforcement notice was issued by the Council on 19 August 2019 which alleged the use of the house as a sui generis House in Multiple Occupation (HMO). An appeal was made against the notice and subsequently dismissed on 4 June 2020; in the interests of clarity, I confirm that I was the Inspector who determined that appeal.
6. The above mentioned LDCs and Prior Approval were submitted and determined prior to the issuing of the enforcement notice however, the Council say that the house was in use as an HMO when those applications were determined. However, sui generis HMOs do not ordinarily benefit from those permitted development rights granted by Schedule 2 Part 1 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
7. Nevertheless, in respect of the LDCs, whether they should have been issued, section 192(4) of the Act provides that the lawfulness of any use or operation for which an LDC is in force under s192 *shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness.*
8. Consequently, if the house was in use as an HMO when the LDCs were issued, then as already stated the LDCs are conclusively presumed, and this has no bearing on their status.
9. In any event, none of the alleged developments have been carried out in accordance with the details submitted with those applications and the case has not been made out to me, that the developments constitute permitted development.
10. Notwithstanding submissions regarding inaccurate drawings submitted with the retrospective planning application reference 20/2127, my decision is based upon the development described in the allegation and as built.
11. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice and as built. Nevertheless, I do have the power under s177(1)(a) of the 1990 Act to grant planning permission for any part of the matters stated in the notice.
12. In their appeal statement, the Council raised matters relating to the effect of the single storey extension on the character and appearance of the house, which did not form part of the reasons for taking enforcement action. Consequently, this has not formed part of my assessment.

Main issues

13. The main issues are the effect of (i) the extension and raised patio on the living conditions of the occupants of 10 Sidmouth Road with particular regard to outlook and privacy and (ii) the hip to gable roof extension, rear dormer window rooflights and the outbuilding on the character and appearance of the area.

Reasons

Extension and raised patio

14. The extension is sited right up to and projects above the shared boundary with the neighbouring 10 Sidmouth Road however, it projects no further into the garden than the conservatory at no.10. It appears from the submissions that there was previously a relatively tall fence on the boundary between the two houses which would have obstructed views from the side of the conservatory facing no.8.
15. Furthermore, it appeared to me at my visit that there is some form of boundary treatment or screen between the side of the conservatory and the extension, such that views out from that side are obstructed. Consequently, and since views out from the conservatory, overlooking the garden, remain unobstructed, I find there is no materially harmful overbearing impact on the outlook from no.10.
16. In respect of privacy, the houses are in a suburban environment where some mutual overlooking of homes and gardens is inevitable, indeed there is already overlooking from the upper floor windows in the houses. As such, and since there is a relatively tall boundary between the houses and their gardens which prevents direct views from the patio and within the extension, I find there is no harm as a result of loss of privacy.
17. Therefore, there is no conflict with the amenity protection aims of Policy DMP1 of the London Borough of Brent Local Plan November 2016 Development Management Policies (DMP) or the National Planning Policy Framework. The development also conforms with the overall aims of the Council's SPD¹ to ensure there is no harm to the living conditions of neighbours by reason of loss of outlook.

Hip to gable roof extension and rooflights

18. The appeal property is a semi-detached house which, notwithstanding the gym on the opposite side of the road, is located in a predominantly residential area, characterised by semi-detached and detached houses with hipped roofs, predominantly covered with red tiles, and bay windows.
19. Whilst the SPD states that the conversion of a hipped roof into a full gable is generally acceptable, in this case the creation of a gable ended roof unbalances the appearance of the pair of houses, numbers 8 and 10 and detracts from the established character of the immediate area. This harmful effect is exacerbated by the use of roofing materials which contrast with the adjoining house.

¹ Residential Extensions & Alterations SPD 2 Jan 2018

20. Whilst the dormer does not occupy a significant proportion of the roofslope and is not unduly bulky, it has been erected 'over' and has an awkward relationship with the existing two-storey projection.
21. The hip to gable roof extension is readily visible in public views from the street. Whilst views of the side of the dormer from the street would be limited to a small section of Sidmouth Road, it would be clearly visible from a number of neighbouring properties and their gardens. As a result, the proposed hip to gable roof extension and dormer cause material harm to the character and appearance of the house, and the streetscene. That the house is not listed nor in a conservation area does not alter my judgement.
22. There are rooflights evident in the locality and whilst in this case I consider they cause no material harm to the character and appearance of the house; they are not clearly severable from the roof extensions and therefore it would not be appropriate to grant permission for them.
23. I have had regard to the dormers referred to by the appellant but except for that at 12 Alverstone Road, none have the same awkward relationship with the existing roof. Furthermore, this example reinforces my view about the adverse visual impact that such development can have on their surroundings. Accordingly, this does not provide a strong argument to justify the appeal development.
24. Whilst the appellant has referred to the planning history and asked that the development be considered in that context, they have not sought to suggest that the certified scheme (LDC) represents a fallback.
25. In any event, the fallback position would only be available once the unauthorised gable roof extension and rear dormer window are demolished. Since I have no evidence to indicate that there is a real prospect that the certified scheme would be implemented, I cannot be certain that it represents a realistic fallback. Consequently, whilst I consider that the certified scheme would have a very similar effect, this is a matter of limited weight in my assessment.
26. In conclusion for the reasons given, the hip to gable roof extension and rear dormer are contrary to Policy DMP1 of the DMP which requires development to be of a detailing and design that complements the locality. It also fails to accord with the overall design aims of the Framework.

Outbuilding

27. The outbuilding is located towards the end of the garden furthest away from the house. Its flat roof single storey form is straightforward and its construction from red brick to match the existing house is appropriate. It is of reasonably modest domestic proportions and does not, in my view, appear excessively large in the context of the generous garden within which it is sited.
28. At my visit I could see that the outbuilding was in use for the storage of a table tennis table, bikes, and other sporting paraphernalia. There is no evidence that it is used for residential accommodation. Therefore, I find there is no conflict with the design aims of Policy DMP1 of the DMP, Policy CP17 of the Core Strategy² or the Framework.

² London Borough of Brent Core Strategy – Adopted 12 July 2010

Other Matters

29. I acknowledge the appellant's comments regarding the previous use as an HMO and their cooperation with the Council however, these matters are not relevant to my assessment of the planning merits of the development subject of this appeal.
30. Third party representations were received about loss of light as a result of the hip to gable extension. Given that the extension is no taller than the existing ridge and in line with the existing walls of the house, I find there will be no materially harmful overshadowing of 6 Sidmouth Road.

Conclusion on ground (a)

31. For the reasons given, I find that the extensions as built are unacceptable in respect of the hip to gable roof extension, rear dormer window and rooflights. However, since it appears to me that the removal of the hip to gable roof extension, rear dormer window and rooflights would resolve the harm, I consider it is appropriate to issue a split decision. I therefore intend to grant planning permission under s177(5) of the 1990 Act for the extension and raised patio and the outbuilding only.

Conditions

32. A time limit or plans condition is not necessary since the extension, patio and outbuilding are complete. I considered whether a condition to restrict the use of the outbuilding would be necessary and reasonable however, if there were to be a future material change of use then it would be open to the Council to investigate and take action if appropriate.

The appeal on ground (f)

33. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the extensions and outbuilding to be demolished and all associated waste materials to be removed, I find the purpose is to remedy the breach of planning control. No lesser steps other than those set out in the notice would achieve that purpose.
34. The appellant has not suggested any lesser steps and their case essentially relates to ground (a) and the planning merits of what has been built, which I have considered above.
35. Although planning permission has been granted in respect of parts of the development enforced against, the notice has been upheld without varying any requirements relating to them, since this could have given rise to two separate planning permissions, namely the one that has been granted in this appeal decision and the one that would be deemed to be granted by section 173(11) due to under-enforcement.
36. Attention is drawn to the provisions of section 180(1) as to the effect on the notice of the permission that has been granted. This provides that where planning permission is granted after the service of a copy of the notice for any

development already carried out, the notice shall cease to have effect insofar as it is inconsistent with the planning permission.

37. The appeal on ground (f) therefore fails.

Conclusion

38. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the erection of an extension and raised patio to the rear of the premises and the erection of an outbuilding, at 8 Sidmouth Road, London, NW2 5JX but otherwise I will uphold the notice and refuse to grant planning permission in respect of the hip to gable end roof extension, rear dormer window, and rooflights. 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.

Felicity Thompson

INSPECTOR