



Appeal Decision

Site visit made on 26 October 2021

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Appeal Ref: APP/T5150/W/20/3266062

154A-B-C Harlesden Road & 9A-B Cross Way, London NW10 3RE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ebele Muorah against the Council of the London Borough of Brent.
 - The application, Ref 20/3170, is dated 23 October 2020.
 - The development proposed is described as:
"Replacement of 3 porches into 2 semi enclosed porches and one new fully enclosed porch with new entrance door, removal of boundary railings, erection of 1.8m fence panel with gates to the boundary, replacement of first floor hallway windows with French doors and placement of guard rail to the porch rooftop, provision for cycle storage and electrical charging station all works to 154 A-C and erection of single storey annex building incidental to and to the rear of 9 Crossway, NW10".
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Decision

1. The appeal is dismissed and planning permission for the development described as "replacement of 3 porches into 2 semi enclosed porches and one new fully enclosed porch with new entrance door, removal of boundary railings, erection of 1.8m fence panel with gates to the boundary, replacement of first floor hallway windows with French doors and placement of guard rail to the porch rooftop, provision for cycle storage and electrical charging station all works to 154 A-C and erection of single storey annex building incidental to and to the rear of 9 Crossway, NW10" is refused.

Application for costs

2. An application for costs was made by Ebele Muorah against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

Procedural Matters

3. The appellant has tended to use "Crossway" as the address for that part of the appeal site, while the Council has preferred "Cross Way"; other parties' submissions used both versions of the name. I saw on my site visit that the street signs read "Cross Way", and other than when quoting directly I have used that form throughout my decision.
4. The Government published a revised National Planning Policy Framework ("the Framework") on 20 July 2021, replacing the version published in February 2019. Given the timing of this, both main parties had the opportunity to

address the revised Framework as part of their appeal representations (at appeal statement stage for the Council, and at “final comments” stage for the appellant). Where I have referred in my decision to specific paragraphs of the Framework, the numbering used is that of the July 2021 version.

5. On 24 February 2022, while the appeal was being determined, the Council adopted the new Brent Local Plan (“the BLP”). This replaced the previous development plan documents – the Brent Core Strategy 2010 and Brent Development Management Policies 2016 – which had been referred to in both main parties’ evidence. I therefore afforded the main parties the opportunity to comment on the new policies, and in my reasons below I have referred to the policies of the BLP.

Background and Main Issues

6. The appeal relates to a group of properties within a modern residential development. No 154A, 154B and 154C Harlesden Road (which for the sake of simplicity I shall refer to without the street name hereafter) are separate three-storey properties on the north-western side of that street. Facing them across a rear garden space are Nos 9A and 9B Cross Way, within a single three-storey property which has been subdivided into two units. Individually and collectively the appeal properties have quite a planning history, including applications for planning permission and certificates of lawfulness, enforcement notices, planning appeals, and High Court challenges. I return briefly to these where relevant later in my decision, although in fact they have very little bearing on the main issues in this appeal.
7. The first principal disputed element of the proposed development is alterations to Nos 154A, 154B and 154C. Existing canopy porches to all three properties would be replaced; in the case of No 154A with a fully-enclosed projecting front porch, while at Nos 154B and 154C there would be a covered porch with cycle storage areas. The existing windows serving landings at first floor level of all three properties would be replaced with French doors, and guard rails would be installed on the flat porch roof to create external balconies. Electric vehicle charging points would be installed at the front of Nos 154B and 154C, and existing railings to the front of No 154A would be replaced with a brick wall.
8. The second principal disputed element of the scheme is the erection of a single-storey outbuilding, described by the appellant as an “annex incidental to and to the rear of 9 Crossway”. This would be sited in the garden space between No 154C and No 9A Cross Way.
9. The Council had not determined the planning application prior to the appeal being lodged, nor was any form of officer report or putative decision notice prepared. The Council’s appeal statement indicated that, had it made a decision, it would have refused planning permission for the proposal on three grounds.
10. On the basis of all the information before me, I therefore consider that the main issues are:
 - The effect of the proposed porches, first-floor French doors, balcony guard rails, and front wall on the character and appearance of the area;
 - Whether or not the proposed outbuilding or annex would be subservient and incidental to the host dwelling; and

- The effect of the proposed outbuilding on living conditions for neighbouring occupiers, with particular regard to the provision of outdoor amenity space for the occupiers of No 154C Harlesden Road, and daylight, sunlight and outlook for the occupiers of No 9A Cross Way.

Reasons

Character and appearance

11. The appeal properties on Harlesden Road are at the northern end of a continuous residential terrace. I saw on my site visit that the centre of the block (the six properties Nos 156A, B, C, D, E and F) has three full storeys, and the prominent front gables to Nos 156A and 156F give the terrace a strong central visual focus. Either side of this, the roof ridge steps down slightly, and Nos 154B and 154C (at the northern end) and Nos 158A and 158B (to the south) are two and a half storeys with small box dormers. Nos 154A and 158C bookend the block with three storey front gables. There is a further addition at the southern end, where there is also No 158D built with accommodation at first floor level above the entrance to a parking courtyard; the terrace as a whole has an orderly and, No 158D aside, essentially symmetrical appearance. This is further emphasised by the regular detailing, including the height and alignment of the fenestration, and the consistent use of canopy porches.
12. The Council's 2018 *Residential Extensions & Alterations* Supplementary Planning Document ("the SPD") advises that front extensions, including porches, "will not be permitted unless these are the predominant character of the area", while the design of balconies should "aim to minimize the impact on the elevation" and "use setbacks where possible".
13. The flat canopy of the proposed front porches in this case would span the greater part of the combined frontages of Nos 154A, 154B and 154C; it would therefore have a significant impact on the front elevation of the terrace. As I have already described, front porches are not a feature of the terrace including the appeal properties on Harlesden Road. I saw some isolated examples elsewhere on Harlesden Road, although these are not within the same development as the appeal properties, nor do they amount to a predominant part of the character of the area. Front porches *do* feature on the block at Nos 3 to 25 Robson Avenue, although those examples appear to be an original design feature of that terrace and, in any event, they form part of an entirely different streetscape.
14. Although both The Oaks and Donnington Court a short way to the north of the appeal site have projecting balconies, these are tall blocks of purpose-built flats, of a quite different form and character to the appeal properties. Projecting balconies are not otherwise a feature of the area, and they are not at all characteristic of the lower-rise development including the appeal site. I saw that some windows on Blackheath House, further south on Harlesden Road, have Juliet balconies, although these are more discreet features than the projecting balconies proposed in this appeal; they are also within a four-storey block of flats which, although it is attached to (and has several design similarities with) the terrace including the appeal properties, as a result of its height and detailing also has a distinct character and appearance of its own.
15. While there are a variety of front boundary treatments in the wider surrounding area, front gardens within the same development as the appeal site are

predominantly either open-plan, or bounded by low hedges or open steel railings similar to those currently in place at No 154A. While taller brick walls are used to bound side or rear gardens, the proposed replacement of the open railings around the front garden of No 154A with a brick wall would be at odds with the prevailing character of the estate including the appeal properties. The appellant suggests that this replacement is necessary to allow the use of the enclosed area as a private garden space. However, it is in the nature of front gardens that they do not generally enjoy a high degree of privacy, and this argument does not justify the disruption to the character of the area which would be caused. In any event, although the description of development and the appellant's statement referred to a 1.8m high wall¹, the submitted drawings show a 1.5m high brick wall, which would be harmful to the character of the area while simultaneously not providing any great increase in privacy.

16. The projecting front porches, balconies on the flat porch roof and associated guard rails, and the proposed front wall, would be alien features in the context of Nos 154A, 154B and 154C, and the wider block of which they are part. As a result, they would be detrimental to and disruptive of the regular and orderly form of the terrace.
17. The appellant has drawn my attention to an appeal decision elsewhere in Brent, where the Council had refused to issue a certificate of lawful development for a new window and Juliet balcony². That appeal was allowed by the Inspector; however, the proposal in this case is not for a Juliet balcony, so that other decision does not weigh in favour of the appeal scheme. I also entirely accept that compliance with the Building Regulations³ would mean that any permitted balcony would need to be provided with barriers or guarding to prevent people falling. However, the need to comply with the Building Regulations does not amount to a planning justification for the creation of the balcony, or balconies, in the first place.
18. I conclude that the proposed porches, balconies and guard rails, and front wall would be significantly harmful to the character and appearance of the area. The proposal therefore conflicts with Policies BD1 and DMP1 of the BLP, which among other things together seek the highest standards of urban design which complements the locality. The proposal also fails to comply with the requirements of Paragraph 130 of the Framework, which seeks to ensure that developments add to the overall quality of the area, are sympathetic to local character, and establish or maintain a strong sense of place.

Function and status of outbuilding

19. The proposed outbuilding would be built in what at present is a garden space set between Nos 154B and 154C, and No 9A Cross Way (although the submitted drawings suggest that it is associated only with Nos 154B and 154C). The space seems to me to have been enlarged by relocating the original boundary of Nos 154B and 154C towards the rear of No 9A Cross Way, as shown on the submitted "Site Plan – Existing" drawing⁴. No 9A has a relatively short rear amenity area, which appears to be a truncated version of its original

¹ In fact, the initial appeal statement referred to a "1.8cm fence". The reference to a fence was corrected to a brick wall in the "final comments" submission, but as a matter of common sense I have assumed the measurement to be intended to read 1.8m.

² PINS Ref: APP/T5150/X/17/3167445

³ Part K

⁴ Drawing No A101, dated 6 April 2019

garden. In fact, the question of which property has effective use of the garden at present was not entirely clear on site as boundary fences shown on the existing site plan were incomplete or missing. The Council has estimated the area of the combined large garden to be around 219m², but that figure includes the area serving No 154A which I saw at the time of my site visit was physically separated from the other space.

20. Policy BH12 of the BLP sets out the Council's approach to the provision of outbuildings, and states that they will only be permitted where they do not provide residential accommodation, or do not support the increased occupation of a dwelling. The SPD provides further guidance, and advises that the maximum acceptable size of an outbuilding will usually be determined with regard to its location and the size of the garden. It goes on to advise that for a garden of less than 100m² an outbuilding of up to 20m² may be acceptable, while for larger gardens an outbuilding of up to 30m² may be acceptable.
21. The submitted drawings show that the proposed outbuilding would be around 8.6m long and just under 5.0m wide; it would have a footprint of approximately 42.5m². While I have not been provided with precise measurements in respect of No 9A Cross Way, the submitted drawings show that the footprint of the outbuilding would be very similar to that of the main dwelling. The proposed outbuilding would be large in absolute terms; whichever measurement of the garden is taken, and whichever existing property that space is currently associated with, the outbuilding would be almost half as large again as the upper size limit advised in the SPD, so it would also be relatively large. It would not be proportionate in scale either to the main dwelling or to the existing garden.
22. The appellant has stated that the use of the annex would be "incidental to the use of the residential premises at 9A Crossway". The submitted drawings show that a toilet with shower would be provided in the outbuilding, while the "living room" of approximately 27.9m² is shown laid out with lounge and dining furniture for four, as well as a set of units in the southern corner of the room which, while unlabelled, in scale and layout are suggestive of a typical small kitchen. Given the proposed incidental nature of the outbuilding, there is no reason to assume that those using the outbuilding could not return to the main dwelling to use such facilities. The appellant acknowledged that "there are also indications that the plan which had images of facilities which was consistent with a separate dwelling unit" but also added that "revisions could have been invited by the local authority".
23. The submitted "Site Plan – Proposed" drawing⁵ shows a new panel fence separating the proposed outbuilding from the rear gardens of Nos 154B and 154C, as well as incorporating part of the existing rear garden of No 154A in a way which would allow separate access to the site from an existing gate at the side of that property, as well as a 2m high brick wall which would be built at the southern edge of the proposed outbuilding, separating it from the rear garden of No 156A Harlesden Road. The same drawing also appears to show a brick wall at the northern end of the outbuilding, separating it from No 9A Cross Way's small rear garden space.
24. That proposed layout would facilitate the independent use of the outbuilding, although the appellant dismisses suggestions by interested parties that it would

⁵ Drawing No A102, dated 16 May 2019

be used as a separate dwelling as not being accurate. However, there is no doubt in my mind that, given the size of the proposed outbuilding and the facilities shown, it would be *capable* either of being used as independent accommodation or, alternatively, supporting increased occupation of the main dwelling.

25. Several further arguments were put proposed as justification for the size and scale of the outbuilding. The appellant drew my attention to other adjoining dwellings within the same development, suggesting that most already have deep extensions, and that the principal difference between them and the appeal proposal was that the annex would not be attached to the main building. I was able to see some of these extensions at the time of my site visit; all of the evidence before me indicates that the proposed outbuilding in this appeal would be considerably larger than, and therefore not directly comparable to, the existing extensions nearby.
26. I also saw on my site visit that the rear garden in which it is proposed to site the outbuilding was, as the appellant acknowledged, somewhat overgrown. I note that there is also a history of disputes between the appellant and some neighbouring occupiers about the condition of the garden, which at one point resulted in the Council getting involved. The appellant has stated that the current occupier of No 9A has had "real maintenance issues" with the garden, and that the amount of garden space (which I take to include the large area between No 9A and the three properties on Harlesden Road) is "excessive for the property". However, in my view the question of garden size could be quite easily remedied by reinstating the original boundaries, which would leave each property with a modest but comfortably-sized garden, comparable to those elsewhere in the same development. Neither the size of the garden, nor the overgrown state into which it apparently regularly descends, therefore justifies allowing such a disproportionately large outbuilding.
27. Similarly, the appellant suggests that the existing garden is overlooked from neighbouring properties and that, as a consequence of this lack of privacy it to all intents and purposes cannot be and has not been used as a private garden. However, in my view the extent of overlooking of the garden space does not go beyond that which would typically be expected in a modern, low-to-medium density development in a suburban area. The situation in respect of privacy might be reasonably easily improved with some well-considered planting, rather than building on much of the garden. Finally, the suggestion that the large outbuilding is necessary, at least in part, to provide the occupier of No 9A Cross Way with "additional incidental space for storage of maintenance tools for carrying out her [gardening] duties" is, given the size and proposed layout of the building and site, not credible.
28. As the proposed outbuilding would be capable either of being used as independent accommodation or, alternatively, supporting increased occupation of the main dwelling, I conclude that it would not be subservient or incidental to the host dwelling. None of the arguments put forward in support of the scheme carries more than negligible weight in its favour. The proposal therefore conflicts with Policy BH12 of the BLP, the requirements of which I have described in paragraph 20 above.

Living conditions

29. As I have already described, at present it is not entirely clear – on the ground at least – which of the appeal properties has access to and responsibility for which part or parts of the rear garden. However, the appeal proposal would resolve that question to some extent.
30. As a consequence of the proposed subdivision of the rear garden, No 154C would be left with an outdoor amenity area of around 29m². No 154C is a House in Multiple Occupation, licenced by the Council for a maximum occupancy of 7 persons (although I understand it to be within Use Class C4 which in planning terms would allow it to be occupied by up to 6 individuals). Whether the number is 6 or 7 though, the amount of amenity space which would remain would fall far short of meeting the needs of that many occupiers. I note that, as the appellant pointed out, Roundwood Park is reasonably close to the appeal site. However, public spaces such as parks also do not meet occupiers' needs for private, or semi-private, amenity space in the same way as gardens. I do not therefore consider that the presence of the park would overcome the deficiency of private space for the occupiers of No 154C.
31. The submitted drawings show that the proposed outbuilding would have an overall (parapet) height of 2.75m. I have not been provided with measurements for the separation between the northern elevation of the outbuilding and the ground floor windows on the rear elevation of No 9A Cross Way, but all the evidence before me and my observations on site indicates that the distance would be a short one. The outbuilding would be to the south-east of the rear elevation of No 9A Cross Way and, while it may be intended as an incidental annex for that property, it would have the effect of diminishing the outlook from the ground floor windows of the main dwelling, as well as reducing the amount of daylight and sunlight reaching the rooms they serve.
32. I conclude that the proposed outbuilding would be significantly harmful to living conditions for neighbouring occupiers; in the case of No 154C this would be because of the lack of outdoor amenity space, while in the case of No 9A Cross Way this would arise because of a loss of daylight, sunlight and outlook. The proposal therefore conflicts with Policies DMP1 of the BLP, which among other things seeks to ensure that development provides high levels of internal and external amenity. I also find that the proposal conflicts with the requirements of the Framework which seeks to achieve well-designed places, in particular the provisions of Paragraph 130 which requires a high standard of amenity for existing and future users.
33. The Council also drew my attention to Policy BH13 of the BLP which sets the requirements for external private amenity space in development in the borough. However, that policy specifically addresses proposals for new dwellings; as the appeal proposal is not for a new dwelling I have not assessed it against this policy.

Other matters

34. The Council raised no objection to certain elements of the scheme, namely the installation of the electric vehicle charging points and cycle storage. None of the evidence before me has led me to a different view on these aspects of the proposal; however, that these elements are acceptable does not outweigh the other harm I have found.

35. The original planning application consultation received numerous responses from nearby residents objecting to the scheme. The appellant's "final comments" also referred to ongoing disputes with neighbours about a variety of matters, although the appellant was at pains to stress that no objection to the proposal had been made by the occupier of No 10 Cross Way, the closest dwelling (excluding those within the five appeal properties themselves) to the location of the proposed outbuilding. I note the observations made on the subject of third-party representations and amenity (as well as those in respect of procedural fairness) made by David Elvin QC, sitting as a Deputy Judge of the High Court, in a judgment relating to an enforcement notice at the appeal site⁶. However, the planning issues addressed in that case do not appear to be directly comparable to those in this appeal. Matters raised by interested parties in response to the original planning application consultation and the appeal notification have, to the extent that they are material, been addressed in my consideration of the main issues above.
36. Finally, the appellant alluded to other developments which have been carried out in the vicinity of the appeal properties, and in particular complained that a neighbouring resident carried out development under the permitted development "prior approval" route, but subsequently objected to the appellant's proposed development. However, that this may have happened is not in any way related to the planning merits of the appeal scheme, and it has had no bearing on my decision. None of the other matters put forward in support of the scheme by the appellant outweighs or mitigates the harm I have found.

Conclusion

37. The development would be harmful to the character and appearance of the area, would not comply with development plan policies in respect of outbuildings, and would be detrimental to living conditions for the occupiers and future occupiers of properties within the appeal site. The proposal conflicts with the development plan taken as a whole.
38. There are no material considerations, including the Framework, which indicate that a decision should be made other than in accordance with the development plan. For the reasons given above, the appeal is therefore dismissed and planning permission is refused.

M Cryan

Inspector

⁶ *Muorah v SSHCLG* [2020] EWHC 649 (Admin)