



Appeal Decision

Site visit made on 8 March 2022

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 April 2022

Appeal Ref: APP/M5450/C/20/3253496

48 Waltham Drive, Edgware, HA8 5PE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms B Patel against an enforcement notice issued by London Borough of Harrow.
- The notice was issued on 8 April 2020.
- The breach of planning control as alleged in the notice is: Without planning permission (1) Unauthorised construction of a single storey front extension, single and two storey side to rear extension; (2) The material change of use of the land from use as single family dwellinghouse to use as two separate self-contained units; (3) The construction of an outbuilding in the rear garden of the land.
- The requirements of the notice are: 1. Cease the unauthorised use of the land; 2. Remove all kitchens from the land except one (1) from the main dwellinghouse; (3) Demolish the unauthorised development or build in accordance to the approved layout of P/2032/17 allowed under appeal reference P/2032/17/5253; (4) Remove all internal partitions that enables the use of the original house as 2 separate self-contained units; (5) Make good any damage caused to the building as a result of the above steps 1-3 and ensure that all materials used shall match those used in the existing building; (6) Demolish the Unauthorised Outbuilding; (7) Remove from the land all material and debris arising from compliance with the requirements of the notice.
- The period for compliance with the requirement is: Nine calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is allowed and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended, insofar as it relates only to the construction of a single storey front extension, single and two storey side to rear extension, and the construction of an outbuilding at 48 Waltham Drive, Edgware, HA8 5PE.
2. The appeal is dismissed and the Enforcement Notice (EN) is upheld insofar as it relates to the material change of use of the land from use as a single family dwellinghouse to use as two separate self-contained units at 48 Waltham Drive, Edgware, HA8 5PE and planning permission is refused in respect of that part of the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

3. The EN is directed at development comprising operational development and material change of use. Relating to the outbuilding in the rear garden, the

Council has only attacked its construction. Therefore, notwithstanding concerns raised in the EN and the Council's evidence about its potential use by containing primary living accommodation not shown on the plan submitted in the original Lawful Development Certificate application allowed at appeal (Council ref: P/3094/15 & Appeal Ref: APP/M5450/X/15/3136460), the use of the outbuilding is not a matter before me. Therefore, if I was to grant it planning permission under the ground (a) appeal, it would be for an outbuilding. Any use of the building and concerns that it might not be used ancillary to the main house would be a matter for future investigation by the Council away from this appeal. When it comes to the planning merits of the outbuilding, I shall therefore only be considering the effect that the exterior design of the building has on the character and appearance of the area.

The ground (b) appeal

4. The appellant has confirmed that this ground of appeal is directed only at the alleged material change of use from use as a single family dwellinghouse to use as 2 separate self-contained units. The focus of the issue is the creation of a self-contained unit in the side/rear extension. The appellant needs to show that, as a matter of fact and degree, the matter alleged has not occurred. The test of the evidence is the balance of probability.
5. In the side extension on the ground floor is a fully fitted kitchen/dining area and a bedroom with an en-suite. Via stairs from the kitchen area, that are separate and independent from the staircase in the original dwelling, there is access to the first floor that has two further bedrooms and a shower room. There is no link between the first floor of the extension and the first floor of the main house. There is a ground floor doorway between the kitchen/diner of the extension and the original dwelling. However, this does not mean that this could not be, or is not, closed/locked/not used. At my site visit I noticed that the door has a lock on it. As a matter of fact, in the extension there is all the means of self-contained living.
6. If the internal access door is locked/not used, there would at present be no independent means of access to the dwelling in the extension other than going through the original dwelling. This would be a potentially odd and awkward arrangement, but it does not mean that a new dwelling has not been created. Moreover, the appellant has advised that when guests stay, sometimes for two or three months, and they have young children, they may from time to time choose to cater for themselves in their accommodation. On those occasions it is clear to me that they would be living in an independent dwellinghouse.
7. It is also the case that there was an access to the back door of the extension via an opening in the garden boundary wall which is next to a lane at the side of the appeal property. Using that would have allowed persons staying in the extension to come and go independently without going through the original dwelling. That access may have been blocked up before the EN was issued. However, the timing of those works is not relevant because s174(2)(b) of the 1990 Act is worded in the past tense, and the question is whether the breach had occurred by the date of issue of the EN.
8. I note that the extension may be used for other family reasons such as for different food preparation and the back garden has not been divided into two. Nevertheless, I find that the appellant has not discharged the burden on them

to show that the alleged change of use has not, as a matter of fact and degree, occurred. Therefore, the ground (b) appeal fails.

The ground (a) appeal – planning merits

9. Having regard to 'The Notice' section above, the main issues are:

- the effect of the outbuilding and the extensions to the house on the character and appearance of the area; and
- whether the dwellinghouse in the extension provides suitable living conditions.

Outbuilding and extensions

10. In May 2016 a Lawful Development Certificate (LDC) was granted on appeal (Appeal Ref: APP/M5450/X/15/3136460) for the construction of a detached outbuilding in the rear garden of the appeal property. The full garden width building which has been constructed is in roughly in the same position as the lawful building and, although one corner was to be chamfered which has been squared off, the depth of the current building is slightly less than granted at appeal. The new building is slightly higher than approved which, due to ground level changes, means that it is also stepped up from the height of the adjoining outbuilding in the back garden of No. 46.
11. Nevertheless, both buildings are of similar design with matching roof parapets, and their garden facing walls line up. Seen together and in the context of numerous other large back garden outbuildings in the local area, the appeal building does not look out of place. Furthermore, the marginal differences between what was found to be lawful and what has been constructed, overall have not led to a building which is too large, too bulky, or too high. Consequently, it does not have an overbearing presence and it has not harmed the character and appearance of the area.
12. Turning to the extensions, in December 2017 planning permission was granted at appeal (Appeal Ref: APP/M5450/D/17/3182869) for 'single storey front side to rear and double storey side to rear extension' at the appeal property. The as built scheme is not in accordance with the approved plans. The roofline of the two-storey side extension should have had a small step down from the ridge of the main roof and the first floor of the rearward extension should have been stepped in further from the side boundary than the ground floor part of the extension below it. As built, the heights of the rooflines match and the first floor flank wall is not set back. The approved scheme would have resulted in changes to the appearance of the appeal property that were found to be acceptable and the EN allows for the extensions to be put back to the approved plans. In these circumstances, it is reasonable to assess the effect of the development on the character and appearance of the area having regard to what was granted planning permission.
13. In the immediate area there are pairs of semi-detached houses and several short terraces of 3 and 4 houses. The appeal house is at the end of a group of 4 next to a three-storey block of flats. Given the varying lengths of the terraces there is no prevailing rhythm or uniformity in the street scene to be maintained that would necessitate a stepped down roof. Moreover, the terrace of three houses opposite, and the two groups of four houses closest to the appeal site at the small roundabout junction with Waltham Drive and Reynolds

Drive and Lawrence Crescent, also have ridgelines at a uniform height. Adding the side extension at the same roof height to the original house that gives an appearance like a terrace of five houses is therefore not out of place.

14. The appeal property is an end house site that might ordinarily justify a rear extension to be stepped back from the flank wall to minimise the bulk and prominence of the extension. However, in this case views of the side wall of the extension from Waltham Drive are glimpses limited by the narrowness of the track at the side of the house and the presence of the block of flats which is also significantly bulkier and has a greater scale than the extended house. In this case, therefore, the lack of a setback from the boundary of the rear projection has not made it unduly dominant or incongruous. Moreover, the setback as approved for the rear extension was 360mm and not the usual 500mm. Such a very marginal recess in the context of the site's setting would not make any material difference to the scale of the rear extension.
15. In view of the above, the outbuilding and the extensions to the house accord with the design aims of the National Planning Policy Framework 2021, policies D1, D3 and D4 from the London Plan 2021, policy CS1(B) from the Harrow Core Strategy (CS), policy DM1 from the Harrow Development Management Policies Local Plan (LP) and the Council's Supplementary Planning Document – Residential Design Guide (RDG).

Dwellinghouse

16. Policy D6 *Housing Quality and Standards* from the London Plan 2021 seeks to secure housing development that provides adequately sized rooms with comfortable and functional layouts which are fit for purpose. Dwellings must therefore provide at least the gross internal floor area set out in Table 3.1 from the Plan. The appellant suggests that with a floor area of 66 sqm the dwelling in the extension is only slightly below the minimum requirement for a 2 bedroom/3-person house. However, as outlined above and shown on the submitted existing layout plan, this is a 3-bedroom house. It may be the case that the ground floor bedroom could be used as a living room. Nonetheless, the EN attacks the development as built and it seems to me that the ground floor bedroom was designed for that specific purpose due to its linked en-suite.
17. A two storey 3-bedroom four-person house, at a minimum in accordance with Table 3.1, should have 84 sqm of gross internal floorspace, or greater if it was used by 5 persons. The internal space falls well short of the minimum standard required to provide accommodation that is fit for purpose. I accept that in other respects the creation of another dwelling causes no harm, for example to the amenity of neighbours, and that it would be possible in my view to create spaces for refuse and cycle storage. Nevertheless, these considerations do not outweigh my concerns that the new house lacks adequate internal space.
18. The development therefore does not accord with the living standard aims of policy D6 from the London Plan 2021 and policies DM1 and DM26 from the LP.

Ground (a) Conclusion

19. Under s177(1)(a) of the 1990 Act I can grant planning permission for the whole or any part of the matter stated in the EN. For the reasons given, I find that the extensions to the main house and the construction of the outbuilding are acceptable, but not the change of use to two dwellinghouses. Given that the

elements of operational development have been attacked separately in the EN, I intend to grant planning permission under s177(5) of the 1990 Act for them. I shall leave the EN unchanged and let s180 of the 1990 Act take effect. This states that where, after the service of a copy of an enforcement notice planning permission is granted for any development carried out before the grant of that planning permission, the notice shall cease to have effect so far as inconsistent with that permission.

Conclusion

20. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the extensions to the house and the outbuilding, but otherwise I will uphold the EN and refuse to grant planning permission in respect of the change of use of a single family dwellinghouse to use as two dwellinghouses. The requirements of the EN will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Gareth Symons

INSPECTOR