



Appeal Decision

Site visit made on 15 March 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 May 2022

Appeal Ref: APP/T5150/C/21/3272965

74 Redhill Drive, Edgware HA8 5JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Abdal Mohamed Enus against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 4 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single-storey rear extension to the premises.
- The requirements of the notice are to:
 - STEP 1 Demolish the unauthorised development from the rear of the premises.
 - STEP 2 Remove all items and debris, arising from that demolition, and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a), (c) and (d) 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 dismissed, 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

2. Although the appellant has ticked ground (a) on the appeal form, he asserts in his appeal statement, that the structure has been substantially completed for four years. This appears to be a hidden ground (d) appeal, that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The appellant also states that the development complies with the permitted development rights afforded by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). This appears to be a hidden ground (c), which is that those matters (stated in the notice) do not constitute a breach of planning control. I have raised these matters with the parties and shall deal with them accordingly.
3. Following submission of the appeal, the Council adopted a new development plan on 24 February 2022, the Brent Local Plan 2019-2041 (BLP). The Council has confirmed that policy DMP1 of the Development Management Policy (2016) has been replaced by policy DMP1 of the BLP, which reflects the principles set out in the previous policy and the remaining policies have been replaced with policy BD1. The appellant has been given the opportunity to comment on the new local plan through the appeal.

Ground (d)

4. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In a legal ground of appeal, the burden of proof is firmly on the appellant to make their case, on the balance of probabilities.
5. Section 171B(1) of the Act provides where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years, beginning with the date on which the operations were substantially completed. The appellant asserts that the structure has been substantially completed for four years.
6. The Council has provided aerial photographs dated May 2018 and June 2019. The extension can be seen in the June 2019 photograph but not in the May 2018 photograph. While Google Aerial photographs, once published, may not be updated for some time, the photographs provided by the Council are both dated with a month and a year.
7. Furthermore, photographs provided by the Council dated 1 April 2019, show that although the roof had been erected, patio doors, which were present during my site visit, had not been fitted. In my view, having regard to the structure as completed, the extension was not substantially complete on 1 April 2019.
8. Given the above, I consider it highly unlikely that the extension had been substantially completed by April 2017. Furthermore, since the notice was issued on 4 March 2021, in order to succeed on this ground, the appellant would need to have shown that the extension was substantially complete on, or before 4 March 2017¹.
9. Consequently, the appeal under ground (d) must fail.

Ground (c)

10. An appeal under ground (c) is made on the basis that the matters stated in the notice do not constitute a breach of planning control. The main thrust of the appellant's case under this ground is that the development benefits from permitted development rights afforded by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPD0).
11. Schedule 2, Part 1, Class A permits the enlargement, improvement or other alteration of a dwellinghouse, subject to certain limitations. Development is not permitted by Class A if, A.1(g) ...the enlarged part of the dwellinghouse would have a single storey and (i) extend beyond the rear wall of the original dwellinghouse by more than by more than 8 metres in the case of a detached dwellinghouse, or 6 metres in the case of any other dwellinghouse. Since the appeal dwelling is a semi-detached property, 6 metres is the relevant limitation in this case.
12. Paragraph A.4 of Class A requires the developer to provide certain information to the local planning authority before beginning the development. The

¹

appellant applied for prior approval in 2019, however, although there were no objections from neighbours, it was refused by the Council on 2 September 2019 as the extension exceeded 6m in depth.

13. While the appellant sought advice from the Council prior to erecting the extension, they do not dispute that the structure exceeded 6m. Although the extension has now been modified so that it is within 6m of the original rear wall, the GPDO does not grant retrospective planning permission. Consequently, the extension is not permitted by the GPDO and the appeal under ground (c) must fail.

Ground (a)

14. An appeal under ground (a) is made on the basis that in respect of the breach of planning control, planning permission ought to be granted. In order to bring the extension within 6m depth, the appellant has removed part of the roof. It appears the modifications to the extension were carried out after the notice was served and so I have considered the extension as erected.

Main Issues

15. The main issues of the appeal are the effect of the appeal scheme on:
- Living conditions of neighbouring occupants, with regard to the loss of outlook and light; and
 - The character and appearance of the area.

Reasons

Living conditions

16. The appeal property comprises one of a pair of semi-detached dwellings. Although No 72 has been extended to the rear, No 76, which adjoins the appeal property has not. The extension is adjacent to patio doors in No 76 and extends the full length of a patio area, which occupants of No 76 are likely to use for sitting out and enjoying the garden.
17. The rear extension is not stepped in, contrary to guidance within the Residential Extensions & Alterations SPD 2 (2018)(SPD), which advises that an extension up to 6 metres in depth may be acceptable providing that for every additional metre beyond 3 metres in depth, the extension should be set in from the boundary by an additional metre to protect neighbouring residential amenity.
18. Given the depth of the extension, it provides a harmful sense of enclosure which occupants of No 76 are likely to find overbearing and resulting in a diminished outlook, contrary to policy DMP1 of the Brent Local Plan 2019-2041 (adopted February 2022)(BLP), which seeks to ensure development provides high levels of internal and external amenity, amongst other things.
19. The appellant has reduced the depth of the extension in an attempt to bring it within permitted development rights. However, as set above, the GPDO does not grant retrospective planning permission. Furthermore, although the reduction has resulted in the extension extending less than 6m in depth, the difference is limited and so it still creates a harmful sense of enclosure and conflicts with the policies above. While the GPDO permits extensions of up to

6m, the outcome of the prior approval procedure is not guaranteed. Neighbours may change and so may the opinions of neighbours. Consequently, I afford this matter very limited weight.

Character and appearance

20. The appeal dwelling is a semi-detached property located in a generally residential area. Policy DMP1 of the BLP seeks to ensure development complements the locality and policy BD1 seeks high quality design. The SPD advises extensions to extensions may be acceptable if it is well designed to integrate with the existing extension.
21. The extension is located to the rear of the main dwelling and so there are very limited public views of it from the public domain. Although the extension can be glimpsed from Redhill Drive, given its location to the rear, it is not a dominant feature and does not harm the character and appearance of the area. While the materials used in the finish of the extension contrast with the pre-existing extension, this is a matter which could be addressed by condition.
22. Thus, I consider there is no harm to the character and appearance of the area and no conflict with policies DMP1 and BD1 in this regard.

Ground (a) conclusion

23. While I have found the appeal scheme does not harm the character and appearance of the area, I have found it harms the living conditions of neighbouring occupants and conflicts with the development plan as a whole. There are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR