



Appeal Decision

Site visit made on 2 February 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 May 2022

Appeal Ref: APP/T5150/C/20/3264790

19 The Avenue, London, NW6 7NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nadim Saad against an enforcement notice issued by London Borough of Brent.
 - The notice, numbered E/20/0035, was issued on 17 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the demolition of a dwellinghouse and the rebuilding of a new dwellinghouse which includes extensions to the roof, and two storey extensions to the rear and side of the premises. ("The unauthorised development").
 - The requirements of the notice are:
 - Step 1 - Demolish the unauthorised dwellinghouse, which includes extensions to the roof and two storey extension to the rear and side of the premises.
 - Step 2 - Remove all debris, items and materials arising from that demolition from the premises.
 - Step 3 - Reconstruct the single dwellinghouse to exactly replicate the previously demolished dwellinghouse, as shown in the plans (EX01, EX02, EX03, EX04, EX05, EX06 and EX07) and the photographs attached to this notice.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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.
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Decision

1. It is directed that the enforcement notice is corrected by deleting:
 - 'the demolition of a dwellinghouse and' in Schedule 2; and
 - 'which includes extensions to the roof, and two storey extensions to the rear and side of the premises' in Schedule 2.
2. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 Act as amended (the 1990 Act) for the development already carried out, namely the rebuilding of a new dwellinghouse at land at 19 The Avenue, London, NW6 7NR, as shown on the plan attached to the notice and subject to the following condition:
 - (i) The building operations hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 12 months of the date of the failure to meet any one of the requirements set out in (a) to (e) below:

- a) Within two months of the date of this decision a scheme to amend the front porch and the main roof form so that the ridgeline, front and rear roof slopes and rear dormer match the front porch, ridgeline, front and rear roof slopes and rear dormer being built under joint planning permission reference 19/0884 at 17 The Avenue, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- b) If within eight months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, a valid appeal shall have been made to the Secretary of State.
- c) If an appeal is made in pursuance of b) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- d) The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- e) Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

- 3. The appeal relates to a two storey, semi-detached dwelling at No 19 The Avenue. By the date of my site visit, a substantial amount of work had been undertaken at the adjoining dwelling, No 17 The Avenue, including the removal of its roof. Given the relevance to the ground (a) appeal, I sought confirmation from the parties as to the planning permission being implemented.
- 4. To that end the appellant provided the Council's acknowledgement of a valid Commencement Notice¹ addressed to the owner/occupier of No 17 in respect of joint planning permission reference 19/0884 with No 19 for the erection of two-storey side extensions, first floor rear infill extensions, rear dormer roof extensions, and two front rooflights to each dwellinghouse. That permission, referred to hereafter as the joint planning permission, also included a first floor front extension, alteration to front gable and replacement of garage door to No 17 and a single storey rear infill gap extension to No 19.
- 5. The Council was offered opportunity to comment on all of the information submitted by the appellant, including approved drawings, but confirmed that it had no further comments to make.

The Enforcement Notice

- 6. The alleged breach is the demolition of a dwellinghouse and the rebuilding of a new dwellinghouse which includes extensions to the roof, and two storey extensions to the rear and side of the premises. If a new dwelling has been

¹ The Community Infrastructure Levy Regulations 2010 (as amended) – Regulation 67 Commencement Notice

built, which encompasses all those latter elements, they are not extensions as such, but simply part and parcel of the new dwellinghouse.

7. To avoid any confusion and properly define the terms of the deemed planning application, I will correct the notice by deleting reference to them. That does not change the substance of what the enforcement notice seeks to address and I am satisfied that I am able to correct that misdescription without injustice to any party under the powers transferred to me by s176(1)(a) of the 1990 Act. Although this correction to the allegation logically suggests a consequential variation of the requirements (Step 1), that would serve no purpose as I am quashing the notice.

The Appeal on Ground (c)

8. For the appeal to succeed on ground (c), the onus is on the appellant to demonstrate, on the balance of probabilities, that the matters alleged in the notice do not constitute a breach of planning control.
9. The property has a significant amount of planning history over the last three to four years. The appellant argues that what has been built is largely in line with three of the permissions granted, namely planning application references 19/0812, 19/0884 and 19/2062.
10. However, it is undisputed that the pre-existing dwellinghouse has been demolished. The appellant is therefore unable to rely on any of the planning permissions to extend or alter a dwellinghouse that no longer exists.
11. The description of development for reference 19/0812 does include, amongst other things, the demolition and subsequent rebuild of the existing dwellinghouse with consolidation of previous approved applications. Development was therefore lawfully commenced by the demolition works, being a material operation comprised in the development permitted. That as aspect does not therefore constitute a breach of planning control. Nevertheless, it has not been shown that what has subsequently been rebuilt is in accordance with the remainder of that permission, or any of the other planning permissions granted which include the demolition of the pre-existing dwellinghouse.
12. The appellant argues that minor variations to a permission could be regularised through an application under s73 of the 1990 Act. Be that as it may, for the purposes of an appeal under ground (c), it is not shown that such an approval has been granted. Indeed, the appellant acknowledges that a recent planning application sought to consolidate a number of previously approved elements under one permission was refused by the Council².
13. I note that planning permission³ was granted for a front porch extension to both dwellinghouses in December 2018. Even if that permission does not relate to the pre-existing dwelling, Condition 4 stipulates that the porches shall be carried out as one joint development. As the porch has not been built at No 17, the porch at No 19 would appear to be in breach of that condition, even if it matches that approval. It is also attached to the alleged dwelling which has not been shown, on the balance of probabilities, to benefit from a grant of planning permission.

² Planning application reference: 21/2835

³ Planning application reference: 18/3790

14. Bringing the above together, the ground (c) appeal succeeds in relation to the demolition of the pre-existing dwelling, as it has been shown, on the balance of probabilities, that the same did not constitute a breach of planning control. I will correct the notice to delete references to the demolition of the dwellinghouse. Again, although this correction to the allegation logically suggests a consequential variation of the requirements (Step 3), that would serve no purpose as I am quashing the notice.
15. It has not been demonstrated, on the balance of probabilities, that the rebuilding of a dwellinghouse was not in breach of planning control. The ground (c) fails in this regard.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

16. The main issues are whether the alleged development results in unacceptable harm to:
 - the character and appearance of the area and/or the living conditions of neighbouring residents; and
 - if so, whether unacceptable harm(s) can be avoided by an amended scheme, and whether such a scheme can be appropriately secured.

Reasons

Character and appearance

17. The alleged dwelling sits within an established residential street set out on a straight alignment. Predominantly the dwellings are two storey scale and are either semi-detached or detached. Designs vary although there are a number of common features, including hipped roofs and two storey bays with either pitched roof gables or hipped gables above. Finishing materials are mainly brick or painted render, or combinations of the same.
18. I acknowledge that the site benefits from numerous planning permissions and that much of what has been built may represent a conglomeration of those various schemes which have been found to be acceptable by the Council. However, whilst those permissions are material, it does not necessarily follow that their combined effects are acceptable.
19. Although the photographs attached to the enforcement notice show pre-existing differences in the design and finishing materials of Nos 17 and 19, there was a symmetry to the main roof form in terms of general proportions, pitch and ridge height. As noted, by the time of my site visit, No 17 had been subject to a significant amount of demolition works, including the removal of its roof. Indeed, a large scaffolding structure covered the area of the building, reflecting the extent of the works being carried out.
20. The Council does not dispute that the those works relate to the implementation of the joint planning permission. Accordingly, since serving the enforcement notice, the baseline position in which the alleged development at No 19 should be assessed, has materially changed.
21. The joint planning permission drawings show the two adjoining dwellings with matching ridgelines. However, the appellant acknowledges that which has been

built is higher than approved. The ridgeline will therefore be higher than that at No 17 when the works to that property are completed. Although drawing number EX106 Revision C shows the difference to be fairly small, it is enough to unbalance the pair and appear awkward.

22. The appellant has drawn my attention to existing semi-detached pairs in the street without matching ridgelines, but those do not reflect the predominant pattern of matching ridgelines in the vast majority of cases. The example at Nos 56 and 58 The Avenue where there is a stepped difference in the respective ridgelines, serves to highlight the unbalancing effect and harm that can arise from such an arrangement.
23. The harm in this case is compounded by the ridge level crown roof at the appeal dwelling. Because the joint planning permission does not include a comparable arrangement there will inevitably be a misalignment of the front or rear slopes (or even both), between the two dwellings. Indeed, the as built drawings and photographs against the pre-existing arrangement at No 17, show a significant step between the respective rear roof slopes. A similar arrangement would appear odd and visually jarring, exacerbating the harm and lack of symmetry arising from the differing ridge levels, that would not be masked by the centrally positioned chimney stack.
24. I accept that the harm would be less if the difference in roof slopes were confined to the rear, rather than public facing street views. Nevertheless, the roof form would be clearly seen in views from the rear gardens of neighbouring dwellings to the north, and from the residential development currently being built on the corner of The Avenue and Brondesbury Park. I appreciate that the rear of the properties along The Avenue display a variety of form and appearance but the mismatch of roof slopes (and ridgelines) on a pair of semi-detached dwellings would appear as a particularly poor form of development.
25. In any case, I have not been directed to a drawing which demonstrates that the difference to the roof slope would be solely confined to the rear. Indeed, the Council's photographs show that prior to the roof being removed at No 17, there was also a misalignment to the front roof slope - albeit less than the rear.
26. The joint planning permission also includes adjoining dormers in the rear roof pitch. If the dormer has been constructed in accordance with that permission, as stated by the appellant, it would project beyond that being implemented at No 17 by any misalignment in the rear roof slope arising from the crown roof form. Therefore, even if the dormer dimensions match, the disjointed appearance of the respective roofs would be further compounded.
27. The appellant has referred to permitted development rights, including Class AA⁴ of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). However, even putting aside the provisions of Article 3(5)⁵ of the GPDO, it has not been shown that the dwelling would meet the limitations of Class AA so as to be able to add to the number of storeys. Moreover, it is a condition of that permitted development

⁴ The enlargement of a dwellinghouse consisting of the construction of— (a) up to two additional storeys, where the existing dwellinghouse consists of two or more storeys; or (b) one additional storey, where the existing dwellinghouse consists of one storey, immediately above the topmost storey of the dwellinghouse, together with any engineering operations reasonably necessary for the purpose of that construction.

⁵ Article 3(5)(a) provides that permitted development rights granted by the GPDO are not available where the building operations involved in the construction of that building are unlawful.

right⁶ that prior approval must be sought as to the external appearance of the dwellinghouse. Therefore, it does not necessarily follow that the maintenance of symmetry is not essential outside of conservation areas, as suggested.

28. Although the existing porch at No 19 does not appear to be fully completed, it can be seen to have an enclosed form with a flat roof, the height of which extends above the ground floor of the house. However, the approved front elevation of the joint planning permission shows matching porches for both No 17 and No 19, with lower eaves and mono pitched roofs. On the basis that design is being implemented at No 17, the porch at No 19 would result in an uncomfortable and visually jarring mismatch of styles and proportions that would further undermine the symmetry of the pair and the overall composition of the principal elevation.
29. Turning to the lower side roof, although the angle of the pitch is steeper than that of the main roof, the difference is not significant or readily apparent in most views. Moreover, the joint planning permission drawings approve differing angles to the lower side roof (compared to the main roof), for both No 17 and No 19. Whilst I note that the Council's Residential Extensions and Alterations SPD 2 states that the angles should match, unacceptable harm is avoided in the particular circumstances of this case.
30. The first floor flat roof adjacent to the front gable is also similarly shown in previous planning permissions and the Council consider that aspect to be acceptable. The Council also consider the rear ground floor projection to be acceptable. Based on my own observations, I find no reason to disagree on either aspect.
31. The dwelling as built essentially runs to the full width of the plot at ground floor level, with a narrow gap above to No 21 The Avenue. That in itself is not unacceptable within the context a street scene where narrow gaps between dwellings is a relatively common feature. The photographs attached to the enforcement notice also show that the pre-existing dwelling largely filled the width of the front part of the site. Indeed, save for the aspects identified, the overall design and scale to the street facing elevation is similar to that already approved. Within its varied street scene, which includes dwellings with similar proportions, it does not appear out of place or overly dominant.
32. Nevertheless, I find that the misalignment of the roof form with No 17, as well as the contrasting porches, would represent a poor form of design and detailing which would be harmful to the character and appearance of the pair of semi-detached dwellings and surrounding area, contrary to London Borough of Brent Local Plan Development Management Policy DMP1. That policy states, amongst other things, that development will be acceptable provided that the detailing and design provides a high level of internal and external amenity and complements the locality.
33. The reasons for issuing the enforcement notice also refer to conflict with Policies 7.4 and 7.6 of the London Plan (March 2016), which has been replaced by the London Plan (March 2021). The Council's statement of case, received post replacement date, does not refer to either, or to the National Planning Policy Framework which has been updated from the 2019 publication

⁶ Paragraph AA.2.(3)(a)

referenced in the enforcement notice. Nevertheless, the aforementioned development plan conflict remains.

Living conditions

34. The Council's evidence sets out that the first floor of No 19 extends 3m beyond the adjacent first floor rear wall of No 17, thereby exceeding the 1:2 rule of SPD 2⁷ by 2m and resulting in a loss of outlook and light from the nearest window of No 17.
35. However, that window no longer exists and it is confirmed that joint planning permission is currently being implemented in its stead. That includes adjoining first floor infill extensions to both dwellings. The appellant states that what has been constructed in that part of the dwelling, reflects that permission. That being the case, the adjoining rear walls at first floor level should be in alignment. Consequently, there would be no harm to the occupants of No 17 in terms of outlook and loss of light.
36. I am also mindful that such an outcome could have occurred anyway for the occupants of either dwelling because there is no condition attached to the joint planning permission to prevent one dwelling being extended at first floor level and the other not.
37. I do not therefore find that the alleged development will have an unacceptable effect on the living conditions of the occupants of the adjoining dwelling and accordingly find no conflict in that regard with Policy DMP1 or Brent Design Guide SPD 1, which state, amongst other things, that new development should provide adequate amenity for new residents and protect those of existing developments.

Amended scheme

38. The requirements of the notice are, essentially, to demolish the alleged dwellinghouse and reconstruct the pre-existing dwellinghouse. The appellant considers that to be excessive on the basis that the majority of what has been built has been considered acceptable under various planning permissions. Accordingly, a ground (f) appeal is also made.
39. It is suggested that a more reasonable solution would be to alter what has been built. Options submitted include requiring the dwelling to be amended to reflect consented drawings; for example, the roof to be amended to be in accordance with the joint planning permission, or to alter the dwelling in accordance with planning application reference 21/2835, which was refused by the Council on 16 September 2021.
40. Caselaw⁸ directs that, so long as there is an appeal on ground (a), I must consider whether the modified development would be 'part of the matters' and should be permitted. Such options should be considered under ground (a), even though the actual application under ground (a) relates to the development as built.
41. Ultimately, what may be granted is governed by s177(1)(a) of the 1990 Act, which provides that planning permission may be granted in respect of the

⁷ The depth of the rear extension is restricted to half the distance between the side wall and the middle of the neighbours nearest habitable room window

⁸ *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566

matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters. Whether or not the proposed alternative scheme(s) amounts to part of the matters, and may be permitted, is for the planning judgement of the decision maker⁹, but as recognised in caselaw¹⁰, virtually any alternative scheme is likely to involve at least some element of new work.

42. Although an appeal might succeed on ground (f), by adding an alternative requirement to modify the dwelling so as to comply with a specified planning permission, caselaw¹¹ makes it clear that the permission must be extant. Whilst it appears that the joint planning permission is extant insofar as it is being implemented at No 17, implementation at No 19 is no longer possible as it relates to the alteration and extension of a dwelling that no longer exists. Consequently, it is not possible to vary the notice to require compliance with that permission and it has not been shown that there are any other extant redevelopment permissions which the appellant would wish to fully implement. Moreover, it would not be possible in this case to achieve an appropriate degree of precision by adopting a 'pick n mix' approach from a number of permissions.
43. Nevertheless, I have found that unacceptable harm is restricted to a number of distinct elements relating to the main roof and porch. Consequently, it would be excessive to demolish the whole dwellinghouse if an alternative scheme that satisfactorily resolves those matters can be secured with an appropriate degree of precision.
44. The appellant has explained that the purpose of refused¹², planning application reference 21/2835 was to try to find a compromise with the Council. However, notwithstanding the requirement for an extant permission, it would not be appropriate to add an alternative requirement to demolition, requiring compliance with the proposed plans of 21/2835, as they demonstrate a relationship with the pre-existing form of No 17, rather than what is being implemented. In any case, as the deemed planning application is made in respect of the development as alleged and built, there is no mechanism for incorporating any revised plans into any deemed planning permission by way of condition.
45. Nevertheless, the proposed drawings demonstrate how lesser steps could in principle achieve an acceptable outcome insofar as the main roof form is capable of being materially altered by removing the crown roof, lowering the ridgeline and altering the roof slopes, so as to be able to marry with No 17. A scheme to that effect could also ensure the symmetry of the rear dormers in respect of their alignment and dimensions. A scheme to ensure that the porches of No 19 and No 17 match is more straight forward.
46. That would be a more proportionate and sustainable outcome whereby the footprint of the dwelling would remain unchanged and more extensive development avoided; indeed its overall volume would be reduced. In my judgement, such a scheme can clearly be identified within the scope of the alleged matters.

⁹ *R (oao Banghard) v Bedford BC* [2017] EWHC 2391 (Admin)

¹⁰ *Bhandal v SSHCLG & Bromsgrove DC* [2020] EWHC 2724 (Admin)

¹¹ *Elmbridge BC v SSCLG & Giggs Hill Green Homes Ltd* [2015] EWHC 1367 (Admin)

¹² It was refused for similar reasons to those given for issuing the enforcement notice but with a third reason, relating to surface water, which is not included and therefore is not a matter for the ground (a) appeal

47. I note the appellant's intention, without prejudice to his ground (a) case, is to pursue submission of a new joint planning application for the roof form at No 17 to match that at No 19. However, I am unaware if that has been progressed and I make no comment on it as to do so would usurp the local decision-making process. Moreover, even if I considered such an outcome acceptable, it is not within the scope of this appeal to vary the enforcement notice to require No 17 to match No 19.
48. Nevertheless, a condition requiring a scheme to be agreed with the Council so that No 19 matches No 17, would properly fall within the statutory powers open to me to grant planning permission under s177(1)(a) of the 1990 Act and would satisfactorily resolve the harm to the character and appearance of the pair of semi-detached dwellings and surrounding area and the above stated conflict with Policy DMP1.

Other matters

49. I note the neighbouring occupants' concerns but in general, the courts have taken the view that the protection of purely private interests, such as the impact of a development on the value of a neighbouring property, cannot be material consideration. Moreover, any damage to the neighbouring property from construction works is a matter for the parties involved.
50. Concern has also been expressed over works to the front garden and driveway. However, those matters do not form part of the alleged development and I make no comment on them.
51. I appreciate the appellant requires additional living space to accommodate elderly relatives but it has not been shown that the increased ridge height and crown roof is critical to the provision of the same within the loft space.

Conditions

52. The only way to require that the works needed to make the development acceptable in planning terms, would be to permit the alleged development subject to a condition that a scheme is submitted to and approved by the local planning authority, and then implemented within a specified period of time, or the development is removed.
53. Condition (i) is therefore necessary to ensure that such alternative details are submitted, approved and implemented. It includes a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively worded condition to secure the approval and implementation of the alternative scheme before the development takes place. I will include details of what the scheme should comprise in the interests of precision and to ensure the right outcome.
54. The condition will also ensure that the development can be enforced against if the required details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.
55. The Council has not suggested any other conditions and I consider none are necessary.

Conclusion

56. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described. The appeal on ground (f) does not therefore fall to be considered.

Richard S Jones

INSPECTOR