



Appeal Decisions

Site visit made on 26 April 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 May 2022

Appeal A: APP/T5150/C/20/3263771

Appeal B: APP/T5150/C/20/3263772

3 Grove Way, Wembley HA9 6JS

- 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 R Patel (Appeal A) and Mr M Patel (Appeal B) against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 3 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single-storey rear extension, double storey side extension and loft conversion with rear dormer window.
 - The requirements of the notice are:
STEP 1 Demolish the unauthorised development and restore the premises back to its original condition before the unauthorised works took place. Remove all items, debris and materials arising from that demolition and remove all materials associated with the unauthorised development at the premises. OR
STEP 2 Alter the unauthorised development so that it accords to the plans and conditions approved in the planning permission reference 18/0165 dated 18th May 2018.
 - The period for compliance with the requirements is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (c) 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.
 - Appeal B is proceeding on the grounds set out in s174(2) (b) and (c) of the 1990 Act.
-

Decisions

Appeal A

1. It is directed that the enforcement notice is:
 - corrected by deleting the words "and 3A" within schedule 1 of the enforcement notice (the land or premises affected).
2. Subject to this correction, 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 1990 Act as amended for the development already carried out, namely the erection of a single-storey rear extension, double storey side extension and loft conversion with rear dormer window on land at 3 Grove Way, Wembley HA9 6JS.

Appeal B:

3. It is directed that the enforcement notice is:
 - corrected by deleting the words “and 3A” within schedule 1 of the enforcement notice (the land or premises affected).
4. Subject to this correction, the appeal is dismissed.

Procedural Matters

5. The appellants states that the appeal site is a single dwelling and not two flats. The Council have not contested this and have confirmed that the notice does not relate to the conversion of the property into separate units but is for the operational development works stated in the notice. For the purpose of clarity and identifying the property I will correct the address and remove reference to “and 3A” on the notice and on the banner heading above. This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to make this correction.
6. The Council state that the fourth paragraph under schedule 3 (reasons for issuing this notice) referring to under-sized units is an error and should be disregarded. Therefore, this decision does not focus on this issue.
7. For Appeal A, the Council have confirmed that the fee was paid, and therefore this appeal will proceed on grounds: (a), (b) and (c). For Appeal B, the fee was not paid, and therefore this appeal will proceed on grounds (b) and (c) only.
8. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.
9. Furthermore, during the course of this appeal, the London Plan, 2016, and policies contained within it, has been replaced with the London Plan 2021 (London Plan), which was adopted on 2 March 2021. In addition, the Brent Local Plan 2019-2041 (LP) was adopted on 24 February 2022. These policy documents must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on these documents, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded London Plan 2016, the Brent Core Strategy 2010, Brent Site Allocations Plan 2011, Wembley Area Action Plan 2015, and Brent’s Development Management Policies Plan 2016.

The Appeals on Ground (b)

10. To succeed on this ground, the onus is upon the appellants to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact. This has not been demonstrated. On the contrary, the appellants states that planning permission should be granted for the development as this is a family dwelling and not 2 flats and that planning permission has been granted for the double story side and rear extension and that all other works constitute permitted development (PD). However, these arguments are more appropriate to the appeals on grounds (a) and (c) and do not demonstrate that the allegation has not occurred as a matter of fact.

11. The Council state that they witnessed the matters stated in the notice during an Officer site visit on the 30 July 2020, and photographic evidence has been submitted to support this. Therefore, on the balance of probabilities I consider that the matters as alleged by the notice have occurred as a matter of fact.
12. Accordingly, the appeals on ground (b) must fail.

The Appeals on Ground (c)

13. Ground (c) arises where the appellants seek to argue that the matters alleged by the enforcement notice do not constitute a breach of planning control. As with ground (b) the onus of proof lies with the appellants, the relevant test of the evidence being the balance of probability.
14. As outlined above, the appellants consider that they have been granted planning permission for the two storey side extension and the single storey rear extension and that loft conversion with rear dormer constitutes PD.
15. Planning permission was granted for the demolition of side outbuilding and erection of a two storey side extension, front porch, rear dormer window and 3 front rooflights to dwellinghouse¹. Condition 2 of that permission requires the development to be carried out in accordance with the approved drawings. However, the current development has not been built in accordance with the approved drawings since the roof of the main dwelling has been altered from a hipped roof to a gable end, which has resulted in further modifications to the roof of the two storey side extension. Furthermore, contrary to the appellants assertion, no single storey rear extension is included on the approved planning permission, nor mentioned on the decision notice. Therefore, the development as carried out does not appear to benefit from any extant planning permission.
16. With regard to the loft extension works no substantive evidence has been submitted to explain how these works comply with permitted development rights of the Town and Country Planning [General Permitted Development] Order 2015 [GPDO 2015]. Furthermore, none of the evidence submitted by the appellants, including the receipts and invoices, nor building control certificate, provide any clear evidence that the loft extension was carried out in one separate building operation in accordance with the GPDO 2015. Indeed, the planning contravention notice, completed by one of the appellants states that all building works, including the rear dormer, were carried out at the same time.
17. Therefore, on the balance of probability and based on all the evidence before me, the development does not constitute PD. Therefore, planning permission is required for the development, and there is none in place. There has therefore been a breach of planning control and the appellants have not discharged the onus on them to demonstrate otherwise.
18. Accordingly, the appeals fail on ground (c).

¹ Council ref: 18/0165 approved on 18 May 2018.

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

Main Issue

19. The main issue is the effect of the development on the character and appearance of the host building and the area.

Reasons

Character and appearance

Loft conversion with rear dormer

20. The appeal property is a two-storey end of terrace dwelling, situated in a residential area. The development includes a hip to gable roof extension and a rear dormer roof extension over the main house. Brent's Residential Extensions and Alterations SPD2, 2018 (SPD) states that where there is an existing two storey side extension with a hipped roof, a full gable to main house would not be acceptable. The SPD also states that whilst rear dormers can be full width, they should be set down from the ridge by at least 0.3m and must be set up from the eaves line by at least 0.5m measured along the roof plane.
21. Although the rear dormer window has been built slightly larger than the above guidance, the rear dormer nevertheless, is set in from the eaves and sits below the ridge line. The dormer is also constructed from materials which match the main roof. I also observed that there were a variety of roof forms in the area, including hip to gable roof extensions, as well as side and rear dormers of various sizes, all visible from the public realm. Whilst I appreciate many of these would have been built under PD legislation and therefore their planning merits would not have been assessed against the Council's development plan and SPD, these developments nevertheless form part of the existing character and appearance of the area. Therefore, in this context, the hip to gable roof extension and the rear dormer does not harm the character and appearance of the building or area.

Two storey side extension

22. The two storey side extension is set below the ridgeline of the main building and with set-backs at both ground and first floor level, the extension is of an acceptable size, shape and height and is suitably subservient to the main building. The materials of the extension also match those of the main dwelling. Whilst the hip roof of the side extension is not strictly in accordance with the Council's SPD, as noted above, there are a variety of roof forms in this area, and in this context, the roof of the extension is not harmful to the character and appearance of the host building and area.

Single-storey rear extension

23. The appeal site forms part of a small terrace of two storey dwellings (which includes 163 and 165 Monks Park) which have all been extended with ground floor rear extensions, and in the case of No 163 includes a ground and first floor rear extension with a pitched roof. The single storey flat roof rear extension at the appeal property is of a similar depth to these other rear extensions in the terrace and projects no higher than the extension at the adjoining property at No 165. Furthermore, the materials of the rear extension

matches those of the main dwelling ensuring it successfully integrates with the host building. It follows that the single storey rear extension does not harm the character and appearance of the host building and area.

Overall conclusion on character and appearance

24. I therefore conclude that the development does not have a harmful impact upon the character and appearance of the host building and area. In this respect the development complies with Policies DMP1 and BD1 of the LP. Amongst other things these state that development will be acceptable provided it is of asiting, layout, scale, type, density, materials, detailing and design that provides high levels of internal and external amenity and complements the locality, and that development must be of the highest architectural and urban design quality. The development also complies with Policy D1 of the London Plan, which seeks to achieve good growth through good design.
25. Finally, the development complies with aims of part 12 of the Framework, which requires development to be sympathetic to local character and history.

Other matters

26. Whilst not specifically referred to within the enforcement notice, the Council's appeal statement also raises additional concerns relating to the size and quality of amenity space for occupiers of the appeal site as well as the effect of the development upon the living conditions of neighbouring occupiers with regard outlook. Regarding amenity space, owing to its corner location, the appeal site has an unusual triangular shaped rear garden which is directly overlooked and enclosed by neighbouring buildings on Grove Way and Monks Park. Given these existing constraints of the rear garden, the rear extension, has not resulted in a harmful reduction in size and quality of amenity space for occupiers of the appeal site. The Council have referred to Policy BH13 of the LP in support of their objection. However, this policy refers to "all new dwellings" and is therefore not relevant to the current development. Furthermore, owing to the size and location of the rear extension, loft extension and two storey side extension, I do not consider that these works are harmful to the living conditions of the occupiers of neighbouring properties with regard to outlook.

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

27. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. Neither party has suggested any planning conditions, and none are necessary in my view.

Conclusions

28. Appeals A and B fail on grounds (b) and (c). Since these are the only grounds pleaded for Appeal B, Appeal B is dismissed. However, Appeal A succeeds on ground (a) and the deemed planning application is approved for the operations described in the notice. The enforcement notice will be quashed. Thus, the dismissal of Appeal B is of no practical consequence.

R.Satheesan

INSPECTOR