
Appeal Decision

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: 09 May 2022

Appeal Ref: APP/T5150/C/21/3267425
178 Braemar Avenue, London NW10 0DS

- 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 Kalpesh Patel against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 15 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a front porch extension, single-storey rear extension, rear canopy, and rear outbuilding to the premises.
 - The requirements of the notice are:
STEP 1 Demolish the unauthorised development.
STEP 2 Remove all items, materials 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 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. It is directed that the enforcement notice is:
 - corrected by deleting the words “the erection of a front porch extension” within schedule 2 of the enforcement notice (the alleged breach of planning control) and its replacement with “extension to the existing front porch”.
2. Subject to the correction, the appeal is allowed insofar as it relates to rear outbuilding 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 rear outbuilding at 178 Braemar Avenue, London NW10 0DS.
3. The appeal is dismissed, and the enforcement notice is upheld as corrected insofar as it relates to the extension to the front porch, single-storey rear extension, and rear canopy and planning permission is refused in respect of the extension to the front porch, single-storey rear extension and rear canopy at 178 Braemar Avenue, London NW10 0DS, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

4. 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.
5. 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.
6. The enforcement notice refers to the front porch, the single storey rear extension, rear canopy and outbuilding as the "unauthorised development", and for consistency I shall also refer to these as the "unauthorised development".

The Appeal on Ground (b)

7. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
8. Amongst other thing, the Enforcement Notice alleges "the erection of a front porch extension". The Cambridge Dictionary defines 'porch' as "*a covered structure in front of the entrance to a building*". The appellant states that the greater part of the porch (including the asymmetric pitched roof) is original to the building, and that similar porches are visible on other houses on the street. Indeed, a Google Street view image, dated June 2015, shows a porch, which meets the above definition, existed for more than 4 years before the Notice was served.
9. The Council state that the porch is materially different in so far as the front area has now been enclosed. The Council have also submitted a Google Street view image, dated February 2018, which illustrates the open asymmetric pitched roof porch at the appeal site. Therefore, the Council's own evidence supports the appellant's contention that part of the porch already existed.
10. It is clear from the evidence that a new porch extension has not been erected, but rather the existing porch has been extended, by enclosing part of the porch. The appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. It is necessary however to correct the notice so that it alleges "extension to the existing front porch". This would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) of the Act to make this correction.
11. The appeal on ground (b) succeeds to this extent.

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

Main Issues

12. The main issues are:

- the effect of the unauthorised development on the character and appearance of the host building and the area;
- the effect of the unauthorised development on the living conditions for the occupiers of 176 Braemar Avenue, with particular regard to outlook; and
- the effect of the single storey rear extension on the living conditions for the occupiers of 176 Braemar Avenue, with particular regard to light.

Reasons

Character and appearance

Extension to the existing front porch

13. The appeal property is a two-storey end of terrace dwelling, comprising two flats situated in a residential area. Brent's Residential Extensions and Alterations SPD2, 2018 (SPD) states that front extensions will not be permitted unless these are the predominant character of the area. The SPD also states that the design should take into account the most appropriate position, size, shape, and height that will complement the design of your home. Whilst the SPD is guidance only, its emphasis on good design is consistent with the Framework.
14. Open front porches with a pitched roof are a characteristic feature of the street. However, given its size, scale and prominence, the addition to the front porch forms a bulky, obtrusive, and incongruous feature in the street scene which is at odds with the prevailing character. Therefore, the extension to the front porch harms the character and appearance of the building and area generally.

Single storey rear extension

15. The Council's SPD advises that rear extensions should be designed to respect the character and size of your house, and that the maximum depth normally permitted is 3.0 metres from the wall of the house. Whilst the development exceeds 3m in depth, given the flat roof design of the extension and the relatively long rear garden of the appeal site, the extension does not occupy a disproportionate area of the garden and respects the size and character of the property. Furthermore, the render material of the extension respects the materials of the surrounding area. In these respects, the single storey rear extension does not harm the character and appearance of the building or area.

Rear canopy

16. Despite its position next to the external staircase, the excessive size of the canopy extension, which projects beyond the existing rear building line, in combination with its use of poor quality materials, consisting of a timber post and a polycarbonate roof, lacks any architectural merit. Therefore, despite the structure being largely open and its position away from any public views, the

effect of the development diminishes unacceptably the character and appearance of the host building and the area generally.

Outbuilding

17. The outbuilding at the appeal site is part width of the property and is less than the 20 or 30sq.m prescribed in the Council's SPD. Furthermore, the design of the outbuilding, made from render, with a flat roof design has a satisfactory external appearance, and is not dissimilar to other outbuildings in the area. In this respect the outbuilding does not harm the character and appearance of the host building and area.

Conclusion on character and appearance

18. Therefore, whilst I find no harm in relation to single storey rear extension and the rear outbuilding, the extension to the front porch and the rear canopy harms the character and appearance of the host building and area in conflict with Policies DMP1 and BD1 of the LP. Amongst other things these state that development will be acceptable provided it is of a siting, 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.

Living conditions of the neighbouring occupiers of 176 Braemar Avenue with regard to outlook

Single storey rear extension

19. The Council's SPD advises that "An extension up to 6 metres in depth may be acceptable providing that for every additional metre beyond 3.0 metres in depth, the extension should be set in from the boundary by an additional metre to protect neighbouring residential amenity." Contrary to the above guidance the unauthorised extension is approximately 4m deep, and the final 1m is not set in from the boundary.
20. The unauthorised rear extension results in a large expanse of the flank wall of the extension, built close to the boundary with No 176. As a result, the unauthorised rear extension appears as a dominant feature in the outlook from windows in the rear elevation of this property at ground floor level and from the part of the garden which adjoins the extension. Furthermore, the extension rises above the existing boundary treatment, and therefore results in greater harm. In this respect the unauthorised single storey rear creates an increased sense of enclosure to occupiers of No 176, which harms their living conditions.

Outbuilding

21. The height of the outbuilding exceeds 2.5m, and therefore does not strictly accord with the Council's SPD. However, given its modest floor area in combination with its flat roof design, and location towards the end of a relatively long rear garden ensures that the outbuilding does not harm the living conditions of neighbouring occupiers on Braemar Avenue.
22. Furthermore, given that the rear boundary of the appeal site, adjoins a rear access road, the development is set away from neighbouring properties on Lyndhurst Close and does not harm the living conditions of the occupiers of these properties.

Extension to the front porch and rear canopy

23. Owing to their location, away from neighbouring properties and windows, the extension to the front porch and rear canopy does not result in any harm to the living conditions of neighbouring occupiers with regard to outlook.

Conclusion on the living conditions of the neighbouring occupiers of 176 Braemar Avenue - outlook

24. Therefore, whilst I find no harm in relation to the front porch, rear canopy, and outbuilding, the single storey rear extension fails to provide acceptable living conditions for occupiers of No 176 with regards to outlook. Accordingly, the single storey rear extension is contrary to Policy DMP1 of the LP, which amongst other things states that development will be acceptable provided it is.... of a location, use, concentration, siting, layout, scale, type, density, materials, detailing and design that provides high levels of internal and external amenity.
25. The single storey rear extension is also contrary to paragraph 130 of the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Living conditions of the neighbouring occupiers of 176 Braemar Avenue with regard to light

26. The Council have raised an objection that the single storey rear extension results in harm to the living conditions of No 176 with regard to loss of light. However, owing to the single storey height and flat roof design of the extension, and that the rear of the properties on this terrace face in a southerly direction, the rear extension does not result in any demonstrable loss of light nor overshadowing to neighbouring occupiers of No 176.
27. I therefore conclude that the rear extension does not have a harmful effect on the living conditions of the neighbouring occupiers of 176 Braemar Avenue with regard to light. In this respect the development complies with Policy DMP1, which seeks the aforementioned aims.

Conclusion on the ground (a) appeal and the Deemed Planning Application

28. For all the above reasons, I conclude that the rear outbuilding, does not harm the character and appearance of the building and area, and does not harm the living conditions of neighbouring occupiers.
29. On the other hand, I find that the extension to the porch and the rear canopy harms the character and appearance of the host building and area, and that the single storey rear extension harms the living conditions of neighbouring occupiers of No 176 with regard to outlook.
30. Following on from these conclusions, I intended to allow the ground (a) appeal and the deemed planning application in so far as it relates to the construction of the rear outbuilding only. Neither party has suggested any planning conditions, and none are necessary in my view.

Split decision - the effect of Section 180 of the 1990 Act

31. S180 provides that where after the service of a notice, planning permission is granted for any development carried out before the grant of that permission,

the notice shall cease to have effect so far as it is inconsistent with that permission. In this case, the appeal on ground (a) will be allowed in part. If the requirements of the notice were varied to exclude that part of the development for which planning permission is being granted, then this could give rise to two inconsistent permissions, one being granted under S173(11) of the 1990 Act as a variation of cutting down the requirements. To avoid this possibility the requirements of the notice will not be varied in this way and reliance will be placed on S180 to mitigate the effect of the notice in so far as it is inconsistent with the permission.

Overall conclusions

32. For the reasons given above, I will grant planning permission for the rear outbuilding, but otherwise I will uphold the notice with a correction and refuse to grant planning permission in respect of the extension to the front porch, single-storey rear extension and rear canopy. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

R Satheesan

INSPECTOR