



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: 23 May 2022

Appeal Ref: APP/T5150/C/21/3274606

68 Hay Lane, London NW9 0NB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mark Rodden against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 30 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single-storey rear extension and outbuilding to the rear of the property AND Without planning permission, the excavation to the front of the property and the building of retaining walls to create a front drive way/parking area, and the formation of an access onto a highway.
 - The requirements of the notice are to:
 - STEP 1 Demolish the unauthorised single-storey rear extension to the premises or alter the single storey rear extension to accord with all plans and conditions approved in planning application Ref 19/1909 dated 13 May 2019.
 - STEP 2 Demolish the unauthorised outbuilding at the rear of the premises.
 - STEP 3 Demolish the walls to the front of the premises.
 - STEP 4 Remove the ramp and hardstanding to the front of the premises.
 - STEP 5 Back fill the land, ensuring that the final 500mm of the land consist of top soil so that the front garden is restored back to its original condition before the unauthorised works took place as shown in 'Photograph A' attached to this notice.
 - STEP 6 Erect 1m high brick wall adjacent to the highway parallel with the highway to the front of the premises.
 - STEP 7 Plant privet hedge alongside each boundary to the front of the premises.
 - STEP 8 Remove all items, materials and debris arising from carrying out Steps 1 to 4 of this enforcement notice 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 (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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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Preliminary Matters

2. The Council adopted the Brent Local Plan 2019-41 (BLP) on 24 February 2022. The Council advise that policy DMP1 is very similar to the 2016 policy DMP1 and that the remaining policies quoted in the enforcement notice have been replaced with policies BHC1 and BD1. The appellant has been given the opportunity to comment on the implications of the adoption of the new local plan through the appeal.

3. The appeal site is located in the Buck Lane Conservation Area (BLCA). Since the appeal has been lodged, the Council has issued a new Article 4 Direction, with a revised boundary. The appeal site remains within the area which is subject to the Direction. The appellant has been given the opportunity to comment on the revised Direction through the appeal.

Main Issues

4. The main issues of the appeal are:
- The effect of the appeal scheme on the character or appearance of the Buck Lane Conservation Area (BLCA); and
 - The effect of the outbuilding on the living conditions of neighbouring occupants, having regard to outlook; and
 - The effect of the rear extension on the living conditions of neighbouring occupants, having regard to outlook.

Reasons

Character or appearance of the BLCA

5. The appeal building is located along Hay Lane, which is within the Buck Lane Conservation Area (BLCA). The BLCA is generally characterised by distinctive architecture, its hilltop location and verdant character. Boundary treatments in the area are generally low stone or brick walls, with planting behind. Tree lined streets, with grass verges and vegetation within front gardens make a significant contribution to the character of the BLCA.
6. Although some properties within the BLCA have been modified¹, in my view, the significance of the BLCA is derived from the layout of buildings, architectural detailing, use of traditional materials and its green and leafy character.
7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the BLCA. Furthermore, paragraph 199 of the National Planning Policy Framework ('the Framework')(2021) states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
8. The appeal premises comprises a substantial semi-detached dwelling, located in an elevated position, with an extensive, sloping front garden. The Council has provided photographs, dated 10 December 2020, which show much of the front garden has been excavated and retaining walls constructed from breeze block and red/orange brick with dark blue/black capping, to create a generous area for off-street parking. The appellant suggests that the works were unfinished at the time the enforcement notice was served and that they will be completed later in the summer, primarily in accordance with an approved scheme, reference 19/2933.
9. It is asserted that a temporary retaining wall has been constructed on site to hold the large banking of the land. However, while I accept the wall appears

¹ No 62 Hay Lane has been converted to 5 self-contained flats, reference 03/2111.

unfinished given the exposed block work, it is set much closer to the dwelling than the approved scheme, with a much greater proportion of the garden having been excavated. An individual implementing the approved scheme is highly unlikely to choose to erect a taller wall in a different position and to excavate a greater amount of the garden, just to have to reinstate part of the garden and reconstruct the wall further away from the dwelling. Consequently, I do not consider this to be part of parcel of the implementation of the approved development, rather this is an entirely different scheme.

10. An appeal under ground (a) is made on the basis that, in respect of the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged. While the appellant has now modified the retaining wall and reinstated much of the front garden, I must consider the appeal against the works which had been carried out by the time the notice was issued and not subsequent works.
11. The retaining walls, given their substantial height and the use of breeze block and red/orange brick with dark blue/black capping, are uncharacteristic of the area and contrast with the traditional materials used in construction of the main dwelling. As a result, they appear incongruous features which diminishes the character and appearance of the area. Although the approved scheme includes the erection of a brick wall, its extent is far more limited, without the contrasting capping. Furthermore, the removal of such a significant part of the lawned area and the laying of hardstanding diminishes the verdant character of this part of the BLCA.
12. As a result, the works are contrary to policy DMP1 of the BLP, which seeks to ensure that development conserves and where possible enhances the significance of heritage assets and their settings, policy BHC1 of the BLP which seeks to ensure that development sustain and enhances the significance of the heritage asset and setting, reinforcing the street scene and frontages, amongst other things and policy BD1, which seeks to ensure development respects and complements historic character.
13. The appellant has drawn my attention to boundary treatments elsewhere in the BLCA, however, I do not have full details of the examples cited. A number of the examples cited comprise low level brick walls of limited extent with planting above. Even where contrasting brick is used, its extent is generally limited. Furthermore, having walked the BLCA, I believe the examples' where contrasting brickwork is used are located along Hayland Close, which is in a far less prominent position than the appeal site. Consequently, I do not consider the examples cited to be comparable to the appeal scheme.
14. The appellant states that a new hedge will be planted between the fence and the wall, however, I have no details as to what this would comprise and consider this is likely to have very limited benefit to views towards Hayland Close. Furthermore, a fence has now been erected next to the brick wall, which may limit the success of any planting carried out. Consequently, any planting is unlikely to sufficiently mitigate the effect of the works on the character and appearance of the area.
15. I acknowledge that planning permission has been granted for the excavation of the front garden and the creation of two parking spaces. However, the approved scheme would retain a far greater proportion of the front garden with soft landscaping and the brick walls would be far more limited in extent,

without the use of contrasting coloured brickwork. While the original wall may have been in poor condition, the appeal scheme is not the only means of addressing its condition and so I afford this matter very limited weight.

16. Planning permission was granted, on appeal², for a rear extension approximately 3m deep, 3.8m high and 2.9m to the eaves. The Inspector required, in the interests of protecting the character and appearance of the area, a condition to ensure matching materials are used has been attached to the planning permission. The appellant states that what has been built is around 3.28m deep, 3.75m high and 2.85 to the eaves, which is not disputed. The extension is finished in red brick with red roof tiles. The appellant asserts that the additional 28cm to the rear would have a negligible difference on the character of the conservation area.
17. While I would agree the additional length of the extension has a limited effect on the character and appearance of the area, the extension has been finished in red brick and red roofing tiles, which contrasts significantly with the light brown pebble dash finish of the main building and more muted brown roof tiles. Although views of the extension are limited from outside of the site, it can be seen through vegetation from Hayland Close and, due to the materials used in its construction, it appears an incongruous addition, failing to preserve the historic character of this part of the BLCA, contrary to policies DMP1, BHC1 and BD1, the requirements of which are set out above.
18. The appellant has drawn my attention to extensions at Nos 58 and 64 Hay Lane and 17 Buck Lane. The Council has provided an enforcement notice relating to No 64, which requires the removal of the roof extension and rear dormer and the porch to the front of the premises. This cannot therefore weigh in support of the appeal scheme. Although I do not have full details of No 58 Hay Lane and 17 Buck Lane and cannot therefore be sure of the circumstances around their construction, the extensions are not readily visible from the public domain and so they are not comparable to the appeal scheme before me.
19. The appellant has also constructed a substantial red brick outbuilding in the rear garden. The appellant states they constructed the outbuilding in the belief that it was permitted development. However, the appeal site is located within an area subject to an Article 4 Direction. Furthermore, the appellant advises that it has a height of around 2.7m to the front, which given its proximity to neighbouring properties, exceeds the limitations set out in the GPDO.
20. Although there are no significant views of the outbuilding from Haylands Close, it can easily be seen from Hay Lane. Given its substantial size and the use of materials, including red brick and black fascia and soffits, with felt roofing, it appears an incongruous feature, which diminishes the character and appearance of the area, contrary to policies DMP1, BHC1 and BD1, the requirements of which are set out above.
21. Paragraph 189 of the Framework states that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Paragraph 202 goes on to advise that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimum

² APP/T5150/D/19/3240047

viable use. I consider that the harm arising to the significance of the designated heritage asset would be less than substantial in the context of paragraph 202 of the Framework.

22. While the appeal scheme may provide additional accommodation for the appellant and additional parking, it is not the only means of achieving such benefits. I consider the benefits of the appeal scheme are outweighed by the harm I have identified to the BLCA, the conservation of which I attribute great weight to.

Living conditions: The outbuilding

23. The outbuilding is located towards the rear of the garden, by an extension constructed to the rear of No 21 Hayland Close, which has a kitchen window which faces towards the outbuilding. Whilst the outbuilding has been set back from the boundary with No 21, due to its significant height and proximity to the rear of the dwelling, the outbuilding would appear a dominant feature when viewed from the kitchen, which, despite any difference in land levels, significantly diminishes the outlook from the kitchen window of No 21.
24. Although there was previously a wooden outbuilding within the site, it does not appear to have been set as far back within the site as the appeal building. It also had a pitched roof and appears to have been stepped in, with a lower roof profile at the rear. As a result, it is likely to have had a far more limited effect in terms of outlook than the unauthorised outbuilding.
25. The appellant suggests that the extension at No 21 does not represent the planning permission that was granted. However, I do not have full details of the planning permission and so it is not possible for me to determine, from the information provided, whether the works at No 21 are unlawful. Furthermore, the plans provided by the appellant show a window in the general location it is currently situated and so even if the owner of No 21 were obliged to alter their extension, the effect of the outbuilding on the outlook from their kitchen window is highly likely to remain the same. This does not, therefore weigh in support of the appeal scheme.
26. I agree there would be no harm to occupants of No 20, given the presence of intervening outbuildings, however, this is a neutral factor in my consideration of the appeal scheme. For the reasons given above, I consider the outbuilding harms the living conditions of the occupants of No 21, contrary to policy DMP1 of the BLP, which seeks high levels of external amenity, amongst other things.

Living conditions: Single storey rear extension

27. The extension projects approximately 3.28m out to the rear and abuts the boundary with No 66. There is a habitable window on the ground floor rear elevation of No 66. Given the proximity of the extension to the window and its depth, the extension appears an overbearing feature which diminishes the outlook from No 66 and limits sunlight entering the window, particularly during the morning, due to the orientation of the buildings.
28. As set out above, planning permission was granted, on appeal³, for a rear extension approximately 3m deep, 3.8m high and 2.9m to the eaves. I note the Inspector found the reduction in the depth of the extension from 3.5m to

³ APP/T5150/D/19/3240047

3m, resulted in it complying with the Residential Extensions and Alterations, Jan 18, Supplementary Planning Document (SPD). In the event that the notice is upheld, the appellant would be able to revert to the approved scheme.

29. The structure which has been erected extends further to the rear than the approved scheme. While the difference is limited, the approved extension would have a less harmful effect on the living conditions than the appeal scheme, since it does not project as far towards the rear. Although the occupants of No 66 have not objected to the appeal scheme, the occupants could change and so this does not weigh in support of the appeal scheme.
30. Thus, I consider the single storey rear extension which has been constructed conflicts with policy DMP1 of the BLP, the requirements of which are set out above.

Ground (a) conclusion

31. For the reasons given above, I conclude that the appeal scheme 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.

Ground (f)

32. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The notice confirms that the purpose is to remedy the breach of planning control.
33. Section 173(4) of the Act sets out the purposes of an enforcement notice are (a) remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place.
34. The appellant states that the requirement to demolish the side boundary wall element is excessive. Planning permission 19/2933 was granted on 30 October 2019 for the partial excavation of front garden to create front driveway and dropped kerb with associated alterations to the front and side garden wall of dwellinghouse.
35. Although I have found that the works which have been carried out do not form part and parcel of the above permission, requiring the appellant to alter the works to accord with the permission would achieve the purposes of the enforcement notice with less cost and disruption. I shall vary the notice accordingly and shall merge the requirements set out in step 3, 4 5 and 6, so that it is clear what the alternative requirements are.
36. Step 7 of the notice requires the recipient to plant a privet hedge alongside each boundary to the front of the premises. However, the recipient cannot be required to undertake works that would go beyond remedying the breach. Although it appears there was planting between the appeal dwelling and the adjoining dwelling, it is not clear whether this constituted a privet hedge, nor does it appear to have extended all the way along the boundary. Similarly, to

the side of the path it is not clear what the planting comprised and there does not appear to be a hedge along the boundary with the highway.

37. The Council state that the aim of step 7 is to restore the land to the condition which existed prior to the unauthorised works taking place. In addition to the variations discussed above, I shall vary the wording step 3 to require that the front garden is restored back to its original condition before the unauthorised works took place. Since this is the Council's intention, I consider such a variation would not cause injustice.
38. With respect to the outbuilding, the appellant suggests reducing the height of the outbuilding to 2.5m in height rather than demolishing it in its entirety. However, the notice requires that the building is demolished. Simply reducing it in height would therefore fail to remedy the breach. The Article 4 Direction has withdrawn permitted development rights under Schedule 2, Part 1, Class E and so in the event the notice is upheld, the appellant would not be able to simply erect another building. Consequently, I can see no obvious alternative which would overcome the planning difficulties at less cost and disruption than total removal.

Conclusion

39. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

Decision

40. It is directed that the enforcement notice is varied by:

- At Schedule 4, STEP 1, the insertion of 'and remove all items, materials and debris arising from such demolition from the premises' between the words 'premises' and 'or', so that it reads 'Demolish the unauthorised single-storey rear extensions to the premises and remove all items, materials and debris arising from such demolition from the premises or alter the single...'
- At Schedule 4, STEP 2, the insertion of 'and remove all items, materials and debris arising from such demolition from the premises' so that it reads 'Demolish the unauthorised outbuilding at the rear of the premises and remove all items, materials and debris arising from such demolition from the premises.'
- At Schedule 4, at STEP 3, Delete 'Demolish all walls to the front of the premises' and insert the following:
 - 'Demolish the unauthorised walls to the front of the premises, remove the ramp and hardstanding to the front of the premises and back fill the land, ensuring that the 500mm of the land consist of top soil and restore the front garden back to its original condition before the unauthorised works took place as shown in 'Photograph A' attached to this notice and erect a 1m high brick wall adjacent to the highway parallel with the highway and remove all items, materials and debris arising from these works; OR

- Alter the excavation to the front of the property and the retaining walls and the front drive way/parking area to comply and the formation of an access onto a highway with the terms of the planning permission 19/2933 dated 30 October 2019 including the conditions subject to which that permission was granted.'
 - At Schedule 4, delete steps 4 to 8.
41. Subject to the above variations, 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.

M Savage

INSPECTOR