



Appeal Decision

Site visit made on 23 March 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 June 2022

Appeal Ref: APP/W5780/C/20/3257685

5 Lake House Road, Wanstead, London E11 3QS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Ussman Rashid against an enforcement notice issued by London Borough of Redbridge.
 - The notice, reference E0343/17, was issued on 17 July 2020.
 - The breach of planning control as alleged in the notice is '*Without planning permission, the retention of a two storey extension*'.
 - The requirements of the notice are:
 - (i) *Demolish the two storey extension in its entirety; and*
 - (ii) *Remove all resulting materials, rubble and debris in compliance with steps (i).*
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) 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 be corrected by deleting the word 'retention' in section 3 (The matters which appear to constitute the breach of planning control') and replacing it with the word 'erection'. Subject to that correction 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. The allegation at section 3 of the enforcement notice refers to the retention of a two storey extension. However, the word 'retention' does not convey an act of development, and the breach would be better described as the erection of a two storey extension. I can make this minor change to the wording of the notice without causing any change to its effect or any injustice to either party, and will do so.
3. It was not clear from the initial appeal submissions whether or not the site was within the Aldersbrook and Lake House Estate Conservation Area. I wrote to both parties seeking clarification on the matter and understand that the site is now in the conservation area, following its extension in September 2020, just after the appeal was submitted in August 2020. I afforded the parties the opportunity to provide further comments in relation to the conservation area prior to determining the appeal.

Ground (a)

Main issues

4. The main issues are:

- The effect of the development on the character and appearance of the appeal property and the conservation area; and
- Its effect on living conditions at the neighbouring No 6 Lake House Road, with particular regard to any loss of light and whether the extension is overbearing/harmful to the outlook of the neighbouring property.

Character and appearance and the conservation area

5. The conservation area is a residential area of fairly large houses set within good-sized gardens. The houses in the area are of traditional design and use traditional materials. They appear to be of a similar age and front the roads in a fairly formal arrangement, giving the impression of a planned development. The appeal property is a semi-detached house within a row of similar properties, and is typical of the houses within the conservation area. Accordingly, it contributes positively to the significance of the conservation area.
6. The appeal site slopes downwards from front to back, so that the ground floor is elevated substantially above ground level at the rear of the property. Thus, the ground floor extension sits above a lower ground floor and the external terrace is reached via a flight of stairs from the garden. However, in this respect it is not substantially different to the pre-existing development or the neighbouring properties, which also have raised ground floors and terraces at the rear.
7. The extension here is significantly deeper than the ground floor projections at the neighbouring properties. In view of this, and given that it occupies the full width of the property, it appears as a substantial addition which alters the character of the house at the rear. However, the character of the rear elevation has already been changed by a large dormer roof extension. Moreover, the rear of other nearby properties have been changed, so that the character of the rear of this row of properties is not uniform. Additionally, while the extension can be glimpsed from Windsor Road, it is not prominent and, importantly, leaves the front elevation of the property unaffected. The materials used are an adequate match for those of the original building.
8. For these reasons, while I agree with the Council that the extension is bulky, I conclude that it does not harm the character or appearance of the house or the conservation area. Accordingly, I find no conflict with the aims for heritage assets within Policy 7.8 of the London Plan, Policy LP33 of the Redbridge Local Plan 2015-2030 or the National Planning Policy Framework (the Framework).

Living conditions

9. The appeal property is one of a semi-detached pair. The attached No 6 has a raised balcony to the rear, at the same height as that at the appeal property. The rear-facing kitchen and reception room at No 6 are also at this level. The depth and height of the extension at the appeal property are such that it will create a sense of enclosure and must have a significant effect on the outlook

from the rooms and the terrace. That said, the fact that the rear ground floor and terrace at No 6 is also raised in relation to ground levels means that the impact of the extension when viewed from these raised areas will be significantly reduced.

10. Viewed from the garden of No 6, on the other hand, the full scale of the extension will be apparent. In my judgement, the combination of the height and depth of the extension, together with its location close up to the boundary, means that it is overbearing in relation to the garden, causing an excessive sense of enclosure. While the roof of the extension slopes gently downwards away from the original house, it is still around 4m high at the eaves, rising to about 5.4m at its highest point. This is substantially higher than the boundary fence between the gardens of the two properties. The formation of an unrelieved expanse of brickwork on this scale has created an unsatisfactory outlook in my view.
11. While the appellant argues that 'no. 6 retains an uninterrupted outlook over its long rear garden', that does not lessen my concerns regarding the overbearing, enclosing effect of the development, given its height, depth and proximity to the boundary. I have taken account of the fact that the occupiers of No 6 did not object to the prior approval scheme or a retrospective planning application for the 'as-built' development, but that does not alter my view that the development is harmful.
12. There is little evidence to support the Council's claim that the development has caused a harmful loss of light at No 6, particularly given that property's location to the south of the appeal property. My finding on this does not, however alter my view that the extension is overbearing and harmful to the outlook at No 6.
13. For these reasons I conclude that the development significantly harms living conditions at 6 Lake House Road. This brings the development into conflict with local plan policies LP26 and LP30, which seek to avoid adverse impact upon the amenity of neighbouring occupiers due to, amongst other things, harming their outlook. The Council refers to other policies as well, but those I have highlighted are of greater relevance to my concerns.

Other considerations

14. I am mindful that the development provides improved internal space for the occupiers of the property, but that does not outweigh the harm I have found. I appreciate that the Council issued prior approval for a rear extension in 2016¹, but it is an agreed point that the development actually carried out is unlawful, irrespective of whether the appellant believed otherwise when the development was carried out.

Conclusion – ground (a)

15. I have concluded that the development preserves the character and appearance of the conservation area and find no conflict with the policies which seek to protect it. However, that does not alter or outweigh the harm in respect of living conditions at the neighbouring property. This leaves me to conclude that there is conflict with the development plan as a whole. None of the other considerations raised outweigh the harm I have found and I therefore conclude

¹ Ref 4728/16

that planning permission should not be granted. Accordingly, the appeal on ground (a) fails.

Ground (f)

16. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the removal of the extension in its entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a). Consequently, I do not regard the requirements as excessive.
17. The appellant asks that the notice be varied to allow the option of the extension being rebuilt in accordance with the prior approval application which the Council approved in 2016. However, permitted development rights cannot be claimed retrospectively. Moreover, there has been a material change in circumstances since the prior approval application was determined in that the site now lies within a conservation area. Consequently, I cannot be sure that the permitted development provisions previously relied on still apply to the appeal property. Thus, I am not satisfied that compliance with the prior approval drawings would remedy the breach of planning control.
18. That said, the enforcement procedure is intended to be remedial rather than punitive, and I have considered whether compliance with the prior approval drawings could produce a satisfactory outcome. Yet the current breach of planning control appears to have arisen because those drawings failed to adequately address the sloping land levels. Thus, the full height of the structure from ground level up is not shown and the full nature of the proposal is not clear. Nevertheless, it seems that the ground floor extension shown in the drawings could not be built without a supporting structure beneath it, which would result in a development similar in overall scale to that which has been constructed. Overall, therefore, the drawings do not provide a satisfactory basis for any revised requirements.
19. The appellant advises that the Council was informed of the variation in levels prior to its approval of the drawings. However, that does not alter my view that the drawings do not provide a reliable and clear basis for a revised structure.
20. For these reasons I am not satisfied that the appellant's proposal would remedy the breach of planning control. Amended as suggested, the notice would lack sufficient clarity and its effectiveness would be undermined. Accordingly, the appeal on ground (f) fails.

Ground (g)

21. The appellant seeks an extension in the time for compliance from 3 months to 6 months. The need for this is said to be to allow the funds for the demolition to be raised and thus save the family from any financial hardship or health impacts.
22. However, there is little detail or firm evidence to support the appellant's claim. While I appreciate that complying with the notice will lead to significant costs,

there is nothing to show that this would lead to genuine hardship, or that extending the compliance period by 3 months would alleviate any such hardship or health impacts. Moreover, the appellant's concerns must be balanced against the desirability of remedying the breach of planning control without undue delay. In my judgement the 3 months specified in the notice strikes an appropriate balance.

23. The appellant suggests that the Council is partly responsible for the existing situation as a result of its decision on the 2016 prior approval application. However, even if I were to accept that view, it would not provide a justifiable reason to extend the compliance period.
24. I conclude that the 3 months specified in the notice is reasonable and proportionate. Accordingly, the appeal on ground (g) fails.

Conclusion

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

Peter Willows

INSPECTOR