
Appeal Decision

Site visit made on 9 August 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 07 October 2022

Appeal Ref: APP/T5150/C/21/3274618
298 Dollis Hill Lane, London NW2 6HH

- 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 Iftikhar Ahmed against an enforcement notice issued by the Council of the London Borough of Brent ('the Notice').
 - The enforcement notice, numbered E/19/0595, was issued on 31 March 2021.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of two storey side extension, part single storey, part two storey rear extension and the creation of a basement.
 - The requirements of the notice are: Step 1. Demolish the unauthorised two storey side extension, part single storey, part two storey rear extension, and ensure that the house is restored to the situation before the unauthorised development took place; Step 2. Demolish and fill in the area of the basement that is not directly under the original house. In the area of the basement which has been infilled ensure that 500mm of topsoil is laid and turfed over that area with grass, ensuring the level of the land is commensurate with adjoining land levels; and Step 3. Remove all debris and items arising from compliance with Steps 1 and 2 and remove all materials associated with the unauthorised developments 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), (b), (c) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected and varied by: deleting the words "part single storey, part two storey rear extension" in Schedule 2 of the Notice and substituting the words "single storey extension" in their place; and deleting the words "part single storey, part two storey rear extension" in Schedule 4 of the Notice and substituting "single storey extension" in their place.

Subject to the correction and variation, the appeal is allowed insofar as it relates to the single storey extension and basement 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 single storey extension and basement at 298 Dollis Hill Lane, London NW2 6HH.

The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the two storey side extension and planning permission is refused in respect of the two storey side extension at 298 Dollis Hill Lane, London NW2 6HH on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. The Council's decision referred to policies from the Development Management Plan 2016 ('DMP'). The Council has since adopted the Brent Local Plan 2019-2041 ('LP') in February 2022, which superseded the DMP. Consequently, the Council identified the policies from the LP that it sought to rely on. The Appellant was then asked for his comments on these. Where relevant, my decision is made using the relevant LP policies.

Reasons

Ground (b)

3. An appeal under Ground (b) is that the matters alleged in the Notice have not occurred. This is a legal ground of appeal where it is incumbent upon the Appellant to make his case on the balance of probability.
4. The Appellant states that it is not clear what the Council means by 'part single storey, part two storey rear extension' referred to in the Notice. He says that a single-storey extension, basement extension and two-storey side extension have been constructed (as well as roof alterations under permitted development). The first-floor rear projection, he says, is original to the house.
5. In its statement, the Council acknowledges that what the Notice alleges to be a first-floor extension to the dwelling is part of its original fabric. It goes on to state that the Notice can be corrected to reflect this without injustice. From the evidence before me, including what I saw at my site visit, I have no reason to find otherwise.
6. For the above reasons, I will correct the Notice through omission of the reference to the first-floor extension from Schedules 2 and 4 of the Notice. To this extent, the appeal under Ground (b) is successful.

Ground (c)

7. An appeal under Ground (c) is that the matters alleged in the Notice do not constitute a breach of planning control. Again, this is a legal ground of appeal where the onus lies with the Appellant to make his case on the balance of probability.
8. The case made in the Appeal Form is that the single-storey rear extension has prior approval, through the decision made on the application with the Council reference 19/0314. Whilst the Appellant did not provide me with a copy of that decision, the Council did along with a copy of the approved drawing. There are clear differences between what has been built and what was approved, for example the provision of parapet walls and a different patio door opening onto the garden. Furthermore, in the absence of a scaled drawing of what has been built, I cannot be sure that what has been built accords with the dimensions of the approved single-storey extension.
9. Therefore, the Appellant has not provided clear evidence to show how, on the balance of probability, what has been built accords with prior approval 19/0314.
10. For the above reasons, the Ground (c) appeal fails.

Ground (a)

11. An appeal made under Ground (a) is that planning permission ought to be granted for the breach of planning control stated in the Notice. Given my finding on the Ground (b) appeal, I am assessing the Ground (a) on the basis of the Notice as corrected.
12. The two-storey side extension has accommodation at first-floor level only. This is supported by two pillars rising from ground level. Thus, it partially fills the space between the side of the dwelling and the boundary with No 296. There is a similar gap between the side wall of No 296 and the common boundary with the appeal site.
13. From what I saw, only a very small number of properties on this part of Dollis Hill Lane have infilled, or partially infilled these gaps. They are an important element of the street scene that add greatly to its character and appearance. The upper part of the two-storey side addition is seen from the road and, by reason of its diminution of the gap, it causes harm to the character and appearance of the street scene.
14. This being the case, I find that the side extension does not accord with the terms of LP Policies DMP1 and BD1 and Policy D1 of the London Plan, March 2021.
15. In his Statement of Case the Appellant states that "the development is very similar to the various approvals he gained before starting work". In respect of the rear extension, there are clear similarities between what was allowed under prior approval 19/0314 and what has been built. This is a material consideration to which I afford some weight.
16. There are other flat-roofed single storey extensions at the rear of properties in the area. Whilst this one seemed to be a little higher than others that I could see, its height was not excessive. Although I did not see any others with parapet walls along their side elevations, these did not look out of place in terms of both the building and the wider street scene.
17. Its finish in light painted render with dark coloured metal framed windows and doors match the rest of the dwelling. As properties in the area are finished in both brick and are painted render, with windows in a range of forms and materials, these finishes are also entirely appropriate to the dwelling and the wider area. In this respect, the rear extension accords with LP Policies DMP1 and BD1 and London Plan Policy D1.
18. Guidance on the provision of basement extensions to dwellinghouses is given in the Council's 'Basement' Supplementary Planning Document, adopted June 2017, ('SPD'). In essence it provides support for their provision subject to there being no harm to either amenity or the character and appearance of the building and wider area.
19. The SPD does not restrict basement extensions to remain within the footprint of the original house, but encourages this to be the case. The Council's case is that as what has been constructed extends beyond the footprint of the house, it is not subordinate to it. The result, it says, is harmful to both the dwelling and wider area.

20. From what I saw, the basement extended beyond the original house to the side, where it ran below the two-storey extension, and to the rear where it extended under the single-storey extension. It seemed to follow the line of the front of the house. Externally, the only evidence of the basement is through the provision of modest glazed lightwells at the front, rear and side. None of these have fencing around them. As a result, the basement has very little effect on the character and appearance of the property and none at all on the wider street scene.
21. No case has been made that the basement affects the amenity of residents of the host dwelling or neighbouring properties; I would agree with this.
22. Whilst having a larger footprint than that of the original house, and therefore not being wholly in accordance with the guidance on the size of basements in the SPD, it does not cause harm to the character or appearance of the host dwelling or wider area which are amongst the central aims of that guidance. These are also amongst the terms of LP Policies DMP1 and BD1 and London Plan Policy D1, with which the basement accords.
23. The Council did not propose any conditions be attached to the planning permission, in the event that the Ground (a) appeal was allowed. Given that the rear single storey extension and basement appeared complete and were acceptable, there is no need to attach conditions to the planning permission granted for these elements.

Conclusion on Ground (a)

24. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the single storey rear extension and the creation of a basement, but otherwise I will uphold the notice with correction and variation and refuse to grant planning permission in respect of the two-storey side extension. 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.

Ground (g)

25. My decisions on the Grounds (b) and (a) appeals result in a significant reduction in the works required by the Notice. In the light of this, the 6 months that the Notice provides is an appropriate period in which to instruct builders and to undertake the necessary work to remove the side extension.
26. For the reasons given above, the appeal on Ground (g) fails.

Roy Curnow

Inspector