



Appeal Decision

Site visit made on 21 September 2022

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal Ref: APP/T5150/C/22/3294309

23 Monks Park Gardens, Wembley, HA9 6JB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mrs Jiayi Dong against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice, numbered E/19/0699, was issued on 27 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a single-storey rear extension.
 - The requirements of the notice are to: Demolish the single storey rear extension to the premises. Remove all items 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: six months after the notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Act 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. 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 Act.

Main Issues

2. The ground of appeal is that planning permission should be granted for the breach of planning control stated in the notice. Whilst not expressly referred to within the notice, I consider the following main issue is relevant to the appeal scheme, namely:-
 - i) whether the appeal scheme would comply with national planning policy which requires development in areas at risk of flooding to demonstrate that it will be made safe for its lifetime without increasing flood risk elsewhere.
3. In addition, having regard to the reasons for issuing the notice, the following main issues are also relevant:-
 - ii) the effect of the single storey rear extension on the character and appearance of the host dwelling and surrounding area; and
 - iii) whether the development would provide adequate living conditions for neighbouring occupiers with particular regard to outlook, light and privacy.

Reasons – The appeal on ground (a)

Flood risk

4. The appeal site is located within Flood Zone 3a, which indicates there is a high probability of the site flooding. The National Planning Policy Framework (the “Framework”) seeks to ensure that inappropriate development in areas at risk of flooding now, or in the future, should be avoided. Where development is necessary in such areas, the development should be made safe for its lifetime without increasing flood risk elsewhere. It goes on to set strict tests to protect people and property from all sources of flooding and, where these tests are not met, new development should not be allowed.
5. At footnote 55 of the Framework, it sets out when a developer will be required to provide a site-specific Flood Risk Assessment (the “FRA”). This includes all proposals for new development (including minor development) in Flood Zone 3. The Planning Practice Guidance (the “PPG”) explains what an FRA should establish. Among other things it should specify the risks of flooding from all sources, the potential to increase flooding elsewhere, measures to deal with these effects and risks, evidence to allow the application of the Sequential Test, if necessary, and in relation to the Exception Test, if applicable.
6. Paragraph 168 of the Framework sets out that applications for some minor development, including householder development, should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments set out in footnote 55. Accordingly, a development will need to demonstrate that the unauthorised development is appropriately flood resistant and resilient such that, in the event of a flood, it could be quickly brought back into use without significant refurbishment, that it incorporates sustainable drainage systems unless it provides clear evidence that this would be inappropriate, that any residual risks can be safely managed and that safe access and escape routes are included where appropriate.
7. Given that the application was not accompanied by an FRA, there is little information regarding the aforementioned matters and there is no evidence before me to establish that flood risk would not be increased elsewhere by displacing flood water that would otherwise have occupied the space taken up by the extension.
8. Although the notice did not make specific reference to flood risk, this issue was raised by the Council within their statement. The appellant had the opportunity to comment on this matter within their final comments, however, the appellant did not take the opportunity to respond. Furthermore, it also formed part of the previous appeal decision¹ and the Council’s case when planning permission was previously refused.
9. Accordingly, I attach significant weight to the importance of the consideration of flood risk as identified within the Framework. The absence of a site-specific FRA is contrary to Framework’s aims and is sufficient in its own right to lead to a dismissal of the appeal scheme before me.

¹ Appeal Decision APP/T5150/W/20/3253096

Character and appearance

10. The appeal dwelling is one of a pair of modestly sized semi-detached two-storey dwellings positioned at the end of Monks Park Gardens. It lies within a predominantly residential area with open parkland to its front and other residential properties to its rear beyond a service alleyway.
11. By reason of its position at the rear of the host dwelling, the unauthorised extension therefore has no impact on the streetscene along Monks Park Road. However, notwithstanding that it is largely hidden from most public viewpoints, it is readily visible when viewed from within a number of neighbouring properties and their rear garden areas, particularly given its elevated position above the level of the garden.
12. By reason of its height, width and scale, the unauthorised development is a sizeable structure that spans across the entire width of the rear elevation of the host dwelling. It projects a considerable distance from the original rear elevation of the host dwelling and as a consequence it occupies a significant portion of the rear garden of the property. Nevertheless, the resultant rear garden area remains sufficiently large to accommodate a small area of patio together with a shed, garden furniture and some small areas of vegetation and based upon my observations it is a pleasant and useable outdoor space.
13. It is evident that what has been built appears as a bulky addition when compared with the modest scale and form of the existing property and the size of the plot. However, since the previous appeal decision, a broadly similar single storey extension has been constructed at the rear of the adjoining dwelling ("No. 24"). The consequent effect of which is that a continuous single storey extension spans across the entire width of the pair of dwellings. As a consequence, there is balance and symmetry which when taken together with the harmonious use of a common palette of materials reduces the visual impact of the development and lessens its dominance to an extent that the unauthorised development does not appear unduly harmful or at odds with the character and appearance of the appeal dwelling or the surrounding area.
14. The Council suggest that the neighbouring extension has not been constructed in accordance with the approved prior approval and the requirements for permitted development under Schedule 2, Part 1, Class A and D of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the "GDPO"). Although it is suggested that the eaves height exceeds 3 metres, no information has been provided to explain the extent to which the permitted development right is alleged to have been exceeded. Consequently, I find there is no clear evidence before me to substantiate the Council's view that what has been constructed is contrary to the prior approval that was granted or that it would be expedient to take enforcement action.
15. Moreover, Class A, Part 1, Schedule 2 of the GDPO allows for a rear extension of comparable size and scale to be constructed in accordance with the permitted development right and for which there would have been a similar consequent effect upon the character and appearance of the host dwelling and the surrounding area.
16. Overall, whilst the appeal scheme does not strictly accord with the guidance of the Council's Residential Extensions & Alterations Supplementary Planning Document 2 (January 2018)(the "SPD2"), I find that the unauthorised

development is not so unduly visually obtrusive so as to be materially harmful to the character and appearance of the host dwelling and the surrounding area. Therefore, it accords with the provisions of Policy DMP1 of the Brent Local Plan 2019-2041 (February 2022)(the "LP") insofar as this policy requires a high quality design which complements the locality.

Living conditions

17. The unauthorised development projects from the rear elevation of the original dwelling by some 3.25 metres, taking the Council's measurements, which do not appear to have been disputed by the appellant. This is a substantial projection of built form in close proximity with the shared boundaries of neighbouring properties. Given that the enforcement notice refers to the impact upon neighbouring properties and does not expressly make reference to any particular property, I have had regard to the neighbouring properties situated to either side of the appeal dwelling.
18. Despite the substantial height and depth of the unauthorised extension, by reason of the original rear elevation of the host dwelling being set back from the rear elevation of 22 Monks Park Gardens ("No. 22"), together with the intervening communal access passage that is positioned between the flank elevations of the appeal dwelling and No. 22, this has the effect of reducing the visual prominence of the development when viewed from within the rear windows of No. 22 and its rear garden area.
19. Additionally, I observed that the closest windows within the ground and first floor rear elevation of No. 22 are comprised of frosted glass. This leads me to the view that these windows do not serve habitable rooms. Windows containing non-frosted glass are positioned further away thus further limiting the view of the extension from these positions. The consequent visual impact upon the neighbouring dwelling is limited to such an extent that the unauthorised development does not have an unduly enclosing, dominant or overbearing effect on the occupiers of the neighbouring property.
20. In terms of No. 24, given the construction of a similar single storey rear extension which broadly aligns with the unauthorised development, the overbearing and enclosing effect as described within the previous appeal decision is no longer capable of arising.
21. Accordingly, I find the outlook of neighbouring occupiers is not unduly compromised and the appeal scheme provides a satisfactory standard of living conditions.
22. Given the close arrangement of dwellings within a tightly knit urban area, there already exists a considerable degree of mutual overlooking. By reason of this arrangement and the absence of any substantial boundary treatments, the level of privacy experienced is limited. Whilst the unauthorised development includes a number of windows and doors, the views from those locations are, to my mind, not likely to be significantly different to the views that were available from openings within the original rear elevation prior to the unauthorised development taking place. As such, I consider that the living conditions of neighbouring occupiers at Nos. 22 and 24 are not unduly compromised in this regard.

23. Given that the appeal dwelling is positioned to the north of No. 24 it is unlikely to experience any loss of light.
24. With regards to No. 22, whilst those areas in closest proximity to the side elevation of the unauthorised development are likely to receive some reduced level of light, given that the depth of the extension is limited by the position of the host dwelling being set back from the neighbouring dwelling, any effect is likely to be limited. Furthermore, given my observations above regarding the likelihood of the nearest windows serving non-habitable rooms, I am not satisfied that any loss of light would materially compromise the living conditions of occupiers within the rooms served by those windows.
25. Overall, I conclude that the unauthorised development does not result in an unacceptable standard of living conditions for the occupiers of neighbouring properties with regards to outlook, privacy and loss of light. The appeal scheme accords with the provisions of LP Policy DMP1 insofar as it seeks to protect the amenities of neighbouring residents. Similarly, it would not conflict with the aims of the Framework insofar as it seeks a high standard of amenity for existing and future users.

Other Matters

26. I have had regard to the comments of third parties which are broadly in support of the appeal scheme. However, the presence of support does not provide justification for a scheme which fails to accord with the provisions of the Framework.

Conclusion

27. I have concluded that the unauthorised development is not unduly harmful to the character and appearance of the surrounding area nor the living conditions of neighbouring occupiers.
28. However, the unauthorised development fails to accord with the Framework's provisions regarding flood risk. This is a matter of significant importance. It carries substantial weight against the appeal scheme and is sufficient in its own right to lead to a dismissal of the appeal scheme before me.
29. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

E Brownless

INSPECTOR