



Appeal Decision

Site visit made on 12 July 2022

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

an Inspector appointed by the Secretary of State

Decision date: 30 November 2022

Appeal Ref: APP/T5150/C/21/3275729

70 Cranleigh Gardens, Harrow, HA3 0UW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr M Gorasia against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/21/0153, was issued on 19 May 2021.
 - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on a planning permission ref 15/3736 granted on 15 December 2017.
 - The development to which the permission relates is: 'Retrospective application for the two-storey, two-bedroom attached dwellinghouse and associated works within the curtilage of the house, including proposed modifications to the unlawfully constructed building'.
 - The condition in question is no 7 which states that: 'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargements or outbuildings shall be erected pursuant to class A, B, D or E of the Order other than those expressly authorised by this permission.'
 - The notice alleges that 'a rear dormer has been erected in breach of condition 7'.
 - The requirements of the notice are:
 1. Demolish the unauthorised rear dormer window from the premises.
 2. Remove all items and debris, arising from that demolition, and remove all materials associated with the unauthorised development from the premises. Restore the roof back to its original condition before the breach of condition took place.
 - 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. 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. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act.

Preliminary Matters

2. Since the determination of the application a revised National Planning Policy Framework (the Framework) was published in July 2021. In addition, the Council have formerly adopted the Brent Local Plan 2019 -2041 (the LP) in February 2022. I have therefore had regard to the revised Framework and policies of the LP in my determination of this appeal. It has not been necessary in this instance to revert to the parties on these changes to planning policy as LP General Policy DMP1 largely replicates superseded policy DMP1 and the provisions of the LP and revised Framework do not

materially alter the planning policy position as it relates to the appeal scheme.

3. The breach of planning control alleged in the notice is the failure to comply with a planning condition that removed permitted development rights for various enlargements of the dwellinghouse including the rear dormer window the subject of the appeal. I canvassed the views of the parties as to whether the appeal could instead be considered based on a breach of planning control comprising the unauthorised operational development of the construction of the rear dormer window, but they disagree. While the dormer window was constructed in breach of the condition, such a condition cannot remove the right to apply for planning permission, including for development already carried out. Because the appeal on ground (a) includes a deemed planning application for the rear dormer window, either approach would require me to consider whether the rear dormer window is acceptable in planning terms and therefore whether to grant planning permission for it.

The appeal on ground (a)

4. The ground of appeal is that planning permission should be granted for the breach of planning control stated in the notice. Condition 7 of planning permission reference 15/3736 does not prevent the dormer extension the subject of this appeal being formed, provided it is granted planning permission. Having regard to the reasons for issuing the notice, the main issue is the effect of the rear dormer window on the character and appearance of the host dwelling, host terrace and the surrounding area.
5. The Council's enforcement notice does not specifically make reference to the effect of the appeal scheme upon the living conditions of occupants of the appeal property and neighbouring dwellings. However, the issue is raised by the Council within their statement of case where they cite concerns regarding issues of privacy, overshadowing and loss of daylight.

Character and appearance

6. The host dwelling is an end of terrace two-storey property situated partway along Cranleigh Gardens where it adjoins Falcon Way. Dwellings along Falcon Way are mostly arranged in semi-detached pairs whereas dwellings positioned along Cranleigh Gardens are typically arranged in short terraced rows. Typically, exteriors comprise a mix of brick and render in a variety of colours, roofs are simple red tile pitched structures with some hipped profiles and front facing gable elements and there is a consistency of fenestration.
7. Despite some minor alterations such as front porches and rooflights and variations in the colour of external finishes, there is a pleasant uniformity and rhythm to the design and layout of dwellings along Cranleigh Gardens. This results in there being a sense of attractive regularity within the streetscene. The appeal dwelling shares a number of these characteristics and therefore makes an important contribution to the character and appearance of the host terrace and the surrounding area.
8. The dormer is a sizeable structure which dominates the rear roof slope and includes a flat roof. It is clad in red coloured hanging tiles that largely match the existing roof tiles. Whilst there are glimpsed views of the side elevation of the dormer between dwellings from the highway, it is mainly not visible

from the front of the property. However, it remains visible in public views through vegetation from Wealdstone Brooke footpath and Brookfield Crescent which are sited to the rear of the appeal property together with views from some neighbouring properties and their gardens.

9. By reason of its scale, form and height, the dormer window is a prominent and highly visible addition to the rear of the host dwelling. Albeit it is set down from the ridge, set up from the eaves and set in from the edge of the roof, its sizeable bulk across the roof structure dominates the roof form of the host dwelling.
10. However, I noted that there were other large dormer windows within the rear roof slopes of several properties nearby which are visible from public vantage points and include similar proportions to this development. Moreover, all dwellings within the host terrace presently include a flat rear roof dormer window and as such the pitched roof form has been eroded within this rear elevation of the host terrace. There is no information before me to suggest that these are unlawful additions. Consequently, I consider that rear dormer windows of this type, scale and design are not uncharacteristic of the host terrace and the surrounding area.
11. The Council's Residential Extensions and Alterations Supplementary Planning Document (2018)(SPD2) seeks to restrict rear dormer windows and specifies minimum requirements for the siting of one. There is no clear information before me to demonstrate that these have been complied with. Nonetheless, I observed that the development has been set down from the ridge, set up from the eaves and set in from the edge of the roof. Whilst the appeal scheme may not be constructed in strict accordance with the requirements of SPD2, its design, scale and bulk are similar to those on properties in the vicinity of the appeal site.
12. Moreover, the appeal scheme concludes a continuous run of similar flat roof dormer windows along the host terrace. Notwithstanding that the rear build line of the host dwelling projects beyond the common build line of the terrace, which makes the dormer window appear more prominent, the use of similar fenestration and materials provides a complementary external finish. This provides balance and aids its assimilation within the host terrace roofscape. As a result, it does not appear inharmonious or as an unduly strident addition to the roofscape.
13. For the reasons set out above, I conclude that the development is not unduly harmful to the character and appearance of the host dwelling, terrace and surrounding area. Therefore, it accords with General Policy DMP1 of the LP which is permissive of development that, among other things, complements the locality through location, use, siting, layout, scale, type, materials, detail and design. In addition, it would broadly accord with the requirements of the Council's SPD2 and the provisions of the Framework which require high quality development that is sympathetic to local character.

Living conditions

14. Given the close arrangement of dwellings within a tightly knit urban area, there are already significant levels of mutual overlooking between properties from their upper floor windows. The appeal scheme would give rise to similar

overlooking and therefore would not unduly alter the level of privacy experienced by neighbouring occupiers.

15. Furthermore, given the intervening distance and outbuildings between the host dwelling and 67 Falcon Way together with the host dwelling being positioned to the north of this neighbouring property, I am satisfied that the development has not caused any unacceptable shadowing or loss of daylight.
16. The dormer is set back compared with the windows in the ground floor rear elevation of 68 Cranleigh Gardens, which are therefore unlikely to suffer any significant restriction of daylight or overshadowing. Due to the close proximity of a number of windows at first and second floor height there may be some reduction in the amount of light that they receive. However, these windows are constructed in frosted glass and are likely to serve a bathroom rather than a habitable room. Consequently, I am not satisfied that the appeal scheme would result in an unduly harmful loss of light within the attached neighbouring dwelling.
17. The Council give no specific detail about their concerns as regards the impact of the appeal scheme on the occupants of the host dwelling. Having regard to the information before me and my own observations, I consider that the appeal scheme provides adequate living conditions for the existing and future occupants of the host dwelling.
18. Overall, I do not consider that the appeal scheme would materially compromise the living conditions of occupiers of the host dwelling and neighbouring properties. The appeal scheme accords with LP General Policy DMP1 insofar as it requires high quality development that provides high levels of amenity. Similarly, it would concur with the aims of the Framework which requires development of a high standard of amenity for existing and future users and which does not undermine quality of life.

Other Matters

19. Reference is made to the appeal scheme creating an undesirable precedent and a consequent weakening of the integrity of the planning system. However, I have determined the appeal before me based upon its individual planning merits and this approach would be applicable to a similar scheme if it were to arise in the future.

Conclusion

20. Overall, I conclude that the appeal scheme accords with the development plan and the material considerations in this instance do not justify a decision otherwise than in accordance with the development plan. For the reasons given above, I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed.
21. Condition 7 of planning permission reference 15/3736 will continue to have effect in respect of any other enlargement or outbuilding that would otherwise have been permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

E Brownless

INSPECTOR