



Appeal Decision

Site visit made on 5 December 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Appeal Ref: APP/H5960/C/21/3281909

21 Kersley Street, London SW11 4PR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Dr Olakunle Ajayi against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The notice was issued on 19 July 2021.
 - The breach of planning control as alleged in the notice is without planning permission and within the last ten years a breach of condition 2 (in accordance with approved drawings) of the planning permission granted by the Council on 22 July 2019 under reference 2019/1897 (the "Planning Permission"). The three-storey rear extension and rear dormer extension have been constructed larger than approved by the planning permission and are therefore unauthorised.
 - The requirements of the notice are to:
 1. Remove the unauthorised three-storey addition and rear dormer roof extension to the rear of the property;
 2. Ensure that any remedial works accord with the approved plans and conditions of the planning permission; and
 3. Remove from the site all debris arising from compliance with steps 1 and 2.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (f) 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 varied by:
 - 1) Deleting requirements 1 and 2 in section 5 of the enforcement notice (what you are required to do) and replacing them with the following requirement: 1. *Remove the unauthorised three-storey rear extension and rear dormer extension and restore the property to its previous condition or, carry out alterations so that the development complies with the terms of the planning permission reference 2019/1897 dated 22 July 2019 including the conditions subject to which that permission was granted.*
 - 2) Renumbering the requirements accordingly and deleting the *and 2* from requirement 2 in the notice as varied.
2. Subject to these 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.

Preliminary Matter

3. Whilst not forming part of the reasons for issuing the notice, the Council in their officer report referred to the effect on the living conditions of neighbouring occupiers. In this case, since the appellant has had the opportunity to comment, I have considered the appeal accordingly.

Background

4. Planning permission was conditionally granted on 22 July 2019 for the demolition of an existing rear addition and the erection of a part-single part-three-storey rear extension with roof terrace above, the erection of a dormer extension to the rear, excavations to create a basement – including front and rear lightwells and a replacement front wall.
5. For clarity the enforcement notice, and therefore my assessment, relates to the three-storey rear extension and rear dormer extension.
6. The notice, as varied, gives the appellant the option to either remove the unauthorised works or modify them in accordance with the planning permission. Consequently, it is reasonable to assess the extensions, subject of the notice, against the approved scheme.
7. Whilst I have had regard to the submitted as-built plan, my assessment is primarily based upon my site observations. In this respect I noted that a balustrade has been erected around the roof terrace since the notice was issued.

The appeal on ground (b)

8. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
9. The alleged breach of planning control is the breach of condition two, which specifies that the development should be carried out in accordance with the reports, specifications and drawings detailed.
10. The onus of proof is therefore on the appellant to demonstrate that the three-storey rear and dormer extension have not been built, or that they accord with the approved details.
11. There is disagreement between the parties about the extent of the differences between the approved and as built three-storey extension, principally in respect of the height and width. On this basis the appellant's case is essentially that the resolution to take enforcement action was based on inaccurate information and flawed reasoning.
12. However, this matter has no relevance to this ground of appeal, which concerns only whether the breach of planning control, as set out in the allegation, has occurred as a matter of fact.
13. Since the appellant does not dispute that a three-storey and rear dormer extension have been built, nor, that they have not been built in accordance with the approved plans, the appeal on ground (b) must fail.

The appeal on ground (a) and the deemed planning application

14. The main issues are (i) whether the three-storey extension and rear dormer extension preserves or enhances the character or appearance of the Battersea Park Conservation Area, and (ii) the effect of the extensions on the living conditions of neighbouring occupiers with particular regard to outlook, privacy, and daylight/sunlight matters.

Reasons

Conservation Area

15. The appeal property is a mid-terrace house located within the Battersea Park Conservation Area (BPCA), the significance of which is derived from the relationship between the park and surrounding streets. Kersley Street is characterised by two and three-storey, late Victorian red brick terraced houses, with sash windows consisting of multi-panes to the upper and single panes to the lower sash. The appeal property and those in the street exhibit many of the architectural characteristics seen in properties in the wider BPCA and, as such, makes a positive contribution to it.
16. To the rear, houses in the terrace and terraces in the wider area, feature outriggers. Whilst there is much variation in the heights and finishes of the outriggers, there is, notwithstanding the presence of a full width extension to the rear of 27 Kersley Street, a general consistency in their width at first and second floor level, reflecting the width of the original outriggers and thereby respecting the historic form of the houses and maintaining a consistency of spacing between them.
17. There are dormers to the rear of the houses, predominantly single dormers of sympathetic appearance, which leave much of the historic roofs unaltered. There are some larger box type dormers, further along Kersley Street and in the wider area, some of which I saw at my visit however, these are not a characteristic feature of the locality. Furthermore, none of those I saw had the same stepped roof form and are not directly comparable to the appeal development.
18. Whilst the height of the approved extension would have exceeded the existing eaves line, the extension as built appears materially taller and has an awkward relationship with the dormer and neighbouring extension. The dormer itself is substantial and occupies a significant proportion of the rear roof slope. As a result of its scale, box-like stepped form, and relationship with the three-storey extension, it appears as a prominent and awkward addition within the roof slope, poorly related to the dwelling's character and style.
19. There remains, above ground level, a reasonable separation distance between the extension and the outrigger to the rear of 23 Kersley Street, such that there is no materially harmful terracing effect. However, the tall, narrow window which has been squeezed into the space between the extension and No.23, which itself does not reflect the proportions or appearance of fenestration seen in the locality, emphasises the uncharacteristic width of the extension.
20. Notwithstanding how the differences between the approved and as-built development came to be, or the precise measurements, when taken as a whole, the extensions appear poorly proportioned and adversely affect the

appearance of No.21, detracting from its contribution to the BPCA. As such, it follows that the development fails to preserve or enhance the character or appearance of the BPCA.

21. The appellant argues that the development is not visible from anywhere within the public domain or surrounding streetscape however, it will be visible from some windows and gardens of neighbouring and surrounding houses and in such views would appear as a discordant feature. Moreover, I am mindful that the statutory requirement relating to the desirability of preserving or enhancing the character or appearance of conservation areas is not dependent on public views of relevant changes.
22. I acknowledge the appellant's comments regarding the contribution of the property frontages. However, whilst not all elements of a conservation area necessarily contribute to its significance, the harm to the appearance of the house and visual qualities of the area identified above, also translates into harm to the wider character and appearance of the BPCA.
23. As approved the three-storey extension would not be as wide or tall or, include a full width dormer. Consequently, it would appear materially smaller and sympathetic, and is clearly preferable in terms of its effect on the character and appearance of the house and surroundings, compared to the existing extensions.
24. The appellant under ground (f) proposed, as an alternative to demolition, the reduction in height of the parapet walls. However, this would not overcome the identified harm in respect of the overall massing and the design of the dormer.
25. Given the scale of the development within the context of the Conservation Area as a whole, I consider the harm to be less than substantial. Nevertheless, I am mindful that the National Planning Policy Framework (the Framework) says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.
26. Where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits.
27. The appellant has not sought to demonstrate, nor do I consider that there are any public benefits associated with the development.
28. Consequently, there are no public benefits to outweigh the great weight that I am required to attach to the heritage asset's conservation. I conclude that the development does not accord with Policies DMS1, DMH5 and DMS2 of the Wandsworth Local Plan Development Management Policies Document 2016 (DMPD). Together these require well-designed extensions and development to sustain, conserve and, where appropriate, enhance the significance, appearance, character and setting of the heritage asset. It also fails to accord with national policy which seeks to conserve and enhance the historic environment.

Living conditions

29. There is a first-floor bedroom window in the rear of No.23, located close to the shared boundary with No.21. Because of the height, depth, and proximity to this window, the three-storey extension will have a dominant and overbearing

effect upon the outlook from No.23. Undoubtedly the approved scheme would have an effect on the outlook from No.23. However, in my estimation, given the increase in height and width, the effect is materially more harmful than the approved scheme.

30. The extension is no closer to those properties on Kersley Mews than the approved. Consequently, notwithstanding the increase in height, given the separation distance, there is no materially harmful overbearing impact on the outlook from those properties.
31. The rear of the houses on Kersley Street face broadly north-west, and the tight grain of development would have already limited the sunlight/daylight to the inner and side windows at the rear of No.23. Consequently, although closer and taller, I find there will be no materially harmful loss of daylight or overshadowing. Indeed, the extension would have had a similar effect if the development had been carried out as approved.
32. The houses are in a suburban environment where some mutual overlooking of homes and gardens is inevitable. The roof terrace is surrounded by obscure glazed screening, which prevented me from overlooking into neighbouring houses and gardens.
33. Notwithstanding the increased height and whilst the extension adds to the number of overlooking upper floor windows, given the angles and distance to those dwellings on Kersley Mews, and since a condition could be imposed to ensure the windows remain obscure glazed and fixed, there would be no materially harmful loss of privacy to those dwellings.
34. Notwithstanding that I have found no harm in respect of daylight/sunlight matters, loss of privacy or overbearing impact on the outlook for occupiers of properties on Kersley Mews, the extension has an unacceptably harmful impact on the outlook from No.23. The development is therefore contrary to Policy DMS1 of the DMPD which amongst other things seeks to ensure there is no harm to the amenity of nearby occupiers in respect of unsatisfactory outlook. There is also conflict with the amenity protection aims of the Framework.

Other matters

35. I acknowledge the harassment the appellant and their family have been subject to however, this and the appellant's misgivings about the actions of the Council are separate matters which have no bearing on the planning merits of the development.

Conclusion on ground (a)

36. The extensions are contrary to the development plan when taken as a whole and in this case, there are no material considerations of sufficient weight to indicate that the appeal should be determined other than in accordance with the development plan.
37. I therefore conclude that the appeal on ground (a) fails, and that planning permission will not be granted.

The appeal on ground (f)

38. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
39. The appellant's case on this ground relates to requirement number one and is essentially that it is not necessary to remove the three-storey extension and dormer to carry out remedial works so that the development complies with the planning permission.
40. Where planning permission has been granted but the development is not built as approved, the notice should give the recipient options to either remove or, modify the unauthorised works to implement the permission in accordance with its terms and conditions. However, the appellant cannot be forced to implement any planning permission because that would exceed what is necessary to remedy the breach of planning control. Yet requirement two, in the notice as issued, is worded to that effect and is therefore excessive. Since this is excessive, I shall vary the requirements accordingly.
41. As varied, the notice requires either the removal of the three-storey extension and dormer extension, or their alteration in accordance with the planning permission. As such, I find its purpose is to remedy the breach of planning control that has occurred.
42. That purpose can only be achieved by either restoring the land to its condition before the breach took place – in other words by removing the three-storey and dormer extensions and all associated debris or, carrying out remedial works so that the three-storey and dormer extensions accord with the planning permission.
43. Since the varied requirements would do no more than seek to achieve this purpose, they are not excessive. There is partial success under the ground (f) appeal.

The appeal on ground (g)

44. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested a period of 30 months, on the basis that any remedial works would likely have to be carried out in two phases, and so that funds could be sourced to carry out the works.
45. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be removed.
46. The appellant provided no substantive explanation about why the works would have to be carried out in two phases or, how long that would take. Whilst I have sympathy with the appellant in respect of funding the works, this is a matter which relates to the time before the works can commence.
47. Although the appellant's concerns are understandable, in the absence of substantive explanation about how long it would take to either remove or modify the extensions, I consider the period of six months as specified in the notice, is proportionate to the breach of planning control that has occurred.
48. Accordingly, the appeal on ground (g) fails.

Conclusion

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

Felicity Thompson

INSPECTOR