



Appeal Decision

Site visit made on 26 April 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2023

Appeal Ref: APP/F5730/C/22/3303610

32 Wells House Road, Park Royal NW10 6EE

- 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 Vasilis Giannoulis against an enforcement notice issued by Old Oak and Park Royal Development Corporation.
- The enforcement notice, numbered 20/0016/ENFOPDC, was issued on 1 June 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the construction of a part first floor extension (above existing single storey side extension) and part two storey side extension; rear roof extension (to main roof slope and over rear outrigger); and external alterations to the resultant building, including render painted yellow.
- The requirements of the notice are A. Remove the part first floor extension (above existing single storey side extension) and part two storey side extension and restore the external appearance of the Property to its original condition prior to the breach occurring; B. Remove the rear roof extension to the main roof slope and over the rear outrigger and restore the external appearance of the Property to its original condition prior to the breach occurring; C. Remove the yellow painted render and restore the Property to its original condition prior to the breach occurring; and D. Remove all debris resulting from compliance with steps A, B and C, above.
- 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), (d), (e), (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.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Procedural Matters

1. Appeal grounds (e), (b), (c) and (d) are known as legal grounds of appeal. In this regard the onus rests with the appellant to demonstrate their case on the balance of probability.
2. It has been brought to my attention that the Old Oak and Park Royal Development Corporation Local Plan (DCLP) was formally adopted on 22 June 2022. Accordingly, the policies in the Ealing Development Management Development Plan Document 2013, together with that Council's Supplementary Planning Document 4 – Residential Extensions, as referred to in the enforcement notice, have been superseded. I have therefore disregarded policies from those documents, cited in the reasons for issuing the enforcement notice, as they are now obsolete.

3. The appellant is highly critical of the way that the Old Oak and Park Royal Development Corporation (the Corporation) has dealt with this enforcement case. For the avoidance of doubt, procedural concerns of this nature are outside the remit of my considerations in this case, and do not therefore bear on my decision.

The appeal on ground (e)

4. This ground of appeal is that copies of the enforcement notice were not served as required by s172 of the Act. This requires the notice to be served on the owner and the occupier of the land to which it relates and on any other person having a material interest in that land. The Corporation says that it delivered the enforcement notice by hand, posting the document through the appellant's letterbox. This is disputed by the appellant who complains that the document was not delivered to him directly, indicating that it was lucky to have been found lying loose within the grounds of the property.
5. The appellant is also critical that other family members residing at the property were not served with a copy of the notice. I note the Corporation's records show that copies of the notice were served on both the appellant and his wife and also on the occupier of the appeal site. I am not provided with evidence to rebut the point that the notice was intended for the attention of relatives occupying the property.
6. I am not persuaded that the notice was incorrectly served, however even if this was the case, section 176(5) of the Act provides that failure to serve may be disregarded if the appellant has not been substantially prejudiced by the failure to serve him. The appellant has been able to lodge his appeal and to argue his case fully during the course of the proceedings, and I am not persuaded that he or any other family members have been substantially prejudiced. The ground (e) appeal fails.

The appeal on ground (b)

7. The ground of appeal is that the matters alleged in the notice have not occurred as a matter of fact. The notice alleges the construction of a part first floor and part two storey side extension; a rear roof extension and alterations to the building that include rendering. Notwithstanding that the appellant considers these developments to be acceptable for whatever reason, it is nevertheless undisputed that the developments have occurred. The ground (b) appeal therefore fails.

The appeal on ground (c)

8. The appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. In this respect I consider each of the alleged developments in turn below.

Rear roof extensions

9. The provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO), within Schedule 2, Part 1, Class B allow for "the enlargement of a dwellinghouse consisting of an addition or alteration to its roof" as permitted development, subject to various limitations and provisos.

10. One such condition of permitted development is that the edge of the enlargement closest to the eaves of the original roof shall, so far as practicable, be not less than 0.2 metres from the eaves, measured along the roof slope from the outside edge of the eaves. It was with this constraint in mind that a lawful development certificate was previously granted for proposed developments¹. Whether this condition has been complied with is disputed by the parties.
11. The dwelling comprises a two-storey semi-detached property, with a two-storey rear 'outrigger' addition. The extensions subject to this appeal have been constructed at second floor level, over the main roof and outrigger. From my visit it was apparent that the 0.2 metre set back is absent with regard to the rear elevation of the extension over the main roof.
12. It is apparent from the drawings provided that prior to the roof extensions taking place, there was a hipped roof over the outrigger. Despite a gap existing between the rear wall of the outrigger extension and the existing eaves level of the outrigger itself, there is no such gap in respect of the side walls of the same extension.
13. Accordingly, the roof extensions breach the 0.2 metre set back requirement, unless it can be demonstrated that practical constraints prevented compliance with this requirement. I have not been provided with any information to persuade me that it was not practicable to construct the extensions in accordance with this requirement. Consequently the roof extensions fail to meet the subject condition and would not therefore have been permitted development in accordance with the GPDO.

Side extension

14. The Corporation alleges that the side extension has not been constructed in accordance with approved drawings relating to a previous planning permission², and as such is in breach of planning control. It says that the extension has been constructed larger than approved, in terms of height relative to the ridge of the main dwelling; the eaves on the rear elevation and in terms of overall footprint. The enlarged area is also evidenced, it says, by the incorporation of a flat roofed element at its highest point.
15. During my visit I took some measurements of the side extension, which were agreed by the parties. These indicated the overall length of the side extension at first floor level to be some 8.3 metres. I calculate this to be around 1.5 metres longer than shown on the approved plans, with the elongation appearing to be achieved by the aforementioned flat roofed section.
16. It also seemed to me that the extension is set down from the ridge of the main dwelling roof by less than is shown on the approved plans; that the eaves level of the rear elevation is higher than on those plans; and that the gap between the extension and the side boundary at its closest point, measuring approximately 0.5 metres, is somewhat narrower. It also appears that additional window openings have been inserted into the extension over and above those shown on the drawings. The width of the rear elevation of the side extension appeared to be a little narrower than approved.

¹ Ref 182817OPDLDC – granted 02 August 2018

² Ref 194215OPDCHH – granted 12 November 2019

17. Overall, I am in no doubt that the side extension, as developed, has resulted in a materially different design, with added bulk, when compared to what was approved. The side extension does not therefore benefit from planning permission.

External rendering

18. It was plain from my visit that the external walls of the dwelling, including the side extension, have been rendered and painted with a pale yellow / cream finish. I am in no doubt that the application of render forms part and parcel of the unlawfully constructed side extension. Furthermore, Article 3(5) of the GPDO sets out that permitted development rights do not apply where the building operations involved in the construction of that building are unlawful. The effect of this clause therefore means that the render as a whole does not benefit from permitted development rights.

Ground (c) appeal conclusion

19. Drawing the aforementioned considerations together the ground (c) appeal therefore fails.

The appeal on ground (d)

20. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control. S171B(1) of the Act provides that no enforcement action may be taken in respect of any unauthorised operational development after the end of the period of four years beginning with the date on which the operations were 'substantially completed'.
21. In order to succeed on this ground, in accordance with Section 171B(1) of the Act, it would be necessary for the appellant to show, on the balance of probability, that the alleged developments were substantially completed by 1 June 2018.
22. This date predates the aforementioned lawful development certificate for the roof extensions (2 August 2018) and planning permission for the side extension (12 November 2019). The appellant's statement refers to the loft extension being substantially completed shortly after permission was obtained. It also refers to the side extension rendering being completed after planning permission was received and it was constructed. The appellant therefore provides no evidence to suggest that the alleged works were substantially completed by 1 June 2018.
23. Furthermore, the Corporation has provided Google Street View imagery from October 2018, which depicts front and side elevation views of the dwelling prior to the alleged development having been carried out. For the reasons given above, I conclude on the balance of probability, that the alleged development was not substantially completed by 1 June 2018 and therefore more than four years prior to the enforcement notice being issued. Accordingly, the development is not immune from enforcement due to the passage of time.
24. I therefore conclude that the appeal should not succeed on ground (d).

The appeal on ground (a)

Main Issues

25. The main issues are the effect of the development on i) the character and appearance of the original dwelling and the wider area and ii) the living conditions of nearby residents, having particular regard to outlook and visual amenity.

Reasons

Character and Appearance

26. Wells House Road is a triangular shaped, and quite densely developed layout of predominantly two storey semi-detached dwellings. Many of the houses in the street retain their original brick facades, with painted window surrounds. However there are several dwellings where the brick frontage has been painted or rendered with a white finish or various other pale colour. The overall character of the street is one of traditional closely spaced dwellings, softened by the presence of trees, featuring houses with a variety of external finishes.

Rear roof extensions

27. The roof extensions, subject to this appeal, are substantially screened from the highway to the front by the main building and the two-storey side extension. Although the nearest part can be seen fleetingly when passing close to the site, it has a recessive rather than eye-catching appearance at this distance. Accordingly, the roof extensions are not a prominent feature in the public domain, and the relative benefits to the public realm of them being constructed in accordance with the aforementioned permitted development limitations, would be very limited in this particular case.
28. The roof extensions are visible from the rear of several nearby properties. However, having regard to separation from these properties I do not accept they would appear visually dominant or obtrusive. I am also mindful that in the event of demolition, and compliance with the enforcement notice requirements, the roof extensions could be reconstructed in a very similar design, as permitted development. I consider this to be a fallback position that weighs in support of the existing development, because any relative benefits to visual amenity for private views would be very minor and would not therefore justify demolition.
29. Furthermore, I noted during my visit, that the rear roof extensions to the adjoining dwelling at No 34 are similar in design. The development does not therefore stand out as an alien feature.

Side extension

30. The side extension is in a prominent location when viewed, between buildings, from the adjacent street. As set out above it has been built larger than the structure for which planning permission was given.
31. Notwithstanding this, when viewed from the public highway to the front of the property, the structure is set down from the main ridge of the roof; at first floor level is set back from the front elevation of the main dwelling; and is stepped in from the tapering side boundary. Furthermore, the visible element of the flat roofed section forms only a relatively small part of the overall side

extension, and the raised eaves level and additional windows associated with the rear elevation are not, in themselves, prominent features. In addition, the raised eaves are somewhat assimilated in relation the adjacent roof extension. I therefore do not find the extension to be insubordinate to or incongruous with the original dwellinghouse or harmful to the appearance of the street scene, when viewed from the public domain. I do not concur with the view that the development results in any significant harm to the architectural value of the appeal dwelling and its adjoining neighbour within the street scene.

32. From the information before me I acknowledge that there are some prominent views of the side and rear elevations of the extension from the upper floors of surrounding buildings. I accept that the scale and design of the side extension, having regard to the flat roof element and the eaves height of the rear elevation, does appear somewhat top-heavy from this perspective. Also when read against the roof extension, the profile serves to obscure visual evidence of the original roof design of the dwelling.
33. However, I am mindful that national policy allows for roof extensions of significant scale; also having regard to the layout of the estate and roof extensions to the adjoining dwelling, that the extension in this case would not interrupt any strong sense of design uniformity at the rear. Having regard to the effect of the development as a whole, including on the public realm as set out above, I am not therefore persuaded that the outcome in this case warrants refusal of planning permission.

External Rendering

34. As I have set out above, there are several properties in the vicinity, in relation to which various pale coloured external finishes have been applied. Notably this includes some of the dwellings situated opposite the appeal site. From my visit I consider that the pale yellow coloured render of the appeal dwelling does not draw the eye as being incongruous, having regard to the similar and various light colours of paint and render that can be seen in the surrounding area.
35. For the aforementioned reasons I conclude that the developments do not result in harm to the character and appearance of the original dwelling or the surrounding street scene and area. Accordingly, the developments do not conflict with Policies D3 and D6 of the London Plan 2021 (LP), with the Policies SP2, SP9, D3 and D5 of the DCLP or with the National Planning Policy Framework (the Framework) insofar as they seek to deliver high quality design that has regard to its character and context.

Living Conditions

36. Those properties closest to the side extension are Nos 26 and 28 Wells House Road, with direct views available from their rear elevation windows and gardens towards the extension, just beyond respective rear boundaries.
37. Whilst the profile of the side extension is different to what was approved by the Corporation, from the information before me it seems that the direct outlook from the rear of No 28 would be similar, in terms of the bulk and proximity of the new extension.
38. The enlarged development means that it would appear bulkier and closer, in direct views from the rear of No 26, when compared to what was approved.

However, it seems to me, when taking account of the footprint being stepped in from the side boundary and therefore breaking up the profile of the side elevation, despite the relatively short separation distance between the rear of the dwelling and the side extension, the standard of outlook for No 26 would be similar to that which was approved, and therefore deemed acceptable, in relation to No 28.

39. I am satisfied that either side of the aforementioned properties, Nos 24 and 30 Wells House Road are sufficiently offset from the side extension for it not to result in harm to outlook; furthermore that the roof extensions are far enough away, or sufficiently offset from nearby properties not to be problematic in this regard either. It is also significant, as set out above, that if demolished the roof extensions could be reconstructed in a very similar design as permitted development.
40. Given the surroundings, I am not persuaded that the light colour of the render, in itself, detracts from the standard of outlook for neighbouring residents.
41. For the aforementioned reasons I conclude that the developments do not result in harm to the living conditions of nearby residents, having particular regard to outlook and visual amenity. Accordingly, the developments do not conflict with Policies D3 and D6 of the LP, with the Policies SP2, SP9, D3 and D5 of the DCLP, or with the Framework insofar as they seek to protect the living conditions of nearby residents.

Other Matters

42. There have been a number of further objections raised against the development from local residents. I have not been provided with evidence that the developments have resulted in material harm to light entering buildings and gardens, or to local wildlife. Nor does it mean there would be a greater likelihood in the future of the appeal property being subdivided into flats, which in any event would require a separate planning permission.
43. I have had regard to photographs provided by a neighbouring resident. I am not persuaded that artificial light emitted from rear elevation windows in the extension would result in any significant disturbance, due to excessive brightness, and therefore harm to living conditions. The rear facing windows in the side and roof extensions inevitably allow for visibility beyond the boundary of the property. However the side extension windows serve a stairwell area and as such any visibility is likely to be fleeting. In any event I do not accept that the rear facing windows result in an unacceptable degree of overlooking when considering the existing layout and density of development in the surrounding area. With regard to the design of the front door of the dwelling, I do not find this to be at odds with the character of the dwelling or wider street scene.
44. Concerns have also been expressed with regard to loss of property value that would be experienced by neighbours. This does not attract weight as it is unsupported by evidence, and in any event it is not the purpose of the planning system to protect such private interests. Reference has also been made to the impact of a boundary wall and outbuilding. However these developments are not the subject of the enforcement notice, and are therefore outside my remit for consideration in this case.

Conclusion

45. For the reasons given above I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice. The appeal on grounds (f) and (g) does not therefore need to be considered.
46. In the event of the appeal being allowed, the Corporation recommended the inclusion of a condition requiring a side facing, upper floor bathroom window to be obscure glazed and fixed shut, in the interests of preventing the overlooking of adjoining properties. However, from my visit I am satisfied that this window has already been obscure glazed to a satisfactory standard and would be likely to remain as such, given the nature of the room it serves. The glazed area is relatively small, and it did not seem to me that prohibiting the opening of this window would serve a useful purpose.

Formal Decision

47. 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 1990 Act as amended for the development already carried out, namely the construction of a part first floor extension (above existing single storey side extension) and part two storey side extension; rear roof extension (to main roof slope and over rear outrigger); and external alterations to the resultant building, including render painted yellow on land at 32 Wells House Road, Park Royal NW10 6EE as shown on the plan attached to the notice.

R Merrett

INSPECTOR