



Appeal Decision

Site visit made on 16 May 2023

by Emma Worley BA (Hons) Dip EP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2023

Appeal Ref: APP/M5450/W/22/3301845

34 Clitheroe Avenue, Harrow HA2 9UX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Mukarram Sattar on behalf of Merino Limited against the decision of the London Borough of Harrow.
 - The application Ref P/4034/21, dated 4 October 2021, was refused by notice dated 1 April 2022.
 - The development proposed is described as 'Conversion of existing dwelling into two flats (2 x 1 bed) and; associated external alterations including the creation of a terrace at first floor level'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development in the banner heading is taken from the planning application form. It differs from that on the Decision Notice which includes an amended description of the proposed development which omits the word 'including' and lists the proposed development specifically as 'the creation of terrace to first floor rear elevation; separate amenity space; bin and cycle stores'.
3. Having regard to the first refusal reason, given that the description of the proposed development on the planning application form refers to alterations *including* the terrace, this suggests that the proposal is not limited exclusively to the terrace. Moreover, the submitted 'pre-existing' plans and elevations clearly show the property without the roof alterations, outbuilding, side and rear extensions and terrace, which are shown on the 'proposed' plans. This suggests each of the separate parts of the proposed development as shown on the submitted proposed plans and elevations form part of the proposals. Accordingly, the failure to refer to elements shown on the submitted plans individually in the description of the development would not exclude them from the proposal.
4. It is evident from the refusal reasons that the Council has considered the effects of all parts of the proposal. Furthermore, despite the Council's description of development, public consultation as part of the planning application was carried out based on the submitted plans. As such no injustice would occur should I consider the appeal proposals as shown on the submitted plans.

5. In relation to the second refusal reason, I note the appellant's contention that some parts of the proposal are lawful by virtue of a Certificate of lawful development (proposed) Ref P/2334/17 (CLDP) granted on 10 July 2017 for 'alterations to roof to form end gable; rear dormer with Juliette balcony; two rooflights in front roof slope to create habitable roof space; window in end gable; single storey side extension and single storey rear extension'. However, other than the description, I have not been provided with details of the specific development to which the CLDP relates. Moreover, given some of the discrepancies highlighted by the appellant between the CLDP plans and what has been built there is uncertainty as to whether the development that has taken place would have been lawful. In light of this and as these parts of the development are shown on the submitted plans as set out above, they fall to be considered as part of the appeal proposal.
6. On the basis of the above, I see no reason why the extensions and alterations shown on the proposed plans and elevations should not be included in the proposal as a matter of procedure.
7. At my site visit, I noted some minor differences between the submitted plans and the part of the development that has already been implemented. This includes the fenestration in the single storey side and rear extensions. Moreover, I cannot be certain that other elements of the scheme that have been built reflect the submitted plans. For the avoidance of doubt, I have determined the appeal on the basis of the submitted plans.
8. Amended plans have been submitted as part of the appeal to address refusal reasons 1,4 and 5, these include changes to the description of development to include the front and side extensions and rear dormer; the design of the rear balcony to include a raised parapet of 300mm; and the front elevation to include a single front door. These have not been subject to consultation and I cannot be certain that all interested parties will have reviewed the appeal documents in detail. In these circumstances, I do not consider it appropriate to accept revised plans that may raise new planning issues. In this regard, I note that the 'Procedural Guide – Planning Appeals – England' advises that: "If an applicant thinks that amending their application proposals will overcome the local planning authority's reasons for refusal, they should normally make a fresh planning application". Accordingly, I have determined the appeal based on the drawings that were before the Council when it made its decision.

Main Issues

9. In light of the above considerations, the main issues are therefore:
 - the effect of the proposed development on the character and appearance of the existing building and the surrounding area;
 - the effect of the proposed development on the living conditions of the occupiers of the neighbouring properties having regard to overlooking of rear gardens; and
 - whether the proposed development would provide suitable living conditions for future occupiers having regard to noise.

Reasons

Character and appearance

10. The appeal site comprises a 2 storey property which lies at the end of a short terrace of 4 dwellings. The surrounding area is residential in character, made up of dwellings of a similar design and appearance. They are arranged in a linear formation, set back a similar distance from the road with a combination of parking and gardens to the front. This creates a pleasant sense of uniformity, despite a range of modest alterations and extensions to the front elevations of some of the properties. The appeal proposals seek to subdivide the existing dwelling into 2 self-contained one bedroom flats and comprises alterations to the roof, including a rear dormer extension, single storey side, rear and front extensions and a first floor terrace to serve the flat on the upper floors.
11. Whilst it is set in marginally from the side gable and eaves of the host dwelling, the rear dormer would extend up to the shared side boundary of the roof slope with the adjoining property at 36 Clitheroe Avenue and would sit flush with the ridge of the main dwelling. Consequently, it would occupy nearly all the rear roof slope. Due to the scale and design, the dormer would be an unduly dominant and incongruous feature.
12. Although the proposed dormer would not be visible above the main ridge to the roof of the property, and views of the dormer from the street would be limited to a small section of Clitheroe Avenue, it would be clearly visible from the neighbouring properties to the rear and their gardens. The dormer would therefore adversely affect the character and appearance of the dwelling and the area generally.
13. My attention is drawn by the appellant to examples of other dormers in the area, however these are in the main smaller in scale than the appeal proposal. Whilst the side elevation of the rear dormer at 23 Clitheroe Avenue opposite the site is flush with the gable and the ridge of the main dwelling, this is not a feature which is a predominant characteristic of the area. As such, the existence of other dormers in the locality does not justify the harm I have identified.
14. The proposed first floor terrace to the rear elevation would be enclosed by a frosted glass balustrade to the main section and 1.8m high fence panels to either side. Due to the modest size of the terrace, it would be subservient in scale to the host dwelling and would not be a visually intrusive feature.
15. The presence of 2 front doors side by side to the front elevation of dwellings is not a prevalent feature in the street scene, but where properties have been extended to the side a window alongside the front door is a more common arrangement. Nevertheless, despite its form and appearance, due to its size and siting, the proposed door would not be so apparent so as to disrupt the established pattern of development, even if it did appear to suggest that the property has been subdivided. As such, the additional front door would not detract from the character and appearance of the host dwelling or the surrounding area.
16. For the foregoing reasons I conclude that the proposed rear dormer would harm the character and appearance of the existing building and the

surrounding area. Accordingly it would conflict with Policy D3 (D(1) and D(11)) of the London Plan 2021 (LP) which requires development to respond to local distinctiveness and the existing character of a place, Policy CS1.B of The Harrow Core Strategy 2012 (HCS), in so far as it requires development to respond positively to the local context in terms of design, including that extensions should respect their host building and Policy DM1 of the Harrow Development Management Policies Local Plan 2013 (HDMP) which seeks development proposals to achieve a high standard of design and layout.

17. It would also fail to accord with advice in the Council's Supplementary Planning Document Residential Design Guide adopted 2010 (SPD), which among other things sets out that dormer windows should complement the original street character and not dominate buildings or impair their proportions or character and would conflict with Chapter 12 of the National Planning Policy Framework (the Framework) which seeks well-designed places.

Living conditions of occupiers of the neighbouring properties

18. The proposed first floor terrace comprises a small, enclosed area immediately to the rear of the property. It would be set in from the side boundaries of the site and would include the provision of 1.8m fence panels to the sides. This arrangement would prevent any direct overlooking of the garden areas immediately to the rear of the neighbouring properties to the sides. Consequently, the view from the terrace above the frosted glass balustrade to the rear would not be significantly different to that from the existing first floor windows in the property.
19. The site is in an urban setting where a degree of overlooking of rear garden areas is commonplace. However, the main difference is that whilst a view from an existing window may be possible, it is less likely to be one that is lingered over. Despite its modest size, the terrace would be likely to be used for extended periods, particularly as it would be the only outdoor space serving the upper flat and would therefore have a tendency to give a much more pronounced feeling of unwelcome and intrusive surveillance of the adjoining neighbouring rear gardens.
20. The appellant has drawn my attention to a 'first floor sight lines' plan submitted as part of the appeal which indicates that the view from the proposed terrace would be restricted by an obscured/frosted glass balustrade to the proposed parapet. However, this relates to the scheme as amended, which for the reasons set out above is not for consideration as part of the appeal.
21. Whilst I note the need for the terrace to provide amenity space for the occupiers of the upper floor flat, this would not outweigh the harm I have identified. My attention is drawn to the existing Juliette balcony to the rear of the neighbouring property at 36 Clitheroe Avenue, which it is suggested has similar effects in terms of overlooking to the appeal proposal. However, it differs in terms of design, specifically that it does not create any useable outdoor space. As such, it has a different effect in terms of overlooking to that which is proposed at the appeal site and in any event its presence does not justify the harm which I have identified.
22. For the forgoing reasons I find that the proposed terrace would give rise to an unacceptable degree of overlooking and would consequently harm the living conditions of the neighbouring residential occupiers, with particular regard to

their private rear gardens. Accordingly, the proposed development would be contrary to Policy D3 (D(7)) of the LP which sets out that development should deliver appropriate outlook, privacy and amenity, and Policy DM1 of the HDMP in so far as it requires development to achieve a high standard of privacy. It would also conflict with advice in the SPD which indicates that balconies are unlikely to be acceptable due to overlooking and privacy considerations. It would also fail to accord with paragraph 130 of the Framework which requires among other things development to create places with a high standard of amenity for existing users.

Living conditions of future occupiers

23. Policy D6.A of the LP sets out that housing development should be of a high quality design with comfortable and functional layouts which are fit for purpose. Policy DM1.D(g) of the HDMP requires an assessment of amenity considerations having specific regard to the adequacy of the internal layout of buildings in relation to the needs of future occupiers and any impact on neighbouring occupiers.
24. The living room of the upper flat would be directly above the bedroom of the ground floor flat. Whilst I note the appellant's suggestion that due to the age of the building the floor build up is better than in new buildings, the appeal submissions do not indicate any specific measures relating to the provision of acoustic insulation between the flats to prevent the transfer of noise between the units. Consequently, given the internal arrangement and the potential conflict of uses, there is no substantive evidence that the proposal would provide suitable living conditions for future occupiers.
25. The subdivision of the property has taken place and the flats are occupied. Whilst the occupants of the flats have not raised concerns regarding noise disturbance and have not objected to the proposal, this does not in itself render the scheme acceptable.
26. In the absence of any evidence to demonstrate that the development would include appropriate measures to prevent the transfer of noise between the ground floor and upper floor flats, I conclude that the proposal would fail to provide suitable living conditions for future occupiers having regard to noise. Therefore, the proposal would fail to accord with Policy D6.A of the LP and Policy DM1.D(g) of the HDM. It would also fail to reflect advice in the SPD that the design and layout of conversions should minimise the potential for noise transfer between new homes and would fail to accord with the high quality design aims of Chapter 12 of the Framework which set out that development should create places that promote health and well-being, with a high standard of amenity for existing and future users.

Other Matters

27. I note the appellant's comments about the advice that was received from the planning case officer before the submission of the planning application, as well as the lack of engagement from the Council during the planning process. However, I have determined this appeal on its individual planning merits and none of these other matters outweigh or overcome my conclusion on the main issue.

Conclusion

28. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Emma Worley

INSPECTOR