



Appeal Decision

Site visit made on 13 June 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2023

Appeal Ref: APP/T5150/C/22/3304745

118 Kingsbury Road, London NW9 0AY

- 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 Fraidon Sharifi against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/19/0841, was issued on 30 June 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a single storey rear extension to the premises.
- The requirements of the notice are: (1) Demolish the unauthorised single storey rear extension; and (2) Remove all debris and items, arising from that demolition, and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is: 6 months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) 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.

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.

The appeals on grounds (c) and (d)

1. Both appeals centre on the appellant's contention that the first 3.4 m of the single-storey rear extension was not in breach of planning control when it was constructed in 1984. The Council determined that a single storey rear extension was permitted development that year but copies of the determination and the drawings it related to have not been provided. Furthermore, there is no documentary record of what was built in 1984.
2. It is not disputed that the rearmost part of the extension is development in breach of planning control. Neither is it claimed that this part was substantially completed on or before 30 June 2018, 4 years before the date the notice was issued ("the Relevant Date"). Accordingly, it was possible to take enforcement action against it on the date the notice was issued.
3. The appeal on ground (c) must therefore turn on whether the appellant can demonstrate, on the balance of probability, that the extension certified as permitted development in 1984 was built and still exists as a recognisable structure in its own right. Alternatively, an appeal on ground (d) may succeed if it can be shown that a different, unauthorised, extension was substantially completed on or before the Relevant Date and still exists as a recognisable structure in its own right.
4. It is not clear whether the appellant has any direct knowledge of what took place in 1984. He simply claims that the extension that was determined to be

permitted development at that time was built and forms part of the extension the subject of the notice.

5. The brickwork in the side wall visible from Kingsbury Road was exposed at the time of my site visit, revealing a change in brick type some 3.25 m¹ beyond the original rear wall of the house, with an intervening row of bricks laid vertically. This lends support to the appellant's case that the part of the extension closest to the original house is older.
6. This older part includes blockwork near the eaves and a Google Streetview image from June 2015 confirms that the uppermost part of the wall then existing, beneath a sloping roof, was enclosed with cladding. It seems likely that blockwork would have been used under that cladding in preference to more expensive brickwork. The Streetview image only affords an oblique view, but it does appear to show a high-level window where more blockwork is found in the section of wall now exposed.
7. This indicates that a significant proportion of the fabric forming the first section of this wall is either as constructed in 1984 or otherwise by June 2015, before the Relevant Date. While it might be assumed that a similar amount of older fabric exists in the other side wall, visible in part from Mardale Drive, that has not been demonstrated because nothing could be seen beneath the cladding or from inside the extension.
8. Therefore, while part of one side wall was part of an extension that was either permitted development or is immune from enforcement action, that extension no longer exists as a recognisable entity. The remaining fabric of the previous extension is now incorporated into the larger extension that existed when the notice was issued, providing some support to the new roof. That remaining fabric is no longer a recognisable structure in its own right but has been subsumed into a larger extension.
9. For these reasons, the appeals on grounds (c) and (d) must fail.

The appeal on ground (a)

10. The main issues in this ground of appeal are:

- The effect of the extension on the character and appearance of the dwelling and the surrounding area.
- The effect of the extension on the living conditions of neighbouring occupiers.
- Whether the claimed fall-back of constructing the extension confirmed not to require prior approval under reference 21/2465 is realistic.

Reasons

Character and appearance

11. The surrounding area is largely characterised by mid-C20th red brick semi-detached houses. Views of the extension from Kingsbury Road are limited by the relatively narrow gap between the appeal premises and No. 120. Consequently, and because the house is raised above the road, the full extent

¹ Measured and agreed by the appellant and the Council.

of the extension is not readily apparent in views from this direction. A similar effect is achieved in views from Mardale Drive, which are limited by hedges and other boundary treatments. These factors serve to mitigate the effect of the extension, allowing it to complement the locality and match the main house.

12. While many houses have extensions or outbuildings, those that can be seen from nearby roads are generally faced in brickwork, allowing them to integrate with the prevailing built form. In contrast, the white cladding used in those parts of the side walls visible from Kingsbury Road and Mardale Drive does not complement the locality or match the main house.
13. However, the appellant suggests that planning permission could be granted subject to a condition relating to the materials used in the extension. While the removal of cladding from one side wall has exposed brickwork, it has also exposed blockwork that does not match the main house or complement the locality. As noted earlier, evidence has not been provided of what materials lie beneath the cladding on the other side, visible from Mardale Drive. The removal of the cladding alone would therefore not make the development acceptable. However, an alternative facing material, such as coloured render, could be applied and would help assimilate the extension into its surroundings.
14. A condition to secure the submission and approval of external materials and their implementation is necessary because it will ensure the extension adequately complements the locality and matches the main house. The development would then accord with policies DMP1 and BD1 of the Brent Local Plan 2019-2041 ("the BLP") and the Council's Supplementary Planning Document on Residential Extensions & Alterations ("SPD2").

Living conditions

15. The Council contends that the extension causes loss of outlook and light when viewed from surrounding residential premises. The extension stands close to the common boundaries with 116 and 120 Kingsbury Road but 1 Mardale Drive, to the rear, is on higher ground and therefore not significantly affected.
16. The gap between the extension and the dwelling at No. 120 serves to reduce the effect of the extension. Accordingly, the occupiers of that property continue to enjoy high levels of internal and external amenity.
17. The extension is closest to the house and back garden at 116 Kingsbury Road. No. 116 has been extended to the rear but the extension at No. 118 projects further. It may therefore have some effect on the outlook and light enjoyed by the occupiers of that dwelling, but the Council does not elaborate on this, and no representations have been made by the occupier. No. 116 occupies a corner plot and therefore enjoys a greater degree of separation from other buildings in all other directions. Viewed in this context, it is not apparent that the greater depth of the extension to No. 118 prevents the occupiers of No. 116 from maintaining high levels of internal and external amenity.
18. The extension therefore accords with policies DMP1 and BD1 of the BLP and SPD2 in this respect.

Fall-back

19. The Council had determined that a single-storey rear extension 6 m deep and with a maximum height of 2.88 m and an eaves height of 2.7 m does not

require prior approval. That means it is permitted by paragraph A.1(g) of Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the Order").

20. The permission granted by the Order is subject to conditions, including that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. Thus, if the appeal were to fail and the extension was demolished, any future exercise of the rights conferred by the Order would result in something similar to what may be achieved through the grant of conditional planning permission.

Conclusion

21. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall therefore grant planning permission for the erection of a single storey rear extension to the premises as described in the notice and subject to a condition requiring the submission and approval of details of facing materials.
22. In these circumstances the appeals on grounds (f) and (g) do not fall to be considered.

Formal Decision

23. 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 as amended for the development already carried out, namely the erection of a single storey rear extension to the premises at 118 Kingsbury Road, London NW9 0AY as shown on the plan attached to the notice and subject to the following condition:

- 1) Unless within 3 months of the date of this decision a scheme for the removal of the cladding from the walls of the extension and the treatment of the external surfaces of the exposed walls of the extension is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the extension shall be demolished and all debris and items arising from that demolition shall be removed from the land.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the extension shall be demolished and all debris and items arising from that demolition shall be removed from the land.

Upon implementation of the approved scheme specified in this condition, the external surfaces of the walls of the extension shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Mark Harbottle

INSPECTOR