



Appeal Decision

Site visit made on 28 July 2023

by K E Down MA(Oxon) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th August 2023

Appeal Ref: APP/T5150/D/23/3320754

2 Berkeley Road, London, NW9 9DG

- 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 Feroze Nisar against the decision of the Council of the London Borough of Brent.
 - The application Ref 22/4147, dated 9 December 2022, was refused by notice dated 13 February 2023.
 - The development proposed is a single storey rear extension, first floor extension and rear outbuilding with removal of rear side infill extension, reduction in depth of first floor rear extension and removal of first floor rear door to flat roof of dwellinghouse.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey rear extension, first floor extension and rear outbuilding with removal of rear side infill extension, reduction in depth of first floor rear extension and removal of first floor rear door to flat roof of dwellinghouse at 2 Berkeley Road, London, NW9 9DG in accordance with the terms of the application, Ref 22/4147, dated 9 December 2022, subject to the following conditions:
 - 1) Within 6 months of the date of this decision, the development hereby permitted shall be carried out in accordance with the following approved plans through alterations to the development as built: Location Plan, 442-PRE-EXT-01, 442-PRE-EXT-02, 442-EXT-03, 442-EXT-04, 442-PROP-05, 442-PROP-06.
 - 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing lawful building.

Procedural matter

2. Prior to the application which is the subject of this appeal, the Council served an enforcement notice in respect of various extensions at the appeal dwelling. The notice was appealed on grounds (b) and (d). These failed and the notice was upheld by decision notice ref APP/T5150/C/20/3256667 on 4 July 2022 and came into effect on 4 January 2023. However, the enforcement notice was not appealed on ground (a) – that planning permission should be granted. In
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December 2022 an application was made (now the subject of this appeal) to regularise the extensions, subject to a number of alterations.

Main Issues

3. There are two main issues. Firstly, the effect of the proposed first floor rear extension on the character and appearance of the host dwelling and wider locality; and secondly, the effect of the proposed outbuilding on the living conditions of occupiers of 3 The Paddock with respect to outlook and the effect of the proposed first floor rear extension on the living conditions of occupiers of 4 Berkeley Road with respect to outlook and light.

Reasons

4. The appeal dwelling comprises a traditional, hip-roofed semi-detached house with a modest rear garden backing onto a railway line in a cutting. It is attached to 4 Berkeley Road. Nos 2 and 3 The Paddock, which appear to be flats, lie to the south. The appeal dwelling has been extended in the past through a two storey side extension which is not the subject of this appeal. In addition, the submitted pre-existing plans show a single storey rear extension with a flat roof, a detached outbuilding on the southern boundary and a flat roofed first floor rear and side extension. The "existing" plans show further extensions and alterations to these. Alterations and reductions to the structures as built are the subject of the appeal before me which I have judged on its own merits.
5. The Council raises no objection to the retention of the single storey rear extension, as built, the removal of a rear side infill extension between the side extension and the outbuilding or to the removal of an external door from the first floor rear extension. The side infill extension had been partly removed at the time of my site visit. I agree that all these elements of the proposed development would be acceptable. I shall therefore restrict my further consideration to the first floor rear extension and the outbuilding.
6. The first floor extension, as proposed to be altered, would sit behind the side extension and part of the original rear elevation. It would have a depth of some 2.75m, a width of about 5.6m and a flat roof. Although the flat roof is not in keeping with the original dwelling, it mirrors the flat roofed design of the single storey extension below. Since it is both narrower and shallower than this, it appears sympathetic to, set-back from and subordinate to it. Although wide, in the context of the dwelling as a whole it occupies about two thirds of the extended width with about half the width of the original rear elevation remaining visible, such that the proportions do not appear unsympathetic or incongruous. Moreover, it would have no material effect on the wider locality.
7. The Council's Residential Extensions & Alterations SPD2 (SPD), 2018, allows for first floor extensions up to 3m deep. Although it expects roofs to match the design of the roof of the original dwelling, the document constitutes guidance and will not be applicable in every case. As reasoned above, in the context of the flat roofed single storey extension below, I find the flat roof at first floor to be acceptable in this case.
8. It is concluded on the first main issue that the proposed first floor rear extension would have no materially detrimental effect on the character or appearance of the host dwelling or the wider locality. In consequence, it would

comply with Policy DMP1 of the Brent Local Plan 2019-2041 (LP), adopted 2022 insofar as it relates to appearance. Amongst other things, this expects new development to be of a design that complements the locality.

9. Turning to living conditions of neighbours, the Council is concerned about the effect of the first floor rear extension on neighbours at No 4. The SPD sets out that two storey rear extensions should be no deeper than half the distance between the centre line of the closest habitable room window in the neighbouring property and the side wall of the extension. In this case the proposed extension would fail to comply, being 0.7m closer or 0.35m deeper than the rule would allow.
10. The appellant points out, and it is shown on the submitted plan, that notwithstanding the conflict with the SPD, the proposed extension would comply with the commonly used "45 degree rule" which requires an extension not to breach a line drawn at 45 degrees from the nearest habitable room window in a neighbouring property towards the proposed extension.
11. It is commendable that the Council seeks to apply a high standard of amenity. Nevertheless, guidance should be interpreted flexibly. In this case, the actual relatively generous layout and the open aspect to the rear of the dwellings, coupled with the modest conflict with the SPD satisfies me that the proposed extension would not materially harm the living conditions of neighbours at No 4 with respect to either outlook or light and would not result in an undue sense of enclosure.
12. With respect to the effect of the outbuilding on outlook from 3 The Paddock both the appellant and the neighbour state in evidence that the outbuilding has been in place for many years. My observations generally support that position. Nevertheless, the appeal is under s78 and hence the lawfulness of the structure is not before me to determine.
13. The Council is concerned that the lack of any set in from the shared boundary, coupled with the height of the outbuilding of 2.7m would result in an overbearing effect. Although the Council's delegated report suggests that for an outbuilding on the shared boundary an eaves height of 2.1m should be achieved this appears to deviate from the SPD which allows an eaves height of 2.5m on a shared boundary. It is not clear where the 2.1m standard has been derived from. Nevertheless, the proposed outbuilding exceeds the SPD standard by some 0.2m. However, there would be a gap on the boundary between the outbuilding and the dwelling which would provide a clear separation and degree of openness when seen from No 3. Moreover, the closest window in the rear elevation of No 3 would be some 5.5m from the closest corner of the outbuilding which would be sufficient to ensure that the height of the eaves did not result in an overbearing effect on the outlook from No 3.
14. It is concluded on the second main issue that the proposed first floor rear extension would have no materially harmful effect on the living conditions of occupiers of 4 Berkeley Road with respect to outlook and light and the proposed outbuilding would have no materially harmful effect on the living conditions of occupiers of 3 The Paddock with respect to outlook. In consequence, the development would comply with Policy DMP1 of the LP which, amongst other

things, expects development to provide high levels of internal and external amenity.

15. Turning to conditions, since the proposed development has already commenced a commencement condition is not necessary. However, the development, as applied for, has not been substantially completed since alterations are required. I therefore agree with the Council that conditions are necessary to ensure that the development is carried out in accordance with the approved plans and using external materials that match the existing lawful dwelling both for the avoidance of doubt and so as to protect the character and appearance of the surrounding area and the living conditions of neighbouring occupiers. Since the permission is in part retrospective, it is necessary to require the alterations to the development, as built, to be carried out within a fixed timescale. I have used a timescale of 6 months, this being the same as the timescale for compliance set out in the enforcement notice which was neither challenged nor altered through the enforcement appeal and which I therefore consider to be reasonable.

16. For the reasons set out above and having regard to all other matters raised, including the representations of third parties, I conclude that the appeal should be allowed.

KE Down
INSPECTOR