



Appeal Decision

Site visit made on 14 November 2023

by P D Sedgwick BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21.12.2023

Appeal Ref: APP/A5270/D/23/3317191

25 Melbury Avenue, Southall, Middlesex, UB2 4HR

- 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 Mrs B K Chahal against the decision of the Council of the London Borough of Ealing.
 - The application Ref 203450HH, dated 31 August 2020, was refused by notice dated 1 December 2022.
 - The development proposed is retention of single storey rear extension with proposed modifications to openings to rear elevation.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The name of the applicant on the planning application form was given as Ms Shelley Chahal. Ms Chahal has provided evidence that she informed the Council that this was a mistake and that she had submitted the application on behalf of her mother Mrs B K Chahal. In recognition of this, the Council subsequently issued the decision in her mother's name, which I have also used in the banner heading above.
3. In the interests of brevity and clarity I have taken the description of the development used by the Council in their decision notice as this omits words which are not a description of development.
4. Applications for costs have been submitted by the Council against the appellant and the appellant against the Council. These are the subject of separate decisions.
5. At the time of my visit, I saw that the development of the extension was substantially complete. I also note that the application has been submitted retrospectively. I have dealt with the appeal on that basis.

Planning History

6. The appeal site relates to a 2 storey detached house. The ground floor comprises a hallway with a study on the right and the lounge on the left. It leads to a reception room which then connects to the main kitchen. At the rear of the lounge, there is an ante room with access on one side to a utility room that connects to the appellant's separate kitchen and a toilet and washroom connected to the attached garage. On the other side the ante room has doors to

the main kitchen and the dining room. The extension surrounds the dining room on 3 sides, part of which next to the small utility room is used by the appellant as a kitchen. The rear section appears to be unused and the side nearest the main kitchen, labelled as a second utility room, contains a washbasin used by the appellant. The corner section to the rear of this utility room has been partially demolished.

7. There is an extensive planning history for the site dating back to 1997. I understand that prior to the extension subject of this appeal the property had already been extended to the side and rear. According to the Council, the current proposal is not materially different to that which was subject of appeals against the refusal of planning permission and against an enforcement notice in 2019¹. Those appeals were dismissed, and the enforcement notice upheld with amendments requiring the removal of elements that had not previously been permitted, and the site cleared of debris, within 9 months of the decision date (that is by 2nd January 2020). Demolition has not occurred, and the extension remains in place.
8. In the appeals decisions the Inspector concluded that the existing development, and proposed amended scheme, would harm the character and appearance of the host property and the outlook from neighbouring houses. In weighing up the planning balance, due regard was had to the Public Sector Equality Duty (PSED) under the Equality Act with the appellant's needs identified as an important consideration. However, the Inspector concluded that her needs, namely 2 adjacent bedrooms for the appellant and her carer, a shower room, sunroom, and extended kitchen on the ground floor, could, for instance, be met within the space approved for an extension permitted in June 2018². This would have avoided the harm to the living conditions of neighbours.
9. In paragraph 57 of the decision the Inspector stated "Further, I do not see a reasonable prospect of the appellant being able to demonstrate conclusively that the necessary facilities cannot be accommodated within the existing authorised floorspace. If I am wrong about that, and the appellant is able to provide conclusive evidence that further extension is indeed necessary, then a new planning application supported by that evidence would succeed."
10. The appeal proposal was submitted in response to the above wording. It includes, among other things, letters from a Building Surveyor and an Occupational Therapist which the appellant considers provides the conclusive evidence referred to by the Inspector.

Main Issues

11. The main issues in this appeal are the same as in the previous one. They are the effect of the proposed development upon:
 - the character and appearance of No. 25 Melbury Avenue and the surrounding area;
 - the living conditions of occupiers of Nos. 23 and 27 Melbury Avenue, with particular regard to outlook; and
 - the personal circumstances of the appellant.

¹ APP/A5270/W/18/3194178 and APP/A5270/C/18/3198333

² 181432HH

Reasons

Character and appearance

12. The extension covers the full width of the house. Although the upper part of the wall on one corner section has been demolished, it is proposed to retain some of the lower part of the wall and plant a small garden within it. The plans suggest that the propped up roof section would form a canopy over the garden. A rear opening would be widened to provide folding doors with access from the proposed bedroom to the garden. A carer's bedroom would be to the rear of the appellant's bedroom in the existing dining room. There would be no change to the extension in terms of its bulk and size. At a depth of 7m back from the already extended rear elevation, it is larger than those on nearby houses and appears out of proportion with the main house. It substantially exceeds the 3.5m guideline for rear extensions set out in the Council's Design Guidance (2022) (DG).
13. The existing and proposed openings are out of position with those on the upper floor, and the partially open corner section gives the extension an odd asymmetrical appearance. Overall, I conclude on this main issue that the development is out of scale with the host dwelling and surrounding development and fails to integrate with the main house in terms of its appearance and therefore conflicts with Policies 7.4 and 7B of the Ealing Development Management Development Plan Document (2013) (DMDPD), the aims of policies D1 and D4 of the London Plan (2021), the DG and the National Planning Policy Framework (2023) (the Framework) which require development of a high quality design that respects local character and has a positive visual impact.

Living conditions

14. The DG advises that where the depth of a rear extension exceeds 3.5m it needs to be justified by demonstrating that the massing protects residential amenity. The extension has created a 2.9m high, 7m long, brick side boundary wall with No 23 and from the rear garden and windows of that property will appear overbearing and visually intrusive. The design makes no attempt to mitigate its effect. The removal of part of the wall on the corner near the boundary with No 23 to some extent lessens its impact on the outlook from no 27, as does the gap between the extension and the boundary wall. But, as noted by the Inspector at the previous appeal, the canopy roof, and the pillar that would likely be necessary to support it, means that it remains a significant presence affecting the outlook from No 27. Although the appellant has suggested that a bracket could be used instead of a pillar, I am not convinced that it would support the roof, which would still be a visually intrusive feature. Overall, I conclude on this main issue that the development has an unacceptable impact on the living conditions of occupiers of neighbouring dwellings and therefore conflicts with the requirements of Policy 7b of the DMDPD, the Framework and the DG which requires development to provide a high standard of amenity for adjacent users.

The personal circumstances of the appellant

15. There is no dispute that the appellant has protected characteristics under the Equalities Act and a need for independent accommodation within her home. I accord her needs significant weight, as did the Inspector at the previous appeal.

I have also had regard to the rights of the appellant and her daughter under Articles 1 and 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998, which deal with the protection of property and the right to respect for family life, respectively. These are qualified rights, and interference may be justified where that is lawful and in the public interest. The concept of proportionality is crucial.

16. The key consideration in this case is whether the appellant has demonstrated that her needs can only be met within the current extension, rather than the reduced area under previous consents. If that were to be the case, then her personal circumstances might outweigh the identified harm. Although, I have not been provided with previously approved plans, the appellant submitted a plan, No 0821-03, which indicates the extent of the building line under the 2018 permission. I have no reason to doubt that it is correct.
17. Letters provided by the appellant from a Chartered Building Surveyor and Senior Occupational Health Therapist refer to having assessed alternative layout plans and a set has been provided to me, which I assume formed the basis of their assessments. Options 1 to 6 correspond with the indicative line of the 2018 permission, insofar as it relates to the NW corner of the extension. However, they also retain part of the opposite corner which has been partially demolished and is proposed for a general wellbeing and herb garden patio. That area does not appear to have been included in the 2018 permission. Nonetheless, I have considered the various options based on the footprint and layout provided.
18. The assessments concluded that it would be unreasonable to remove parts of the building, or reconfigure it internally, because of the cost to the appellant, the need to re-accommodate the appellant during the alterations, and the extent of works required, including re-plumbing, electrical works, and structural works. The occupational therapist also considered that none of the options would meet the appellant's needs for open plan living and for privacy, security, safety, and access to daylight.
19. I have carefully considered the various options and the accompanying assessments. As noted above, options 1 to 6 are based on removing a section of the existing extension on the northwest outer corner and option 7 is based on the existing extension. Option 2 would involve converting the lounge into 2 bedrooms, option 3 converting the garage into 2 bedrooms, option 4 converting the extended kitchen into the appellant's bedroom and shower room and the dining room into the carer's bedroom with the appellant's kitchen to the rear, option 5 converting the dining room into the appellant's room with the carer's bedroom to the rear and option 6 remodelling the ground floor with a new partition wall, although it is not clear where the bedrooms would be in option 6. I agree that these options are not ideal for several reasons including the poor access to natural light for the appellant's proposed bedroom, the relative inaccessibility of the garden from these rooms and the difficulty of providing accessible kitchen and bathroom facilities.
20. Option 1 is described as re-modelling as suggested by the Inspector, and Option 7 is the proposal subject of this appeal. Option 1 would involve converting the ante room between the lounge and dining room into a carer's bedroom which was suggested as a possibility by the Inspector in the previous appeal. The assessments rejected this scheme on various grounds including that there is no

capacity to place a window in the room, and because it has doors providing access to other rooms and would therefore offer no privacy or security.

21. However, those reasons for rejecting Option 1 would also apply to the appeal proposal, which is to convert the dining room into the carer's bedroom. The dining room is surrounded by other rooms. Its existing window, which would be retained, faces into the utility room which would become the extended kitchen. It would offer no privacy, ventilation, or outlook. Furthermore, the room could be entered from the main kitchen, ante room, and the appellant's bedroom, similarly offering little privacy and security.
22. More importantly, it appears to me that the appellant has not considered other logical alternatives that would enable her needs to be met along the lines of Option 1 – using the ante room as a carers room - and within the same footprint, without requiring substantial rebuilding works and providing a similar level of amenity as the proposed development. For instance, the utility room by the main kitchen could be subdivided into a level access shower area, and a utility room. That would obviate the need for a door connecting the other utility room to the ante room or enable it to be converted to a toilet for the carer or the appellant. Although this would prevent the main kitchen from being extended, it is big enough to provide for the needs of the remaining household. Alternatively, instead of extending the main kitchen into the utility room, the utility room could be converted into a personal kitchen for the appellant. The dining room could provide additional space linked to her bedroom and possibly provide an alternative location for the level shower area. Taking out the dining room window to link it to the utility room, if it were to be converted to the appellant's personal kitchen, would also provide a more open plan layout. If the existing kitchenette was to be retained instead, it would need a door from the dining room, but that would not necessarily require substantial works.
23. These observations are not intended as proposed alternative layouts. They are simply to illustrate that there are potential ways of meeting the needs of the appellant that have not been considered in the options. In my view, the appellant has not therefore provided conclusive evidence that her needs could not be met within a smaller footprint than that proposed, which was suggested by the previous Inspector as necessary to justify the development and outweigh the harm identified.
24. I also note that costs were identified as a significant factor in rejecting various options. However, none of the options have been costed, including the appeal proposal. Neither has the cost of bringing the existing extension up to a reasonable habitable and safe condition been considered. The proposed development would require additional, and likely expensive, works and significant disruption to the appellant. The existing kitchen wall would need to be removed to extend the kitchen into the second utility room. That utility room has a bathroom washbasin but is otherwise unfinished and is only currently accessible from the garden. The kitchen used by the appellant has exposed wiring and there is no level shower installed in the bedroom area. Brickwork would need to be removed to install the proposed by folding doors. It is therefore difficult to make any meaningful comparisons between the different options on a cost basis.
25. I have had regard to the impact statement submitted by the appellant. I sympathise with the stress and discomfort that she experiences from relying on

parts of the house that remain largely unfinished and therefore not suited to meeting her acknowledged needs. I also accept that she may have made a genuine mistake in assuming that the development was authorised under the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

26. Nonetheless, I conclude on this main issue that, whilst her needs are important and carry significant weight, it has not been demonstrated that the proposed layout is the only option that could meet those needs. Also, based on the evidence before me, I am not convinced that the disruption and expense that would be incurred in meeting her needs within a reduced floor size would be significantly greater than that necessary to finish the development to a safe and satisfactory standard.

Other matters

27. My attention has been drawn to other development proposals that have been recently permitted by the Council and examples of planning appeal decisions where the personal requirements of the appellant outweighed identified harm. I will address some of these but note that each proposal must be considered on its individual merits against the relevant policies and taking account of other material considerations.
28. The appeal scheme in Wakefield³ was an amendment to a previous scheme where the depth of the extension had been reduced to overcome amenity concerns, although the effect on the character and appearance of the building remained an issue. However, the Inspector could not see how the specific needs of the family could otherwise be met, which is not the case with the appeal proposal. The appeals in Farnham⁴ and Chaldon⁵ were in the Green Belt and had no impact on neighbouring amenity. The appeal proposal in Hounslow⁶ had no impact on neighbouring amenity, nor did the extensions in Chigwell⁷ and Beaconsfield⁸. In the appeal decision for 74 Melbury Avenue⁹ the Inspector noted that vegetation along the side of the boundary would provide some visual screening. It was also for a 6m rather than a 7m extension. None of these examples are therefore directly comparable with the appeal proposal.
29. The appellant has provided several satellite images of houses nearby on Melbury Avenue, Tentelow Lane and Minterne Avenue. However, it is difficult to see from these images whether they are the same depth as the appeal extension and without visiting the sites it is not possible to assess their impact on the outlook of neighbours. I assume many of these predate the Council's design guide. In any case, I have come to my own view regarding the development rather than relying on the approach the Council may have taken elsewhere.
30. Concerns raised by the Appellant in relation to the Council's handling of the application and the legality of any future enforcement action must remain matters between the main parties. My remit is limited to assessing the

³ Appeal Ref: APP/X4725/D/20/3252099

⁴ Appeal Ref: APP/Y3615/D/12/2168348

⁵ Appeal A Ref: APP/M3645/C/17/3171241

⁶ Appeal Ref: APP/F5540/D/21/3280

⁷ Appeal Ref: APP/W5780/D/21/3277603

⁸ Appeal Ref: APP/A5270/D/17/3185395

⁹ Appeal Ref: APP/A5270/D/18/3194898

planning merits and impacts of the proposed development, and I have reached my decision on this basis.

31. I have considered the issues raised in representations regarding the potential for the appeal proposal to create a precedent, the effect of the development on daylight to neighbouring properties and the condition of the appeal site but these do not add to my reasons for dismissing the appeal.

The Overall Planning Balance

32. I have had regard to the PSED and given significant weight to the needs of the appellant. However, it would be disproportionate to allow permanent harm to the character and appearance of the building and area, and the living conditions of neighbours, when the needs of the appellant could be met by a less harmful form of development.

Conclusion

33. For the reasons given above I conclude that the appeal should be dismissed.

P D Sedgwick

INSPECTOR