



Appeal Decisions

Site visit made on 17 September 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2024

Appeal A: APP/T5150/C/23/3314617

98 Sudbury Court Drive, Harrow HA1 3TF

- 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 A Bhade of FPG (UK) Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 9 December 2022.
- The breach of planning control as alleged in the notice is without planning permission, The removal of two chimney breasts and stacks and the alterations to the front facade of the property and the installation of new windows, The erection of a dormer window roof extension covering the front sides and rear of the property; The erection a party two storey, part single storey side and rear extension to the dwellinghouse; The installation of a hardstanding to the front of the premises.
- The requirements of the notice are to:
 - STEP 1 Demolish the dormer window roof extension, covering the front sides and rear of the property and the part two storey, part single storey side and rear extension to the dwellinghouse.
 - STEP 2 Remove the hardstanding to the front of the premises.
 - STEP 3 Rebuild the two chimney breasts and stacks as shown in PHOTOGRAPH A attached to the notice.
 - STEP 4 Alter the front façade, and windows as shown in PHOTOGRAPH A attached to the notice.
 - STEP 5 Restore the premises to the condition of the premises as shown in PHOTOGRAPH A attached to the notice, excluding the white canopy to the side of the premises.
 - STEP 6 Remove all debris and items, arising from compliance with STEPS 1 and 5, and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B: APP/T5150/W/23/3314121

98 Sudbury Court Drive, Harrow, Brent HA1 3TF

- 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 A Bhade of FPG (UK) Ltd against the decision by the Council of the London Borough of Brent.
 - The application Ref 22/2457, dated 11 July 2022, was refused by notice dated 1 December 2022.
 - The development proposed is roof extensions and alterations.
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Decisions

Appeal A - APP/T5150/C/23/3314617

1. It is directed that the enforcement notice is corrected and varied by:

- (1) Deleting the words *The erection a party two storey, part single storey side and rear extension to the dwellinghouse* from Schedule 2 of the enforcement notice and replacing them with the following; *The erection of a part two storey, part single storey side and rear extension to the dwellinghouse.*
- (2) Deleting STEPS 3 – 6 (inclusive) from Schedule 4 of the enforcement notice and replacing them with the following: *STEP 3 Restore the premises to its previous condition before the breach of planning control took place. STEP 4 Remove all debris and items, arising from compliance with STEPS 1 - 3.*

2. Subject to this correction and variations, the appeal is dismissed, and the enforcement notice is upheld.

Appeal B - APP/T5150/W/23/3314121

3. Appeal B is dismissed.

The Enforcement Notice

4. I have corrected the typographical error in respect of the part two storey, part single storey side and rear extension.
5. The appellant's case under ground (f) was made in respect of steps 3 - 5 of the notice, on the basis that they are not clear because they refer to a photograph which is not clear and only provides a front elevation. The picture also only shows one chimney and no chimney breasts.
6. The photograph is limited in detail. Since there is no dispute that there were two chimneys, it is sufficient to require the land to be restored to its previous condition, and the landowner should have the best knowledge of what that condition was, I shall vary the requirements accordingly.
7. There is no injustice to either party since these variations neither enlarge nor reduce the scope of the requirements.

Preliminary Matters

8. In respect of Appeal A, the terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice and as built.
9. Appeal B proposes the retention of two side dormer windows (wraparound dormer) and two front rooflights, the demolition of the existing first floor side extension and proposed roof alterations to the first-floor rear extension. Accordingly, I have considered Appeal A based on my site observations and Appeal B based on the submitted plans.
10. However, since the considerations in Appeal A are the same as for Appeal B I have considered the appeals together.

Appeal A on ground (c)

11. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is on the appellant

- to demonstrate that the matters alleged in the notice do not constitute a breach of planning control.
12. There is no dispute between the main parties that the works amount to development within the meaning of development as set out in section 55(1) of the 1990 Act, for which planning permission is required.
 13. The appellant's case relates to the removal of the chimney stacks and external chimney breasts, the installation of new windows, the alterations to the front façade and the hardstanding. The appellant's contention is that the developments are permitted by Article 3 Schedule 2 Part 1 of The Town and Country Planning (General Permitted Development) (England) (Order) 2015 (as amended) (the GPDO).
 14. Article 3(5) of the GPDO provides that the planning permission granted by the Order does not apply if in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.
 15. It is an established principle that, where the word 'building' is defined for the purposes of an Order as including 'part of a building', and the operations involved in the construction of any part of a building are unlawful, Article 3(5) serves to disapply permitted development rights granted in respect of that building.
 16. The appellant did not dispute that the developments were carried out as a single act. Moreover, there is no dispute that the extensions to the side, rear and roof are a breach of planning control.
 17. Accordingly, since part of the building has not been constructed lawfully, then the removal of the chimney stacks and external chimney breasts, the installation of new windows, the alterations to the front façade, and the hardstanding cannot constitute permitted development.
 18. Even if I am wrong, Part 1 Class A of the GPDO grants planning permission for the enlargement, improvement, or other alteration of a dwellinghouse subject to conditions and limitations. Condition A.3. (a) states that *the materials used in any exterior work (other than materials used in the construction of a conservatory) must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.*
 19. The Government's Technical Guidance¹, which is an aid to the interpretation of this condition says: *The condition above is intended to ensure that any works to enlarge, alter or improve a house result in an appearance that minimises visual impact and is sympathetic to existing development. This means that the materials used should be of similar visual appearance to those in the existing house but does not mean that they need to be the same materials.*
 20. An example is: *it may be appropriate to replace existing windows with new uPVC double-glazed windows or include them in an extension even if there are no such windows in the existing house. What is important is that they give a similar visual appearance to those in the existing house, for example in terms of their overall shape, and the colour and size of the frames.*

¹ Permitted development rights for householders Technical Guidance Ministry of Housing, Communities and Local Government September 2019

21. In this case whilst the ground floor bay window gives a similar visual appearance, that at first floor in the bay is smaller and the panes have a horizontal emphasis. That above the door has replaced a small projecting bay window and since the window is flush with the elevation and has chunky frames, it clearly does not have a similar appearance to the window it replaced. The first-floor replacement windows would not have therefore constituted permitted development.
22. In respect of the hardstanding, the appellant acknowledges that it would fail the condition at Part 1 Class F.2. that *either the hard surface is made of porous materials, or provision is made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.*
23. In respect of the removal of the chimney breasts and stacks, the Council issued a lawful development certificate (LDC) for a proposed dormer extension which included their removal, so must have considered this to constitute permitted development at that time, and I need not consider this further.
24. However, for the reasons given, the developments are not permitted by any development order and there is no record of planning permission having been granted for them. The appeal on ground (c) therefore fails.

Appeal A on ground (a) and the deemed planning application and Appeal B

Main Issue

25. The main issue is the effect of the existing and proposed development on the character and appearance of the house and area generally.

Reasons

Character and appearance

26. The appeal site is in a residential area, which is generally characterised by detached dwellings. The dwellings incorporate a similar pallet of materials with the main external materials being brick and render and the dwellings typically having hipped roofs and other features such as bays, tall chimneys, and mock Tudor detailing.
27. Whilst there is some consistency in these respects, the dwellings do not have a uniform appearance. Many have been altered and extended, including replacement windows, side extensions and dormer windows. However, for the most part such alterations have attempted to reflect or be sympathetic to the original character of the dwellings, albeit some more successfully than others.
28. Most dwellings retain some areas of landscaping to the front where others have been covered with hard surfacing. Landscaping to front gardens in combination with tree planting along the road helps to soften the visual impact of the drives and parking areas behind and contributes to a pleasant, landscaped street scene.
29. To the rear I observed that dwellings in the vicinity, include extensions of varying design including single storey flat roof and first floor extensions, such that the rear elevations do not have a uniform appearance.

30. Policy BD1 of the London Borough of Brent, Brent Local Plan 2019-2041 Adopted February 2022 (Local Plan) requires development to be of the highest architectural and urban design quality.
31. Policy DMP1 of the London Borough of Brent Local Plan November 2016 Development Management Policies (DMP) sets out that development will be acceptable provided that it is, amongst other things, of a scale, detailing and design that complements the locality.
32. The National Planning Policy Framework (the Framework) states that planning decisions should ensure developments are visually attractive as a result of good architecture, layout, and appropriate and effective landscaping and sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change.
33. The two-storey side extension is at first floor level, set back from the front elevation of the original house and, notwithstanding the dormer which I go on to consider below, incorporates a roof form to match. Viewed from the street, it would, without the dormer, appear as a subservient addition which would not detract from the appearance of the house or street scene.
34. To the rear the extension includes a two-storey part which has a hipped roof form to match the original house. The single storey element has a flat roof and straightforward appearance. Viewed in context with the varied rear elevations and given the use of roof forms, for the most part, to match the existing house, I consider those parts of the development would cause no material harm to the appearance of the house or area.
35. However, the development includes a substantial dormer, which effectively wraps around the sides and rear of the house and over the ridge of the side extension. This awkward clumsy relationship is clearly visible from the front and approaching from the east, and in such views the dormer appears as a prominent and significantly incongruous addition, poorly related to the character and appearance of the house.
36. Whilst the use of uPVC is not harmful in this context, the chunky construction and horizontal emphasis of the panes in the first-floor windows is not sympathetic to the character of the house and they are an inferior replacement for the previous windows.
37. It is evident from the submissions that the house previously had an established and what appeared to be well-maintained garden to the front. Such landscaping made a significant contribution to the setting of the house and the appearance of the area. In contrast the hardstanding covers the entire frontage and has a harsh and uninteresting appearance which has a detrimental effect on the street scene.

Fallback

38. The appellant referred to their fallback position which is a previously certificated scheme for a loft conversion with side and rear dormer windows and installation of two side and one front rooflight. I have had regard to the appeal decisions provided, and it is an established principle that the prospect of the fallback position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect.

Although the possibility of the fallback position happening may be very slight, this is sufficient to make the position a material consideration.

39. However, for significant weight to be afforded to a fallback position there needs not only to be a real possibility of it being carried out, but it would also need to be equally or more harmful than the appeal scheme.
40. The dormer in the certificated scheme would be set back from the front elevation and contained within the side and rear roof slopes. Whilst it would include the loss of the chimneys and the design is similarly box like, it would not extend over the ridge and have the same awkward relationship when viewed from the front. Moreover, that scheme would not include the loss of detailing, including the projecting first floor bay window above the front door. For all these reasons, the certificated scheme would be less harmful than the appeal scheme and its existence is therefore a matter of little weight.
41. In respect of the hardstanding, the appellant has provided no details of what could be provided as permitted development, this is therefore a matter of little weight.

Appeal B

42. The proposed dormer would reflect that in the certificated scheme. However, the Council's SPD² sets out, in respect of two-storey rear extensions, that the design, shape and materials of the roof must match the original roof. The proposal includes the retention of part of the two-storey rear extension and the replacement of its roof with a flat roof which would appear poorly related to the house's character and style. Whilst flat roofs are not unusual on single storey extensions, at first floor level this would appear significantly incongruous.
43. Overall, for the reasons given, the existing and proposed developments have and would cause material harm to the character and appearance of the house and area, contrary to Policies BD1 and BT2 of the Local Plan, DMP1 of the DMP and the design aims of the Framework.

Other matters

44. The Council referred to Policy D3 of The London Plan 2021 which relates to optimising site capacity, the strategic aims of which are not relevant to the detailed considerations in this case.
45. That there is no harm to the living conditions of neighbouring residents and the site is not in a conservation area, are neutral matters that cannot outweigh the identified harm.

Conclusion on Appeal A on ground (a) and Appeal B

46. For the reasons given, I conclude that Appeal A on ground (a) and Appeal B should not succeed.

The appeal on ground (f)

47. The appellant's case under ground (f) I have already considered above.

² Residential Extensions & Alterations SPD 2 Jan 2018

The appeal on ground (g)

48. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested a period of nine months to allow sufficient time to seek quotes from builders who are in short supply because of Brexit, and to carry out the necessary works.
49. The purpose of the period within an enforcement notice is to allow for the physical works associated with the notice to be removed. The appellant's submissions largely relate to the time before the works can commence.
50. In the absence of substantive explanation regarding the availability of builders, I consider the period of six months, as specified in the notice, is proportionate to the breach of planning control that has occurred.
51. Accordingly, the appeal on ground (g) fails.

Conclusions

52. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
53. Appeal B is dismissed.

Felicity Thompson

INSPECTOR