



Appeal Decision

Site visit made on 8 January 2013

by Mike Robins MSc BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 February 2013

Appeal Ref: APP/T5150/A/12/2180789

The Kilburn, 311 Kilburn High Road, London NW6 7JR

- 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 Sundial Capital Corporation against the decision of the Council of the London Borough of Brent.
 - The application Ref 12/0343, dated 8 February 2012, was refused by notice dated 19 July 2012.
 - The development proposed is a change of use from use class A4 and D2 to A1, A2 and for A3 on the ground floor and student accommodation on the first floor, with a new second floor and set-back third floor, also accommodating student accommodation.
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Decision

1. The appeal is allowed and planning permission is granted for a change of use from use class A4 and D2 to A1, A2 and for A3 on the ground floor and student accommodation on the first floor, with a new second floor and set-back third floor, also accommodating student accommodation, at The Kilburn, 311 Kilburn High Road, London NW6 7JR in accordance with the terms of the application, Ref 12/0343, dated 8 February 2012, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1267-P4-001, 1267-P4-020, 1267-P4-021, 1267-P4-022, 1267-P4-023, 1267-P4-024, 1267-P4-025, 1267-P4-026, 1267-P4-027, 1267-P4-029, 1267-P4-030, 1267-P4-031 and 1267-P4-040.

Application for costs

2. An application for costs was made by Sundial Capital Corporation against the London Borough of Brent. This application is the subject of a separate Decision.

Procedural Matters

3. A Unilateral Undertaking, signed and dated 22 October 2012, was submitted by the appellant under the provisions of the Town and Country Planning Act 1990. This was to address contributions sought by the Council, as well as to set out the requirement for the development to be primarily occupied by students and to be car free, through the removal of entitlement to parking permits.

4. I consider the matter of contributions later in my decision, however, the other matters relate to the Council's third and fourth reasons for refusal. I am satisfied that the undertaking has been properly made and that the provisions would address these concerns.

Main Issues

5. Consequently, I consider that there are two main issues in this case, firstly the effect of the proposed student accommodation on the provision of residential housing in Brent, and secondly, whether the proposal makes reasonable provision to mitigate its impact on infrastructure and services in accordance with adopted policies.

Reasons

6. The appeal site is a large building fronting onto a busy shopping area of Kilburn High Road. Formerly in use as a public house, function room and gym, the site has been cleared and the interior stripped. It forms part of a larger building, of which the neighbouring part has been extended with an additional storey. Surrounding buildings are also generally of a similar scale or higher than the existing appeal site. The site is in a highly sustainable location with shops and services nearby and excellent public transport links.
7. There have been a number of proposals to redevelop the site, including the most recent planning permission¹, which allowed for the change of use to nine flats with retail units at ground floor, albeit subject to a legal agreement. The appeal proposal retains a very similar external form as well as retail provision, but would provide for 34 purpose-built student units in place of the flats.

Housing Provision in the Borough

8. The appellant provided a Socio-economic Impact Assessment, by Quod, which drew on a Student Accommodation Report prepared by Knight Frank. The outcome of these studies suggested that there was a significant unmet demand for purpose-built student housing in Brent, the provision of which would result in positive economic gains for the local area. Although the Knight Frank report acknowledged there were no universities or higher education institutes in Brent itself, it set out the level of demand across London, as well as the proximity of the site to up to 35 institutions within 30 minute travel time.
9. The Council's objections centred on the loss of this site for residential accommodation, noting that while Brent has targets and an acknowledged need for housing, student accommodation would not meet an identified need in the Borough.
10. The development plan for this area includes the Spatial Development Strategy for Greater London, (the London Plan), adopted July 2011, the Brent Core Strategy, (the Core Strategy), adopted July 2010, and saved policies from the Brent Unitary Development Plan, (the UDP), adopted 2004. Central to the Council's case on this matter is Policy CP21 of the Core Strategy. This policy seeks to provide for a balanced housing stock, which should include, among others, an appropriate range and mix of self-contained accommodation, including family sized accommodation. The policy also refers to non-self

¹ 11/1739

contained accommodation that meets identified needs, which accompanying text² indicates includes student accommodation.

11. The London Plan acknowledges the importance of higher and further education to London, and supports coordinated working between Boroughs and other stakeholders to plan for student accommodation in locations with good public transport access³. It sets out in Policy 3.8 the need to plan strategically for student housing, without compromising capacity for conventional homes. The text accompanying this policy does note that there is uncertainty over future growth, but indicates a large potential requirement. Paragraph 3.53 addresses the concerns regarding the need to secure mixed and balanced communities with a focus on affordable family homes and on areas where student accommodation could become concentrated.
12. The Council state that there are no specific targets identified for student housing in the Borough's Core Strategy, and this has not been challenged. The appellant has provided evidence highlighting a need both locally and more strategically across London. I consider it may be overly simplistic to suggest that student numbers, indicated by census returns in Brent, can be set against the current provision of student accommodation to conclude a 'massive under-supply of student accommodation'. Nonetheless, the location is a sustainable one. I noted the presence of the Institute of Contemporary Music nearby and consider the site is strategically well placed to support the local further education establishments, as well as higher education centres outside of the Borough.
13. On the evidence before me I am satisfied that there would be demand for such accommodation. Although the Council have identified sites where they have previously accepted student accommodation, the factual conclusions of the appellant's reports have not, in my view, been countered by evidence indicating that demand for such housing in Brent has been met.
14. The matter therefore centres on whether the provision of student housing here would compromise the delivery of conventional homes, in accordance with the Borough's approach to a balanced housing stock. The appeal site does not appear to have been allocated for housing, and while it may benefit from a permission for change of use, the delivery of that scheme cannot be guaranteed.
15. While the previous planning permission can therefore be considered a material consideration, and I accept that it may have been included within the Annual Monitoring Report, (the AMR), its weight is limited as the Council cannot require delivery of flats here. The appellant suggests that the AMR indicates that Brent has met its own housing targets in any event. I am conscious, however, that this statement is tempered by the acknowledgement that specific needs remain, particularly in relation to affordable and accessible homes and larger family accommodation.
16. The proposal would result in a sustainable reuse of a currently unused site. Although the scheme would remove the option for the site to be developed for flats, it is not in such use presently and such a development cannot be guaranteed. It cannot therefore be concluded that it would compromise the

² Paragraph 5.79 (UDP)

³ Paragraph 3.107 (London Plan)

capacity for conventional homes. As indicated in the London Plan⁴, such schemes also have the potential for freeing up conventional housing that would otherwise be occupied by students. In the absence of material evidence challenging the appellant's assessment of need, I consider the proposal complies with the London Plan Policy 3.8 and Core Strategy Policy CS21.

Infrastructure and Services

17. The Council identified that they considered the development should address impacts on local infrastructure and services through contributions towards sustainable transport improvements, open space and public sports facilities. They confirmed that they were seeking a contribution of £1500 per unit, identified as being a 50% reduction on the standard contribution sought. I have considered this in light of the Framework, paragraph 204, and the statutory tests introduced by Regulation 122 of The Community Infrastructure Levy (CIL) Regulations, 2010.
18. The submitted undertaking identified a contribution of £51,000, but sets out in its Schedule that this would be subject to a finding, in this decision, that the contribution complies with Regulation 122. An executed obligation once submitted has legal effect, which does not cease by including such a clause within the Deed. While the effectiveness of such a clause is therefore questioned, on its own it does not invalidate the obligation.
19. The appellant further questions whether the Council approach set out in their Supplementary Planning Document (SPD) *S106 Planning Obligations, 2007*, applies to this development and whether sufficient justification had been provided for the amount sought.
20. The proposal would introduce additional residents into the area, which would have implications in terms of the pressure on the local transport infrastructure. There would be limited amenity space provided, and it is reasonable to conclude that these new residents would utilise existing open space and sports provision, both of which are shown in the SPD to be under pressure. I note that the Council do not consider that a contribution toward education provision is necessary.
21. On the face of it therefore, the requirements set out in UDP Policy TRN4 regarding transport and Policy OS7 regarding the provision of open space, establish the requirement for contributions to address additional pressures that are directly related to the proposal. The SPD does not appear to exclude student accommodation, indeed it has a section which deals with specific heads of terms relating to it. The contributions are therefore necessary to make the development acceptable in planning terms.
22. The SPD sets out amounts based on a calculation assessing provision and costs against projected development, but revises this to a lower standard charge based on previously agreed contribution rates. Standard charges can be useful to give clarity and certainty to the process, although the document notes that each case will be addressed individually, notably when there are concerns over viability. In this case, although the figures set out in the SPD are due for review, I am satisfied, on the evidence before me, that the standard charge is fairly and reasonably related to the scale of the development.

⁴ 3.52 (London Plan)

23. The Council have not set out specific schemes or areas where the money would be spent, however, the SPD does include reference to the financial demands of the Boroughs parks, gardens and sport pitches as well as transportation improvements, set out in the Local Implementation Plan. It further explains how the contributions will be pooled, but confirms that spend will be on projects within the local area affected by the development. I consider that in this location, this approach acceptably addresses the matter of ensuring the contribution is directly related to the development.
24. Having regard to Regulation 122, I therefore consider that the proposal will adequately address impacts on infrastructure and services in accordance with the development plan, and have taken the provisions of the submitted undertaking into account in considering my decision on this appeal.

Other matters and Conditions

25. The appellant alleged that the Council had been inconsistent in their assessment in light of an earlier decision referred to as Dexion House. Here it appears that a previous permission for conventional homes had existed prior to the grant of permission for student accommodation. While the circumstances appear superficially similar, I am satisfied that the Council viewed the mix of housing and the need for residential development to be different within the Wembley Opportunity area. In any case each application and appeal must be considered on its own merits.
26. Neither the Council nor the appellant have indicated the need for any conditions. For the avoidance of doubt and in the interests of proper planning, it is necessary that the development shall be carried out in accordance with the approved plans, I have therefore included conditions only related to plans and to implementation.

Conclusion

27. The Council have relied on a material consideration, the previous planning permission, to argue that the proposed student accommodation would compromise the delivery of housing. In this case, however, such a consideration does not outweigh the benefits associated with this scheme, both in terms of the provision of student accommodation and economic benefits to the local area. No other harms have been alleged by the Council in relation to this scheme, and I am satisfied that it represents sustainable and deliverable development.
28. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Mike Robins

INSPECTOR



Appeal Decision

Site visit made on 6 February 2013

by D A Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 18 February 2013

Appeal Ref: APP/T5150/D/12/2186361

1 Mildrose Court, Malvern Mews, London, NW6 5PT

- 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 N Aitken against the decision of the Council of the London Borough of Brent.
 - The application Ref 12/1360 was refused by notice dated 7 August 2012.
 - The development proposed is an extension at the rear first floor level to house the kitchen.
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Decision

1. The appeal is allowed and planning permission is granted for an extension at the rear first floor level to house the kitchen at 1 Mildrose Court, Malvern Mews, London, NW6 5PT in accordance with the terms of the application, Ref 12/1360, dated 21 May 2012, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 534/1, 534/2, 534/3, 534/4, 534/5, 534/6, 534/7, 534/8 & 534/9.
 - 3) Notwithstanding condition 2, the materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Main issues

2. The main issues are the effect of the proposal on the living conditions of nearby residents at 33 and 35 Saltram Crescent, with particular reference to visual impact; and on the character and appearance of the host property and the adjacent property, 2 Mildrose Court.

Reasons

Effect on living conditions

3. The appeal relates to an end of terrace mews property on Mildrose Court. It has a small side and rear garden area, backed by a tall wall which forms a common boundary with Nos 33 and 35 Saltram Crescent to the west. A ground floor rear extension already exists at the appeal property, extending right to this boundary wall. The appeal proposal seeks to erect a first floor extension some 1.6m deep and spanning the full width of the property, above the existing ground floor

addition. This would bring the first floor in line with a rear extension which has already been approved at the adjacent dwelling, 2 Mildrose Court.

4. The rear roof slope would be extended over the proposed first floor addition and would contain velux rooflights to light the internal accommodation. A high-level, rear-facing window would also be inserted to replace the existing window in this elevation, which currently provides some views into the rear garden areas of 33 and 35 Saltram Crescent. However, any such views are filtered by the tall trees which exist in the gardens of both of these neighbouring properties.
5. The angled alignment of the boundary between the appeal property and these Saltram Crescent dwellings means that the proposed extension would lie some 0.85m from the boundary with No 33 at its southern end, and about 1.3m from the boundary with No 35 at its northern end. This would bring built form closer to the rear gardens of Nos 33 and 35, but as these gardens are of a reasonable size I am not persuaded that the proposed extension would appear unduly obtrusive or overbearing when viewed either from rear windows of these Saltram Crescent dwellings, or from their gardens.
6. In coming to this view I have noted that properties further to the north in Malvern Mews are built up to the rear boundary of their plots, such that many of these dwellings lie much closer to their Saltram Crescent neighbours than would be the case with the extended appeal property. Moreover, as already noted, tall trees in the rear gardens of Nos 33 and 35 provide some mutual shielding between the appeal property and these dwellings. Although these trees lie outside the appellant's control, he has discussed this matter with these neighbours who have indicated that they have no plans to remove the trees completely. Indeed, the owner of No 35 has specifically carried out only limited pruning of his trees in recent months.
7. In view of the above points I conclude that the proposed rear extension would not have an adverse impact on the living conditions of residents at 33 and 35 Saltram Crescent, through overbearing impact. Accordingly I find no conflict with policy BE9 from the Brent Unitary Development Plan (UDP). Amongst other matters this policy requires new development to be laid out to ensure that buildings and spaces are of a scale, design and relationship to each other which promotes the amenity of users and provides a satisfactory level of outlook for existing and proposed residents. Similarly I find no conflict with the Council's Supplementary Planning Guidance (SPG) "Altering and extending your Home".

Effect on character and appearance

8. I have noted the Council's comment that the eaves height of the proposed rear extension and the new roof itself would be higher than the roof to the differently designed first floor extension at the adjoining property, No 2. However, although there would be a clear difference in design between these two extensions, the rear elevations of these two dwellings are not readily seen from public viewpoints.
9. In these circumstances, and because of the relatively modest size and scale of the development proposed, I conclude that no significant harm would be caused to either the character or appearance of the appeal property, or to that of No 2. As a result I again find no unacceptable conflict with the UDP policy and SPG referred to above.

Conclusion

10. In view of my favourable findings on both main issues, my overall conclusion is that this appeal should be allowed, subject to a number of conditions. For the avoidance of doubt and in the interests of proper planning I have imposed a condition defining the plans upon which this decision has been based. In addition, to ensure that the proposed extension has a satisfactory appearance I have imposed a condition requiring external materials to match those used in the existing dwelling.
11. I have had regard to all other matters raised, but they are not sufficient to outweigh the considerations which have led me to my conclusion.

David Wildsmith

INSPECTOR



Appeal Decision

Site visit made on 6 February 2013

by **David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 February 2013

Appeal Ref: APP/T5150/D/12/2189298

1 Mentmore Close, Harrow, Middlesex, HA3 0EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by conditions of a planning permission.
 - The appeal is made by Dr S Rahman against the decision of the Council of the London Borough of Brent.
 - The application Ref 12/2009, dated 8 August 2012, sought approval of details pursuant to conditions Nos 4 & 5 of a planning permission Ref 11/2383, granted on 12 December 2011.
 - The application was refused by notice dated 15 November 2012.
 - The development proposed is a 2-storey side extension and ground floor rear extension and internal alterations.
 - The details for which approval is sought are: the materials for all external work; and further details of the windows to the front elevation of the side extension.
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Decision

1. The appeal is **allowed** insofar as it relates to the materials for all external works; and the details submitted pursuant to condition No 4 attached to planning permission Ref 11/2383, granted on 12 December 2011 in accordance with the application dated 8 August 2012 and the details submitted with it, are approved.
2. The appeal is **dismissed** insofar as it relates to the further details of the windows to the front elevation of the side extension; and the details submitted pursuant to condition No 5 attached to planning permission Ref 11/2383, granted on 12 December 2011 in accordance with the application dated 8 August 2012 and the details submitted with it, are not approved.

Preliminary matters of clarification

3. The application for the approval of details reserved by condition, dated 8 August 2012, indicates that the development approved under Ref 11/2383 had been started but not completed. However, at the time of my site visit the side extension appeared to be substantially complete and windows had been installed. The Council Officer's Delegated Report on this matter notes that works which were not approved as part of application Ref 11/2383 have also taken place, including the replacement of all the windows to the front elevation of the dwelling and the removal and paving over of some of the soft landscaping to the front boundary.
4. The appeal property lies within the Northwick Circle Conservation Area. This area is also covered by a Direction under Article 4(2) of the Town and Country Planning (General Permitted Development) Order 1995, preventing certain acts of development from being carried out unless specific permission for them is

granted. These include such matters as the alteration of a dwelling house, the provision of a hard-standing and the erection or demolition of walls, gates or fences, if any of the above front onto a "relevant location", such as a highway.

5. For the avoidance of doubt, my role in this appeal is limited to the consideration of those matters for which specific approval was sought, namely the details of the materials for all external work, and details of the windows to the front elevation of the side extension.

Main issue

6. The main issue is whether the external materials and fenestration used in the approved side extension preserve or enhance the character or appearance of the Northwick Circle Conservation Area.

Reasons

External materials

7. As noted in the banner heading at the start of this decision, planning permission was granted for a 2-storey side extension, ground floor rear extension and internal alterations at the appeal property in December 2011, subject to a number of conditions. Condition 4 clearly states that details of materials for all external work, including samples, should have been submitted to and approved in writing by the Council prior to any works commencing on site. The information before me is that this did not happen. Instead I understand that the appellant commenced construction and only submitted an application for the approval of the materials when the development was largely completed.
8. That said, the Council has commented that the roofing materials are considered to be acceptable, with original tiles having been re-used on the front elevation, with plain farmhouse red concrete tiles on the side elevation. Similarly the Council has made it clear that although the Ibstock Ashdown Bexhill Dark bricks used for the extension do not exactly match those of the original dwelling, they are nevertheless considered to be acceptable.
9. I see no reason to take a contrary view on these matters, and accordingly I conclude that these external materials preserve the character and appearance of the Northwick Circle Conservation Area. As such they accord with the requirements of the London Borough of Brent Unitary Development Plan (UDP) set out in policies BE2 (Townscape: Local Context & Character), BE9 (Architectural Quality) and BE25 (Development in Conservation Areas).

Windows in the front elevation of the side extension

10. The Council has indicated that the original windows in the appeal property, which were timber, had a dentil moulded driprail feature with even profiles of the openings, fixed casements, even sightlines, decorative stained glazing within the upper fanlights and square leaded detail across all of the panes. None of these original windows were proposed to be replaced. Indeed the approved plans for planning permission Ref 11/2383 indicate that the proposed windows were to match the existing windows. This is reinforced by the planning application itself which states that the proposed windows would be "leaded lights glazed in HW¹ frames as existing".

¹ Hardwood

11. As a significant number of the dwellings within the Northwick Circle Conservation Area appear to have retained their original windows, displaying a number of the features detailed above, I can understand why the Council sought to control the type and form of windows proposed for the new extension. To this end it imposed Condition 5 on the planning permission granted in December 2011.
12. This condition clearly states that notwithstanding the submitted plans otherwise approved, further details of the windows to be fitted in the front elevation of the side extension needed to be submitted to and approved in writing by the Council, prior to any works commencing on site. The condition explains that such details should include an elevation of the proposed windows at a scale of 1:10; and cross-section detail at a scale of 1:5 through the transom, showing the relationship of opening and fixed lights, with full-sized details of externally mounted glazing bars. However, this condition was not complied with.
13. Furthermore, the appellant replaced the existing windows in the property, without seeking prior approval from the Council, despite the restrictions imposed on such alterations by the Article 4(2) Direction referred to earlier. I have already noted, however, that this is not a matter specifically before me for consideration as part of this appeal. I therefore comment no further in it, except to say that although the windows in the extension now match those in the rest of the dwelling's front elevation, they do not contain the features highlighted by the Council as characteristic of this conservation area, and appearing in the original windows.
14. I have noted the appellant's comment that it became evident during construction that the original windows were severely damaged and that new windows ("Duraflex Diamond Featured Suite"), were therefore installed professionally and were matched, as best as possible, with those of surrounding neighbours. However, the appellant's assertion that the windows exactly match those of the neighbouring property, No 3, did not appear to be borne out by my observations on site, as the windows at No 3 clearly appear to have even sightlines, whereas those at the appeal property do not.
15. That said, I do acknowledge that some of the dwellings in this cul-de-sac have had their original windows replaced, and I saw at my site visit that not all of these replacement windows contain all of the features described and sought by the Council. However, the specific details relating to these other properties are not before me for consideration, and I do not know how comparable their circumstances may be to the current appeal. What was apparent, however, was that a significant number of the dwellings in Mentmore Close, and in the wider area do seem to have retained many of these window features, which are clearly an important characteristic of this conservation area.
16. In contrast, as the Council has pointed out, the installed windows in the appeal property do not provide a dentil moulded driprail feature; do not have even sightlines and window frames; and do not replicate the stained glazing and leaded detailing which was present within the original windows. In my assessment the absence of these features means that these windows have a noticeably different appearance to the predominant window type within this local area. In view of these points I conclude that the windows fail to preserve the character and appearance of the Northwick Circle Conservation Area. As such they are at odds with the requirements of the UDP policies to which I have already referred.
17. I have noted the references within the appellant's Grounds of Appeal to the fact that Council planning staff did not visit the site until after the windows had been

installed; that it was only after this that details of the window requirements were provided by the Council; and that no specific guidance had been given to the appellant on this matter. However, I can give little weight to these claims, as the planning permission granted by the Council in December 2011 states quite clearly that the permission is subject to the conditions set out on an attached Schedule. In turn, Conditions 4 and 5 within this Schedule explicitly indicate that the appellant needed to submit specific details of materials and windows for the written approval of the Council before commencing work.

Other matters

18. The Council's Delegated Report makes reference to Condition 3 of planning permission Ref 11/2383, which required that the front garden of the appeal property, and in particular the proportion of soft landscaping, should be retained as existing following construction works on site. This condition has not been complied with and the Council has indicated that the matter has been reported to its Enforcement Team. I mention this matter for completeness, as the appellant has referred to it in his Grounds of Appeal. However, as has been made clear earlier in this decision, this is not a matter which fell to be considered under application Ref 12/2009, made by the appellant on 8 August 2012. It is not, therefore, something which is before me for consideration as part of this appeal.

Overall conclusion

19. For all the reasons detailed above, my overall conclusion is that the external materials used in the extension are acceptable and can be approved. But the windows used in the front elevation of the side extension are not acceptable and are therefore not approved. I have had regard to all other matters raised, but they are not sufficient to outweigh the considerations which have led me to my conclusion.

David Wildsmith

INSPECTOR



Appeal Decision

Site visit made on 7 February 2013

by C J Leigh BSC(HONS) MPHIL MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 February 2013

Appeal Ref: APP/T5150/D/12/2190038
27 Wren Avenue, LONDON, NW2 6UG

- 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 Fayeq Salus against the decision of the Council of the London Borough of Brent.
 - The application Ref 12/2200 was refused by notice dated 5 October 2012.
 - The development proposed is described as 'extension and alterations, including retrospective application for single storey rear addition'.
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Preliminary matters

1. The appeal concerns a single storey rear extension that has been erected and a proposed two storey side and rear extension to the house.

Decision

2. The appeal is allowed and planning permission granted for a single storey rear extension and a two storey side and rear extension at 27 Wren Avenue, LONDON, NW2 6UG in accordance with the terms of the application, 12/2200, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 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 building.
 - 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 12006.01 and 12006.02f.

Main issue

3. The main issue in this appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

Character and appearance

4. The appeal property has been extended in the past through the conversion of the original hipped roof to a gable end and a rear dormer extension. The proposed two storey extension would be situated to the side of the house and attached to the new gable end, then project to the rear of the property and partly 'wrap round' to join part of the rear elevation of the house.

5. The side extension would be set back a considerable amount from the existing front elevation to the house at first floor level and there would be a set-down in the ridge line from the host property of No. 25. These matters would reduce the scale of the proposal and result in the extension appearing subservient to the host property. The adjoining property has been extended to the side close to the site boundary. The proposals at No. 27 would be a different form to the neighbour, but the chosen design would then match more closely the roof form to the main house that has been created from the gable extension. The gap at first floor level would be reduced but I saw at the site visit that extensions at first floor level which reduce the gaps between properties to some degree are seen at other properties, including at No. 25, and so are part of the character to the area.
6. The depth of the house as extended would remain in proportion to the host building, which is of a reasonable size within a large garden. The scale of the extension would be proportionate to the house and also to the adjoining property that has similarly had a large side and rear extension. The extended house would therefore not appear disproportionate or out of scale. The detailed design would also be acceptable, with the new gable form to the rear being acceptable in the context of the wider area, with a Juliette balcony being an appropriate design feature in a house of this character.
7. The extension that has been constructed at the property is a modest addition that does not impose upon the area when considered by itself and in combination with the proposed development.
8. The Council have referred me to their Supplementary Planning Guidance 5: Altering and Extending Your Home (SPG). This was adopted in 2002. I note the appellant's acknowledgement that the proposed development would conflict with the somewhat prescriptive statements in the SPG, including the reference to permission not being granted for a side extension to a house that has had a conversion from a hipped to a gable end. The more recently published National Planning Policy Framework (2012) states at paragraph 59 that local planning authorities' design policies 'should avoid unnecessary prescription or detail and should concentrate on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development in relation to neighbouring buildings and the local area more generally'. This statement is a material consideration of significant weight. For the reasons given earlier, it is considered that the proposed development would be appropriate in terms of scale, massing, height, layout and materials in relation to the neighbouring buildings and local area for the reasons given.
9. Furthermore, for similar reasons it is concluded that the proposed development would be consistent with the objectives set out in the relevant saved policies of the Brent Unitary Development Plan 2004 that, amongst other matters, seek a high standard of design, namely Policies BE2, BE7 and BE9. Indeed, the Introduction to the SPG states that its purpose is to help ensure an extension is well designed and complements the house and neighbourhood, and hence it is also concluded this objective would be met.

Other considerations

10. The scale of the proposed side and rear extension, and the existing rear extension, would not be harmful to the outlook of neighbouring properties or

levels of light. The positioning of windows would not lead to any material increase in overlooking to residents.

Conclusions and conditions

11. For the reasons given, and having had regard to all other matters raised, the appeal is allowed. I have attached a condition requiring materials to match the existing property in the interests of a satisfactory appearance to the development. It is also necessary to attach a condition specifying the approved drawings, since it is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.

C Leigh

INSPECTOR



Appeal Decision

Site visit made on 13 February 2013

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 February 2013

Appeal Ref: APP/T5150/C/12/2178154

Studios 1 to 6, 2A Wendover Road, London NW10 4RW

- The appeal is made by Yoav Tal of Lintonhill Limited under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: E/10/0953) issued by the Council of the London Borough of Brent on 11 May 2012.
- The breach of planning control alleged in the notice is as follows: -
"Without planning permission, the erection of a two-storey building to form six self-contained flats."
- The requirements of the notice are as follows: -
"STEP 1 Demolish the unauthorised two-storey building in the premises, remove all items and debris arising from that demolition and remove all fixtures, fittings and materials associated with the unauthorised development and residential use in that building from the premises.
STEP 2 Cease the use of the premises as residential flats and remove all items, materials and debris, including ALL kitchens and bathrooms, which facilitate the unauthorised change of use, from the premises."
- The period for compliance with these requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g).

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Reasons for the decision

The alleged breach of planning control

2. There has been no appeal on ground (b) (that the breach of planning control alleged in the notice has not occurred as a matter of fact), but the information supplied by the appellant under ground (f) and in his comments on the Council's statement of case show that he disputes that a two-storey building has in fact been erected here to form six self-contained flats. Instead, he asserts that what has occurred is that the original two-storey building has been refurbished and extended to form six self-contained flats.
3. I saw at the visit that building operations have been carried out that could be works of extension and refurbishment and that the six self-contained flats utilise the whole of the two-storey building. I was not able to establish the age and nature of the operations, because the parties' representatives at the visit had insufficient knowledge of the building and because features of original building work that might exist are no longer visible as a result of the rendering and colouring of the whole of the external walls. However, the tiles used on part of the roof look newer than the rest.

4. The 2003 and 2008 aerial photographs supplied by the Council show that the site then contained a two-storey building that had a single-storey extension. This appears to be the building in respect of which, firstly, a certificate of lawfulness was granted in 2000 (ref: 00/1780) and, secondly, plans were approved in 2006 (ref: 06/1543) showing the construction of a first-floor extension over the single-storey extension in connection with the change of use of the building to a single dwelling. The 2010 aerial photograph supplied by the Council appears to show that the first floor of the building had by then been extended as shown on the plans approved in 2006 and that the rest of the building remained in situ. These conclusions are consistent with the appellant's representations and the appearance of the tiles.
5. It is not clear why the notice alleges that a two-storey building has been erected to form six self-contained flats. The reasons for its issue do not give an explanation and the Council's statement of case appears to indicate that most of the building is longstanding. It is also unclear why the notice requires the building to be demolished when the Council have not raised any concerns about its impact as a building, as opposed to its use as flats, and a use as a single dwelling has previously been approved.
6. For the reasons given above I consider that, on the information available to me and on the balance of probabilities, a two-storey building has not as a matter of fact been erected on the site to form six self-contained flats.
7. I am authorised to correct any defect, error or misdescription in the notice, or to vary its terms, if I am satisfied that this will not cause injustice to the appellant or the Council. Both parties would suffer injustice if I attempted to alter the notice in this instance, since the information available to me does not establish in sufficient detail how the notice should be rewritten and, even if it did, the changes would be likely to alter fundamentally the basis on which the notice was issued and the appeal was brought.
8. I have concluded that the notice is defective and incapable of correction. The appeal has succeeded on ground (b) and the notice has been quashed.

Grounds (f) and (g)

9. Grounds (f) and (g) no longer fall to be considered following the success of the appeal on ground (b) and the quashing of the notice.

D.A.Hainsworth

INSPECTOR



Appeals Decisions

Site visit made on 13 February 2013

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 February 2013

Appeals Refs: APP/T5150/C/12/2179290 & APP/T5150/C/12/2179291 240 Carlton Avenue East, Wembley, Middlesex HA9 8PZ

- The appeals are made by Mr Yui-Hong Ho and Mrs Fung-Kay Ho under section 174 of the Town and Country Planning Act 1990 against an enforcement notice issued by the Council of the London Borough of Brent on 2 June 2012 (ref: E/12/0244).
 - The breach of planning control alleged in the notice is the erection of a building in the rear garden and its use as residential accommodation.
 - The requirements of the notice are as follows: -
 - “STEP 1 Cease the use of the building in the rear garden of the premises as residential accommodation and remove all fixtures, fittings and items associated with the use from the building.
 - STEP 2 Demolish the building and remove all debris, fixtures and fittings from the premises.”
 - The period for compliance with these requirements is three months.
 - Mr Ho’s appeal is proceeding on the grounds set out in section 174(2)(a) and (f).
 - Mrs Ho’s appeal is proceeding on the ground set out in section 174(2)(f).
-

Decisions

Appeal Ref: APP/T5150/C/12/2179290

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the erection of an outbuilding in the rear garden of 240 Carlton Avenue East, Wembley, Middlesex HA9 8PZ, subject to the condition that the outbuilding shall only be used for purposes incidental to the enjoyment of the dwellinghouse, 240 Carlton Avenue East, Wembley, Middlesex HA9 8PZ, as such.

Appeal Ref: APP/T5150/C/12/2179291

2. No further action is being taken.

Reasons for the decisions

Ground (a)

3. The main issue is the effect of the building on its surroundings and on the amenities of neighbours.
 4. The building is at the end of the back garden and occupies nearly the full width of the garden. It has replaced a shed that had the same footprint, which was approved more than 20 years ago and was becoming beyond repair.
-

5. The building has a tiled pitched roof and the walls have been covered in white UPVC shiplap cladding. The eaves height is about 2.5m (measured from the ground level of the former shed) and the pitched roof has a low profile rising to about 4m high at its ridge. The building does not reduce neighbours' privacy or significantly overshadow the gardens at each side of it, and there is a park at its rear. It is somewhat prominent because of its height, but in other respects it looks quite attractive. The neighbour who has commented on it is highly complimentary about its appearance and its improvement on the shed.
6. It appears to me that the building would be within the permitted development dimensions for domestic outbuildings if its height were reduced to no more than 2.5m overall. The appellants have offered to do this and it could be required by varying the terms of the notice. The outcome would be the replacement of the pitched roof by a flat roof. The building would then be similar to the one at No 230, which has a certificate of lawfulness, but it would be unlike those outbuildings in nearby gardens that have pitched roofs. It would be less prominent, but its overall appearance would be impaired because the flat roof would be less attractive than the pitched roof.
7. The amount of floor space provided by the building does not indicate that it is too large to be required for purposes incidental to the enjoyment of the house. The appellants state that it has never been used as primary accommodation, but the photographs taken by the Council in May 2012 suggest that this may have been their intention at that time. However, they do not seek permission to use the building as primary accommodation and have removed many of the items present in May 2012, including the kitchenette. The wash hand basin, shower and w.c. remain, but these facilities are not inconsistent with the incidental domestic purposes for which the building could be required.
8. Policy BE2 of the Brent Unitary Development Plan indicates that development should be designed with regard to its local context and should not cause harm to the appearance of an area. Policy BE9 indicates that the size of buildings should be appropriate to their setting and townscape location and should relate satisfactorily to adjoining development. Policy CP 17 of the Brent Core Strategy seeks to protect the character of the Borough's suburban housing.
9. On balance and taking into account the appellants' permitted development rights, the objectives of these policies will be maintained and neighbours' amenities will be protected if the building is allowed to remain as it stands, subject to a planning condition restricting its use to purposes incidental to the enjoyment of the house. The appeal on ground (a) has therefore succeeded and a conditional planning permission has been granted.

Ground (f)

10. In view of the success of the appeal on ground (a), the notice has been quashed. Ground (f) no longer falls to be considered.

D.A.Hainsworth

INSPECTOR