The Planning Inspectorate

Appeal Decision

Site visit made on 30 November 2010

by D G T Isaac LLB

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

Decision date: 13 December 2010

Appeal Ref: APP/T5150/D/10/2140596
69 Girton Avenue, London, NW9 9UE

- 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 S Gnanasegaram against the decision of the Council of the London Borough of Brent.
- The application Ref. 10/1896, dated 8 July 2010, was refused by notice dated 10 September 2010.
- The development proposed is a single storey rear extension.

Decision

1. I allow the appeal, and grant planning permission for a single storey rear extension at 69 Girton Avenue, London, NW9 9UE in accordance with the terms of the application, Ref. 10/1896, dated 8 July 2010.

Procedural matter

2. The development has been carried out and the application was made retrospectively. Although the description on the application form refers to the retention of the extension, "retention" is not an act of development and I have therefore amended the description of the development by omitting the reference to retention.

Main Issue

3. The main issue in this appeal is the effect of the extension on the living conditions of neighbouring residents.

Reasons

4. The appeal building is a two storey semi-detached dwelling. The single storey flat roofed extension which is the subject of this appeal spans the whole width of the rear of the dwelling and is about 3m in height. The extension sits on the boundary with the adjoining semi-detached dwelling, no. 71 Girton Avenue and projects some 4m behind the original rear wall of the dwellings.

5. The development plan for the area includes the London Borough of Brent Unitary Development Plan 2004 (UDP). Amongst other things, UDP policy BE9 seeks to ensure that buildings are of a scale, design and relationship to each other which promotes the amenity of users and that satisfactory levels of sunlighting, daylighting and outlook are provided for existing residents. The Council has also adopted relevant supplementary planning guidance entitled Altering and Extending Your Home (SPG). The SPG which was adopted in 2002 advises that in the case of semi-detached houses the maximum permitted

depth for a single storey rear extension is 3m. However, whilst the SPG is a material consideration of significant weight, what also has to be considered is whether in comparison with what could be built under permitted development rights the extension causes any actual harm.

6. The side wall of the extension can be viewed in the outlook from the rear windows of no. 71 Girton Avenue. However, a bush in the garden of no. 71 provides screening of the part of the extension furthest away from the rear windows of that adjoining property. Moreover, whilst planning permission is required for this extension, having regard to the screening provided by the bush the effect of the extension on the outlook from no. 71 Girton Avenue is not significantly greater than that of an extension that could be built under permitted development rights.

7. In addition I am not satisfied that it has been shown that the extension has actually resulted in the residents of no. 71 Girton Avenue not having a satisfactory outlook from their property or not receiving satisfactory levels of daylight and sunlight to their dwelling. The absence of any objection from the occupiers of no. 71 Girton Avenue and the fact that a resident of that property wrote to the Council to make it clear that he had no objection to the extension reinforces my view that the extension has not resulted in an unacceptable sense of enclosure for the residents of that property. It also serves to reinforce my view that the extension has not had an unacceptable impact on the living conditions of the residents of no. 71 Girton Avenue in terms of loss of daylight or sunlight, or outlook or in any other respect.

8. No other neighbouring residents have objected to the extension and some, including a resident of the adjoining property on the other side no. 67 Girton Avenue, have also written to the Council to make it clear that they do not object to the extension. Having regard to the distance separating the side elevation of the appeal building from the side elevation of no. 67 Girton Avenue the extension should not have an unacceptable impact on the living conditions of the residents of that adjoining dwelling. Furthermore, the extension should not have an unacceptable effect on the living conditions of any other neighbouring residents.

9. On the main issue in the appeal therefore, I conclude that the extension does not have a harmful effect on the living conditions of any neighbouring residents; that it does not conflict with the aims of UDP policy BE9; and that in this particular case the fact that it conflicts with the advice in the SPG does not justify refusing planning permission for the extension.

10. Turning to other matters, the extension has a satisfactory appearance and does not have an unacceptable effect on the character and appearance of the appeal building or the surrounding area. Moreover, none of the other matters raised justifies refusing planning permission for the extension. For the reasons given above and having regard to all other matters raised, I therefore conclude that the appeal should be allowed. In addition as the development has already been carried out, and I consider its appearance to be acceptable, there is no need for any conditions.

D G T Isaac

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 23 November 2010

by Claire Sherratt DipURP MRTPI

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

Decision date: 8 December 2010

Appeal Ref: APP/T5150/C/10/2134594
441A High Road, London NW10 2JJ

- 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 Tarik Mohammad against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/08/0480.
- The notice was issued on 8 July 2010.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a second storey extension, including that part over the roof of the premises ('the unauthorised development').
- The requirements of the notice are:
  Step 1: Remove the second storey rear extension, including that part over the roof of the premises.
  Step 2: Restore the roof back to its original condition before the unauthorised development took place.
  Step 3: Remove all items, materials and debris associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- An application for planning permission is deemed to have been made under S177 (5) of the Act as amended.

Decision

1. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of a second storey extension, including that part over the roof of the premises at 441A High Road, London NW10 2JJ, as shown on the plan attached to the notice, subject to the following conditions:

   1) The extension hereby permitted shall be removed and all materials resulting from the demolition shall be removed within 3 months of the date of failure to meet the requirements set out in (i) below:-

      i) Within 3 months of the date of this decision the door that provides access to the roof shall be removed and the resultant opening blocked up using materials to match the existing extension.

   2) The rear kitchen window shall be fitted with obscured glass and shall be permanently retained in that condition.

Main Issues

2. The main issues are the effect of the development on:
   (a) The character and appearance of the original building and the surrounding area; and
   (b) The living conditions of the occupiers of nearby properties by reason of overlooking.

Reasons

3. The unauthorised development involves alterations to the rear of the roof to provide additional accommodation on the second floor of the premises, extending the accommodation over the flat roof of an existing two storey extension to the rear of the building. The property already benefits from planning permission for a rear dormer window.

4. The development that is the subject of the notice extends the full width of the property and beyond the eaves and guttering of the original roof. I agree that it exceeds what may typically be regarded as a dormer extension. The overall mass and bulk of the extension is considerably greater than that already permitted by the local planning authority for a dormer window.

5. The development is not visible from any public viewpoints. A ground floor and first floor window of another property face the appeal development. It is viewed in the context of the existing rear two storey extension and other substantial extensions to the rear of properties. I appreciate that the roof profile is significantly altered. However, in the context of the surrounding developments, despite its scale, I do not consider it unduly detracts from the character and appearance of the surrounding area.

6. Windows to the rear of the extension serve a bathroom and kitchen. In addition a door provides access onto the flat roof. The kitchen window is obscure glazed with restricted opening and the bathroom window is high level. I was unable to gain views to the rear of the property. Conditions could ensure that the glazing to the kitchen remains obscure glazed and that the door providing access to the flat roof is removed to prevent any overlooking towards windows of other buildings that directly overlook the rear garden of the appeal site.

7. To conclude, the proposed development does not unduly harm the character and appearance of the host building or surrounding area. It accords with Policy BE2 and Policy BE9 of the London Borough of Brent Unitary Development Plan that require proposals to be appropriate to their setting and not cause harm to the character and appearance of an area.

Claire Sherratt
INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 23 November 2010

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 9 December 2010

Appeal Ref: APP/T5150/C/10/2131404
Afrex House, Beresford Avenue, Wembley, London HA0 1NX

- 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 Hamilton Bradshaw Limited (Abbey Waterside Development Limited) against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/09/0170.
- The notice was issued on 21 May 2010.
- The breach of planning control as alleged in the notice is the change of use of the premises to a mixed use as highway, offices, car repair, car servicing, car sales, tyre fitting, repair, sales, mini cab and residential use.
- The requirements of the notice are:
  - i) Step 1: cease the use of the premises for car repair, car servicing, car sales, tyre fitting, repair, sales, mini cab and residential use.
  - ii) Step 2: remove all vehicles, car repair equipment, tyres, car parts advertisements, beds, and other equipment associated with the sale of/and repair and servicing of vehicles, and operation of mini cabs and residential use.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. I allow the appeal and direct that the enforcement notice be quashed.

Procedural matters

2. In correspondence prior to the site inspection the Council confirmed that the under enforcement in respect of the offices component of the mixed use alleged was deliberate. During the site inspection the Council became aware that the plan attached to the notice covered a wider area than it should have done. In a letter dated 24 November 2010 the Council invited me to reduce the area to which the notice relates. It also gave further evidence about the reason for including the highway land in the allegation and provided three different plans for use in correcting the notice to enable me to select the most appropriate dependent upon the decision reached on the evidence. I have also had regard to the appellant's observations on these matters in a letter dated 2 December 2010.

The appeal on ground (b)

3. The gist of the appeal on ground (b) (and for that matter ground (c)) is that some of the uses alleged (for example the mini cab use) have not occurred as

a matter of fact while others (such as those which may fall within Class B2 of the Town and Country Planning (Use Classes) Order 1987 as amended (UCO)) do not amount to a breach of planning control. It is further argued that there are, in fact, multiple planning units on the site rather than a single planning unit in a mixed use as alleged.

4. The court has held that a notice must tell the person on whom it is served fairly what he has done wrong and what he must do to remedy it[1]. I therefore believe the appeal on this ground to be, in reality, a challenge to the validity of the notice on the basis that the allegation is inaccurate and that what is alleged has not, in fact, occurred. It is on that basis that I have dealt with the appeal.

5. Dealing first with the alleged mini cab use, the appellant contends that at no time has the premises been used for such a purpose. The Council now accepts that any such use as may have been taking place ceased some time before the notice was issued. I therefore conclude that the notice should be corrected in this respect.

6. The appellant also criticises the inclusion of 'highway' within the alleged mixed use on the basis that land or premises cannot simply become 'highway'. My understanding of the Council's purpose in this regard is to control the use made of the adjacent highway land by those involved with the alleged unauthorised uses. In my view, it is sufficient to include the highway land within the notice plan to achieve this. Since little turns on this either way I do not consider this any further.

7. Having dealt briefly with what are, in essence, two peripheral matters, I turn now to the nub of the issue. With the corrections to the allegation and the notice plan already discussed, the notice would relate to a two-storey building which has a frontage onto a busy highway junction. Although somewhat complicated it appears that the appeal site is in a single ownership with the appellant not becoming involved in the site until November 2007. Apart from those already discussed, the appellant does not dispute that the uses alleged were taking place. The starting point therefore is whether the notice, even corrected as indicated, accurately describes the breach of planning control that may have occurred.

8. There is no planning permission history and no substantive evidence from either party as to the lawful use or indeed the use prior to the change alleged to have taken place which might anyway be different. There is certainly no evidence for the Council's contention that the lawful use of the premises is as a warehouse within Class B8 of the UCO. This assertion appears to derive from the policy designation of the site in the development plan which may be something entirely different to its lawful use which might now need to be established by way of an application under s191 of the Act.

9. While it is not necessary for the Council to recite the previous use when a material change of use is alleged, it may well have been preferable in this case as the reasons why it considers that such a change has occurred would be that much more obvious. I am however conscious that the Council received no response at all to the Planning Contravention Notice served on the occupiers of the premises on 26 August 2009. I have therefore considered this appeal on the basis of the written evidence before me and what I saw during my site inspection. Although this was some six months after the notice was issued, I

[1] *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196

have no reason to believe that there has been any significant change in the arrangement of the uses within the building during that period.

10. For the allegation to accurately describe the breach of planning control in this case the building must be a single planning unit with no functional or physical separation between the various uses alleged. It also needs to be a single unit of occupation.

11. I was able to gain access to most parts of the ground floor of the premises. Although there was a certain functional relationship between the uses being carried out (in the limited sense that they were all components of the motor trade), the various vehicle repair workshops and the tyre sales, fitting and repair business all appeared to be occupied as separate enterprises. There is no evidence of any commercial relationship or any mutual dependence between them. Moreover, they were physically separate one from another and there were at least three separate entrances to what now appear to be self contained parts of the building. There was no obvious evidence of any shared facilities and very little common usage of circulation space.

12. Although I was not able to see for myself, I understand that the alleged office and residential uses were taking place on the first floor. There is no evidence of any functional relationship between the two in the sense of, say, a live-work arrangement or of any functional relationship with any of the uses occurring on the ground floor. There was a separate entrance to the upper floor which was locked at the time of my site inspection and no other access through any of the ground floor uses that I was able to enter was apparent.

13. My conclusion on the evidence before me is that, on the balance of probabilities, the building is not in a single occupation although it is in single ownership. Moreover, there is a functional separation between, at the very least, the residential use and the other components of the mixed use alleged. There is also physical separation between the uses on the ground and first floors and, at the time of my site inspection, some of the ground floor uses themselves. I therefore conclude that the building comprises several planning units in discrete uses and that the mixed use allegation therefore does not accurately describe the breach of planning control that may have occurred.

14. The alleged breach of planning control must be correct since it both defines the scope of the planning application deemed to have been made under s177(5) of the Act and is the basis on which the recipient determines the grounds of appeal that may be required or available. There are extensive powers available to me under s176(1) of the Act to correct the notice subject only to there being no injustice to either party as a result of doing so.

15. It would be difficult to identify now with any certainty the separate planning units into which the first floor of the premises was divided when the notice was issued. However, of more concern is the fact that the change of use that would need to be alleged in respect of one of those planning units would be to residential use.

16. Although the case law in this area is complex, I cannot exclude the possibility of a case being made that, if it was a separately alleged breach, the residential use of that part of the building might be immune from enforcement action after four years from the date of that breach first occurring. This would depend on the facts but the appeal under ground (d) that would be required for this to be considered has not been made. Correction of the notice to include an alleged

material change of use of part of the building to residential use would therefore deny the appellant (or indeed an occupier served with the notice but who had not appealed against it) the opportunity to make such an appeal. Alternatively, to exclude the residential element from the allegation altogether would cause injustice to the Council as it is clear from the reasons for issuing it that the Council wishes to bring this use to an end. Therefore, I do not believe the notice to be correctable without injustice to one or other party.

17. Although the variations between the three notice plans supplied with the letter from the Council dated 24 November are perhaps minor, the fact remains that, as a result, the appellant cannot be certain about the land to which the notice relates. I consider this to be unsatisfactory and a further cause for concern.

18. For these reasons I conclude that the breach of planning control alleged has not occurred as a matter of fact and the appeal on ground (b) therefore succeeds.

Conclusions

19. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under the various other grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

Brian Cook

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 23 November 2010

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 7 December 2010

Appeal Ref: APP/T5150/C/10/2127501
46 Crundale Avenue, London NW9 9PL

- 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 V Mahalinghan against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/09/0617.
- The notice was issued on 18 March 2010.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a part single and part two storey rear extension and the erection of a single storey side and front extension to the premises.
- The requirements of the notice are:
  - i) Step 1: demolish the part single and part two storey rear extension.
  - ii) Step 2: demolish the single storey side and front extension.
  - iii) Step 3; remove all debris, materials and equipment associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. I allow the appeal insofar as it relates to the erection of a part single and part two-storey rear extension to the premises and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a part single and part two-storey rear extension to the premises subject to the following conditions:

   1) The development hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 6 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-

   i) within 2 months of the date of this decision a scheme for the prevention of access to the roof area of the single-storey element of the development hereby permitted shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

   ii) if within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.

iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

2) The means of prevention of access to the roof area of the single-storey element of the development approved and implemented in accordance with condition 1 above shall thereafter be retained as implemented in accordance with the approved scheme.

3) The roof area of the single-storey element of the development hereby permitted shall not be used as a balcony, roof garden or similar amenity area without the grant of further specific permission from the local planning authority.

2. I dismiss the appeal insofar as it relates to the erection of a single-storey side and front extension to the premises and uphold the enforcement notice and I refuse planning permission in respect of the erection of a single storey side and front extension to the premises on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural matter

3. At the site inspection my attention was drawn to a s78 appeal decision dated 18 November 2010 in respect of the single-storey front and side extension (Ref: APP/T5150/D/10/2136532). I have taken this and the views of the Council on any matters arising from it into account in reaching my decision. A plan (68-PROP.02B) which was part of that appeal proposal indicates that the part single and part two-storey extension at the rear that is also the subject of the notice is subject to a separate planning application but I have no information about that.

The appeal on ground (a) and the deemed application

4. From my site inspection it seems to me that the two elements of the alleged breach of planning control are separate and severable. I shall therefore deal with them in the order in which they appear in the allegation.

The part single and part two storey rear extension

5. In regard to this element of the development carried out the main issues are:
   (a) Whether the development carried out affects the living conditions of the adjoining residents with regard to an overbearing appearance and a loss of privacy from overlooking; and
   (b) Whether the development carried out harms the character of the existing property.

Effect on the living conditions of the adjoining residents

6. The appeal building is a detached dwelling in a road of predominantly semi-detached properties of varied design. In that regard it is uncharacteristic and a further unusual feature is the orientation of the plot. This places the rear elevation of the original dwelling slightly beyond the building line of No 48 but more noticeably behind that of No 44.

7. There is no evidence to suggest that this part of the development was carried out other than as a single operation. There is no evidence either to suggest that construction began prior to 1 October 2008. Therefore, it cannot be permitted development under the Town and Country Planning (General Permitted Development) Order 1995, as amended (GPDO) by virtue of Schedule 2, Part 1, Class A, A.1 (f) and (g). However, the appellant argues that a ground floor extension of the same footprint and greater height could be erected under Schedule 2, Part 1, Class A of the GPDO as it now stands and that this is a fall back position in this case.

8. The court has held that in circumstances where the partial re-instatement of works prohibited by the notice would be permitted development the likelihood of it happening must be assessed. The appellant has clearly contemplated this option and having regard to the relevant Part of the GPDO, I consider the contention to be correct. This is therefore a material consideration to which I attach considerable weight.

9. Turning first to the effect of the rear extension on the outlook of the adjoining residents, any harm caused by the ground floor element must be weighed against the fact that the same development could be erected under the rights available in the GPDO. The two-storey element is positioned centrally on the rear elevation and set in from both side walls of the host dwelling. The appellant's evidence, which includes measurements of the distance between the extension and the windows of the adjoining properties that the Council does not dispute, is that this has been designed so as to comply with the guidelines given for two-storey rear extensions in the 'Altering and Extending Your Home' supplementary planning guidance (SPG) adopted in September 2002. From what I saw during my site inspection I consider that the two-storey element achieves the design objective of the SPG in this respect. As a whole therefore, the development at the rear does not result in an overbearing structure when viewed from the adjoining properties.

10. Dealing now with the effect on the privacy of the adjoining residents, there is access from the habitable room on the first floor at the rear onto the roof of the single-storey element. It is possible to walk round all three sides of the two-storey extension and thus look into the rear gardens of both adjoining properties including those more private areas adjacent to the houses themselves. Given the angles however, only oblique views to main room windows are possible from this flat roof area.

11. However, this loss of privacy could be mitigated by the erection of the Julliet balcony proposed under the ground (f) appeal since this would prevent access to the flat roof of the ground floor element. A further condition preventing the use of the roof area would reinforce this objective. With the imposition of these conditions there would be no conflict on this issue with saved policy BE9 of the London Borough of Brent Unitary Development Plan (UDP) adopted on 14 January 2004.

Whether the development carried out harms the character of the existing property

12. While undeniably substantial, the extension at the rear preserves the basic symmetry of the property and the pitch of the roof reflects that of the host dwelling. The structure is subservient to the main building with the ridgeline being set below that of the house. In most of these respects, the design accords with the principles set out in the SPG which focuses upon extensions to semi-detached properties in the illustrations provided. Furthermore, while the

rear extension is clearly visible in the private views available from a number of the surrounding dwellings, it cannot be seen clearly from the public domain. For these reasons I do not consider the rear extension to be in conflict with the urban design principles set out in saved UDP policies BE2 and BE9.

Summary conclusion on the part single and part two storey rear extension

13. While I recognise the concerns expressed that permitting the development would create a precedent for others in the area each proposal would need to be considered on its own merits against the development plan policies and any adopted supplementary planning guidance then in force. I have assessed the development carried out against the current development plan and SPG and have given weight to the fall back position in respect of the single-storey element. The Council has not suggested any conditions in the event of the appeal on ground (a) succeeding. However, for the reasons given above I shall impose three conditions to control access to the flat roof and, with that safeguard, conclude that the appeal should succeed on ground (a) in respect of this part of the alleged breach of planning control. Planning permission will be granted and the appeal on ground (f) does not therefore need to be considered in respect of this element of the development alleged.

The single storey side and front extension

14. In regard to this element of the development carried out the main issue is the effect of the development on the character and appearance of the host dwelling itself and that of the area. This issue is the same as that considered by my colleague when determining the s78 appeal referred to earlier.

15. It appears from the s78 appeal plans that the project considered under that appeal differed very little from that which has been built. My colleague concluded that the development would have a harmful impact on the character and appearance of the host dwelling and the wider street scene and that it would therefore conflict with saved UDP policies BE2 and BE9. From what I saw during my site inspection I see no reason to draw a different conclusion.

16. Although no appeal has been made on ground (c) there is a suggestion in the appellant's evidence that the development may be permitted under the GPDO. However, this element of the development carried out appears to have been undertaken as a single project, a conclusion reinforced by the layout of the resulting internal space. The enlarged part of the dwelling does not therefore meet the requirements of Schedule 2, Part 1, Class A A.1 (d).

Summary conclusion on the single-storey side and front extension

17. For the reasons given above I conclude that the appeal on ground (a) should not succeed in respect of this part of the alleged breach of planning control.

The appeal on ground (f)

18. The appeal on this ground now relates only to the single-storey side and front extension. The appellant suggests that minor changes to the existing roof structure could significantly reduce its visual bulk and mentions two options, namely reductions to the existing overhang or providing a flat roof to achieve this. However, no details are provided and it is suggested that a planning condition to secure a suitable scheme to be submitted and approved could be imposed.

19. Success on ground (f) would result in the variation of the requirements of the notice prior to it being upheld. Those requirements must tell the recipient of the notice clearly and unambiguously what needs to be done to remedy the breach of planning control. A requirement for a scheme to be agreed at a later date cannot achieve this certainty. In the absence of any specific proposals for me to consider the appeal on this ground must therefore fail.

Conclusions

20. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. Although the notice is being upheld in its entirety, s180 of the Act provides that, where planning permission is subsequently granted for a development that has been carried out, a notice shall cease to have effect where it is inconsistent with that permission.

Brian Cook

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 7th December 2010

by Clive Whitehouse BA(Hons) MCD MRTPI

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

Decision date: 16 December 2010

Appeal Ref: APP/T5150/C/10/2131820
38 Rugby Road, London NW9 9LB

- 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 C E Oduneye against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/10/0097.
- The notice was issued on 27th May 2010.
- The breach of planning control as alleged in the notice is: without planning permission, the erection of a front porch, part single and two-storey side extensions and part single and two-storey rear extensions to the premises.
- The requirements of the notice are: (i) Demolish the front porch to the premises. (ii) Demolish the part single and two-storey side extensions to the premises. (iii) Demolish the part single and two-storey rear extensions to the premises. (iv) Remove all items, materials and debris associated with the unauthorised development from the premises, and restore the premises back to its original condition before the unauthorised development took place.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal succeeds in part and fails in part, as set out in the formal decision, below

Main Issues

1. I consider the main issues to be; (i) the effect of the single-storey rear extension on the living conditions of the occupiers of 40 Rugby Road and, (ii) the effect of the side extension on the street scene.

Background

2. Planning permission was granted in 2007 (Ref.06/3607) for extensions to this semi-detached house. Following a complaint whilst work was in progress, the Council investigated and established that the extensions are larger than permitted in several respects.

Appeal on Ground (a)

3. The appeal on this ground is on the basis that planning permission should be granted for the works alleged in the notice.

4. On the first main issue, the permitted scheme included a single-storey dining room extension projecting by 3m on the party boundary with the attached

semi-detached house at No.40. I verified on site that the extension, as built, projects by 3.5m.

5. The permitted scheme has a stepped layout at the rear with the kitchen extension projecting by a further 0.5m to 3.5m. Rather than set the dining room extension back to 3m, the appellant has constructed the whole of the rear extension on the 3.5m line. He says that the decision to deviate from the approved plan was made on the advice of the Council's Building Control Inspector because of the need to provide a beam foundation to counter any possible structural effects from the roots of a tree in the garden of No.40. He considers that the present problem is the result of a lack of communication.

6. The corner of the extension is several metres from the trunk of the tree and outside its branch spread. In terms of proximity there is little difference between the approved scheme and the scheme as built. Whilst it may have been more convenient and simpler in constructional terms to build in the present form, I do not accept on the balance of probability that there were compelling structural reasons why the dining room extension could not have been built in its approved form. The responsibility for advising the Council of any potential deviation from the planning permission rests with the property owner.

7. The Council also considers that this part of the extension is 0.5 m higher than approved. However, the drawings approved in 2007 show a sloping, lean-to roof commencing from just below the first-floor bedroom window, which equates closely with the arrangement as constructed. The gradient of the roof slope does not appear to be markedly different, and I conclude by reference to the house features that the single-storey rear extension is not materially higher than approved.

8. The Council's supplementary planning guidelines for house extensions (SPG5) state that the maximum permitted depth for single storey extensions on the boundary between semi-detached houses is 3m. In my experience this is widely and consistently applied and is reflected in national regulations that set permitted development limits. Extensions deeper than 3m are likely to unacceptably reduce the natural daylight and restrict the outlook from the ground floor windows of the attached house. In the present case the rear elevations of the houses are north-facing and there should be no effect on direct sunlight. However, from my inspection I consider that the extension restricts natural daylight and appears overbearing when seen from the ground floor windows of No.40. I therefore consider that the dining room extension in its present form conflicts with saved Unitary Development Plan policy BE9(e), which seeks to provide a satisfactory level of daylighting and outlook for existing residents, and with the detailed advice in SPG5.

9. I conclude on the first main issue that the single-storey dining extension unacceptably affects the living conditions of the occupiers of No.40 Rugby Road by restricting daylight and outlook.

10. Turning to the second main issue, the main differences between the approved and built schemes are the addition of a porch and a reduced set back for the first floor element of the side extension.

11. The first-floor bedroom extension is set back by about 1.3m from the front elevation of the house, as opposed to a set back of 2.5m on the approved plans. Having viewed the side extension from various points along the road, I

consider that it complements rather than dominates the appearance of the original house. Similarly, the porch, which links to a single-storey garage on the same line at the next door property, does not in my view appear out of keeping with the appeal property or the local area. I consider that the side extension and porch do not conflict with relevant development plan policies and I conclude on the second main issue that the development has no unacceptable effects on the street scene.

12. The two-storey element of the rear extension is somewhat larger than approved, but the variation has no material effect on the street scene. The extent of the disparity is disputed between the parties (either 0.4m wider or 0.25m wider). No.36 has a single-storey extension of the same depth, and I established that the nearest first floor window at the adjoining property (No.36) is a bathroom window, which does not count as a habitable room for the purposes of SPG5 guidelines. The occupier of No.36 has given written support for the extension as it exists. The two-storey rear extension as built appears to comply with the Council's guidelines.

13. For the reasons given above, and having regard to all other matters raised, I conclude that the main parts of the side and rear extensions are acceptable, notwithstanding the variations from the approved scheme, but that the single-storey rear dining room extension is unacceptable.

14. I intend to grant planning permission for part of the existing extensions subject to any conditions similar to those on the 2007 permission which are still capable of having effect retrospectively. The 2007 permission included a condition requiring details of hard and soft landscaping for the garden area to be approved and implemented. I do not propose to attach a similar condition since I do not consider it to be necessary or proportional to the development, and it effectively restricts permitted development rights.

15. I will refuse planning permission and uphold the notice as it relates to the dining room extension.

16. The effect of section 180 of the Act is that the grant of planning permission for the porch, the side extension and part of the rear extension overrides the requirements of the enforcement notice insofar as it is inconsistent with the permission. To avoid the creation of an unconditioned permission for the permitted part of the extensions under section 173(11), I will not vary the requirements of the notice to exclude any of the permitted parts. However, the effect of my decision is that only the rear, single storey dining room extension is required to be demolished. I will vary the requirements of the notice to add that the side of the permitted kitchen extension, which will be exposed by the demolition, should be made good in matching materials.

17. The enforcement notice is made on the basis that the development as a whole is unauthorised, and it is not framed in terms of requiring modifications to make it comply with the scheme approved in 2007. In the absence of an appeal on ground (f) I am not in a position to specify lesser steps that might overcome the harm to the amenities of the occupiers of No.40, such as reducing the projection of the offending part to 3m. The appellant may wish to discuss with the Council the availability of permitted development rights for a smaller replacement extension in that area.

Formal Decision

18. I allow the appeal on ground (a) insofar as it relates to part single-storey and part two-storey side and rear extensions and a porch at 38 Rugby Road, London NW9 9LB as shown on "as built" drawings CO061002 & 3, but not including the single-storey rear dining room extension. I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for that part of the development described above, subject to the following condition:

    1. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) or any future enactment of that order, no windows or glazed doors shall be constructed in the flank walls of the building as extended.

19. I direct that the notice be varied by the addition of the following sentence at the end of step 4 in Schedule 4. "Make good the remaining parts of the permitted rear extension in matching materials".

20. I dismiss the appeal and uphold the enforcement notice as varied insofar as it relates to the single-storey rear extension described as a dining room on "as built" drawing CO061002, and I refuse planning permission in respect of that part of the development, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

C Whitehouse

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 7th December 2010

by Clive Whitehouse BA(Hons) MCD MRTPI

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

Decision date: 20 December 2010

Appeal Ref: APP/T5150/C/10/2134486
2 Alington Crescent, London NW9 8JN

- 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 Dr M A A A Latif against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/10/0167.
- The notice was issued on 6th July 2010.
- The breach of planning control as alleged in the notice is: without planning permission, the erection of a side brick wall adjacent to Alington Crescent, the erection of a rear outbuilding and the erection of railings on the roof of the single storey rear extension.
- The requirements of the notice are to: (i) demolish the rear outbuilding, (ii) demolish the rear brick wall (and to remove all debris and materials arising from demolition and remove all items and materials associated with the unauthorised development from the premises). (iii) Remove the railings from the roof of the single storey rear extension and install a "Juliet" balcony in accordance with approved plans 08/2008 Rev.C and 07/2008 Rev.C of the planning permission 09/0489 dated 01/05/09.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal fails in respect of the rear outbuilding and brick wall, but succeeds in respect of the railings, as set out in the formal decision, below

Background

1. The appeal property is a detached house in a corner position. Planning permission was granted in 2009 for alterations and extensions to the house and for the erection of a single-storey outbuilding in the rear garden. The outbuilding, as constructed, is considerably larger than the permitted building and is used as a swimming pool and store. A brick wall about 3m high has been erected on the road boundary close to the side of the pool building. The railings have been erected around the edge of the flat-roof of a single storey extension.

2. A retrospective planning application for the unauthorised development was refused by the Council shortly before the enforcement notice was issued. Following negotiations, planning permission has since been granted for a smaller pool building with a flat roof (Ref:10/2044).

Pool Building and Boundary Wall

Appeal on Ground (a)

3. I consider the main issue to be the effect of the outbuilding and the associated boundary wall on the street scene.

4. The outbuilding is constructed of brick with a shallow pitched roof, and its side wall and eaves are set less than 1m from the highway boundary. The floor level of the building is slightly elevated in relation to the road, and I estimate that the eaves stand about 3.5m above the pavement level. The brick boundary wall is about 3m high on the site boundary adjoining the pool building. The rest of the side garden boundary is marked by a well-established privet hedge about 2.5m-3m high. The north and west elevations of the outbuilding are located between 0.5 and 0.6m from the garden boundaries of the two adjoining houses.

5. The area is characterised by detached and semi-detached houses set in spacious gardens. As a corner property, the rear garden adjoins a straight section of Alington Crescent and the brick boundary wall and upper part of the outbuilding are in prominent view. The height, bulk and close proximity to the road of the combined structures is such that from the pavement they appear obtrusive and out of character with the spacious layout of the area. The appellant has offered to reduce the height of the boundary wall to 1m, but that would simply expose the side wall of the pool building immediately behind it, which would not significantly reduce the obtrusive appearance of the development. The appellant has recently planted trees in the back garden to supplement the boundary hedge, but they will have no screening effect where the development adjoins the road boundary.

6. The appellant draws attention to some other large garden outbuildings nearby, but none are built so close the road boundary, and they do not have a comparable impact on the street scene. One of those is a large timber outbuilding in the neighbouring garden, although the Council's delegated report notes that there are no planning records for that building and its status is under investigation.

7. By virtue of its height and bulk in close proximity to the road, I consider that the outbuilding and the associated boundary wall conflict with the relevant parts of saved Unitary Development Plan policies BE2, BE7 and BE9 that require development to be appropriate to its setting and the streetscape. I conclude on the main issue the development has an unacceptable detrimental effect on the street scene.

Appeal on Ground (f)

8. The appellant said in the initial appeal documents that full alternative proposals for modification would be submitted. However, I understand that those proposals have taken the form of a planning application, resulting in the permission recently granted (ref.10/2044) for a modified pool building. That permission stands in its own right and does not need to be further considered under this ground of appeal. Substituting a flat roof on the existing pool building would not in my opinion sufficiently mitigate the impact in the street scene. The suggestion to reduce the height of the boundary wall would not be effective for the reason given in paragraph 5, above.

Appeal on Ground (g)

9. In the event of the notice being upheld, the appellant requests 6 months instead of 3 months for compliance. The Council comments that its contractors routinely remove buildings of that type within one day and that three months is more than enough the make the necessary arrangements. In the situation where permission has already been granted for a smaller replacement building, I consider that there are no compelling reasons to extend the compliance period.

Railings on Roof

Appeal on Ground (a)

10. The planning permission for the alterations and extensions to the house included a small Juliette balcony outside the French doors opening from a bedroom onto the flat roof of the single-storey extension. The Juliette rail has been fitted and was in place at the time of my visit, but wooden railings have been added around the edge of the flat roof area. There are lattice side screens and climbing plants at each end and wooden decking on the roof surface. Although the roof was not accessible at the time of my visit because of the Juliette rail, the wooden railings enable its use as a balcony, and I consider it likely that it is intended to be so used.

11. I consider the main issue to be the effect of the potential use of the flat roof area as a balcony on the privacy of nearby residents.

12. In relation to the adjoining house at 4 Alington Crescent, the side screen and climbing plants provide a good measure of protection against overlooking of rear windows and the space immediately behind the house, as advised in the Council's supplementary planning guidance. Looking directly to the rear, the appeal property has a long rear garden matched by gardens of a similar length behind the houses on Mallard Way to the north and I estimate that there is a distance of about 45m-50m between the facing rear elevations. To the east the nearest houses are on the opposite side of Alington Crescent. I also have regard to the likelihood that the active use of the balcony would be confined to periods of fine weather.

13. I saw that a house in a similar corner position nearby has a rear balcony enclosed by a metal railing, although the Council has no information on its planning status.

14. In view of the spacious layout of the area, and having regard to all other matters raised, I conclude that the use of the flat roof area as a balcony would not result in an unacceptable loss of privacy for neighbouring occupiers and would not conflict with UDP policies BE2 and BE9. I therefore consider that the existing railings are acceptable.

Conclusions

15. For the reasons given above, I intend to refuse planning permission and uphold the enforcement notice in respect of the outbuilding and boundary wall and to allow the appeal and grant planning permission in respect of the balcony railings.

16. The effect of section 180 of the Act is that the grant of planning permission for the railings overrides the requirements of the enforcement notice, so far as it is

inconsistent with the permission. It is therefore not necessary to vary the requirements of the notice to delete references to the balcony railings.

Formal Decision

17. I allow the appeal on ground (a) insofar as it relates to the railings on the roof of the single-storey rear extension and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for those railings subject to the following condition:

    The existing side screens to the balcony area shall not be reduced, replaced or removed without the written approval of the local planning authority.

18. I dismiss the appeal and uphold the enforcement notice insofar as it relates to the rear outbuilding and the associated rear brick wall, and I refuse planning permission in respect of that building and wall, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

C Whitehouse

INSPECTOR