The Planning Inspectorate

Appeal Decision

Site visit made on 7 December 2010

by Mike Moore BA(Hons) MRTPI CMILT MCIHT

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

Decision date: 4 January 2011

Appeal Ref: APP/T5150/A/10/2132759
16 The Grange, Wembley, HA0 1SY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Ankur Tagdiwala against the decision of the Council of the London Borough of Brent.
- The application Ref 10/1082, dated 4 May 2010, was approved on 29 June 2010 and planning permission was granted subject to conditions.
- The development permitted is the *"erection of a single-storey rear extension to the dwelling house (part retrospective for retention of structure with alterations)"*.
- The condition in dispute is No 3 which states that: *"The alterations to the extension shown on the hereby-approved plan TG16/1 received 23 June 2010 shall be completed in full within 6 months of the date of this planning consent"*.
- The reason given for the condition is: *"In order to rectify the breach in planning control and in the interests of neighbouring residential amenity"*.

Decision

1. I allow the appeal, and vary the planning permission Ref 10/1082 for the erection of a single-storey rear extension to the dwelling house (part retrospective for retention of structure with alterations) at 16 The Grange, Wembley, HA0 1SY granted on 29 June 2010 by the Council of the London Borough of Brent, deleting condition 3 and substituting for it the following condition:

   3) The alterations to the extension shown on the hereby approved plan Ref TG16/1 received 23 June 2010 shall be completed in full within 6 months of the date of appeal decision Ref APP/T5150/A/10/2132759.

Main Issue

2. The main issue is whether the condition in dispute is reasonable and necessary in the interests of the living conditions of nearby residents.

Reasons

3. The appeal property is a 2-storey mid terrace dwelling located in a residential street. A single storey rear extension to the dwelling has been constructed to facilitate its subdivision into 2 self-contained flats. This development has been subject to an enforcement notice which has been appealed under grounds (f) and (g) and is subject to a separate decision.

4. The planning permission that is the subject of this appeal relates to a rear extension that is smaller than that built. The appellant has agreed to the

reductions required but considers that more time is necessary as the two families in the property have a contract to be accommodated until March 2011 with the works being undertaken thereafter. I have not seen the details of the contract but, notwithstanding any such obligation, a period of 6 months should be adequate to secure alternative accommodation for existing residents and complete the necessary works. In that regard, over 5 months have elapsed between the date of the Council's decision and my site visit.

5. The property was still being lived in at the time of my visit and there is a need for the residents to find new accommodation before the alterations to the extension can commence. Whereas I conclude that a condition of this kind is both reasonable and necessary to secure the development in the interests of the living conditions of neighbouring residents, the timescale remaining to implement the Council's condition is clearly unrealistic. The impact of the development on neighbours is not so severe that immediate action is essential. In this context, the compliance period of 6 months should begin from the date of this decision. However, as almost a year will have passed since the permission was granted, and in the absence of any compelling evidence to the contrary, a further extension of time beyond that would not be justified.

6. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed condition and substituting another.

M J Moore

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2011

by Michael Evans BA MA MPhil DipTP MRTPI

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

Decision date: 28 January 2011

Appeal Ref: APP/T5150/D/10/2142431
79 Keslake Road, London NW6 6DH

- 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 Jason Watts against the decision of the Council of the London Borough of Brent.
- The application Ref: 10/1906, dated 18 July 2010, was refused by notice dated 21 September 2010.
- The development proposed is the erection of a single storey side extension.

Decision

1. I allow the appeal and grant planning permission for the erection of a single storey side extension, at 79 Keslake Road, London NW6 6DH in accordance with the terms of the application Ref: 10/1906, dated 18 July 2010, subject to the following conditions:

    1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.

    2) The development hereby permitted shall be carried out in accordance with the plans submitted with the application and appeal.

    3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the extension have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Main issues

2. I consider the main issues to be:

    - Whether the proposal would preserve or enhance the character or appearance of the Queen's Park Conservation Area, within which the appeal site is located.

    - The effect on the living conditions of the occupiers of the adjacent dwelling.

Reasons

3. The environmental quality of the Conservation Area derives to a large extent from the attractive detailing of the front elevations of the Victorian dwellings set in the vicinity of Queen's Park. However, the proposal concerns the rear of the dwelling at the appeal site, which cannot readily be seen from the street. This has a somewhat utilitarian appearance, being dominated by a two storey flat roof rear projection, due to its height and significant depth of about 8m.

4. The proposed extension would be attached to the side of the rear projection, which it would not project beyond the end of and because of the single storey height it would be noticeably lower. It would also not extend past the flank of the main part of the host dwelling. Despite its uniform width and height and in the context of the existing rear projection, the extension would not, therefore, appear unacceptably bulky or excessive in scale and would be a relatively subordinate addition. As a result, the character and appearance of the host dwelling would not be adversely affected.

5. As a result of these factors, the character and appearance of the Conservation Area would be preserved. The proposal therefore complies with this aim of London Borough of Brent Unitary Development Plan (UDP) 2004 Policy BE25. For the above reasons, the proposal is also in accordance with UDP Policy BE26, which among other things aims to ensure that extensions in Conservation Areas do not alter the scale of buildings, detrimental to the unity or character of the Conservation Area.

6. The adjacent dwelling to the east has a rear projection with openings in the side looking towards the appeal site. However, these face the side of the rear projection at the appeal site so that in relation to these openings there would be no significant additional sense of enclosure. In any case, the Council indicates that it is mainly concerned with the adjacent opening facing directly down the back garden in the main rear wall.

7. The extension would be set just under a metre off the boundary and the nearest part to the adjacent dwelling would have a relatively modest height of 2.4m, with the roof sloping down to this point. The adjacent property is also set back from the boundary. Due to these factors and despite the length of the addition and absence of a recessed area, there would be no undue sense of enclosure at the adjacent dwelling. This is especially the case bearing in mind the context of a relatively densely developed urban area. For the above reasons, it is concluded that the living conditions of the occupiers of the neighbouring property would not be harmed and there is no conflict with UDP Policy BE9, which seeks to prevent such adverse effects.

8. It is advised in the Council's *Queen's Park Conservation Area Design Guide* and in the Supplementary Planning Guidance, *Altering and Extending Your Home*, *SPG5*, September 2002 that single storey rear extensions to terraced dwellings should not exceed a depth of 2.5m from the main rear wall. Because there would be no detrimental effects arising from the proposal and the presence of the existing two storey rear projection, this advice should not be strictly applied in this instance.

9. Because of the conclusion in relation to the Conservation Area and the absence of harm to living conditions, it is therefore determined, taking account of all other matters raised, that the appeal succeeds.

10. Otherwise than as set out in this decision and conditions, 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. A condition to this effect is therefore justified. To protect the appearance of the Conservation Area, the facing materials of the extension should be controlled.

M Evans

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 8 November 2010

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 21 January 2011

Appeal Ref: APP/T5150/C/10/2124037
17 Hawthorn Road, London NW10 2LR

- 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 G Garramone against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/08/0772.
- The notice was issued on 2 February 2010.
- The breach of planning control as alleged in the notice is the erection of an outbuilding in rear garden of the premises, the increase in height of the boundary wall fronting Litchfield Gardens and the change of use of the premises to four flats.
- The requirements of the notice are;
  - Step 1 Cease the use of the premises as four flats and cease the occupation of the premises by more than ONE household.
    Remove all fixtures and fittings associated with the unauthorised use from the premises. (For the avoidance of doubt, this includes the removal of all kitchens from the premises, except ONE, and all bathrooms from the premises, except ONE, and all internal locks on doors, except those to the remaining bathroom.)
  - Step 2 Demolish the outbuilding in the rear garden of the premises and remove all associated debris and materials associated with this demolition from the premises.
  - Step 3 Reduce the height of the boundary wall fronting onto Litchfield Gardens so that it is restored back to its original height before the unauthorised development took place.
- The period for compliance with the requirements is 6 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Ground (f)

1. The appellant accepts that the requirements set out in steps 2 and 3 of Schedule 4 of the notice are reasonable. However, he takes issue with the requirement set out in Step 1 of Schedule 4 insofar as it requires the removal of all but one of the bathrooms from the premises.

2. I accept that it is not unusual for 3/4 bedroomed dwellings to have more than one bathroom. Whilst I appreciate the Council is concerned that the retention

of bathrooms may encourage the conversion of the property again into multiple residential occupation without planning permission, the other requirements of Step 1, namely the removal of all but one kitchen and all internal locks on doors, would adequately address the concerns of the Council.

3. The requirements of the Notice do not dictate the internal layout of the building, but simply require the removal of facilities that have enabled self contained flats to be created. The building currently has four bathrooms and the appellant considers removal of one bathroom on the ground floor and one on the first floor may not be unreasonable, albeit he considers it is not necessary to do so to create one household. I consider it would be reasonable to allow more than one bathroom to be retained within a 3/4 bedroom property. In my view, the retention of two bathrooms would be appropriate and I will therefore vary the requirements of the Notice accordingly. To this limited extent the appeal on ground (f) succeeds.

Ground (g)

4. The ground of appeal is that the time given to comply with the notice is too short. The Council has given 6 months for compliance with the Notice. The appellant is seeking a period of compliance of 9 months.

5. At the time of my site visit there appeared to be tenants in all the flats. The appellant states that 6 months is too short a period to allow the premises to be vacated and the works to be planned in a proper fashion and that this would be unduly stressful for the tenants and an unreasonable infringement of the tenant's private life.

6. There are no details of any tenancy agreements or notice periods. Nevertheless, I consider it would be reasonable to grant an extension of time to allow any occupier to look for alternative accommodation and for the appellant to comply with the requirements. In my view, the period of 9 months sought by the appellant would not be excessive and I shall vary the Notice accordingly. To this limited extent the appeal on ground (g) succeeds.

Formal Decision

7. I allow the appeal on grounds (f) and (g), and direct that the enforcement notice be varied as follows:

   (a) by the deletion of the second paragraph of STEP 1 of Schedule 4 of the notice and the substitution of the following:

   Remove all fixtures and fittings associated with the unauthorised use from the premises. (For the avoidance of doubt, this includes the removal of all kitchens from the premises, except ONE, and all bathrooms from the premises, except TWO, and all internal locks on doors, except those to the remaining bathrooms.

   (b) by the deletion of "6 months" and the substitution of "nine months" as the period for compliance.

8. Subject to these variations I uphold the enforcement notice.

Hilda Higenbottam

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 8 November 2010

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 17 January 2011

Appeal Ref: APP/T5150/C/10/2124686
70 Uxendon Hill, Wembley HA9 9SL

- 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 Nabeel Almulla against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/09/0023.
- The notice was issued on 3 February 2010.
- The breach of planning control as alleged in the notice is the erection of a two storey side extension, part single storey and part two storey rear extension, hip to gable end roof extension and rear dormer window to the premises.
- The requirements of the notice are demolish the unauthorised development at the premises and remove all associated items, debris and materials arising from the demolition from the premises OR demolish the unauthorised development and reconstruct the development in accordance with the approved plan 12/08D of planning permission 08/2470 which was attached to this notice.
- The period for compliance with the requirements is 5 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeal succeeds under ground (f) and the notice is varied by the deletion of "Demolish the unauthorised development and reconstruct the development" of the second paragraph of STEP 1 of Schedule 4 and substitution of "Alter the unauthorised development".

2. The appeal succeeds under ground (g) and the notice is varied by the deletion of '5 months' and the substitution of "eight months" as the period for compliance.

3. The appeal fails under grounds (c) and (a), the enforcement notices is upheld as varied and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (c)

4. The ground of appeal is that there has not been a breach of planning control. The appellant accepts that what has been built differs from the 2008 planning permission in a number of ways. These are

    - The original hipped roof of the appeal property has been extended to form a gable;

- The two storey rear extension has been constructed with a gable end (the permitted roof form was hipped); and
- A dormer roof extension has been constructed within the rear roof slope of the original roof.

5. The development that has been carried out does not comply in a material respect or to a material extent with that which was granted planning permission in 2008. Furthermore, although the appellant considers that the hip to gable roof form on the original dwelling and the rear dormer would constitute permitted development under Class B of Part 1 of Schedule 2 of the General Permitted Development Order 1995 as amended (GPDO), the development as constructed comprises the hip to gable extension, the rear dormer and the two storey and single storey rear extensions. As such they are part of a larger development that required planning permission. I therefore find that the development as a whole is unlawful.

6. The appeal under ground (c) fails.

Ground (a)

Main Issue

7. I consider the main issue in this case is the effect of the development on the character and appearance of the area.

Reasons

8. The appeal property is a semi-detached dwelling. Originally the pair of semi's had hipped roofs. No 70 is situated within a residential area, comprising two storey semi-detached properties mainly with hipped roofs. Some properties within the area have been extended extensively, some with dormers and at least one with a gable extension, but the hipped roofs to the houses remain the predominant characteristic of the area.

9. The appellant considers that as a 'fall back', the hip to gable roof form on the original dwelling and the rear dormer would constitute permitted development under Class B of Part 1 of Schedule 2 of the General Permitted Development Order 1995 as amended (GPDO). As stated above what has been constructed was one development and as such is unlawful. There is no substantiated evidence that a lesser scheme, which may constitute permitted development, would ever be implemented. I therefore give the appellant's 'fall back' position little weight.

10. The hip to gable roof extension is contrary to the established character of hipped roofs within the area. The roof extension, taken together with the two storey side element, due to the bulk and massing of the resultant extensions is incongruous within the street scene and significantly greater than that approved in 2008. The junction between the two storey side extension and the hip to gable extension is crude and detracts from the roofscape within the street scene.

11. The rear dormer extension has a box like appearance and visually dominates the rear roof area. There is a poor juxtaposition between the dormer extension and the roof of the two storey rear extension. The flat roof of the dormer extension is visible from the street scene projecting above the sloping roof of the two storey extension. Furthermore, whilst the extent and full form of the

dormer extension is not visible from the street it is seen from the rear of surrounding properties and their gardens.

12. The Council has produced and adopted Supplementary Planning Guidance No 5 entitled *Altering and Extending Your Home* (SPG). The massing, proportions and size of the rear dormer extension as constructed fail to comply with this guidance. Furthermore, hip to gable extensions are resisted, except in certain identified circumstances, as they would significantly change the character and appearance of a house and the street scene. The appeal development does not comply with the exceptions given and therefore is contrary to the guidance contained in the SPG.

13. The general size, shape and height of the side extension complies with the advice in the SPG. However, the gable roof of the side extension fails to comply with the SPG which states that the roof should match the pitch and angle on the main roof. If the existing unauthorised hip to gable roof extension is removed from the main roof of the dwelling the gable roof extension would fail to complement the design of the dwelling would be contrary to the SPG. The retention of the gable roof on the side extension would fail to complement the design of the dwelling.

14. PPS1[1] seeks the achievement of high quality and inclusive design. The development for the reasons given above fails to achieve this.

15. The development as a whole fails to complement the design of the original property or make a positive contribution to the character of the area. This is contrary to PPS1, SPG and saved Policies BE2 and BE9 of the London Borough of Brent Unitary Development Plan 2004 which require development to be designed with regard to their local context, to make a positive contribution to the character of the area, relate satisfactorily to the characteristics of adjoining development and have attractive front elevations.

16. For the reasons stated above the appeal under ground (a) fails.

Ground (f)

17. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In the notice the subject of this appeal the Council has not, unfortunately, specifically indicated which of those two purposes it seeks to achieve.

18. The reasons for issuing the notice concern the effect of the extensions on the character and appearance of the dwelling house and concerns that it would create an undesirable precedent. The purpose of the notice must, therefore be to remedy the breach of planning control that has occurred by making the development comply with the terms of a planning permission or restoring the land to its condition before the breach took place (s173(4)(a)).

19. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity (s174(2)(f)).

[1] Planning Policy Statement 1: Delivering Sustainable Development

20. The requirements are in the alternative and allow the appellant to choose whether to demolish the extensions or demolish the unauthorised extensions and reconstruct the extensions permitted in 2008[2]. Given that the purpose of the notice is to remedy the breach of planning control that has occurred the first part of the requirements would achieve this by restoring the land to its condition before the breach took place. Furthermore, it would not exceed what is necessary to remedy the breach of planning control.

21. However, on the available information, I consider it would be excessive for the extensions as constructed to be demolished and then reconstructed in order to comply with the 2008 planning permission. The requirement as drafted, to my mind, goes beyond what is necessary to remedy the breach of planning control. I will therefore vary the second part of the requirements to refer to the alteration of the unauthorised development to comply with the approved plan 12/08D of planning permission 08/2470 which was attached to the notice. To this limited extent the appeal under ground (f) succeeds.

Ground (g)

22. The ground of appeal is that the time given to comply with the notice is too short. The Council has given five months for compliance with the notice. The appellant is seeking a period of compliance of one year.

23. I am mindful that the requirements of the notice, whether demolition of the whole unauthorised development or alteration of the extensions to comply with the 2008 planning permission, would necessitate significant works. I therefore consider it would be reasonable to grant an extension of time to allow the appellant to look for a builder to carry out the works and for those works to be carried out. In my view, a period of eight months would be a reasonable period and would not be excessive. To this limited extent the appeal on ground (g) succeeds.

Decision

Hilda Higenbottam

Inspector

[2] Council Reference 08/2470.

The Planning Inspectorate

Appeal Decision

Site visit made on 20 December 2010

by R J Perrins MA MCMI ND Arbor

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

Decision date: 10 January 2011

Appeal Ref: APP/T5150/C/10/2132100
30 Second Way, Wembley HA9 0YJ.

- 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 Y Cohen against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/09/0051.
- The notice was issued on 2 June 2010.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of the premises to a vehicle parking area.
- The requirements of the notice are to cease the use of the premises as a vehicle parking area and remove all the fixtures and chattels associated with unauthorised development from the premises.
- The period for compliance with the requirements is 2 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Decision

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

The appeal on ground (c)

2. An appeal under this ground is brought on the basis that the matters alleged do not constitute a breach of planning control. To that end the appellant argues that the use of the land is temporary and does not take place on more than 28 days per calendar year and therefore is permitted development as set out in Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) [1] (GPDO).

3. The Council opine that the relevant section of the GPDO carries the heading "Temporary Buildings and Uses" and the use cannot be a temporary one as no other use occurs on the site. The material use of the land is for a vehicle parking area therefore Part 4 of the GPDO cannot apply in this instance. The Council submit that a number of judgements substantiate that view; *Ramsay*[2] which sets out that the GPDO is to enable land owners to use their land for

[1] The use of any land for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes referred to in paragraph B.2, and the provision on the land of any moveable structure for the purposes of the permitted use.
[2] *Ramsay v Secretary of State for the Environment Transport and the Regions & Suffolk District Council* [2001] EWHC Admin 277

occasional or temporary purposes other than its normal use; *South Bucks*[3] which found that a temporary use as permitted is an exceptional use, as distinct from the normal use, of the land and; *Webber*[4] which states that to determine whether there has been any material change in the use of the land the starting-point must, of course, be the ascertainment of its normal user.

4. It is undisputed that the use does not take place for more than 28 days per year as borne out by the evidence submitted by the appellant. The GPDO is clear on its face and refers to "any land for any purpose" save for those matters set out in paragraphs B.1, B.2 and B.3 of Class B. I accept the Council's view that no other use occurs on the site and has not done so for a number of years. It is undisputed that the previous use as an oil manufacturer was abandoned.

5. However, I do not accept that confers that the material use of the site is as a vehicle parking area because that is the only use that has occurred. The use of the land, once the previous use had ceased, was a nil use. It is agreed that the duration and type of use, for car parking, is a temporary one which is above and beyond that nil use. Therefore it does comply with Part 4, Class B of the GPDO. For the car parking to become the material use of the land, it would have to exceed the parameters set out in Part 4, Class B.

6. I come to that view having taken into account the judgments cited above. In *Ramsay* the normal use of the land was an agricultural one, in this instance I have found the normal use to be a nil one. Also, the parking is exceptional to the nil use as set out in *South Bucks.* The judgment in *Webber* concerned a combined use of grazing and camping on agricultural land so is not relevant to this case although given the nil use of the land there is no requirement to establish the normal user.

7. For these reasons and having considered all matters raised I find, as a matter of fact and degree, that the use of the land for a vehicle parking area is a temporary one as set out in Part 4, Class B of the GPDO and does not therefore constitute a breach of planning control.

8. I conclude that the appeal should succeed on ground (c). Accordingly the enforcement notice will be quashed.

Richard Perrins

Inspector

[3] *South Bucks District Council v Secretary of State for the Environment* [1989] 1PLR 69
[4] *Webber v Minister for Housing and Local Government* [1967] 3All ER 981

The Planning Inspectorate

Appeal Decision

Site visit made on 6 January 2011

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

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

Decision date: 31 January 2011

Appeal Ref: APP/T5150/C/10/2137285
2 Sherrick Green Road, London NW10 1LD

- The appeal is made by Mr M Arif 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 16 August 2010 (ref: E/10/0066).
- The breach of planning control alleged in the notice is "the erection of two-storey side and rear extensions, a part single-storey rear extension to the premises, the formation of a hard surface to the front garden of the premises for the parking of vehicles, the erection of a front canopy/porch structure and front boundary wall to the premises".
- The requirements of the notice are as follows: -
  "STEP 1 Demolish the part single, two-storey side and rear extensions and the front canopy/porch structure to the premises, remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
  STEP 2 Remove the unauthorised hard surface from, dig/rip the land, cross-hatched black on the attached plan, to a depth of 300mm and remove all arisings to ensure that the surface material comprises only topsoil. Then turf over that land and replace any turf which is dead or dying within 5 years after this notice takes effect.
  STEP 3 Demolish the front boundary wall and erect a 800mm high brick wall along the line marked "X" on the attached plan, using bricks that match the original construction of the premises (house)."
- The period for compliance with these requirements is 6 months.
- The appeal is proceeding on the ground set out in section 174(2)(a).

Decision

1. I direct that the enforcement notice be corrected by deleting "two-storey side and rear extensions," in Schedule 2.

2. I dismiss the appeal insofar as it relates to the erection of a part single-storey rear extension, the formation of a hard surface to the front garden for the parking of vehicles and the erection of a front boundary wall at 2 Sherrick Green Road, London NW10 1LD and refuse to grant planning permission for these operations on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990.

3. I allow the appeal insofar as it relates to the front canopy/porch structure and grant planning permission on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the erection of a front canopy/porch structure at 2 Sherrick Green Road, London NW10 1LD.

4. I direct that the enforcement notice be varied by replacing Schedule 4 with: -

"SCHEDULE 4

WHAT YOU ARE REQUIRED TO DO TO REMEDY THE BREACH

STEP 1 Alter the roof of the single-storey rear extension so that it complies with the plans approved by planning permission ref: 08/2003 dated 8 September 2008.

STEP 2 Remove the hard surface of the front garden and lay out and plant the front garden so that it complies with the terms and conditions of planning permission ref: 08/2003 dated 8 September 2008 and the landscaping details approved by permission ref: 09/1213 dated 13 July 2009.

STEP 3 Build front boundary walls of a height of between 0.8 metre and 1.0 metre in the positions shown on the plans approved by planning permission ref: 08/2003 dated 8 September 2008, closing off all vehicular access to the front garden, providing pedestrian access as approved and using materials for the external surfaces of the walls that match those used for the house."

5. I uphold the enforcement notice as corrected and varied.

Reasons for the decision

The notice

6. I have deleted the part of the allegation relating to the two-storey side and rear extensions, since the notice ceased to have effect in respect of them when they were allowed on appeal last September (ref: APP/T5150/D/10/2133501). The notice now relates to four matters – the single-storey rear extension, the front canopy/porch, the hard surface at the front and the front boundary wall. I have dealt with these individually because they were separate operations. I have varied the requirements of the notice for the reasons given below.

Ground (a) – the single-storey rear extension

7. The main issue here is the effect of the extension on the outlook from the nearest ground-floor window of No 4. The extension was built with a pitched roof instead of the flat roof authorised by permission 08/2003. The inspector dealing with the earlier appeal found that the increase in height unacceptably affected the outlook from No 4's window, contrary to Policy BE9 of the Brent Unitary Development Plan (UDP), and I have no reason to disagree.

8. The appeal on ground (a) therefore fails in this respect. The requirement in Step 1 of the notice to demolish the extension is, however, excessive when it can be altered to comply with the permission (the pitched roof has in fact already been removed). I have therefore varied the notice so that, as respects the single-storey rear extension, it only requires alterations to the roof.

Ground (a) – the front canopy/porch

9. The main issue here is the effect of the canopy/porch on the appearance of the house and the street scene. It is larger than the one approved by permission 08/2003 and has a different design. I appreciate that the curved canopy and pseudo-classical pillars will not be to everyone's taste and that to some they

will look rather grandiose on a house of this type and size. However, there are no planning constraints requiring canopies and porches to be uniform in size or appearance in this locality and there is scope for householders to express some unconventionality in the choice of design.

10. The canopy/porch complies sufficiently with the standards called for by UDP Policies BE2 and BE9 and the advice about porches in the Council's guidance. It does not harm the appearance of the house or the street scene to an extent that justifies refusing permission. The appeal therefore succeeds on ground (a) in this respect and I have granted planning permission for the canopy/porch. No conditions have been put forward in this event and none are required. Attention is drawn to the provisions of section 180(1) as to the effect on the notice of this permission.

Ground (a) – the hard surface at the front

11. The main issues here are the effect of the hard surface on the appearance of the frontage and the effect of its use on highway conditions.

12. The front garden has not been laid out in accordance with permission 08/2003 or the landscaping details approved by permission 09/1213. These permissions show lawns, planting and pedestrian access only. Instead, the area has been hard surfaced and a vehicular access has been created, using a longstanding dropped kerb, which appears to have been provided for pedestrians only and is needed to facilitate pedestrian movements at the road junction.

13. As a result, vehicles are being driven over the footway at a point where they inconvenience and endanger pedestrians and the frontage has a bare and austere appearance compared to its previous layout as a garden and to what it would have looked like if the works had been carried out as approved. The criteria in UDP Policies BE7 and TRN15 have not been met and the Council's guidance about parking in front gardens and forming vehicular accesses has not been observed. The appeal under ground (a) therefore fails in respect of hard surface at the front.

14. The requirements in Step 2 of the notice appear to have been drafted without taking into account permissions 08/2003 and 09/1213. The appropriate step to remedy the breach relating to the hard surface is to require the development to comply with these permissions and I have varied the notice accordingly.

Ground (a) – the front boundary wall

15. The main issues here are the effect that the wall has on the appearance of the frontage and the fact that it has been constructed with a gap that facilitates vehicular access to the hard surface.

16. The drawings approved by permission 08/2003 indicate that a wall would be built, which would curve around the boundary where the vehicular access has been created and continue in a straight line along the Sherrick Green Road frontage, leaving a gap for the path to the front door. The landscaping details approved by permission 09/1213 indicate hedging would be planted along the line of the approved wall. It is not clear whether the hedging would be in addition to or in place of the wall.

17. The plan attached to the notice shows a different line, which I assume was not intended, but it is clear from Step 3 of the notice that the Council do not object to a wall being built here that would have a similar height to the existing wall. The requirement to build it in brick is not appropriate, however, since the wall, the house and its extensions and the wall on the Cullingworth Road frontage have all been rendered and coloured off-white and this treatment is in keeping with the street scene.

18. The appeal does not succeed under ground (a) as respects the wall, however, since it is necessary to ensure in the interest of pedestrian safety and visual amenity that vehicular access to the front garden does not occur. This appears to have been the intention when permission 08/2003 was granted and the appropriate way of achieving it is to build the wall so that it complies with this permission. I have therefore varied the notice to require this to be done.

D.A.Hainsworth

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 5 January 2011

by David Murray BA (Hons) DMS MRTPI

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

Decision date: 13 January 2011

Appeal Ref: APP/T5150/C/10/2130431
329 Church Lane, Page Street, London, NW9 8JD.

- 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 D Imran against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/10/0215.
- The notice was issued on 7 May 2010.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a building in the rear garden of the premises.
- The requirements of the notice are (STEP 1) to demolish the building in the rear garden of the premises, remove all materials arising from that demolition and remove all materials, debris, and items associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal is allowed to a limited extent, and the requirements of the notice varied, prior to being upheld.

The appeal on ground (b)

1. The reasons given under this ground are more related to ground (c) in that it is disputed that planning permission is required for the building. However, the reference to the floor area of the building is a criterion under the Building Regulations rather than being relevant to the Planning Acts. Further, the reference to other similar buildings in the vicinity of the site relates to the planning merits of the case and does not establish that the erection of the building as specified in the notice has not taken place. The building exists; I examined it internally and externally at the time of my visit. The appeal on this ground therefore fails.

The appeal on ground (c)

2. The appeal under this ground (and partly made under ground (b)) is that the erection of the building was 'permitted development' erected for a purpose incidental to the enjoyment of the dwellinghouse (no. 329) and that the use of the building, together with its physical form, supports this and does not constitute a breach of planning control.

3. At my site visit, I noted that the height of the single storey building was about 2.7m high measured from the original ground level. Further, the building is sited almost adjacent to, and within 2m of, the western and northern boundaries of the site. On this basis, the building is not permitted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995, as amended, as it would not meet the limitations set out in E.1 (d) (ii) which define development not permitted as that exceeding 2.5m high within 2m of a curtilage boundary.

4. In terms of the use of the building, it appears that since the notice was issued, various kitchen fittings, including a sink as shown in the photograph in Appendix 2 of the Council's statement, and cooking equipment, have been removed. What remains internally, is a small area, partitioned off from the rest of the space to house a toilet and wash hand basin. The remainder of the building was occupied by a small piece of gym equipment, storage of a few household items and children's toys.

5. These changes may well ensure that the use of the building does not now comprise all of the facilities for day to day living and therefore independent residential use, however, I have to deal with the alleged unauthorised use at the time that the notice was issued rather than at present following the changes to the fittings made in the intervening period. From the information available, I have no reason to doubt the Council's allegation about the building being capable of being used as a self contained unit at that relevant time.

6. This ground of appeal therefore fails in respect of both the physical operation of the erection of the building and its alleged use.

The appeal on ground (e)

7. The appellant states that the notice was sent incorrectly to the site address when the appellant had previously notified the Council that he does not live there and had not sent notice to the appellant at his notified address. However, the Planning Act requires the Council to serve notice on the owner and on the occupier of the land in question. It was therefore not unreasonable for the Council to post the notice to the appeal site property. In any event, the appellant was able to lodge his appeal within the period specified in the notice and he has therefore not been prejudiced by the delay involved in him receiving the notification at his current address. This ground of appeal therefore fails.

The appeal on ground (f)

8. The requirement of the notice is to demolish the building and remove the resultant materials and debris from the site. However, I agree with the appellant that such complete demolition is excessive given that the building is only marginally higher than the 2.5m height specified in the General Permitted Development Order, and in the light of the general circumstances of the site. Further, the kitchen facility has now been removed and the remaining small toilet and hand-basin is a reasonable facility in a garden outbuilding gym/playroom and would be incidental to the enjoyment of the overall property by its occupiers.

9. I will therefore allow the appeal on this basis and revise the notice so as to require alterations to the building comprising the removal of the roof and the lowering of all of the walls to ensure that when the roof is replaced, the total

height of the building is no more than 2.5m high above the previously existing ground level. The raising of the ground level around the building to reduce the apparent height of the building would not accord with the regulations and would not be an acceptable solution. In respect of the use, it is necessary to make it explicit that the kitchen facilities have to be removed on a permanent basis.

10. The appeal on this ground therefore succeeds on a limited basis and I will revise the notice accordingly.

Conclusion

11. For the reasons given above I conclude that while there has been a breach of planning control, and that the notice was properly served, the requirements are excessive and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) succeeds to that extent.

Formal Decision

12. I allow the appeal on ground (f), and direct that the enforcement notice be varied by the deletion of all of the requirements set out in STEP 1 and the substitution of the following requirements:

    STEP 1 - Remove the roof of the building and reduce the height of the walls to ensure that when the roof is replaced no part of the building including the roof is more than 2.5m high above the natural ground levels existing at the time before the building was constructed.

    STEP 2 – Permanently remove the sink and kitchen fittings and appliances from within the building.

    STEP3 – Remove all materials, debris and items arising from STEPS 1 and 2 from the premises.

13. Subject to these variations I uphold the enforcement notice.

David Murray

INSPECTOR