The Planning Inspectorate

Appeal Decision

Site visit made on 21 November 2011

by Ahsan U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 1 December 2011

Appeal Ref: APP/T5150/D/11/2162721
48 Plympton Road, London NW6 7EQ

- 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 B Wingate and Ms E Roper against the decision of the Council of the London Borough of Brent.
- The application Ref 11/1394, dated 19 May 2011, was refused by notice dated 22 July 2011.
- The development proposed is described in the application as 'retention of existing roof alterations to previously existing single storey rear extension'.

Decision

1. The appeal is allowed and planning permission is granted for the alterations to single-storey side infill extension (retrospective application) at 48 Plympton Road, London NW6 7EQ in accordance with the terms of the application, Ref 11/1394, dated 19 May 2011.

Procedural Matter

2. The development has already been carried. *Retention* is not an act of development. For clarity's sake, I have used the Council's wording of the development in the decision above.

Main Issue

3. No. 48 is situated in the North Kilburn Conservation Area (the 'CA'). This part of the CA is adorned by rows of Victorian dwellings the architectural style of which defines the character of the CA. I concur with the Council's assessment that the alterations to the height and roof design of the single-storey infill extension do not adversely affect the character or appearance of No. 48 or the surrounding CA, due to the rearward positioning and the type of materials used in the construction. Therefore, the appeal raises one main issue and that is the effect of the development upon the living conditions of the occupiers of No. 50 Plympton Road, with particular regard to loss of light and outlook.

Reasons

4. Policy BE9 of the London Borough of Brent Unitary Development Plan (UDP) 2004 relates to architectural quality and sets out criteria for new buildings, extensions and alterations to existing buildings. Supplementary planning guidance (SPG) Note 5 titled *'Altering and Extending your Home'* (2002) is also relevant to the determination of this appeal.

5. By way of background, planning permission was previously granted for the erection of a rear single-storey infill extension. The approved scheme is different from the development carried out because of the rear infill extension's enlarged footprint. Moreover, the height and design of the roof has also been altered. Retrospective planning permission is now sought for these alterations.

6. No. 48 and 50 are terraced properties with sections to the rear. In such circumstances, the SPG suggests that single-storey rear extensions along the common boundary can adversely affect the adjoining property. For such locations, the SPG sets the maximum height for flat roofed additions to 3m and a similar average height at the mid point of pitched roofs at the site boundary. The Council states that the alterations to the rear infill extension have increased the height along the joint boundary to 3.1m and the flat roof is 2.9m. Because of the overall height to the rear infill extension and its siting, the Council is concerned about the impact upon No. 50.

7. There are no objections to the development in terms of its depth and width. However, in this particular case the SPG should not be applied rigidly because the side elevation windows to No. 50 are not the only means of daylight into its kitchen, due to the location and setting of a rearward conservatory. In addition to that, the rear section of the adjoining dwelling is set away from the boundary and that separation allows daylight into its living room and kitchen. Despite the additional height, the bulk and mass of the rear infill extension does not materially reduce outlook from No. 50's habitable rooms, because of the built-form and layout of the two properties. The development does not have an overbearing or overpowering effect, due to the design of the infill extension. The development complies with UDP Policy BE9, because the infill extension does not result in the significant loss of light or outlook.

8. I have considered imposing conditions in the light of guidance contained in Circular 11/95: '*The Use of Conditions in Planning Permissions*'. The development, as carried out, is consistent with the architecture of the existing dwelling. The materials used on the external elevations of the infill side extension match those on the existing dwelling. In the circumstances, conditions would be unnecessary and unreasonable.

9. For all of the above reasons, I conclude that the development does not have a materially harmful effect upon the living conditions of the occupiers of No. 50 Plympton Road. The appeal should succeed without conditions.

Ahsan U Ghafoor

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 7 November 2011

by N M McGurk BSc (Hons) MCD MBA MRTPI

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

Decision date: 13 December 2011

Appeal Ref: APP/T5150/A/11/2155341
8A Monson Road, London, NW10 5UP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Claire Potgieter against the decision of the Council of the London Borough of Brent.
- The application Ref 10/2426, dated 11 September 2010, was refused by notice dated 14 April 2011.
- The development proposed is an outbuilding at the bottom of the garden.

Decision

1. The appeal is allowed and planning permission is granted for an outbuilding at the bottom of the garden at 8A Monson Road, London NW10 5UP in accordance with the terms of the application, Ref 10/2426, dated 11 September 2010, subject to the condition that the outbuilding shall only be used for purposes incidental to the residential use of the ground floor flat.

Procedural Matters

2. The development this appeal relates to has already been carried out. Although the address given on the planning application form is 8 Monson Road, the appeal relates to a ground floor flat and the appeal form and accompanying documents confirm that the address is 8A Monson Road. This is reflected in the heading above.

Main Issues

3. The main issues are the effect of the development on the character and appearance of the surrounding area and on the living conditions of neighbouring occupiers with regards to outlook.

Reasons

Character and Appearance

4. The development is located at the end of the rear garden of 8A Monson Road, a ground floor flat in a terraced property. Monson Road comprises a long terrace of two-storey housing with gardens to the rear. On the appeal property's side of the road, the gardens back onto the rear gardens of a similar terrace of properties on Furness Road, creating an enclosed area between the two roads.

The area presents a variety of spaces, both green and hard landscaped and includes numerous mature trees, brick walls, patios and garden paraphernalia.

5. There are various outbuildings visible in the rear gardens. These include modest sheds, smaller than the development subject to this appeal, but significantly, also include considerably larger buildings. Three such larger buildings were visible from the appeal site – one immediately behind it and two to the south west. The building behind is of such a size that, together with the mature trees, it obscures the appeal building in views from the Furness Road properties. Moreover, the appeal building has the effect of mitigating, to some extent, the bulk and mass of the larger building against which it is seen from the rear of the Monson Road properties.

6. Although the building extends to almost the full width of the garden, it is relatively small scale. Its flat roof limits the overall height and the use of timber cladding minimises its visual impact in this garden setting. In the context of the other outbuildings and garden paraphernalia, I do not consider the building to be a disproportionate or unduly intrusive structure and find no harm to the character and appearance of the surrounding area. There would be no conflict therefore, with policies BE2 and BE9 of the London Borough of Brent Unitary Development Plan (UDP) 2004, or policy CP17 the Core Strategy 2010 which seek, among other things, to ensure that the scale and design of new buildings respects their setting and causes no harm to the character of an area.

Living Conditions

7. With regard to the living conditions of adjoining occupiers, the Council's concerns relate particularly to the outlook for occupiers of No 6 Monson Road. The wall along the boundary with No 10 is around 2 metres in height screening the appeal building in views from the adjacent garden to that property. However, the wall along the boundary with No 6 Monson Road is approximately 1.5 metres in height. Although, with a height of some 2.75m, the building can be clearly seen above the wall it does not, to my mind, appear as an unduly conspicuous or intrusive feature. It is relatively small in scale and the timber cladding and flat roof further assist in assimilating the building into its context. I find no harm in this regard, to the outlook of the adjoining properties, and no conflict therefore, with UDP policy BE9 which, among other things, seeks to protect the outlook of existing residents.

Conditions

8. I have considered the conditions suggested by the Council against the advice in Circular 11/95. The outbuilding was being used for the purposes of storage at the time of the site visit. I agree with the Council however, that a condition is necessary to ensure that it continues to be used only for purposes incidental to the use of the ground floor flat, in order to minimise any use that may cause undue noise and disturbance to adjoining residents. The Council has also suggested a landscaping condition were the appeal to succeed. However, I have found the development to be acceptable on its own merits and no additional planting is required to make the building acceptable in planning terms.

Conclusions

For the reasons given above, I conclude that the appeal should succeed.

N M McGurk

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 24 November 2011

by David Fitzsimon MRTPI

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

Decision date: 23 December 2011

Appeal Ref: APP/T5150/A/11/2161112
61B St Pauls Avenue, London NW2 5TG

- 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 Miss Radmila Sobot against the decision of the Council of the London Borough of Brent.
- The application Ref 11/0223, dated 30 January 2011, was refused by notice dated 25 March 2011.
- The development proposed is the retention of a wooden outbuilding at the bottom of the rear garden.

Procedural Matter

1. The wooden outbuilding has been constructed and the application was made in retrospect. I have therefore amended the description of the proposal accordingly.

Decision

2. The appeal is allowed and planning permission granted for the retention of a wooden outbuilding at the bottom of the rear garden of 61B St Pauls Avenue, London NW2 5TG in accordance with the terms of the application, Ref 11/0223, dated 30 January 2011.

Main Issue

3. The main issue in this case is the effect of the wooden outbuilding on the character and appearance of the local area and the outlook for adjoining residents.

Reasons

Character and appearance

4. The appeal relates to a wooden outbuilding. It has been erected at the bottom of the rear garden of a ground floor flat which is located within a street of semi-detached properties.

5. The timber outbuilding occupies about a third of the depth of the rear garden and it is a little larger than some of the other structures I saw within nearby rear gardens, but not significantly so. It is of an attractive, contemporary design with an inverse slightly sloping roof which minimises its height. The outbuilding is tucked neatly at the bottom of the garden, against the backdrop

of the taller wall which retains the adjoining railway track, and a tall mature tree. A generous sized garden remains.

6. For these reasons, I conclude that the outbuilding does not appear as an incongruous addition and it does not unduly harm the overall character and appearance of its immediate surroundings. In this respect, I find no conflict with policy CP17 of the adopted London Borough of Brent Local Development Framework Core Strategy and saved policies BE2 and BE9 of the adopted London Borough of Brent Unitary Development Plan.

Outlook

7. The Council suggests that because of its overall size and span, the outbuilding is overbearing for the occupiers of neighbouring dwellings. I disagree for several reasons. Firstly, it is located at the very bottom of the garden close to the railway line, which is a generous distance from the dwellings themselves. Secondly, it does not project a significant distance beyond the similar structure found within the neighbouring garden at No. 63 St Pauls Avenue and therefore it is not overbearing for the occupiers of this property when enjoying their rear garden. Thirdly, whilst the outbuilding encloses the bottom section of the rear garden of No. 61A St Paul's Avenue due to forward positioning of the shed of this property, I find it highly probable that its occupiers mainly use the lawned area between the shed and the rear of the flat. This is because the space to the rear of the shed is less inviting due to the position of the railway line and the shade cast by mature tree cover. To this end, I am satisfied that the outbuilding is not unduly oppressive for the occupier(s) of No. 61A and my view in this respect is reinforced by the fact that no formal objection has been received in this particular regard.

8. Accordingly, I conclude that the outbuilding is not unduly overbearing for neighbouring residents. In this respect, there is no tension with any of the development plan policies I have already referred to.

Conditions

9. The Council has suggested two conditions in the event that the appeal succeeds. The first relates to additional landscaping. To my mind, this is not necessary as the outbuilding is visually acceptable in its own right and it does not need softening by any further planting. The second seeks to ensure that the outbuilding is used only for purposes incidental to the residential use of the ground floor flat. This is not necessary either as any other use would require planning permission in its own right and therefore could be appropriately controlled by the Council. As the development is complete, the standard conditions which limit the lifespan of the planning permission and seek to ensure that the development accords with the approved plans are not required. Accordingly, I allow the appeal unconditionally.

David Fitzsimon

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 6 December 2011

by Raymond Michael MBA BSc DipTP MRTPI ARICS MIM

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

Decision date: 16 December 2011

Appeal Ref: APP/T5150/A/11/2156746
8 Grand Parade, Forty Avenue, Wembley, Middlesex HA9 9JS

- 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 Atheer Supermarket against the decision of Brent Council.
- The application Ref 11/0810, dated 22 March 2011, was refused by notice dated 17 June 2011.
- The development proposed is a change of use from supermarket (Class A1) to supermarket and take-away (Class A5) and installation of extract flue.

Decision

1. The appeal is allowed and planning permission is granted for a change of use from supermarket (Class A1) to supermarket and take-away (Class A5) and installation of extract flue at 8 Grand Parade, Forty Avenue, Wembley, Middlesex HA9 9JS in accordance with the terms of the application, Ref 11/0810, dated 22 March 2011, subject to the following conditions:

    1. The development hereby permitted shall begin not later than three years from the date of this decision.

    2. The development hereby permitted shall be carried out in accordance with the following approved plans: SB/B32/1 and SB/B32/2.

    3. Before the use hereby permitted begins, a scheme for the installation of equipment to control the emission of fumes and smell from the premises shall be submitted to and approved in writing by the Local Planning Authority. The scheme as approved shall be implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions. The submitted scheme shall include details of:

        - The specification of the fan and any silencers fitted;
        - All fittings intended to reduce the transmission of noise and vibration to neighbouring properties;
        - Predicted noise levels at the nearest point to the window, demonstrating that the selected units will not cause a nuisance to the property (e.g. that

the LAeq, 5 min is at least 10 dB below background levels at the window).

Preliminary matters

2. A previous application for the change of use involving a large extractor flue on the rear elevation discharging above roof height was refused because of the its close proximity to habitable room windows and its impact on the Barn Hill Conservation Area.

Main Issue

3. The main issue is the impact of the proposed extractor flue on the living conditions of nearby occupiers because of fumes or noise.

Reasons

4. The appeal site is a supermarket situated within a parade of shops fronting a busy distributor road. It lies on the edge of the Barn Hill Conservation Area (CA), which is formed mainly of attractive inter-war residential properties. The current proposal would eliminate the need for a large extractor flue on the rear of the property, and would incorporate an extractor outlet in a more discreet location on the rear wall of a ground floor projection at the rear of the shop. Because of the discreet location and small scale of the extractor flue it would be largely hidden from most public viewpoints and I am satisfied that it would preserve the character and appearance of the CA.

5. The proposed use is to convert a small part of the shop to the cooking and sale of take-away food. A new extraction system would be installed, and the outlet for that system would be located away from the rear wall of the flats above the shop, within about 7m of the upper floor flat. Because of this location the Council has concerns about the potential odour nuisance which could be caused to the neighbouring residents. However, I noticed at my site visit that there were several other premises in the parade which were in restaurant/take-away use, and that those had extractor flues and air conditioning units at the rear.

6. It is not uncommon for hot-food take-away uses to be located close to residential properties and for odours to be dealt with by means of extraction equipment. The appellant has submitted some details of a proposed extraction system and, in general, I consider that if an appropriate system is installed, operated and maintained in accordance with the manufacturer's instructions, there is no reason why the proposal should give rise to excessive levels of odours. Therefore, subject to such equipment being provided, I see no reason why the proposal would cause any material harm to the living conditions of nearby residents.

7. The appellant has pointed out the existence of a wooden fence between the proposed extractor outlet and the residential property above as potential mitigation of the impact on the flat. However, I do not consider that to be an effective form of screening for odours, and I have given it little weight in my decision.

8. I therefore conclude that the impact of the proposed extractor flue would not give rise to unacceptable harm to the living conditions of nearby occupiers because of fumes or noise, and that the proposal would comply with Policies

BE17, EP2, and SH10 of the London Borough of Brent Unitary Development Plan (2004).

Conditions

9. I have considered the need for conditions in the light of the advice in Circular 11/95 and those suggested by the Council. In addition to the statutory condition on commencement, I shall include a condition requiring the development to be completed in accordance with the submitted plans, for the avoidance of doubt. In order to protect the living conditions of nearby residents I shall also include a condition requiring approval of details by the local planning authority in relation to provisions for odour and noise abatement, prior to the installation of extraction equipment.

Raymond Michael

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 5 December 2011

by William Fieldhouse BA (Hons) MA MRTPI

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

Decision date: 19 January 2012

Appeal Ref: APP/T5150/A/11/2157711
99 Sunnymead Road, London NW9 8BS

- 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 Laurence Hamilton against the decision of the Council of the London Borough of Brent.
- The application Ref 11/0910, dated 9 April 2011, was refused by notice dated 24 June 2011.
- The development proposed is the conversion of the existing property into two apartments, incorporating the previously approved single-storey rear extension and roof addition and the provision of car parking, storage and amenity area.

Preliminary Matters

1. The appellant's evidence suggests possible changes to the plans submitted with the planning application to address some of the Council's concerns, and includes an additional plan showing an outbuilding 2.5 metres in height. However, my decision is based on the plans submitted with the planning application and refused by the Council.

Decision

2. The appeal is allowed and planning permission is granted for the conversion of the existing property into 2 apartments, incorporating the previously approved single-storey rear extension and roof addition and the provision of car parking, storage and amenity area at 99 Sunnymead Road, London NW9 8BS in accordance with the terms of the application, Ref 11/0910, dated 9 April 2011, subject to the conditions set out in the attached schedule.

Main Issues

3. There are two main issues:

   - The effect of the proposal on the supply of suitable housing in the area
   - Whether the proposal would provide acceptable living conditions for future occupiers of the two apartments

Reasons

4. 99 Sunnymead Road is a two storey, end of terrace house with a long back garden. It is in a semi derelict condition and has not been occupied for a number of years. A rear dormer has been built, and work started on a single storey rear extension. An unsurfaced "vehicle row" runs down the side of the property and along the rear of the back gardens to the terrace. It is within a residential area consisting mainly of family homes, some of which have been converted to flats.

Supply of suitable housing

5. No 99 was originally a 3 bedroom house with a floor area of around 82m^2. The Council's Unitary Development Plan 2004 (UDP) policy H17 states that conversions of houses into flats will be permitted unless the property has an original, un-extended floor area of less than 110m^2. This is to prevent the loss of small, purpose-built family dwellings and thereby retain mixed and balanced communities. The Brent Core Strategy, adopted in July 2010, notes a shortage of family homes and policy CP21 aims to provide a balanced housing stock by protecting existing accommodation that meets known needs and ensuring new housing appropriately contributes towards the wide range of household needs.

6. The proposal would be contrary to UDP policy H17. However, the appeal site has not been providing family accommodation for a number of years and the harm caused to the objective of preventing the loss of family homes would be limited in this particular case. Moreover, the proposal would contribute to achieving the Core Strategy objectives of providing more homes and contributing towards the wide range of household needs by bringing a disused property back into a viable residential use. Whilst no evidence has been provided to demonstrate that it would not be economically viable to bring it back into use as a single dwelling, it does seem likely that the creation of two apartments would generate more revenue and therefore make the refurbishment works more cost effective.

7. On balance, I consider that the benefits of bringing the property back into use would outweigh the limited harm that would be caused to the aims of UDP policy H17 given the particular circumstances of this case.

Living Conditions

8. The proposal would create 2 self-contained apartments, one with an internal floor area of around 55m^2 and the other around 61m^2 according to the Council's measurements. Both would have their own private entrance and a lounge at the front. The ground floor apartment would have two small bedrooms, and the other apartment would have a bedroom on the first floor and one in the converted loft. The size of both apartments would meet the Council's minimum standards[1], although the ground floor flat would be slightly smaller than the more recently adopted standard of 61m^2 set out in the London Plan (2011).

9. The layout of the two apartments would be conventional, with adequate room sizes and shapes. The amount of floorspace devoted to rooms would be

[1] Supplementary Planning Guidance 17 *Design Guide for New Development* adopted 2001 (SPG17): minimum size for a 2 bedroom, 3 person flat is 55m^2.

slightly less than the Council's minimum standard of 90%[2], but the internal circulation space would not be excessive or harmful to the objectives of SPG17. All habitable rooms would have external windows. The outlook from the window in ground floor bedroom 2 would be restricted due to it being less than 2 metres from the proposed fence. However, it would be higher than the fence, allowing some outlook and natural light in.

10. The lounges in the 2 apartments would both be at the front of the property, and the overall "stacking" of rooms on different floors would be satisfactory. Bedroom 2 on the ground floor would be adjacent to the stairway to, and partially beneath the bathroom in, the upper floor apartment. However, noise disturbance from the bathroom and stairs would be unlikely to be excessive and frequent, and I do not consider this arrangement to be unacceptable.

11. Both apartments would have an area of the back garden separated by the proposed storage building. The access arrangements from the apartments to these gardens, and the car parking spaces at the rear, would not be unduly inconvenient for the occupiers of either of the apartments. Access from the first floor apartment to the garden and car parking space would entail walking close to the window in bedroom 2 in the ground floor apartment, but this would not lead to significant disturbance or loss of privacy due to the relatively infrequent use of the path that would take place. Overall, the proposal meets the requirements set out in UDP Policy H18 to ensure that flat conversions provide an acceptable standard of accommodation and are not over-intensive.

12. I conclude on this issue that the apartments would not be cramped or substandard and would provide acceptable living conditions for future occupiers in line with the UDP and SPG17.

Other matters

13. The proposal would improve the appearance of the property through the carrying out of much needed repair and restoration including to the front elevation. This would improve the street scene. The provision of the car parking spaces at the rear of the property and the erection of a single storey, flat roofed storage building in the middle of the back garden will affect the appearance to the rear. However, given the presence of other outbuildings in nearby back gardens, and garages / storage buildings accessed from "vehicle row" to the side and rear of the property, this will not harm the character or appearance of the area. The proposed outbuilding's position means that it would not be visually overbearing to the residents of the adjoining house, provided its height, which can be controlled by condition, is not excessive. The proposed outbuilding would therefore comply with UDP policies BE2 and BE9. There are no other matters that outweigh my conclusions on the two main issues.

Conditions

14. I have considered the conditions suggested by the Council and agree that most are necessary, subject to some alteration to the wording to improve clarity and ensure consistency with Circular 11/95: *The Use of Conditions in Planning Permissions*.

[2] Supplementary Planning Guidance 17 *Design Guide for New Development* adopted 2001 (SPG17).

15. Conditions are needed to ensure appropriate landscaping, means of enclosure, arrangements for the storage of waste and recyclable materials, an enclosed cycle store, and to control the outbuilding's height, elevations, and external materials in order to safeguard the character and appearance of the area and living conditions in the adjoining house. A condition is not required relating to the materials of the rear extension and roof addition as these are not part of the current proposal.

Conclusion

16. For the reasons given above, the appeal should be allowed.

William Fieldhouse

INSPECTOR

Schedule of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.
2) The development hereby permitted shall be carried out in accordance with approved plans "3180 dwg. No: 6 (Jan 2011)" and site plan ref MX66038.
3) Prior to the development of the outbuilding, details of its height, elevations and external materials shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
4) No development shall take place until full details of landscape works have been submitted to and approved in writing by the local planning authority. These works shall be carried out as approved prior to the occupation of either of the two apartments. If within a period of five years from the date of the planting of any tree or shrub that tree or shrub, or any tree or shrub planted in replacement for it, is removed, uprooted or destroyed or dies, another tree or shrub of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
5) No development shall take place until details of the position, design, materials and type of boundary treatment to be erected have been submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed before either of the two apartments hereby approved are occupied. Development shall be carried out in accordance with the approved details and thereafter permanently retained.
6) No development shall take place until details of arangements for the storage and disposal of refuse and recyclable materials and enclosed cycle storage within the site have been submitted to and approved in writing by the local planning authority. The approved arrangements shall be in place before either of the two apartments hereby approved are occupied and shall thereafter be permanently retained.

The Planning Inspectorate

Appeal Decision

Site visit made on 8 December 2011

by Sue Glover BA (Hons) MCD MRTPI

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

Decision date: 16 December 2011

Appeal Ref: APP/T5150/D/11/2161939
7 Rosslyn Crescent, Wembley, Middlesex HA9 7NZ

- 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 J N Patel against the decision of the Council of the London Borough of Brent.
- The application Ref 11/1495, dated 7 June 2011, was refused by notice dated 4 August 2011.
- The development proposed is a loft conversion, formation of a hip to a gable end, a rear dormer and front roof lights.

Decision

1. The appeal is allowed and planning permission granted for a loft conversion, formation of a hip to a gable end, a rear dormer and front roof lights at 7 Rosslyn Crescent, Wembley, Middlesex HA9 7NZ in accordance with the terms of the application, Ref 11/1495, dated 7 June 2011, subject to the following conditions:

    1) The development hereby permitted shall be begun 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 following approved plans: location plan and drawing nos. KS/2011/01, KS/2011/02, KS/2011/03 and KS/2011/04.

    3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted 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 Issue

2. The main issue is the effect of the proposal on the character and appearance of the street scene.

Reasons

3. The street is predominantly characterised by pairs of semi-detached houses of varying designs and spaces between them. Some pairs are positioned close together; others have a wider gap between them. No. 7 has previously been extended at the side with a continuation of the hipped roof. The roof of the attached house, no. 5 has been extended from a hip to a gable with a large box dormer at the rear. The pair of dwellings therefore appears unbalanced in design.

4. The proposal to extend the hipped roof to a gable at no. 7 would help balance the design of the pair insomuch that the roof end gables would appear similar. There would remain a sizeable gap at roof level between no. 7 and no. 9 as no. 9 has a hipped roof at the side with a small front gable. The spacing between the 2 flank walls would remain as before.

5. Although there would be some loss of spaciousness as viewed from the street, it would be no more significant than between other pairs of dwellings nearby. At the rear the proposed roof dormer would be substantially hidden from public viewpoints, and would appear smaller than that at no. 5. Taking all these matters into account, I consider that the scale and massing of the proposal would be appropriate to the design and appearance of the dwellings and the spaces between them.

6. I conclude that the proposal would not materially harm the character and appearance of the street scene. There is therefore no conflict with the objectives of Policies BE2, BE7 and BE9 of the *London Borough of Brent Unitary Development Plan 2004*, Policy CP 17 of the *Core Strategy* and *Altering and Extending Your Home, SPG 5*.

7. I have taken into account all other matters raised, but I find none to justify the dismissal of this appeal. I have imposed a condition requiring details of external materials to ensure a satisfactory finished appearance. 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.

Sue Glover

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 10 January 2012

by Zoë Hill BA(Hons) MRTPI DipBldgCons(RICS) IHBC

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

Decision date: 24 January 2012

Appeal Ref: APP/T5150/D/11/2165993
86 Wrentham Avenue, London NW10 3HG

- 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 Ms Rachel Whetstone against the decision of the Council of the London Borough of Brent.
- The application Ref: 11/1528, dated 12 June 2011, was refused by notice dated 7 September 2011.
- The development proposed is described as alteration to rear part of the roof and side elevations and various alterations to the inside of the property.

Preliminary Matter

1. The above description is taken from the application form. In the Council's decision notice it describes the proposal as 'Extension of the roof to the rear and side including a rear dormer window, installation of 1 rooflight across the proposed flat roof and side roof plane and 1 front rooflight'. The appellant uses this description in their appeal form and, as it more clearly details what is proposed, I shall use it as well.

Decision

2. The appeal is allowed and planning permission is granted for the extension of the roof to the rear and side including a rear dormer window, installation of 1 rooflight across the proposed flat roof and side roof plane and 1 front rooflight at 86 Wrentham Avenue, London NW10 3HG in accordance with the terms of the application, Ref: 11/1528, dated 12 June 2011, subject to the following conditions:

    1) The development hereby permitted shall begin not later than three years from the date of this decision.

    2) The development hereby permitted shall be carried out in accordance with the following approved plans: Ordnance Survey 1:1250; Ordnance Survey 1:500; Front Elevation proposed and existing (Revision One 12/06/11); Ground floor plans existing and proposed; First floor plans existing and proposed; Second floor plans existing and proposed (Revision One 12/06/2011); Roof and Basement Plans existing and proposed (Revision One 12/06/2011); existing and proposed long section showing stairs (Revision One 12/06/11); existing and proposed side elevation (Revision One 12/06/11); Existing and proposed rear elevation and short section (Revision One 12/06/11); Drawing produced to Show Main Adjoining Windows (Revision One 12/06/2011).

3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Main Issue

3. The main issue in this case is the effect of the proposed development on the character and appearance of this pair of semi-detached dwellings and the surrounding area.

Reasons

4. The appeal property is one of a pair of semi-detached dwellings. The dwellings to either side of this pair are of a different design and reflect longer stretches of similar development so that the design of these 2 houses is not typical of other houses in the street. Moreover, this pair appears symmetrical from the front but is not symmetrical at the rear and, as a consequence, the roof form is different, particularly in respect of the corner bay at the appeal property and rear bay on the attached dwelling.

5. The proposal would result in increasing the height of the capped party wall and the creation of a new roof, with side wall height increase, within the mid section of the roof structure. However, the front and side roof pitches would be unaltered and the overall roof height would not exceed that of the front ridge. In addition, although the side elevations would alter, including the central parapet increase in height, these changes would only be seen in limited views from the street because of the relatively small gaps between this pair of semi-detached dwellings and the properties at either side. Given the design, the use of matching materials and noting that the chimneys would remain as a focal feature, the change would not have a harmful visual impact on the street scene.

6. Whilst the alteration at the side/rear would be more significant, and the rear section of the roof would no longer be subservient to the front section of the roof, the matching materials, slope of the roof, sympathetically designed dormer and existing variation in design at the rear is such that there would not be visual harm the overall character and design of the building taken as a whole.

7. Thus, I do not find harm to the character of the host dwelling, the pair of semi-detached houses, or the street scene and surrounding area which is designated as being an Area of Distinctive Residential Character. I therefore do not find conflict with saved policies BE2, BE9 or BE29 of the Brent Unitary Development Plan (2004) which, taken together, seek protection of character and quality, and the use of creative, appropriate design solutions. Although the Council's Supplementary Planning Guidance 5: Altering and Extending Your Home explains that roof extensions/alterations will not normally be permitted on a semi-detached dwelling, it places emphasis on the need to respect the character of the building and area which this scheme does, such that I am satisfied that the proposed development would accord with the thrust of the SPG.

Conditions

8. In addition to the commencement condition I shall impose a condition requiring use of matching materials as sought by the Council and, for the avoidance of

doubt and in the interests of proper planning, construction in accordance with the submitted drawings.

Conclusions

9. For the reasons set out above this appeal shall succeed.

Zoë Hill

Inspector

The Planning Inspectorate

Appeal Decision

Inquiry held on 9 November 2011
Site visit made on 10 November 2011

by Martin Joyce DipTP MRTPI

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

Decision date: 5 December 2011

Appeal Ref: APP/T5150/C/11/2151323
26 Park Avenue, London NW2 5AP

- 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 Adilsons Properties Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/10/0719.
- The notice was issued on 9 March 2011.
- The breach of planning control as alleged in the notice is the material change of use of part first floor and second floor from one to three self-contained flats.
- The requirements of the notice are to cease the use of part first floor and the second floor of the premises as three self-contained flats and its occupation by more than one household, remove all items, materials and debris associated with the unauthorised change of use, including all kitchens, except one, and all bathrooms, except one, from the premises.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The deemed application for planning permission also falls to be considered.

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Procedural Matters

1. All evidence to the Inquiry was given on oath or affirmation.

Matters Concerning the Notice

2. It was agreed at the Inquiry that the allegation contained in the notice was factually incorrect in the reference to the material change of the use of part of the first floor of the appeal premises. The change of use concerns only the former single self-contained flat on the second floor of the property. No injustice has been caused by this error; I shall therefore correct the notice accordingly using the powers available to me.

Background

3. The appeal property is a three-storey detached house situated on the north-eastern side of Park Avenue, close to the junction with St Paul's Avenue. There is no dispute that the property has a lawful use as three self-contained flats, one on each floor, although no planning permission for such use has been produced. In 1999, planning permission was refused for the conversion of the property into 3 one-bedroom and three studio flats but permission for a change of use from residential to a hostel for the homeless was granted in 2001. That

permission appears to have expired without implementation, although the appellants produced a document, dated 6 July 2001, relating to the property's grading under the BABIE scheme[1] in respect of nine rooms. It is not for me to decide on this point but, should the permission have been implemented, the lawful use of the property would have reverted to that of three flats upon cessation of any hostel use[2].

4. The second floor of the property has been converted into three self-contained flats (Flats C, D and E), with floor areas of 26.91 sq m, 32.66 sq m and 21.72 sq m respectively. The area of Flat D includes a mezzanine area within the rear dormer of the property. All three flats were occupied at the time of my site inspection, as were Flats A and B, on the ground and first floors respectively.

THE APPEAL ON GROUND (d)

5. The burden of proof in an appeal on ground (d) lies with the appellants who need to show, on the balance of probabilities[3], that the material change of use took place more than four years before the date of issue of the notice, and has continued uninterrupted since that date. The "relevant" date, therefore, is 9 March 2007.

6. The appellants contend that the works of conversion took place between March and September 2006. This claim has been supported by the written and oral evidence of a number of witnesses, including the builder concerned, Mr C Diver, the occupier of Flat B, on the first floor of the property, and the appellant company's Chief Executive (Mr Adil) and Property Manager (Mr Sultan). The latter produced supporting documentation including tenancy agreements, rent receipts, marketing evidence and evidence of the installation of separate electricity meters for the three flats.

7. The Council rely on Council Tax records which show that the flats in question were not registered until 15 April 2010. Moreover, the electoral register of 2011 refers only to three flats, with electors registered at Flats A and B, and Flat C being occupied by a foreign national. Additionally, the Council suggest that the evidence submitted by the appellants is contradictory and should not be relied upon. They question the submission of voluminous documentation at the Inquiry stage of the appeal, when there had been ample opportunity to submit it earlier, and draw attention to contradictions in the evidence about the date of first occupation of the flats. As for the installation of electricity meters, the evidence only shows that two were installed in 2006; this does not prove the existence of three flats at that time thus, in all of the above circumstances, the appellants have failed to meet the required burden of proof.

8. In considering the above submissions, I am mindful of the fact that the Courts have held that the appellants' own evidence does not need to be corroborated by "independent" evidence in order to be accepted, provided it is sufficiently precise and unambiguous on the balance of probability[4]. In this appeal, the appellants have produced a significant amount of evidence to support their case that the second floor of the appeal property was converted into three self-

[1] Bed and Breakfast Information Exchange.
[2] The planning permission (Ref: 00/1300) was granted subject to various conditions including a time limiting condition (Condition No 1), which required the use to cease by 11 October 2005.
[3] Paragraph 8.15 of Annex 8 to Circular 10/97 "Enforcing Planning Control: Legislative Provisions and Procedural Requirements.
[4] *F W Gabbitas v Secretary of State for the Environment and Newham LBC* [1985] JPL 630.

contained flats before the relevant date of 9 March 2007, and that the flats were continuously occupied thereafter until the date at which the enforcement notice was issued.

9. That evidence is contained, firstly, in a number of documents, comprising tenancy agreements for each flat; records of rent payments, including copies of receipts and bank statements; correspondence from edf energy confirming the dates of installation of the electricity meters at the three flats; correspondence and bills relating to Council Tax payments at the appeal property; invoices from letting agents in respect of the letting of the flats; and, a statutory declaration from the occupier of Flat B[5]. In addition, written and oral evidence was produced to support the appellants' claims that the conversion works took place between May and September 2006, and that the three flats were then let and occupied continuously up to and beyond the date of issue of the enforcement notice.

10. I have examined the documentation provided in considerable detail. It presents compelling evidence that the flats in question have been occupied continuously since at least the autumn of 2006. The tenancy agreements for all three flats cover a period from 18 October 2006 until at least the date at which the notice was issued, with tenancy agreements for Flats C and D starting on the earlier dates of 8 August and 9 September 2006 respectively. Moreover, there is no material break in those agreements over the relevant four-year period. In respect of Flat C, there is a break between the end of one tenancy agreement on 7 June 2007 and the start of the next on 15 June 2007, whilst there was a similar break for Flat E between 17 May 2010 and 19 June 2010. The Council do not contest that these breaks were other than the normal gaps between the end of one occupancy period and the start of another when repairs or re-decoration might take place, or when the property was being marketed in a search for new tenants.

11. The tenancy agreements are solidly supported by evidence of rent payment from each of the specified tenants. Contemporary copies of receipts for cash or cheque payments have been supplied, together with extracts from bank statements that show where direct debits or standing orders have been paid in respect of each of the three flats.

12. In addition to the above, invoices from letting agents provide confirmation of names and dates for those tenants who were introduced to the properties as a result of their marketing. Once again there is a clear and consistent correlation between this set of documents and the tenancy agreements and records of rent payments.

13. The bank statements referred to above are an independent source of documentary evidence as is the correspondence from edf energy which confirms the date of installation, and serial numbers, of electricity meters for the three flats. Contrary to the submissions of the Council, the relevant email specifies that all three flats had pre-payment meters installed on 26 October 2010. That for Flat C was, however, replaced with a billed credit meter on 11 February 2010. The serial numbers given for each of the meters coincide with the numbers I noted at my site inspection.

[5] The occupier of Flat B, Mrs Lorena Garcia, also gave oral evidence to the Inquiry.

14. The Council were unable to contradict the comprehensive documentary evidence provided by the appellants, despite rigorous cross-examination. Assertions that suggested that the appellants were well versed in the production of this type of evidence, in relation to other appeals, are disingenuous. Their reliance upon Council Tax and Electoral Register evidence provides only a very narrow angle for a claim that the wide range of supporting documentation is unreliable. It is a fact that the first reference in the Council's own records to five flats at the appeal property, including those on the lower two floors, is dated April 2010, and I consider that the reasons given in cross-examination by the appellants' witnesses for this were unclear and uncertain. Suggestions that tenants were responsible for paying their own Council Tax do not lie well with the demands for unpaid Council Tax in 2009 and 2010 that were addressed to the appellant company. However, I place no great weight on these discrepancies; in my experience it is not unusual for the need for Council Tax to be undeclared, especially by occupiers who are unfamiliar with the system of registration. Whilst this may or may not have been the case at the appeal property, I note that the majority of tenants appear to have been of foreign origin, as noted in the evidence from the Electoral Register produced by the Council.

15. The only slight contradiction in the whole realm of evidence before me relates to the actual date of first occupation of the flats. The tenancy agreement for Flat C is dated 8 August 2006, although the builder stated that none of the flats were ready until September. He does, however, recall prospective tenants being shown around the flats, and Ms Garcia also remembers occupiers moving into the premises in about August 2006, a date she could verify through her pregnancy at that time. Additionally the individual electricity meters were not installed until October 2006 although no suggestion has been made that the second floor was without electricity and there was no suggestion that the previous flat had no supply.

16. As with the question of Council Tax payments, I give little weight to these apparent contradictions which could be explained by a lapse of memory or the possibility that the prospective tenant of Flat C was prepared to pay rent in advance to secure a flat in an area of high demand for such property. In any event, it is largely academic whether initial occupation took place in August, September or October of 2006; all three dates are some time before the relevant date of 9 March 2007. The documentation provided clearly shows that all three flats were occupied well before that date, and the oral evidence given supported this fact.

17. I conclude on this ground that the appellants have met the required burden of proof and have shown, on the balance of probability, that the material change of use of the appeal property to three self-contained flats took place before 9 March 2007 and has continued uninterrupted since that date. The appeal on ground (d) therefore succeeds.

Other Matters

18. All other matters raised in evidence to the Inquiry and in the written representations have been taken into account, but they do not outweigh the conclusions reached on the main grounds and issues of this appeal.

Conclusions

19. From the evidence at the Inquiry I conclude that the allegation in the notice is incorrect, in that it refers erroneously to part of the first floor of the appeal property whereas the breach of planning control affects only the second floor. I shall correct the allegation in the notice thereby to reflect this.

20. As for the appeal on ground (d) I am satisfied on the evidence that the appeal on this ground should succeed in respect of those matters which, following the correction of the enforcement notice, are stated in it as constituting the breach of planning control. In view of the success on legal grounds, the appeal under grounds (a), (f) and (g) as set out in Section 174(2) of 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 fall to be considered.

FORMAL DECISION

21. The enforcement notice is corrected by the deletion, in Schedule 2, of the words "part first floor and". Subject to this correction, the appeal is allowed and the enforcement notice is quashed.

Martin Joyce

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Richard Moules	of Counsel, instructed by Mr Keith Lancaster, Blake Lapthorn, Solicitors
He called:	
Mr Raja Jameel Adil	Solicitor and Chief Executive of the Adil Group pf Companies
Mr C Diver	Proprietor of CD Builders
Mr Aamir Sultan	Property Manager for Adil Properties Ltd
Miss Lorena Garcia	Tenant of Flat B at the appeal property
Mr Anthony Richard Covey ABEng	Partner in Architectural Design and Planning

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Wicks BTP Dip Law MRTPI	Director of Enforcement Services Ltd, instructed by the Director of Planning for the Council
He called:	
Mr Victor Unuigbe BSc (Hons) MSc	Senior Planner with the Council

ADDITIONAL DOCUMENTS PRODUCED AT THE INQUIRY

1 Letter of notification of the Inquiry and list of those so notified.
2 Draft Statement of Common Ground.
3 Saved Policies Direction dated 18 September 2007.
4 Bundle of three appeal decisions, Refs: APP/T5150/C/10/2141736, APP/T5150/C/10/2134651 and APP/T5150/C/10/2124626, produced by the Council.
5 Signed and completed Unilateral Agreement pursuant to Section 106 of the Town and Country Planning Act 1990, produced by the appellants.
6 Extract from the Brent Unitary Development Plan 2004 showing Policies TRN11 and TRN14.
7 Extract from the Brent Unitary Development Plan 2004 showing Policies H17 and H18.
8 Extract from The London Plan showing Policy 3.3.
9 Extract from the London Borough of Brent Core Strategy, adopted 12 July 2010, showing Policy CP21.
10 Letter dated 6 July 2001 from the London Borough of Brent to Mr R Adil, relating to BABIE Grading, produced by the appellants.

The Planning Inspectorate

Appeal Decision

Site visit made on 22 November 2011

by Ahsan U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 12 January 2012

Appeal Ref: APP/T5150/C/11/2155357
30 Bowrons Avenue, Wembley HA0 4QP

- 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 Mrs A Ahmed against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/10/0957.
- The notice was issued on 13 May 2011.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a plastic, UPVC, glass and brick type lean-to extension to side/rear of the premises and the erection of a mono-pitch roof building in rear garden area of premises
- The requirements of the notice are: Step 1 demolish the mono-pitch roof building in the rear garden, remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises. Step 2 demolish the plastic, UPVC, glass and brick lean-to extension to the side/rear of the premises, remove all items and debris arising from that demolition and remove all materials 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) (c), (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as set out below in the Decision.

Procedural Matters

1. Some of the appellant's arguments are best placed under ground (c). The Planning Inspectorate wrote to the appeal parties for their comments on the implied ground (c) appeal. I am grateful for these comments, which I will consider.

The implied appeal on ground (c)

2. Under this appeal, the onus is upon the appellant to show that the matters alleged in the notice do not constitute a breach of planning control. The gist of the main argument is that planning permission is not required for the rear garden building, which is detached from the main dwelling and I will refer to as the 'outbuilding'. Work on the outbuilding commenced around November 2010. It has a mono-pitched roof and is 6.3m wide and 6.75m deep. It is 2.8m high on the front elevation increasing to 3.8m to the rear[1].

[1] Taken from the grounds of appeal.

3. Class E of the GPDO[2]states that the provision within the curtilage of the dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development. However, paragraph E.1 sets out physical criteria that need satisfying and clause E.1(d)(ii) states development is not permitted by Class E if the height of the building would exceed 2.5m in the case of a building within 2m of the boundary of the curtilage of the dwellinghouse. In this case, the building is within 2m of the site's boundaries and is 2.8m high to the front and 3.8m high to the rear. Consequently, the outbuilding fails to comply with this criterion. Therefore, this element of the development does not benefit from permitted development rights. The matters alleged in the notice constitute a breach of planning control. Had there been an appeal under ground (c), it would have failed.

The appeal on ground (a) and the deemed planning application (the 'DPA')

4. The terms of the DPA are directly derived from the allegation. Planning permission is sought for the lean-to extension and the outbuilding. The main issue is the impact of the outbuilding upon the character and appearance of the surrounding area. There is one additional main issue and that is the effect of the lean-to extension and the outbuilding upon nearby residents' living conditions, having particular regard to the loss of light and outlook.

The outbuilding - character and appearance

5. No. 30 is located within a mainly suburban residential area. The Council does not raise objections about the design of the uPVC glass and brick type lean-to infill structure to the side and rear. I concur with that assessment because of its positioning and setting. On the other hand, the outbuilding comprises two rooms with a separate bathroom and kitchen. It is located at the bottom end of the garden and occupies its full width. On the front elevation, it has a protruding canopy supported by two decorative columns. I find its façade uncharacteristic of the simple design of the main dwelling. The external appearance of the outbuilding is out-of-keeping with the architectural qualities of the area. It is visually intrusive because of its overall bulk, mass and built form.

6. I conclude that the outbuilding has a detrimental impact upon the character and appearance of the surrounding area. Accordingly, this element of the development fails to comply with UDP Policies BE2, BE7, BE9 of the Brent Unitary Development Plan 2004 (the 'UDP') and Policy CS 17 of the London Borough of Brent Core Strategy 2010 ('CS').

The lean-to extension and the outbuilding – effect upon residents' living conditions

7. The lean-to extension is about 9m deep and it projects the full width of the rear outrigger and forms an infill extension. However, there is some distance between the extension and No. 28 Bowrons Avenue. Due to the location and separation, the lean-to extension does not have a materially detrimental effect upon the amount of daylight received by the adjoining property's habitable rooms. In addition, the height, positioning and scale of the lean-to extension combined with its design do not have a significantly adverse effect upon outlook from the rear windows to No. 28. I take the view that this part of the development complies with UDP Policies BE2 and BE9 and is consistent with the main aims and objectives of supplementary planning guidance ('SPG') 5: *'Altering and Extending Your Home'* 2002.

[2] Article 3, Schedule 2, Part 1 Class E of The Town and Country Planning (General Permitted Development) Order 1995 as amended (the 'GPDO').

8. The appellant argues that the outbuilding is not used as a dwelling, but its internal makeup includes a kitchen, shower, and toilet facility. In any event, in the light of my findings on the ground (c) appeal above planning permission is required for the outbuilding. Although it is set some distance from properties in Eagle Road, the outbuilding's design has an obtrusive and overbearing effect because of its height. Its layout, size and scale has a harmful visual effect especially when viewed from the rear elevations to the adjoining properties and from within their gardens.

9. The appellant suggests that the outbuilding might be modified to render it permitted development. However, to comply with Class E of the GPDO, the likelihood is that the outbuilding's dimensions, design, and its internal layout would need to be altered materially and significantly. I attach limited weight to the fallback arguments because this part of the development is unacceptable due to the outbuilding's design, size and scale. Taking all of the points raised in the preceding paragraphs together, I find that this element fails to comply with UDP Policy BE9 and the SPG and CS Policy CP 17.

10. The two parts of the development are clearly physically and functionally severable because of their disconnection. The lean-to extension is capable of being used sensibly without the outbuilding. I am satisfied that no injustice would be caused in allowing one component and not the other and so I will next evaluate the possibility of imposing conditions in relation to the lean-to extension only.

11. The lean-to extension was built with mainly uPVC windows and door, which match the fenestration of the host dwelling. It is partly brick built and the lower part is virtually hidden by the boundary fencing. Having considered imposing conditions in the light of guidance contained in Circular 11/95[3], in this case, conditions would be unnecessary and unreasonable.

Conclusions on the ground (a) appeal

12. For all of the above reasons, I conclude that the lean-to extension described in the allegation does not materially harm the living conditions of nearby residents or the character and appearance of the surrounding area. On the other hand, I conclude that the outbuilding has a materially detrimental impact upon the character and appearance of the surrounding area and a harmful effect upon the living conditions of nearby residents. Following on from these conclusions, I intend to allow the ground (a) appeal in so far as it relates to the erection of a plastic, uPVC, glass and brick type lean-to extension to side/rear of the premises only.

Split decision: the effect of Section 180 of the Town and Country Planning Act 1990 Act as amended (the '1990 Act')

13. S180 provides that where, after the service of a notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as it is inconsistent with that permission. In this case, the appeal on ground (a) will be allowed in part. If the requirements of the notice were varied to exclude that part of the development for which planning permission is being granted, then this could give rise to two inconsistent permissions, one being granted under S173(11) of the 1990 Act as a variation of cutting down the requirements. To avoid this possibility the requirements of the notice will not be varied in this way and reliance will be placed on S180 to mitigate the effect of the notice in so far as it is inconsistent with the permission. I will next consider the ground (f) appeal in relation to the outbuilding only.

[3] See Circular 11/95: *'The Use of Conditions in Planning Permissions'*.

The appeal on ground (f)

14. The grounds of appeal are that the requirement to demolish the outbuilding is excessive because modifications would overcome objections.

15. Firstly, it is necessary to establish what it is the Council is seeking to achieve by the notice. The reasons behind issuing the notice refer to the impact of the outbuilding upon the character and appearance of the surrounding area and its effect upon the living conditions of nearby residents. From the wording of the notice, it is clear that the remedial requirements follow from sub-paragraph (a) of S173(4) of the 1990 Act. The notice is directed at remedying the breach of planning control and what must be considered is whether the requirements exceed what is necessary to achieve that purpose.

16. The appellant proposes to modify the outbuilding by reducing its height, constructing a dual-pitched roof and altering its internal layout. The modifications were shown in a drawing submitted with the appeal documents but these suggest that significant alterations would be necessary to the fabric of the outbuilding[4]. In the light of my findings on the ground (c) appeal above, the outbuilding was erected without planning permission. I have reviewed all of the arguments advanced under this ground of appeal. However, the lesser steps advanced by the appellant as a form of under-enforcement would not remedy the breach of planning control and the purpose behind the notice can only be achieved by complying with its requirements. The steps required do not exceed what is necessary to remedy the breach. The appeal on ground (f) therefore fails.

Overall conclusions

17. For the reasons given above and having considered all other matters raised, I conclude that the implied appeal on ground (c), and the pleaded ground (f) appeal, should fail. The appeal on ground (a) should succeed in part only, and I will grant planning permission for one part of the matter the subject of the notice, but otherwise uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission that I will grant by virtue of S180 of the 1990 Act.

Decision

18. The appeal is allowed insofar as it relates to the erection of a plastic, UPVC, glass and brick type lean-to extension to the side and rear of the premises and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a plastic, UPVC, glass and brick type lean-to extension to the side and rear of the premises.

19. The appeal is dismissed and the enforcement notice is upheld for the erection of a mono-pitch roof building in the rear garden area of the premises and planning permission is refused in respect of the erection of a mono-pitch roof building in the rear garden area of the premises, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ahsan U Ghafoor

INSPECTOR

[4] Drawing ref: 11042/BOWRONSAVE 30-602 as attachment no. 2 to the appellant's Statement.

The Planning Inspectorate

Appeal Decisions

Site visit made on 12 December 2011

by David Leeming

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

Decision date: 16 December 2011

Appeal Ref: APP/T5150/C/11/2159226 and 2159227
30-32 Clifford Way, London NW10 1AN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Mohammad Ishaq & Mrs Shamim Akhtar against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/11/0070.
- The notice was issued on 13 July 2011.
- The breach of planning control as alleged in the notice is the erection of an extension to the rear garden building located at the rear of 34 Clifford Way.
- The requirements of the notice are: Demolish the extension to the rear garden building located to the rear of 34 Clifford Way, remove all items and debris arising from that demolition, and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Decisions

1. The appeals are allowed and the enforcement notice is quashed. Planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of an extension to the rear garden building at 30-32 Clifford Way, on land located to the rear of 34 Clifford Way.

Ground (a) and the deemed planning applications

2. The main planning issues in this appeal are firstly the effect of the extended building on the character and appearance of the area and secondly the effect on living conditions of neighbours in respect of outlook from their gardens.

3. The extension has been built on formerly open land to the rear of 34 Clifford Way. Its stated purpose is to provide an additional store room for the use of the property 30-32 Clifford Way. The land apparently once provided vehicular access to a garage for the occupants of Nos 30-32 and, originally, just for No 32. That latter property is now a combined single dwelling with No.30 and has an existing outbuilding at the rear of the combined garden.

4. The Council state that the part of the outbuilding to the rear of No 30 has been used as an office and have supplied a photograph taken on 23 May 2011 in support of this statement. However, use of an outbuilding as a home office can be regarded as a use incidental to the enjoyment of a dwellinghouse, as distinct from ordinary living accommodation. In any event, there is no clear

statement by the Council that the main outbuilding has been used other than for purposes incidental to the enjoyment of the dwellinghouse; and the requirements of the enforcement notice relate only to the extension.

5. The extension has added a footprint of about 14.3 square metres. It would provide additional storage space to that available in the main outbuilding. That outbuilding serves the needs of a substantial family home formed by combining two former dwellings. The appellants have stated why they need the additional storage space, for purposes incidental to the reasonable enjoyment of their dwellinghouse. The Council compare the approximate total floor area of the extended outbuilding (stated to be 45sqm) with that of the remaining garden space (stated to be 50sqm). However, the area of garden space at No 30-32 is stated by the appellants to be 330sqm. In any event, the extension has not resulted in any loss of garden space at either Nos 30-32 or at No 34.

6. Owing to its height and position, the extension is not permitted development. However, the new store room is a fairly modest addition to the existing outbuilding. Whilst it is taller than the adjoining outbuilding serving No 34, it sits neatly alongside it. Positioned next to this building, at the end of a long private access, it is barely visible in views from the road. In the context of the existing outbuildings for Nos 30-32 and No 34, as well as other significantly sized outbuildings/garages associated with neighbouring properties, the additional presence of this extension does not create an impression of over development or otherwise result in material harm to the character and appearance of the area.

7. As to its effect in association with the existing larger outbuilding on the outlook from the neighbouring gardens, the extension is largely hidden from view from those in Clifford Way. With a height of 3m, the extension is partly visible above the rear boundary fences of two properties in Dollis Hill Lane to the north (Nos 43 and 45). Its presence has some additional limited impact in the outlook from the back gardens of these properties. However, these gardens appear to be generally well screened by shrubs/trees adjacent to the northern side of the extension. Thus, the additional impact of the extended outbuilding is not such as to create development that is unacceptably dominant or imposing from there.

8. In considering the appeals, representations made by local residents have been taken into account. In the case of the anonymous single letter of objection, nothing is contained in this that would lead to a different conclusion being reached on the main issues.

9. For the above reasons, the development complies with the aims of Policies BE2 and BE9 of the Council's Unitary Development Plan 2004 and the appeals are being allowed.

David Leeming

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 7 November 2011

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 6 December 2011

Appeal Ref: APP/T5150/C/11/2158100
5 Langdon Drive, London, NW9 8NS

- 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 1990 Act).
- The appeal is made by Mr S A Qureishie against an Enforcement Notice issued by the Council of the London Borough of Brent on 27 June 2011.
- The Council's reference is E/11/0178.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission, the erection of a rear dormer window, two storey side, part single and two storey rear extensions to the premises. ("The unauthorised development").
- The requirements of the Enforcement Notice are: (1) Demolish the two storey side, part single and two storey rear extensions, and the rear dormer window, remove all materials arising from that demolition and remove all materials associated with the unauthorised development, and restore the property back to its original condition before the unauthorised development took place. OR (2) Carry out alterations so that the unauthorised development complies with the plans and conditions approved in planning permission No. 08/0498 dated 15/04/08 as listed and attached to the Enforcement Notice.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a) & (c) of the 1990 Act.

Decision

1. The appeal is allowed, the Enforcement Notice is quashed and planning permission is granted on the application deemed to have been made under Section 177(5) of the 1990 Act for the development already carried out, namely the erection of a rear dormer window, two storey side and a part single and part two storey rear extensions to the premises on land at 5 Langdon Drive, London, NW9 8NS referred to in the Enforcement Notice.

Background

2. The Council granted planning permission for, amongst other things, a two-storey side, part single and part two-storey rear extension and a dormer window at 5 Langdon Drive on 15 April 2008. The development has not been carried out in accordance with that planning permission. The appellant has provided plans which indicate how the development as built differs from what was approved.

Ground (c) that there has not been a breach of planning control

3. The onus of proving that there has not been a breach of planning control falls on the appellant and he has to show this on the balance of probabilities.

4. The appellant is of the view that the dormer window is permitted development pursuant to Class B of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO).

5. However, the dormer is just one part of a much larger development that was carried out as one building operation. For the appellant's argument to succeed he has to show that all the development carried out was permitted under the GPDO. The appellant has not done that and it is clear to me that the development as a whole is not permitted development.

6. Even if the appellant was allowed to claim that the dormer was permitted under Class B in its own right he has failed to show that the cubic content of the resulting roof space would not exceed the cubic content of the original roof space by more than 50 cubic metres.

7. I therefore conclude, for the reasons explained above, that the addition to the roof resulting from the dormer window does constitute a breach of planning control and the appeal on Ground (c) therefore fails.

Ground (a) and the deemed planning application – that planning permission should be granted for what is alleged in the Enforcement Notice.

8. The development plan for the area includes the saved policies of the Council's Unitary Development Plan (the UDP). The UDP explains that extensions to existing buildings should provide satisfactory levels of day-lighting and outlook for existing residents.

9. I have also been referred to Council's adopted Supplementary Planning Guidance entitled "Altering and Extending Your Home" (the SPG). The SPG was subject to extensive public consultation. Part of the purpose of building in accordance with the SPG is to ensure that extensions do not have an unacceptable impact on neighbouring occupiers.

10. I consider the main issue in this case is the effect of the first floor extension which provides a rear facing bedroom (the bedroom extension) at No. 5 on the living conditions of the occupiers of Nos. 3 and 7 Langdon Drive having particular regard to overbearing appearance and loss of daylight to rear habitable rooms within those properties.

11. As explained above, the extensions as built do not reflect the permitted scheme in several respects as identified on the "as built" plans provided by the appellant. The bedroom extension is about 4.9m wide. The approved scheme showed the bedroom extension as being 4.3m wide. The additional 0.6m means that part of the bedroom extension is closer to the rear facing bedroom window at No. 3 than would have been the case had the approved scheme been built.

12. Further, the bedroom extension extends 3m to the rear of the original rear wall of the house whereas the approved scheme showed the bedroom extension as being 2m deep. The SPG explains that the depth of any two storey rear extension will be restricted to half the distance between the side wall of the said extension and the middle of the nearest habitable room windows in the neighbouring properties. The SPG explains that this rule ensures that the loss of amenity and light to the neighbouring properties is kept within reasonable limits.

13. The nearest habitable room at No. 7 is a first floor bedroom window. The SPG rule referred to above would be met. I am satisfied that the bedroom extension does not have any detrimental impact on the living conditions of the occupiers of No. 7. My view is reinforced by a letter from the occupier of No. 7 who confirms, "I wish to inform you that I have no objections whatsoever to the building and recent constructions at 5 Langdon Drive".

14. I accept that the bedroom extension breaches the guidance in the SPG in that it is about 5.06m from the middle of the bedroom window at No. 3. It would meet the standard if it was 6m from the said bedroom window. Alternatively, if the bedroom extension was reduced in depth by about 0.47m it would also comply with the SPG.

15. In this case I am satisfied that the bedroom extension does not harm the outlook from the bedroom window at No. 3. The bedroom extension would only be seen at an oblique angle of about 30-degrees from the bedroom window. Further, I do not consider that the bedroom extension will adversely affect the amount of daylight reaching the bedroom window at No. 3. The window is on the north side of the house and in my judgement the bedroom extension does not significantly reduce the amount of daylight reaching the bedroom window at No. 3.

16. The Council are concerned that allowing this appeal will set a precedent which would make it difficult for them to resist similar applications. I do not consider that would be a problem. The Council will be aware that each case has to be considered on its individual merits and is site specific in almost all cases.

17. I therefore conclude, for the reasons explained above, that

    a) the bedroom extension does not materially harm the living conditions of the occupiers of Nos. 3 or 7 Langdon Drive,

    b) whilst there would be a minor conflict with the guidance in the SPG there is no conflict with the relevant parts of the UDP, and

    c) the appeal should succeed on Ground (a) and planning permission will be granted.

Tim Belcher

Inspector