The Planning Inspectorate

Appeal Decision

Site visit made on 14 May 2013

by Lynne Evans BA MA MRTPI MRICS

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

Decision date: 19 June 2013

Appeal Ref: APP/T5150/A/13/2190579
Ground floor flat, 45A Staverton Road, Brondesbury Park, London NW2 5HA

- 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 Gabrielle Jullienne against the decision of the Council of the London Borough of Brent.
- The application Ref: 11/2103 dated 1 August 2011, was refused by notice dated 9 October 2012.
- The development proposed is conversion of part of front garden to parking space.

Decision

1. The appeal is allowed and planning permission is granted for installation of vehicular access and formation of hard and soft landscaping at ground floor flat, 45A Staverton Road, Brondesbury Park, London NW2 5HA in accordance with the terms of the application Ref: 11/2103 dated 1 August 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 plan: car port dated July 2012.

    3) Notwithstanding condition 2, prior to the commencement of the development hereby permitted, details shall be submitted to and approved in writing by the Local Planning Authority of a retaining front boundary wall no higher than 1 metre on either side of the crossover and a drainage grille at the boundary of the site with the public footway to discharge into the area of the hardstanding. The development shall be constructed in accordance with the approved details which shall thereafter be permanently retained.

    4) The soft landscaping shown on the approved plan shall be carried out prior to the completion of the access and hardstanding or in accordance with a programme to be agreed with the local planning authority.

Procedural Matters

2. I have adopted the Council's amended description of development in my decision, which I consider more accurately describes the proposed works.

Main Issue

3. The main issue raised in this appeal is the effect of the proposal on highway and pedestrian safety and the availability of on-street parking.

Reasons

4. The appeal property is a semi-detached property on the west side of Staverton Road within a predominantly residential area. The property is divided into three flats. A significant proportion of the properties in the same road have off street parking and there is, in addition, on-street permit parking. There appears to be no issue with the principle of introducing off-street parking for the property; the considerations relate primarily to the details of the siting of the arrangements proposed.

5. The Council has indicated that the crossover should be moved to the side of the frontage, in accordance with their guidance in their Domestic Vehicle Footway Crossover Policy 2008 (DVFCP) in order to relate to adjoining crossovers and minimise the loss of on street parking. Neither of the adjoining properties have vehicle crossovers although nearby properties beyond the immediate neighbours do.

6. Policy TRN15 of the Council's adopted Unitary Development Plan 2004 (UDP) relating to the creation of an access from a dwelling to a highway, indicates that no more than one on-street space should be lost where the street is heavily parked. Contrary to the indication in the ground for refusal referring to high levels of on-street parking, the Highway and Transportation report indicates that this is not a road which is defined as being heavily parked. Nonetheless, I agree with the Council that the positioning of the crossover should seek to minimise the loss of on-street parking. However, I agree with the Appellant that there appears to be an error in the Council's diagram so that only one space, rather than two would be 'lost'. It is not clear to me that moving the crossover to one side of the property would therefore lead to a smaller reduction in on-street parking provision.

7. The grounds for refusal refer to the proposed layout having a difficult and hazardous manoeuvre when exiting and entering the site which would have a detrimental impact on pedestrian and highway safety. However there is no evidence before me to substantiate this concern, and it is my view from my site visit that the proposed layout would not lead to hazardous manoeuvres in entering or exiting the site. There would be no material harm to pedestrian or highway safety.

8. I accept that the width of the crossover shown does not correspond to the Council's guidance but this would not by itself justify refusing planning permission. Moreover, the DVFCP also indicates that where a hardstanding is wider than the width of the crossover applied for, a solution would be to require a low wall to be retained to prevent vehicles crossing over an area of footway that has not been strengthened. It is not clear from the application

plan whether the existing wall is to be retained on either side of the crossover but this is a matter which can be satisfactorily addressed by a condition.

9. I therefore conclude that there would be no material harm to highway and pedestrian safety and the availability of on-street parking. There would be no conflict with Policies TRN3 and TRN15 of the UDP as well as guidance in the DVFCP.

10. The amount of front garden landscaping which would remain would fall below the 50% which the Council indicates in Policy BE7 and its DVFCP should be retained. However, I consider that the proposed layout would be of a high landscaping standard and would respect the character and appearance of the local area. The proportion of front garden landscaping would be acceptable in the particular circumstances of this case.

11. The Council has proposed no conditions in respect of this proposal. I have already indicated that I propose to impose a condition regarding approval of a retaining wall in order to reflect the guidance in the DVCLP where the hardstanding is wider than the corresponding crossover. This condition also requires approval of the drainage arrangements to meet the requirement of the DVCLP. I shall also add a condition to list the approved plan on the basis that, otherwise than as set out in this decision and in 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. I have also added a condition to require the soft landscaping works to be undertaken prior to completion of the access and hardstanding in order to respect the street scene. Although these conditions have not been seen by either the Appellant or the Council, I am satisfied that neither party would be prejudiced by their imposition.

12. For the reasons given above and having regard to all other matters raised, I conclude that this appeal should be allowed.

L J Evans

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 19 February 2013.

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 7 June 2013

Appeal Ref: APP/T5150/X/12/2180579
226 Walm Lane, London NW2 3BS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is by Tim Jackson against the decision of the Council of the London Borough of Brent.
- The application Ref. 12/1424, dated 24 May 2012, was refused by notice dated 20 July 2012.
- The application was made under section 191(1)(b)of the Town and Country Planning Act 1990 as amended.
- A certificate of lawful development was sought for two rear single-storey extensions to a single dwellinghouse.

Summary of decision: The appeal is allowed and a certificate of lawful development is granted.

Costs application

1. A written application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matters

2. For the avoidance of doubt, I should explain that in the context of an appeal under Section 195 of the Act, which relates to an application for a lawful development certificate, the planning merits of the existing use or operations are not relevant. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

3. The application was for *'two rear storey extensions to single dwelling house'*. I note that the relevant development is 2 rear single-storey extensions built to either side of a two-storey projection on the back of the house. I have amended the description of development stated in the LDC application to reflect this. I do not consider any party suffers significant injustice in consequence.

4. I note that the appeal property lies within the Mapesbury Conservation Area, that is, on Article 1(5) land for the purposes of the GPDO[1].

[1] The Town and Country Planning (General Permitted Development) Order 1995 as amended.

5. For the purposes of this decision subsequent paragraph references are to paragraphs of Part 1, Class A of Schedule 2 to the GPDO. References to the *Guidance* are to the DCLG Technical Guidance relating to interpretation of the GPDO[2].

Main Issue

6. I consider the main issue in this appeal to be whether the Council's decision was well-founded. In that regard the main question is whether the extensions that have been built are lawful under the provisions of the GPDO Schedule 2, Part 1, Class A.

Reasons

7. The appeal property is a substantial detached dwelling of two storeys with attics, standing on the southern side of Walm Lane. At the back it originally had a two-storey extension projecting approximately 6.5 metres from the main back wall and positioned in roughly the middle third of the back elevation. It is apparent from photographs that the extension was in very poor structural condition, with significant cracks, and several arches over window openings apparently on the point of collapse. It is also apparent from photographs of works in progress that this extension has been extensively restore

8. The two single-storey extensions which the LDC application addresses stand to either side of the back projection and extend to a depth of 4 metres, or slightly less from the main back wall of the house. They effectively infill most of the re-entrant corners between the main house and the back projection. The extension to the west is some 3.17 metres high to the parapet, that to the east some 2.91 metres to the parapet. Separate planning applications have been made for retention of the single-storey extensions - both refused - and Section 78 appeals subsequently dismissed[3].

9. As the Council say, the two extensions appear to have been built as very much part and parcel of the same operation as works to the two-storey extension. However, looking at this and taking into account the planning permissions ref. 12/3041[4] and 12/1605[5], as well as photographs of the works in progress I consider that as a matter of fact and degree the works to the two-storey projection were essentially repairs and alterations to the original back extension, rather than creating a new construction. Furthermore, the Council do not raise objections to the works carried out to the two-storey projection in their submissions. In this context, I consider the single-storey extensions can be looked at as additions to the original extension, and it is reasonable to consider whether they might be permitted enlargements to the original dwellinghouse.

[2] Department for Communities and Local Government 'Permitted Development for Householders': Technical Guidance.

[3] Eastern single-storey extension - Decision notice ref. 12/1305, dated 26 July 2012. Appeal decision ref. APP/T5150/D/12/2180728, dated 15 October 2012.

Western single-storey extension - Decision notice ref. 12/1404, dated 24 July 2012. Appeal decision ref. APP/T5150/D/12/2180738, dated 15 October 2012.

[4] Planning permission for rebuilding of single and two-storey rear projection and insertion of 3 no. windows in the flank elevation to the dwellinghouse.

[5] Planning permission for minor material amendments comprising (revised roof pitch on two-storey rear projection and insertion of 3 no. windows in the flank elevation to the dwellinghouse.

10. I note that in their consideration as to whether the two-storey extension might itself be permitted development the Council came to the view that the provisions of paragraph A.1(c) preclude it, because the ridge of the extension projects above the eaves level of the dwelling. However, that is an incorrect assessment, since A.1(c) refers to the height of the eaves of the enlarged part being above the eaves of the existing dwellinghouse, which is not the case here. Nevertheless, it cannot be considered to be permitted development under the provisions of paragraphs A.1(f)(i) and A.2(c).

11. In relation to the two single storey extensions, the appellant puts forward advice from the Guidance on paragraph A.1(e) - including the diagram showing allowable forms of extension beyond rear walls - where rearward single storey extension to a detached house might be permitted, up to a depth of 4 metres - subject to other restrictions. This is clearly relevant advice in this instance. The Council put forward Guidance advice relating to paragraph A.1(h), which concerns extensions from side walls that would be over 4 metres in height, have more than one storey, or a width greater than half the width of the original dwellinghouse. I consider this advice is not applicable to single-storey extensions.

12. However, as the Council say, paragraph A.2(b) places a restriction on permitted development for dwellinghouses on Article 1(5) land – as is this one – if the enlarged part would extend beyond a wall forming a side elevation of the original dwellinghouse. The Guidance says that extensions beyond any side wall will not be permitted in these areas. No further advice, diagrammatic or otherwise, is provided.

13. If this advice were taken to include side elevations of original back extensions narrower than the original house, it would mean that back extensions to such properties would be limited to those up to 4 metres deep beyond any original extension, but no wider than it. Furthermore, on the basis of the Council's argument a situation would exist where a full-width single-storey back extension to a detached house in a conservation area could be permitted development, as could a back extension alongside an earlier lawful back extension that was not original, whereas an extension alongside an original back extension would not. Also, it would be possible to demolish an original back extension, and build a new and possibly wider one under permitted development rights. These is are all clearly untenable situations, and must be counter to the intentions of the Order, which are concerned here with such matters as maintaining spaces between houses in conservation areas, and ensuring that permitted extensions do not have a harmful visual impact in the public realm.

14. Furthermore, I concur with the views expressed in paragraphs 4 and 5 of a 2010 appeal decision[6] concerning a conservatory built within a re-entrant angle of a semi-detached house in a conservation area, that the extensions would not project beyond a side elevation of the original dwellinghouse.

15. I consider the two single-storey extensions should be regarded as permitted development under the provisions of Class A of Part 1 of Schedule 2 to the GPDO.

[6] Appeal decision ref. APP/B1930/X/09/2110874, dated 4 March 2010.

Conclusions

16. For the reasons given above and having regard to all other matters raised, I am satisfied that the Council's refusal to grant a certificate of lawfulness of proposed use or development was not well-founded and that the appeal should succeed. I shall exercise the powers transferred to me under Section 195(2) of the 1990 Act as amended.

Formal decision

17. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is considered to be lawful.

Stephen Brown

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 24 May 2012 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations would have been permitted development under the provisions of Schedule 2, Part 1, Class A of The Town and Country Planning (General Permitted Development) Order 1995 as amended.

Signed

Stephen Brown

Inspector

Date 07.06.2013
Reference: **APP/T5150/X/12/2180579**

First Schedule

Two rear single-storey extensions to a single dwellinghouse.

Second Schedule

Land at 226 Walm Lane, London NW2 3BS.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

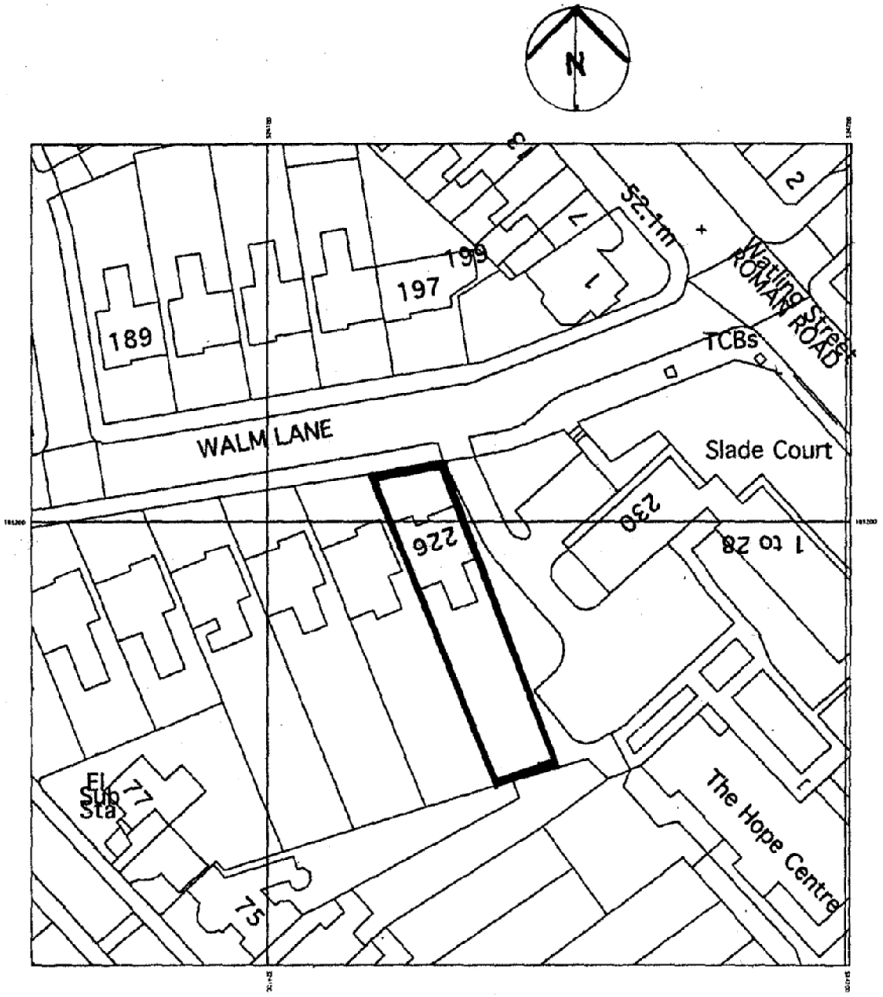
This is the plan referred to in the Lawful Development Certificate dated:07.06.2013

by Stephen Brown MA(Cantab) DipArch RIBA

Land at: 226 Walm Lane, London NW2 3BS

Reference: APP/T5150/X/12/2180579

Scale: DO NOT SCALE



The Planning Inspectorate

Appeal Decision

Site visit made on 14 May 2013

by Sara Morgan LLB (Hons) MA Solicitor

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

Decision date: 6 June 2013

Appeal Ref: APP/T5150/C/12/2179188
10 Oakleigh Court, Edgware, HA8 5JB

- 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 M Srikantha against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/12/0219.
- The notice was issued on 28 May 2012.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a building to the rear of the premises.
- The requirements of the notice are:
  STEP 1 Demolish the rear building, 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 three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

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 as amended for the development already carried out, namely the erection of a building to the rear of the premises on land at 10 Oakleigh Court Edgware referred to in the notice, subject to the following conditions:

   1) The building hereby permitted shall not be used for any purposes other than purposes incidental to the enjoyment of the dwelling house 10 Oakleigh Court as such.

   2) No part of the building hereby approved shall be used as a bedroom, kitchen, bathroom or other primary living accommodation.

Main Issue

2. The main issue in the ground (a) appeal and the deemed planning application is the effect of the development on the character and appearance of the surrounding area.

Reasons

3. The building the subject of enforcement action is a detached single storey pitched roof building situated at the far end of the rear garden of 10 Oakleigh Court. The building takes up virtually the whole width of the rear garden, and according to the Council has a ridge height of around 3.5 m. Permitted development rights would allow the construction of a building taking up the full

width of the garden, provided that its ridge height did not exceed 2.5 m, so this building does not benefit from permitted development rights.

4. The Council argues that this building is overbearing and large in a typical garden context, being of a size, scale and design that is out of character with its garden setting. However, the building cannot be seen from the public highway, only being visible from the rear gardens of Oakleigh Court and other nearby roads. 10 Oakleigh Court has a reasonably large garden, and the building is not out of scale or overly large in this context, despite its width. Given the amount of garden remaining, the building has not resulted in an overdevelopment of the site. It is clearly subordinate in scale to the dwelling and to the other dwellings in the area, despite its size.

5. The gable walls project above the boundary fences of the neighbouring properties and can be seen from the gardens on either side, but those properties too have lengthy rear gardens; only the rearmost part of the gardens furthest from the dwellings would be affected. What could be seen of the building from the gardens and from nearby properties would not be unduly overbearing for the immediate neighbours or materially harmful to their living conditions.

6. The materials used in the construction of the outbuilding (rendered walls with interlocking tiles on the roof) do not look out of place in the context of the traditional design of dwellings in the area. The use of UPVC for the windows and doors would not be unusual in an outbuilding of this type, and they do not look out of place. In my view the building has the appearance of a large outbuilding, and not that of a bungalow, as suggested by the Council. It would not significantly detract from the character and appearance of the area.

7. For these reasons, I conclude that the building would not have an unacceptably harmful effect on the character and appearance of the surrounding area. It would not, therefore, be in material conflict with policies BE2 and BE9 of the Brent Unitary Development Plan adopted in 2004, which require proposals not to harm the character and appearance of the area and to be of an appropriate scale, massing and height for their setting, or with policies contained in the National Planning Policy Framework.

8. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted subject to appropriate conditions.

Conditions

9. Given the location of the building in the rear garden of 10 Oakleigh Court, it should only be used for purposes incidental to the enjoyment of the dwellinghouse 10 Oakleigh Court as such. Any other use, including a use as primary residential accommodation, would be likely to cause harm to the living conditions of nearby occupiers. Consequently, I shall impose conditions limiting the use of the building to incidental purposes, and preventing the provision within the building of bathrooms, kitchens or other primary residential accommodation. The Council has suggested that business use should be specifically restricted, but that is not necessary in view of the proposed restriction to use for purposes incidental to the dwellinghouse use.

Sara Morgan

INSPECTOR