



## Planning Committee

4 April 2010

### Report from the Chief Planner

Wards Affected: Preston

### Report Title: 19 Brook Avenue, Wembley HA9 8PH

#### 1.0 Summary

- 1.1 Members deferred this report from consideration at the last meeting on 16 March 2010 for a site visit to enable them to assess the development and objections raised to it. The report deals with the extensive planning and enforcement history of the extensions to 19 Brook Avenue, Wembley, HA9 8PH and update members on the current enforcement position.

#### 2.0 Recommendations

- 2.1 To note that the part single-storey, part two-storey extension to side and rear of dwellinghouse is considered to have been re-built in accordance with planning permission 99/2269.
- 2.2 To note that the dormer window has been built under permitted development and does not require planning permission.
- 2.3 To agree that no further enforcement action be taken in respect of the above extensions.

#### 3.0 History

- 3.1 A Lawful Development Certificate was granted under reference 99/1922 on 18<sup>th</sup> October, 1999 for the formation of gable end and installation of rear dormer window and front roof-light to provide habitable room within roof space.

- 3.2 Planning permission was granted under reference 99/2269 on 16<sup>th</sup> February, 2000 for the erection of part single-storey, part two storey extension to side and rear of dwellinghouse.
- 3.3 Work commenced on implementing planning permission 99/2269 in 2001. However it was not built in accordance with the approved plans and consequently an enforcement notice was issued on 6<sup>th</sup> October, 2001 which required the extension to be removed. An appeal was made against the enforcement notice and the appeal was dismissed on 28<sup>th</sup> May, 2002 with a variation in the requirements of the enforcement notice to require that the extension should be modified to accord with the plan approved in planning permission 99/2269.
- 3.4 The compliance period of the enforcement notice was 6 months and this meant that the enforcement notice was due to be complied with by 28<sup>th</sup> November, 2002.
- 3.5 The enforcement notice was not complied with and the Council commenced prosecution proceedings against the owner on 27<sup>th</sup> February, 2003. The owner was convicted of breaching the enforcement notice on 30<sup>th</sup> May, 2003 and order to pay a fine of £1,500 and the Council's costs of £1,500.
- 3.6 In the meantime, planning applications were made to attempt to remedy the situation but these were refused on 7<sup>th</sup> October, 2002 and 21<sup>st</sup> February, 2003 (References 03/0375 and 02/2111)
- 3.7 Following the refusal of these two planning applications, the owner commenced works on reducing the size of the extension. However he did not reduce it in size sufficiently enough to comply with the approved plans and further prosecution proceedings were brought against him on 2<sup>nd</sup> February, 2005. The owner was again convicted of breaching the requirements of the enforcement notice on 18<sup>th</sup> November 2005 and ordered to pay a fine of £3,000 and costs of £1,470
- 3.8 At about the same time, he built a dormer window which was not part of the original approval and could not be considered permitted development at that time as the property had already been significantly extended. Consequently, the Council issued another enforcement notice on 28<sup>th</sup> January, 2005. An appeal against this enforcement notice was dismissed on 2<sup>nd</sup> February, 2006 and this notice was required to be complied with by 2<sup>nd</sup> May, 2006.
- 3.9 The project was then taken over by the owner's son. He claimed that he was unable to implement the enforcement appeal decision of the Planning Inspector dated 28<sup>th</sup> May, 2002 as it was not possible to alter the extension, as currently built, to accord with the approved plans.
- 3.10 Therefore a new further application (reference 05/0186) was made in 2005 to make further modifications to the approved plans. Officers had lengthy discussions with him during the processing of this application which resulted in the case being reported to Planning Committee on 12<sup>th</sup> December, 2006 with a recommendation for approval. However members decided to refuse the

application. He appealed this refusal and the appeal was dismissed on 18<sup>th</sup> July, 2007.

- 3.11 Following this refusal, another application was submitted on 15<sup>th</sup> November, 2007 (reference 07/3232). This was reported to committee with a recommendation for approval but was refused on 4<sup>th</sup> June, 2008.
- 3.12 Following these decisions, the owner decided to knock down the whole extension and dormer window in its entirety but keep the foundations in place. Thus the extension and dormer window enforced against no longer existed and effectively the enforcement notice was complied with as of August, 2008.
- 3.13 The owner then rebuilt the dormer window under permitted development. As the property no longer had any extensions to it, he was able to build that previously granted a Certificate of Lawfulness in 1999 (reference 99/1992.)
- 3.14 The dormer window was completed before work was commenced on rebuilding the extension in accordance with the original planning permission (99/2269). Enforcement Officers have monitored the rebuilding works and it is generally in accordance with the original approved plans.
- 3.15 Neighbours have raised three main issues regarding the rebuilding work and these are as follows:-

- **Distance between the extension at 19 Brook Avenue at the boundary of No. 18.**

When measured to the front of the property the distance between the side brick walls is approximately 11cm. This reflects the approved plans. The side extension at 18 Brook Avenue has a coping stone on top of the side wall. This coping stone protrudes approx 1cm beyond the side wall. This results in the gap being reduced in some instances. The approved plan does not mark the next door neighbour's property and therefore it is unclear if the boundary line is the side wall of the extension at 18 Brook Avenue or the edge of the coping stone. In any event your officers do not feel that any such minor variations are significant enough for them to be considered a variation from the approved plan.

- **Parapet Wall and Gutter**

The approved plans show an eave projection which is not detailed enough to show a gutter. Last autumn, a parapet wall was built which was a departure from the approved plans. The owner was advised that planning permission was required for this deviation from the approved plan.

Subsequently he chose to remove the parapet wall and install a traditional 10cm gutter. The owner of 18 Brook Avenue considers that this gutter overhangs his boundary. Your officers consider that as there is an approximate 10cm gap between the extension at 18 Brook Avenue and 19 Brook Avenue, there should be room for this gutter without overhanging the boundary, though with fixings, the gutter may exceed 10cm by a few millimetres. However the position of the boundary is unclear and both the extensions at 18 and 19 Brook Avenue are not built in an exact straight

line and at one point the separation distance falls to 9cm and in other parts it is as much as 11cm. It is impossible to tell whether the gutter as currently installed overhangs the boundary or not.

The Building Control Service of the Council have advised that at the time of writing, they have been unable to determine whether the side gutter complies with Building Regulations. If it does comply with Building Regulations and it is not removed, this element is considered satisfactory. If it does not comply with Building Regulations, an alternative solution will have to be found. Provided that these alternative solutions do not involve the construction of a parapet wall, it is likely that these will not require planning permission. Indeed even if no gutter is provided, then this will still comply with the terms of the planning permission. In any event, the issue of the type of guttering used does not fall within remit of planning control. Should a parapet wall be subsequently proposed, then it is considered, that subject to its design, this would be a satisfactory solution in planning terms.

- **Use of the garage as a habitable room**

The neighbours have expressed concern that the garage will be converted into a habitable room. The owner has informed officers that he may wish to convert the garage in the future and if so he will make a planning application for this conversion. However at the time of writing this report, the room is empty and could be used as a garage once the driveway has been built as there are currently several courses of bricks in the way to prevent access to the garage. The owner and the neighbours have been advised that the Council's policies normally permit the conversion of garages provided the front garden area is sufficiently landscaped and is designed to accommodate parking for two vehicles.

- 3.16 The dormer window was constructed under permitted development and accords to the Certificate of Lawfulness that was granted under reference 99/1992 and the extension now accords to the planning permission that was approved under reference 99/2269.
- 3.17 Even though the planning permission was granted approximately 10 years ago, Brent's guidance has not changed much since that time and it could still be considered acceptable today in the circumstances of the design of the building. The planning permission was implemented within 5 years of it being granted as the same foundations as the previous extension were utilised.
- 3.18 The Certificate of Lawfulness granted in 1999 would also have been permitted today. Indeed the rules on dormer windows are now less strict than they were 11 years ago.

#### **4.0 Conclusions**

- 4.1 The extension and dormer have finally been built in accordance with the planning permission and are not in breach of planning control. Members are therefore asked to endorse this and agree that no further planning

enforcement action should be taken at the premises in respect of these particular extensions.

## **5.0 Financial Implications**

5.1 If further enforcement action were pursued, Officer's opinion is that the Planning Inspectorate may consider an award of costs on any appeal made.

## **6.0 Legal Implications**

6.1 None Specified

## **7.0 Diversity Implications**

7.1 None Specified

### **Background Papers**

Planning Applications: 07/3232, 05/0186, 03/0375, 02/2111, 99/2269,

Certificate of Lawfulness Application: 99/1922

Enforcement Appeal Decisions: E/05/0039, E01/0064

### **Contact Officers**

Any person wishing to inspect the above papers should contact Tim Rolt,  
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