



Appeal Decision

Site visit made on 22 June 2021

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 July 2021

Appeal Ref: APP/X5210/C/21/3266946

Land at 292-294 Kilburn High Road, London NW6 2DB

- 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 Qalam Education Resource Centre Ltd against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice, numbered EN20/0889, was issued on 4 December 2020.
 - The breach of planning control as alleged in the notice is Without planning permission: Erection of full width extensions at rear, first and second floor level.
 - The requirements of the notice are:
 1. Completely remove the full width extensions at rear, first and second floor levels and reinstate the rear elevation in old London stock bricks and fenestration in the original position, materials and design to match the existing rear elevation;
 2. Remove all resulting debris from the land.
 - The period for compliance with the requirements is three (3) 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. Since an appeal has been made on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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DECISION

1. It is directed that the enforcement notice be corrected in paragraph 5 by the deletion of the words of requirements 1 and 2 and the substitution of requirements 1, 2 and 3 worded:
 1. At first floor level either make the first floor extension fully comply with the planning permission dated 16 March 2021 (Ref 2020/5572/P) or completely remove the first floor extension from the rear elevation and reinstate the rear elevation in old London stock bricks and fenestration in the original position, materials and design to match the existing rear elevation, making good the roof of the ground floor extension.
 2. At second floor level, completely remove the full width extension from the rear elevation and reinstate the rear elevation in old London stock bricks and fenestration in the original position, materials and design to match the existing rear elevation.
 3. Remove all resulting debris from the land.
2. Subject to these corrections the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

REASONS

Enforcement Notice

3. During the course of the appeal the Council advised that planning permission had been granted for a full width extension at first floor level and requested that the requirements be corrected to take this permission into account. The appellant was given the opportunity to submit comments. No response was received.
4. The proposed correction introduces an alternative option of a less onerous course of action in respect of the first floor extension. The requirement for the second floor extension remains the same. The appellant's position would become no worse and no prejudice would be caused by correcting the notice.

The Land

5. The appellant has described the property known as Qalam Education Centre as a school/ place of worship.
6. At the rear of the property alterations were carried out to the rear ground floor, including the installation of bi folding doors. The enforcement notice is directed at the first and second floor rear extensions, which are set back from the ground floor elevation. By the time the notice was issued building works had ceased and the extensions remained partially constructed, consisting of timber boarding over a new steelwork frame.

Ground (a)

7. The description of development for consideration in the deemed planning application is derived directly from the description of the alleged breach of planning control. This description refers to full width extensions, rather than a single extension. As noted above, an extension at first floor level now has planning permission and therefore I will focus attention on the extension at second floor.
8. The main issues are the effect of the development on the character and appearance of the property and the terrace, and the effect on the living conditions of the adjoining residents. The most relevant policies in the Camden Local Plan 2017 are Policy D1 that seeks to secure high quality design and Policy A1 that seeks to protect the quality of life of occupiers and neighbours. These policies in the adopted Local Plan are supported by Camden Planning Guidance on Design and on Amenity, which have the status of supplementary planning guidance.

Character and appearance

9. The property is a pair of four storey terraced buildings that fronts onto Kilburn High Road and backs onto Kilburn Grange Park. Before the works took place the property had a half width rear extension at first floor level. The property forms part of a substantial terrace that dates to around the 1900s. The back of the terrace is highly visible from the park. Alterations and extensions appear to have taken place to the terrace over the years but even so the terrace buildings display a good degree of cohesion and rhythm, seen in the roof profile, the pattern of fenestration, materials, the proportions and concentration of mass at ground and first floor levels.

10. The extension at second floor level is full width across the property. Unlike the extensions at higher level along the terrace, the structure is not broken into smaller separate outriggers. As a result, the size of the extension is relatively large and its mass does not relate well to the characteristic pattern of building elements. The openings that have been formed in the rear elevation are not of a size or shape that are consistent with the prevailing pattern of windows on the host building or the wider terrace. The extension is visually intrusive when seen from the park, particularly because of its height above ground. Even if the partially erected structure were to be clad in brick the objections would not be overcome.
11. I conclude that the extension at second floor level does not respect the host building, the local character and context nor does it comprise details and materials that are of high quality and complement the local character. Accordingly, the development is contrary to Policy D1 of the Local Plan. Whilst a similar sized extension has been found to be acceptable at first floor level, it does not follow that a second floor extension also would be acceptable. To the contrary, additional built form at a higher second floor level would unacceptably increase bulk at the back of the building.
12. In June 2017 planning permission was granted for the erection of rear extensions at 1st and 2nd floor level to increase the size of 4 x flats at 286-290 Kilburn High Road. The key difference of the approved extension at second floor level is the outrigger form, which breaks up the mass of the extension. The approved first floor extension is full width and has a greater depth. The lower height, the inclusion of a set back to break up the mass and the relationship to ground floor are all factors that help to ensure the extension respects the character and appearance of the terrace. The development at the neighbouring property provides no justification for the extension at second floor as part of the deemed planning application.

Living conditions

13. The first reason for issuing the notice refers to the loss of daylight, sunlight and outlook from habitable rooms. Camden Planning Guidance: Amenity explains that levels of daylight and sunlight within buildings are important for amenity, health and well-being, for bringing warmth into a property and to save energy. Outlook is the visual amenity enjoyed by occupants when looking out of their windows or from their garden. How pleasant an outlook is, depends on what is being viewed.
14. The nearest flat to the new extension is within the adjacent property 286-290 Kilburn High Road. This flat has a bedroom with a single window facing roughly north eastwards towards the park and a kitchen/living/dining room with two windows facing towards the park and two smaller side windows facing towards the extension. The appellant provided photographs from within the flat and stated that the current tenant confirmed no loss of daylight or sunlight as a result of the extension.
15. Even if that is the case, the quality of living accommodation for future occupiers of the flat should be protected. The Council made an initial assessment based on the 25 degree and the 45 degree tests found in the British Research Establishment's guidelines and referred to in Camden Planning Guidance. This provides an objective assessment and is to be preferred. I also have concern about the additional enclosure and adverse effect on outlook

because of the very close proximity of the new side wall to the affected windows in the bedroom and kitchen/living room. I conclude the development fails to protect the amenity of neighbouring occupiers, and so fails to comply with Policy A1.

Other considerations

16. The appellant states that the development is required to serve the functional educational need of the property's growing community usage and more specifically a full-width extension is necessary to meet the functional needs of a classroom for a school/commercial building. A plan has been submitted that indicates the use of the additional space as extra classrooms.
17. Policy C2 of the Local Plan supports the modernisation and development of community facilities and services to meet the changing needs of communities and to reflect new approaches to delivery of services. To that extent there is support for the development. However, this consideration has limited weight in the absence of information to set the development in context and explain how the proposals would contribute to educational use and worship within the building.
18. The appellant has referred to an intention to carry out further extension at first floor level but no planning permission exists. This possible future change in circumstances has no relevance or weight to the assessment of the second floor extension.

Planning balance and conclusions

19. The second floor extension at the rear of the terrace is contrary to Policies D1 and A1 of the Local Plan. In my view the serious harm to character and appearance of the host building and the terrace is the determining factor. The support from Policy C2 has limited weight.
20. Consequently, when read as a whole the extension at the rear, second floor level is contrary to the development plan and is unacceptable. There are no other considerations to overcome this direction.
21. I have considered whether to issue a split decision granting planning permission for the first floor extension and refusing permission for the second floor extension. I have decided against this because the extension was under construction and additional works would be required that do not fall within the scope of the deemed planning application. The acceptability of the extension at first floor level is dependent on ensuring details of openings, materials and finishes are integral to the design. These details are able to be secured through the permission granted and the associated approved plans.

Overall Conclusion

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Diane Lewis

Inspector