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# Appeal Decision

Site visit made on 21 November 2016

**by Diane Fleming BA (Hons) MRTPI**

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

**Decision date: 13 December 2016**

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**Appeal Ref: APP/T5150/C/16/3157537**  
**491 North Circular Road, London NW2 7QG**

- 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 Beis Beiz Limited against an enforcement notice issued by the Council of the London Borough of Brent.
  - The enforcement notice was issued on 4 August 2016.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of a single storey rear extension to the premises.
  - The requirements of the notice are Step 1 Demolish the unauthorised single storey rear extension. Step 2 Remove all associated items, debris and materials arising from this demolition from the premises.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

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

### Main Issue

2. The Council's Statement of Case (paragraphs 3.1.4 and 3.1.7) refers to the effect of the development on the character and appearance of the area. However, the reasons for issuing the notice relate only to the effect of the development on the living conditions of neighbouring occupiers, having regard to outlook. I have therefore confined my consideration of the appeal to the issue of living conditions.

### Reasons

3. The appeal is in relation to a terraced property. The appellant has erected a single storey, rear extension that extends more or less across the full width of the building and at 6m deep, covers approximately half the depth of the garden. The extension has a flat roof with parapet walls on two sides. The Council state that the height of the extension is 4m to the top of the parapet walls and 3.6m to eaves height. The ground slopes gently away from the property and as a result each of the two doors within the rear elevation of the extension opens onto a flight of steps. These doors are half glazed and are
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positioned next to small windows. There are no windows within the sides of the extension.

4. The extension has been built right up to the boundary with the property to the north, No 493, to such an extent that the position of the flank wall of the extension leaves no space for a dividing fence. The nearest habitable room window to the extension at No 493 though, is a projecting bay window, which is not immediately next to the extension as there is a small kitchen window and fully glazed door in between. Nevertheless, I consider the outlook from this room has been reduced by the height and depth of the extension. However, due to the distance between the bay window and the extension this harm is not significant.
5. With regard to No 489, which lies to the south of the extension, the nearest habitable room window to the extension is a bay window serving a living area. Whilst the appeal site and No 489 are terraced properties, at ground level there is a covered passageway between the houses and the extension is set in marginally from this feature. I find that the outlook from No 489 has been reduced by the height, depth and proximity of the extension, notwithstanding the set in of the extension from the boundary and the height of the dividing fence. This harm is significant as the outlook from No 489 across the neighbouring property at No 487 has already been reduced by a large, single storey extension at that property.
6. In respect of both neighbouring properties to the appeal site, I find that the extension also has an overbearing effect on that part of the garden nearest to each of the houses. This section of garden is often the most used being so close to the building and at No 493 there is a patio. The excessive height and depth of the extension and its proximity to these areas harms the enjoyment of each occupier's use of their private open space.
7. For these reasons I conclude that the development has an adverse effect on the living conditions of neighbouring occupiers, having regard to outlook. The development therefore does not accord with Policy BE9 of the Council's Unitary Development Plan 2004. This requires that extensions provide a satisfactory outlook for existing residents. I give weight to this policy as it is consistent with the National Planning Policy Framework's requirement for a good standard of amenity for existing occupants of land and buildings. The appeal on ground (a) therefore fails.

### **The appeal on ground (f)**

8. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require that the extension be demolished. The purpose of the notice must therefore be to remedy the breach of planning control.
9. The appellant submits that it is not necessary to require the complete removal of the building as it would be sufficient to reduce its size so that it falls within the scope of 'permitted development'<sup>1</sup> (PD). This would therefore remove the harm caused by the development and remedy the breach of planning control.

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<sup>1</sup> Town and Country Planning (General Permitted Development) Order 2015 Schedule 2, Part 1, Class A (the Order)

10. The Council submit that the notice does no more than identify the breach of planning control and to state the minimum that needs to be done to resolve the breach. In addition, they state it is not appropriate to re-design the extension in the context of an enforcement notice appeal.
11. I consider a reduction in the size of the extension, as suggested by the appellant, would not remedy the breach of planning control. This is because the breach of planning control is the action of erecting the extension. Altering its size would not undo that initial action and would not address all of the harm caused by the development set out in the reason for issuing the notice. Furthermore the Order setting out the PD limits also states<sup>2</sup> that development which is not lawful cannot be altered so as to become PD retrospectively. I therefore find that the steps required by the notice do not exceed what is necessary to remedy the harm caused and the appeal on ground (f) fails.

### **The appeal on ground (g)**

12. The ground (g) appeal is that the time given to comply with the requirements of the notice is too short and the appellant requests that the three month time period be increased to six months. This extra time is needed to instruct a builder and agree a fee. However, I consider three months is sufficient time to appoint a builder and to carry out the demolition of the extension which is a relatively small, building operation. The appeal on ground (g) therefore fails.

### **Conclusion**

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

*D Fleming*

INSPECTOR

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<sup>2</sup> Article 3 (5) (a)