
Appeal Decisions

Inquiry held on 7 December 2016

Site visit made on 7 December 2016

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 5 January 2017

Appeal A: APP/A5270/C/16/3143194

14 and 16 St Peter's Road, Southall, Middlesex, UB1 2TL

- 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 Manjit Singh Sanghera against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice Ref COM/2015/01031 was issued on 8 January 2016.
- The breach of planning control as alleged in the notice is without planning permission the construction of a single storey detached outbuilding (marked with an 'x' on the attached plan¹ and hereinafter referred to² as the "Unauthorised Development").
- The requirements of the notice are:
 - (a) Demolish the Unauthorised Development; and
 - (b) Remove all resultant debris.
- The period for compliance with the requirements is 3 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and variations.

Appeal B: APP/A5270/W/16/3144541

16 St Peter's Road, Southall, Middlesex, UB1 2TL

- 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 Manjit Singh Sanghera against the decision of the Council of the London Borough of Ealing.
- The application Ref P/2015/6316, dated 8 December 2015, was refused by notice dated 11 February 2016.
- The development proposed is described in the application as "single storey part rear extension to existing outbuilding at house No. 16, installation of W.C./shower and internal alterations. To be used for domestic gym, snooker, pool and household storage."

Summary of Decision: The appeal is dismissed.

Procedural matter

1. All witnesses gave evidence under affirmation. The appellant's command of English is limited, and so his agent, Mr Basuta, acted as interpreter and also

¹ I.e. the plan attached to the notice.

² I.e. referred to in the notice.

affirmed that he would do so faithfully and truly, to the best of his skill and understanding.

APPEAL A

Ground (b)

2. To succeed on this ground, the appellant must prove on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact.
3. The appellant owns both No 14 and No 16 St Peter's Road. He lives in No 16 and lets No 14 to other family members.
4. Whilst the notice alleges the construction of a single storey detached outbuilding, the appellant's case on ground (b) is that a new building has not been constructed. There is no dispute that there were 2 separate, albeit attached, outbuildings; one to the rear of No 16 and one to the rear of No 14. The appellant contends that he has merely refurbished and improved both outbuildings and extended that to the rear of No 16.
5. The appellant suggested during cross examination that the development is unfinished and he intended to reinstate an internal wall to separate the structure into 2. However, at other times he said he was undecided about this and during closing submissions on his behalf, Mr Lewin accepted that 2 outbuildings had been amalgamated into 1. That is consistent with the proposal shown on the plans submitted with the application the subject of appeal B and with what I saw on site. The structure has a single, central front doorway and detailing on the interior, such as the ceiling and ceiling light arrangement, has clearly been designed and installed to relate to a single open space, rather than a sub-divided structure. There is also a single fuse board for the whole structure.
6. In any event, leaving aside the appellant's apparent indecision, the most he said he might do is reinstate the internal dividing wall and insert a lobby behind the single front entrance, with internal doors serving 2 separate rooms. That would not re-create 2 truly separate outbuildings; it would result in a single outbuilding with 2 rooms.
7. Although the appellant suggested that the occupiers at No 14 might be allowed access to the building in the future, at the moment, only the occupiers of No 16 can use it and there is a verbal agreement with the occupiers of No 14 that they will not use it. The building spans the full width of both plots but, whilst the wall separating the rear gardens of Nos 14 and 16 has been demolished, a new wall has been erected at right angles to the common boundary, across most of the width of the rear garden of No 14. This is roughly in line with the rear elevation of the single storey rear extension at no 16. There is a gap in that wall wide enough to walk through, but it otherwise separates No 14 from the appeal structure, so that it appears to be associated with the house at No 16 and not with that at No 14. The plans submitted with the application the subject of appeal B also show the outbuilding related to No 16 alone.
8. I am satisfied that there is a single outbuilding, but the appellant still maintains that a *new* single outbuilding has not been constructed, as alleged. The Council

draws my attention to *Arnold v SSCLG* [2015] EWHC 1197 (Admin)³, which essentially confirms that works purporting to be a conversion can be so extensive as to amount to the erection of a new building. Any assessment of this nature is a question of fact and degree and a judgement has to be made. It was held that the Inspector in that case was entitled to find that the building was a new dwelling and not a series of staged extensions. He had concluded that "*there must be something significant by way of a structure that remains*" whereas "*there were just a few bits of wall and no roof whatsoever.*" More specifically, the inspector said⁴:

"the only elements of the original extended dwelling that remain are parts of the walls of the western wing. These can be generally described ...as part of the south facing wall (to the top of the ground floor windows), the two storey west facing gable... and a small section of supporting 'return' wall on the northern elevation. The rest of the existing dwelling, including all the slabs, footings and foundations other than those remaining beneath the walls of 'original' building, are new building works that have taken place since the work commenced..."

9. In the case before me, the appellant has:

- removed the internal wall separating the 2 original outbuildings;
- extended rearwards, that part of the overall structure which lies directly behind No 16;
- replaced the 2 separate flat roofs with a single overall roof, which has involved slightly raising the roof over that part of the structure to the rear of No 16, but retaining and slightly extending the roof timbers on that part which lies directly to the rear of No 14;
- closing up the 2 original front doorways, inserting a new central front doorway and enlarging one of the widow openings;
- constructing a new brick skin to the front elevation to create a cavity wall; and
- creating cavity walls internally to the sides and rear.

10. The extent of demolition in *Arnold* did not set a threshold which has to be met in order to justify a conclusion that a new building has been constructed. However, those demolition works were significantly more extensive than the works in this case. Notwithstanding that they are also boundary walls, both side walls of the original outbuildings have been retained. The rear wall of the original outbuilding serving No 14 has been retained, along with its roof timbers. The front wall of both buildings is still largely in place, albeit with alterations to the openings and the addition of a new brick skin. The original slabs, footings and foundations remain. In short, to use the Inspector's expression from the *Arnold* case "something significant by way of a structure" does remain from the original outbuildings.

11. There is an additional factor which was not present in *Arnold*, namely that there is now 1 outbuilding where there were previously 2. In closing for the Council, Ms Visagie said "this change from 2 into 1 outbuilding pushes the

³ Mr Whittaker's appendix 4.

⁴ See paragraph 5 of the judgement.

argument over the edge of the matter of fact and degree barrier.”⁵ I have given careful consideration to this contention, but I am not persuaded by it. The works that have been undertaken have resulted in a single building where there were previously 2 but, without more, the removal of the internal dividing wall would have had the same effect. What the appellant has done has converted 2 outbuildings into 1 but, as a matter of fact and degree, it does not amount to the construction of a new building.

12. On this basis, I am satisfied that the appellant has proved on the balance of probability that the matters alleged in the notice have not occurred as a matter of fact. Nevertheless, the works that have been undertaken do involve operational development and the appellant accepted that the allegation could be corrected to describe those works, without causing injustice.
13. The terms of an appropriate correction were canvassed during the inquiry and I set out the detail in the formal decision below. In broad terms however, I am content that the notice can be corrected to allege the carrying out of works to convert 2 separate but linked outbuildings into 1, namely: removal of the separate front doors serving the original outbuildings and their replacement with a single, central front doorway; enlargement of the window opening in the front elevation of the outbuilding facing No 14; removal of the internal dividing wall; replacement of the roofs with a single roof, involving raising the roof over the building rear of No 16; the addition of a rear extension; the construction of a new brick skin to the front elevation of the building; and the demolition of the brick boundary wall dividing the rear gardens of Nos 14 and 16. These corrections will necessitate consequential variations to the requirements, but I will consider these under ground (f).

Ground (c)

14. To succeed on ground (c), the appellant must prove on the balance of probability that the matters alleged in the notice, as corrected, do not constitute a breach of planning control.
15. The basis of the appellant’s case on this ground was that alterations to the pre-existing outbuildings were permitted development (PD) under Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, (the GPDO). This grants permission for “the maintenance, improvement or other alteration” of a building provided “within the curtilage of a dwellinghouse “for a purpose incidental to the enjoyment of the dwellinghouse as such”.
16. However, this presents a number of problems in this case. The most basic of these is that, by virtue of Class E.1(e)(ii) development is not permitted if the building exceeds 2.5 metres in height and is within 2 metres of the curtilage boundary. Mr Basuta’s evidence for the appellant is that the building measures 2.89 metres high and it abuts the curtilage boundaries on both sides. For that reason alone, the external works cannot be PD and, as Mr Lewin accepted in closing that this is not a pure case of maintenance improvement or other alteration under Class E., I need not address the other technical difficulties.
17. Ground (c) must therefore fail.

⁵ Inquiry document 6, paragraph 3.13.

Ground (d)

18. To succeed on this ground the appellant must prove on the balance of probability that the works described in the allegation, as corrected, were substantially completed by 8 January 2012.
19. This ground was introduced on the basis that the development did not involve the construction of a new building and the outbuildings had been in place for substantially longer than 4 years. However, the corrected allegation concerns the alterations to the buildings and their conversion to 1 outbuilding. The Statement of Common Ground records that these works did not commence until October 2015. Ground (d) must therefore fail.

Ground (a)/the deemed application for planning permission

Main issues

20. The scope of the deemed application is of course determined by the terms of the corrected allegation, but the main issues are:
 - the effect of the development on the character and appearance of the area;
 - the effect of the development on the living conditions of neighbours and the occupiers of No 14, in terms of visual impact, noise and disturbance, and the provision of external private amenity space.
21. The area is characterised by 2-storey terraced dwellings with moderately sized rear gardens. There are substantial outbuildings in many of the rear gardens, as highlighted on a plan submitted by the appellant⁶. A number of outbuildings serving individual dwellings abut, or are linked to outbuildings serving neighbouring properties. However, the appellant could not identify any single outbuilding which spans the width of 2 plots.
22. As is apparent from photographs⁷ and the plans submitted with the application the subject of appeal B, the linked outbuildings serving Nos 14 and 16 St Peter's Road respectively represented a cumulative built mass. Indeed, the brick outbuilding to the rear of No 18 abuts that at No 16 and therefore added to that overall mass.
23. However, each original building could be read as a separate entity and made sense in the overall pattern of development locally. In particular, Nos 14 and 16 had separate front doors; different window openings; separate and differently pitched roofs; and they differed in depth. They were also divided by a wall internally and a garden wall along the same line. The building to the rear of No 14 had its own rear access from the passageway to the rear. The original buildings were each clearly associated with the individual single dwellings that they served. By contrast, the development now appears as a single unified entity spanning the width of 2 plots, but in fact only serves No 16. Notwithstanding, the extent of pre-existing buildings, the new development has a greater presence, given its overall bulk, mass and unified appearance. The previous character and appearance of subservient outbuildings has been replaced by a more dominant structure which is at odds with the local pattern of development. The structure is only visible from neighbouring properties but, from those properties, its appearance is nevertheless incongruous and

⁶ Inquiry document 4.

⁷ Mr Whittaker's appendix 5 and inquiry document 1.

somewhat oppressive. Although No 14 is currently occupied by the appellant's relatives, that may not always be the case and, from that property, the appearance of the combined outbuilding is particularly dominant.

24. For all the reasons given, I conclude on the first main issue that the development causes significant harm to the character and appearance of the area. Policies of the London Plan 2011 Consolidated with: Revised Early Minor Alterations, published October 2013; and Further Alterations, published March 2015 (the LP) have been drawn to my attention. LP Policy 3.5 concerns new housing and is not strictly relevant. However, the development conflicts with LP Policy 7.1 which, among other things, seeks to ensure that new development reinforces or enhances the character and legibility of the neighbourhood. It also breaches LP Policy 7.4. This requires development to have regard to the pattern and grain of the existing spaces and streets in orientation, proportion and mass. Policy 7A of the Ealing Development Management DPD, adopted December 2013 (the DPD), is similarly breached, as it requires development to complement existing building patterns. LP Policy 7.6 is of more limited relevance as, whilst it requires high quality design, it is more focussed on the public realm and the impact of this development on the public realm is limited.
25. Turning to living conditions, my assessment on the first main issue indicates the visual impact of the development on neighbours and the occupiers of No 14. Despite its single storey form, the overall bulk and design of the unified structure appears somewhat dominant, oppressive and overbearing.
26. There is no reason to assume the use of the building will go beyond what would normally be expected in association with a dwelling. The appellant says he intends to use it as a gym and store. I note that the supporting text of DPD Policy 7A recognises that residential uses are unlikely to cause disturbance to other residential uses simply by the nature of that use. There is a new brick wall across the rear garden of No 14. Nevertheless, the size of the development and its location immediately to the rear of No 14 mean that there is the potential for more intrusive and increased comings and goings and noise and disturbance, compared to that associated with the previous smaller outbuilding to the rear of No 16. This factor would become more significant if No 14 were to be occupied by anyone other than relatives of the appellant. It may be insufficient in itself to justify dismissal of the appeal, but it adds to my concerns in relation to visual impact and those under the first main issue.
27. The development is intended to serve No 16 and the removal of the boundary wall effectively incorporates the whole building, together with the garden area in front of it, into the rear garden of No 16. A new wall has been constructed across the rear garden of No 14, though a gap in that wall enables access to the rest of the garden area. However, that arrangement is unlikely to endure if No 14 becomes occupied by anyone other than relatives of the appellant. In any event, the garden area beyond the new wall is not genuinely private. Within the new wall, the private amenity space now available to No 14 is, on the appellant's evidence, 30 sqm⁸. Furthermore, planning permission Ref 162736HH was granted on 2 August 2016 for a rear extension at No 14, which would further reduce the private external amenity space.

⁸ Mr Basuta's proof, paragraph 8.22.

28. DPD Table 7D.2 indicates that each house should typically have 50 sqm of private garden space and that Table is referred to in Policy 7D(A). However, that policy only relates to developments that increase demand for open space. It does not therefore apply to this development. Mr Whittaker suggested that Policy 7D(B) nevertheless applies. However, this concerns "development adjacent to or neighbouring existing open space". It requires that such development should seek to enhance and not compromise the character of that open space or its function. In this context, I am not persuaded that "open space" means a private garden and I am reinforced in this view by the terms of the supporting text at paragraph E7.D.5. This talks of "new development on land adjoining existing designated open space."
29. Accordingly, no policy has been drawn to my attention which specifies the amount of private garden land that should be retained when development of this nature take place. Nevertheless, having regard to the possibility that No 14 will not always be occupied by relatives of the appellant, the reduction in genuinely private amenity space would have a detrimental impact on the occupiers of No 14.

Overall conclusion on ground (a)/the deemed application for planning permission

30. I conclude that the development causes unacceptable harm to the character and appearance of the area, contrary to LP Policies 7.1 and 7.4 and DPD Policy 7A. It also has an unacceptable impact on the living conditions of neighbours and the occupiers of No 14, in terms of visual impact. These factors are sufficient in themselves to justify dismissal of the appeal, but the harm is exacerbated by the significant reduction in private external amenity space available to the occupiers of No 14 St Peter's Road and the potential for future occupiers of that property to experience increased noise and disturbance.
31. Having regard to my conclusions on the main issues and all other matters raised, I am satisfied that the appeal on ground (a) should be dismissed and the deemed application for planning permission should be refused.

Ground (f)

32. The correction of the allegation under ground (b) necessitates consequential amendments to the requirements. Clearly, given my conclusion that a new building has not been constructed, a requirement for total demolition is excessive. Alternatives were discussed during the inquiry and Mr Lewin accepted on behalf of the appellant that reinstatement to the pre-October 2015 position would be appropriate. In oral closing submissions, Ms Visagie indicated that, whilst other changes have contributed to the appearance of a single building, the Council is principally concerned to see the reinstatement of: a single entrance door; the internal dividing wall; and the garden boundary wall. In addition, it considers the removal of the rear extension important, as No 14's rear access to its outbuilding would otherwise be blocked.
33. I consider that all of these things are necessary and proportionate requirements which would partly restore the land to its condition prior to the breach, in accordance with section 173(3) and (4) of the 1990 Act. The corrected allegation also refers to the roof replacement, new brick skin and window enlargement. The omission of any reference to these matters in the requirements means that, if the notice is otherwise complied with, these works will obtained unconditional planning permission, by virtue of section 173(11).

However, there has been no suggestion that these aspects of the development are harmful in themselves.

34. The Council expressed concern that the varied requirements should be sufficiently precise. However, I am satisfied that reference a drawing can ensure that the necessary steps are adequately specified. I will vary the requirements of the notice accordingly.

Ground (g)

35. The appellant seeks an extension of the period for compliance from 3 months to 9 months. He says he will have to engage a contractor, organise the works, and dispose of materials, but his main difficulty is that he may have to raise finance. The works now required by the varied notice are relatively limited, along with the quantity of materials that would need to be disposed of. Furthermore, beyond saying that they are "not good" the appellant gave no details of his financial circumstances. I am not persuaded that a period of 9 months is required to comply with the notice.
36. However, as I write this decision, the Christmas and New Year holiday period is imminent and this may slow the process of engaging a contractor. Winter weather may also cause some delay. In these circumstances, I consider it appropriate to extend the compliance period to 4 months and, to this limited extent, the appeal succeeds on ground (g).

APPEAL B

37. The description of the proposed development in the planning application differs a little from the description of the development in the enforcement notice, as corrected. However, by reference to the application plans, the proposed development is essentially the same. The only difference is that the application proposes the retention of a larger, fenced rear garden for No 14, with no gate in that fence.
38. The main issues are therefore the same as those identified under ground (a) of appeal A. It follows that my conclusions are the same, save that I have no concerns regarding the extent of private external amenity space retained for the benefit of No 14. The dismissal of appeal B is therefore justified by my findings of: unacceptable harm to the character and appearance of the area; unacceptable impact on the living conditions of neighbours, in terms of visual impact; and the conflict with the development plan, in terms of LP Policies 7.1 and 7.4 and DPD Policy 7A. This harm is also exacerbated by the potential for future occupiers of No 14 to experience increased noise and disturbance.

Decisions

Appeal A: APP/A5270/C/16/3143194

39. The enforcement notice is:

- (a) corrected in section 3 by deleting the allegation therein and substituting: "Without planning permission, the carrying out of works to convert 2 separate but linked outbuildings to the rear of Nos 14 and 16 St Peter's Road Southall respectively into 1 outbuilding serving No 16 St Peter's Road (that single outbuilding being marked with an 'x' on the attached plan), those works being:

- the removal of the separate front doors serving the original outbuildings and their replacement with a single, central front doorway;
- enlargement of the window opening in the front elevation of the outbuilding facing No 14;
- removal of the internal dividing wall;
- replacement of the roofs with a single roof, involving raising the roof over the building rear of No 16;
- the addition of a rear extension;
- the construction of a new brick skin to the front elevation; and
- the demolition of the brick boundary wall dividing the rear gardens of Nos 14 and 16

(such works being hereinafter referred to as the "Unauthorised Development"); and

- (b) varied in section 5 by deleting the requirements and substituting the following requirements: "

- "a. Replace the existing single front doorway with 2 separate front doors and reinstate the continuous internal dividing wall, all to conform with the "existing plan" on drawing No 0016STPR/01, submitted with planning application Ref P/2015/6316 (hereinafter referred to as the application drawing);
- b. Demolish the rear extension shown as "proposed" on the application drawing and marked with red hatching on the "location" plan included on that drawing and reinstate the rear wall in accordance with the "existing plan" shown on that drawing;
- c. Reconstruct a continuous brick wall along the boundary between the rear gardens of Nos 14 and 16 St Peters Road, which boundary is indicated on the "existing plan" on the application drawing, at a height to match the existing brick wall across the rear garden of No 14 St Peter's Road; and
- d. Remove all resultant debris."

40. Subject to this correction and these variations 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.

Appeal B: APP/A5270/W/16/3144541

41. The appeal is dismissed.

J A Murray
INSPECTOR

APPEARANCES

FOR THE APPELLANT: Matt Lewin of counsel

He called:

Manjit Sing Sanghera
Sucha Singh Basuta MA
(Eco) Dip TP MRTPI

FOR THE LOCAL PLANNING AUTHORITY: Izindi Visagie, Solicitor for the Council

She called:

Arvinder Manku,
occupier of 18 St Peter's
Road

Neill Whittaker BSc
(Hons) MA MRTPI,
contracted to the
Council as Enforcement
Officer

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Clearer copies of photographs from Mr Whittaker's appendices 2 and 6
- 2 London Plan Policies 3.5, 7.1, 7.4 and 7.6 and Ealing Development Management DPD Policies 3.5, 7.4, 7A, 7B, 7D and Table 7D.2
- 3 The Council's notice of the inquiry
- 4 Plan highlighting rear outbuildings in the vicinity of the appeal site
- 5 Extract from section 8 of Ealing's Supplementary Planning Document 4 – Residential Extensions
- 6 Written closing submissions on behalf of the Council