
Appeal Decisions

Site visit made on 29 November 2016

by Paul Dignan MSc PhD

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

Decision date: 20 January 2017

Appeal Refs: APP/T5150/C/16/3157731 (Appeal A) & 3158791 (Appeal B)

35 Alverstone Road, Wembley, HA9 9SE.

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr and Mrs R Bhojani ((Appeals A and B respectively) against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/16/0156, was issued on 25 July 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a part single storey/part two storey side to rear extension ("the unauthorised development") and Without planning permission, the material change of use of the premises to two flats ("the unauthorised change of use").
 - The requirements of the notice are: Step 1 Demolish the unauthorised development, remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises; and Step 2 Cease the use of the premises as more than one unit of self-contained accommodation and remove all kitchens, except ONE, remove all separating doors and partitions and remove all other items, equipment, and materials associated with the unauthorised use from the premises.
 - The period for compliance with the requirements is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered. Appeal B is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. I direct that the enforcement notice be varied by the deletion from Schedule 4 of Step 1 and its substitution by the words "Step 1. The building shall be altered to comply with the terms of the planning permission Ref. 14/3966, dated 17 December 2014, including the conditions subject to which that permission was granted." Subject to this variation the appeals are 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 A - ground (a)

2. This ground is that planning permission should be granted for the matters alleged to comprise a breach of planning control, which are not disputed.
 3. The appeal property is a 1930's semi-detached house on a corner plot within an estate of broadly similar properties. Planning permission was granted in
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2014¹ for *Demolition of existing single storey side extension and erection of part single storey / part two storey side to rear extension to dwelling house.*

4. Alterations were subsequently made to the building to what appears to have been, broadly speaking, the external dimensions of the 2014 permission, but with, at the very least, different fenestration and roof details. The appellant claims that the permission was implemented and substantially completed, with the building subsequently converted to 2 flats. That should have been raised under other grounds, but in any case I do not accept that the planning permission was implemented. The case of *Sage*² has established that if a building operation is not carried out, both externally and internally, fully in accordance with the permission, the whole operation is unlawful. That is the case here, as a matter of fact.
5. It has also been argued that since the building has yet to be used as flats, it remains a single dwellinghouse with associated permitted development rights, specifically by reference to the insertion of windows and doors. However, the building as a whole is unlawful development and hence cannot benefit from permitted development rights. Further, it is well established in law that where there has been physical conversion of a building to two flats, the change of use can be said to have occurred before the premises are used in the ordinary and accepted sense of the word.

Main issues

6. Having regard to the Council's stated reasons for issuing the notice, I consider that the main issues are the effect of the development on housing provision in the Borough, whether it would provide acceptable living conditions for future occupiers, whether adequate parking is provided, and whether the development leads to a loss of privacy for neighbouring property.

Reasons

7. When the notice was issued the development plan included saved policies of the Brent Unitary Development Plan 2004 (UDP). Amongst these was UDP Policy H17, which sought to avoid the loss to conversion of small purpose-built family dwellings, defined as those with an original floor area of less than 110 m². The saved UDP Policies have now been replaced by the Council's Development Management Policies (DMP), which were adopted on 21 November 2016. DMP Policy DMP17 now covers the conversion of family-sized dwellings of 3 bedrooms or more. Conversion will only be allowed where the existing home exceeds 130m². The policy seeks to ensure continued provision of housing suitable for occupation by families to meet the Borough's housing needs, set out as a priority in Brent Core Strategy Policy CP2.
8. The dwellinghouse prior to the unauthorised operational development had a floor area of about 90m², hence the DMP Policy DMP17 restriction on conversion applies. The approved extension would result in the house exceeding the size threshold, but the permission required, by condition, that the extensions be occupied only for purposes ancillary to the existing house. One of the flats is shown as a 3-bedroom flat, which meets one of the requirements of Policy DMP17, but the appeal development is nonetheless contrary to Policy DMP17.

¹ Council Ref. 14/3966: Decision dated 17 December 2014.

² *Sage v Secretary of State for the Environment, Transport and the Regions* [2003] UKHL 22

9. Conversions must also provide adequate parking and amenity space. The Council's parking standards require the provision of 2.5 parking spaces for the 2 flats. Only one space is currently provided, with an additional space potentially available. The appellant has submitted that additional parking sufficient to meet the requirements can be provided to the front, where a driveway has been constructed, but a dropped kerb from the highway would require a further planning permission. The site is not particularly convenient to local services and has a low PTAL rating³, which suggests that occupiers will be likely to rely on private vehicles, hence there is little justification for relaxing the parking requirement. To do so would be likely to increase the demand for on-street parking, to the detriment of local amenity. Separate amenity spaces for the flats have not been laid out, but I accept that these can be provided relatively easily, as could satisfactory bin and cycle storage.
10. The reasons given for issuing the notice includes reference to the provision of sub-standard accommodation, but this particular objection does not appear to have been maintained. The submitted plans show 3-bedroom and 2-bedroom flats, which appear to me to offer accommodation of an adequate standard. There is a potential for more intensive use, but equally the Borough has a high proportion of large families with accommodation needs. The potential for harm to the amenity of neighbours due to overlooking has also been raised, but the permitted extensions would be similar in this respect.
11. That the property is a large corner plot is put forward as justification for the development, as is the potential to use the house as a HMO, which it is submitted would increase disturbance in the area. However, the loss to conversion of good-sized family housing is contrary to the development plan and would undermine the aims of retaining a stock of housing in the Borough to meet local needs. The conversion of a single house would not in itself have a major effect on the mix of housing types in the area, but I am concerned that if repeated it would undermine the policies that seek to retain this type of dwelling. The failure to provide adequate parking without further permission adds to my concern. On balance I consider that the material considerations put forward in support of the development are not sufficient to outweigh the conflict with the development plan.
12. Accordingly, having considered all other matters raised, I conclude that the appeal on this ground should not succeed and that planning permission should not be granted.

Appeals A and B - ground (f)

13. An appeal on this ground is that the steps required exceed what is necessary to remedy the breach or harm to amenity. Although pleaded, nothing has been put forward to specifically explain how the steps are excessive. However, Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be, and sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the purpose of restoring the building to its condition before the breach took place, but where there is an extant planning permission section 173(4)(a) indicates that the breach can also be remedied by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of

³ Public Transport Access Level

the land. In this case, a requirement to comply with the extant planning permission Ref. 14/3966 would avoid the unsustainable, wasteful and excessive use of materials and energy that would result from complete demolition of the unauthorised extensions.

14. Having regard to the judgement in *Tapecrown*⁴, which emphasised that any “obvious alternative” to full demolition which would overcome “the planning difficulties at less cost and disruption than total removal” should be considered, The form of the existing building is close to that permitted by planning permission Ref. 14/3966, which remains capable of implementation, and I consider that it would be appropriate in this case to vary the requirements so as to enable the building to be altered to comply with the approved plans, which are clearly acceptable to the Council. The appeals succeed to this limited extent

Paul Dignan

INSPECTOR

⁴ *Tapecrown Ltd v First Secretary of State and Anr* [2006] EWCA Civ 1744