
Appeals Decision

Site visit made on 13 April 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 16 May 2017

Appeal A Ref: APP/T5150/C/16/3158303

Appeal B Ref: APP/T5150/C/16/3158304

17 Palace Court, Harrow, London HA3 0SN

- 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 Chandrika Ashok Parmar and Mrs Soma Ashok Parmar against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 3 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises from one to two dwellings.
 - The requirements of the notice are:
 - STEP 1 Cease the use of the premises as more than ONE unit of self-contained accommodation.
 - STEP 2 Remove all kitchens, except ONE, and all bathrooms, except TWO, from the ground floor of the premises, remove all separating doors and partitions and remove all other items, equipment, and materials associated with the unauthorised use from the premises.
 - STEP 3 Remove the front door located in the single storey side projection and brick up the opening with bricks to match the existing brickwork and remove the timber porch located outside this door.
 - The period for compliance with the requirements is 6 months after this notice takes effect.
 - 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. Appeal B is proceeding on the ground set out in section 174(2)(f) of the 1990 Act. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.
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Summary of Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Appeal A – ground (a) and the deemed application for planning permission

Preliminary matter

2. The Council made clear in its statement that since the notice was issued it has adopted the Brent Development Management Policies DPD 2016 (DMP). This plan effectively replaces the policies in the London Borough of Brent Unitary Development Plan 2004, which are referenced in the notice. I have therefore had regard among other matters to DMP Policies DMP18 and DMP19 in the determination of this appeal.
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Main issue and reasons

3. The main issue is the effect on the living conditions of present and future occupiers of the additional dwelling created by the unauthorised development.
4. Palace Court is a cul-de-sac of some 20 properties or more. No 17 comprises the right hand side of a pair of two-storey semi-detached houses sited behind a landscaped street island at a bend in the road. The houses in the cul-de-sac are well-spaced with fairly substantial accommodation, having single storey side extensions or garages that clearly belong to each of their host dwellings.
5. A single storey side and rear extension has been added to the appeal property, including the installation of a window and door to the extended front elevation. The side extension was previously occupied by a member of the extended family of the appellants but it was not then separated internally. However a wall has also been constructed that separates this area from the main accommodation in the house. It is undisputed that what has been created through these alterations is a second, self-contained dwelling.
6. The estimated floor area of this additional dwelling is some 29m² according to the Council, a figure that is not disputed and, from what I have seen and read, appears broadly correct. This is well below the minimum 50m² set out in the London Plan¹ and DMP Policy DMP18, for a single storey 1 bed dwelling. Table 3.3 and footnote 57 in the London Plan clarify that this standard applies to new build development, conversions and changes of use.
7. As currently laid out, the rear garden area of No 17 is not sub-divided so the rear door of the additional dwelling gives access to shared use of amenity space. Whilst this shared external space appears reasonable in size which would not necessarily conflict with Policy DMP19, I agree with the Council that there is no planned storage for refuse bins or cycles. However bearing in mind the space available within the front of the plot, were this the only concern, it is likely in my view that these matters could be satisfactorily addressed by a condition attached to an eventual planning permission.
8. The appeal site is poorly served by nearby public transport, as I found in returning from the premises by foot. Although occupiers of the additional dwelling are likely to require their own vehicles, I have not been directed to a current policy with which the development would conflict in this respect. Nevertheless I saw there is pressure on on-street parking spaces close to the site and consider that parking of additional vehicles here would be undesirable.
9. That said the inadequate size of the additional dwelling remains as a matter to which I accord considerable weight, in light of the strong support given to the quality of accommodation expected to be achieved in residential development and as set out in Policy DMP18 and the London Plan, Policy 3.5.
10. The deemed application is for the change of use of the property from one to two dwellings. On an appeal on ground (a), s177(1) of the Act states that planning permission may be granted in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to "the whole or any part of" those matters or in relation to the whole or any part of the land to which the notice relates.

¹ The London Plan: The Spatial Development Strategy for London Consolidated With Alterations Since 2011. March 2016

11. An alternative scheme is put forward but to all intents and purposes it acquiesces in the requirements of the enforcement notice by proposing to remove the front door and open up the internal partition between the two dwellings. Properly understood the alternative layout is qualitatively different from what is being enforced against. Apart from the fact that permission would not be required for its continued use as a single dwelling, I am doubtful if the alternative steps amount to "the whole or part of" the development enforced against. I note that the appellant makes other proposals that I am able to consider under ground (f) below.

Other matters and conclusion on ground (a)

12. To conclude the unauthorised use of 17 Palace Court has resulted in the provision of sub-standard accommodation which is fundamentally in conflict with DMP Policy DMP18 and Policy 3.5 of the London Plan. The development also conflicts with the National Planning Policy Framework, in particular Paragraph 17 which seeks always to secure in all development a high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
13. It is appreciated that the additional dwelling may have been used for a live-in care worker to assist with the appellant's health problems. The evidence also suggests however that it was marketed as a separate dwelling for rent. I have considered the submitted evidence about the appellant's health but whilst I have sympathy with his personal circumstances, I am not persuaded that these outweigh my conclusion on this ground of appeal.
14. Although not raised by the Council as a separate issue, the form and layout of the semi-detached houses in this part of Palace Road have a distinctive suburban character. To continue use as two dwellings on the same plot as alleged in the notice would undermine local character by introducing a much smaller unit that would be out of keeping with the distinctive and uniform appearance of the dwellings in the cul-de-sac, thus adding to my concerns.
15. The appeal on ground (a) therefore fails.

Appeals A and B – ground (f)

16. Section 173 of the Act states that there are two purposes the requirements of an enforcement notice can seek to achieve. These are firstly, to remedy the breach of planning control that has occurred; and secondly, to remedy any injury to amenity caused by the breach.
17. From a reading of the notice it appears that its purpose is to remedy the breach of planning control. As such the appellants can only argue that the requirements exceed what is necessary to remedy the breach. It would then be for the appellants to propose lesser steps that might remedy the breach.
18. In essence the lesser step put forward by the appellants is to retain the second kitchen. As this was installed to facilitate the use of the side extension as a self-contained dwelling it would not be excessive to require its removal. I have had regard to the claim that a second kitchen is necessary to maintain cultural traditions among those who might be living at the property. However there is no supporting information concerning this matter that would make retention of the additional kitchen an obvious alternative step to consider.

19. I also bear in mind that the kitchen required to be removed was installed to facilitate the unlawful change of use. It is established that even if such works taken on their own might not be subject to planning control, a notice may properly require their removal so that the land is restored to its condition before the change of use took place.
20. I noted during my visit that although most if not all of the timber porch cited in Step 3 appears to have been removed, the front door was still in place, contrary to what is asserted at places in the appellant's statement. Section 181(1) of the Act provides that compliance with any of the requirements contained in an enforcement notice "shall not discharge the notice". In the circumstances it is considered that Step 3 should remain as set out in the notice.
21. If the appellants wish to replace the door with a window it is open to them to seek planning permission for this work from the Council. The six month period for compliance should suffice to enable them to pursue this matter well before the expiration of that period.
22. Therefore I conclude that it is necessary and not excessive to require cessation of the use of the premises as more than one self-contained unit of accommodation, and to remove the items and carry out the remedial work as specified in the notice.
23. Therefore the appeals on ground (f) do not succeed.

Overall Conclusion

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

Formal Decision

25. The appeals are dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR