



Appeal Decision

Site visit made on 12 June 2017

by **Pete Drew BSc (Hons) DipTP (Dist) MRTPI**

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

Decision date: 15 June 2017

Appeal Ref: APP/T5150/C/17/3169140

13A-D Stanley Avenue, Wembley HA0 4JA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Kalpesh Kumar Jivraj Mehta against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 4 January 2017.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a building for residential accommodation in the rear garden of the premises ("the unauthorised development").
 - The requirements of the notice are: (1) Demolish the unauthorised development; (2) Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with these requirements is 3 months.
 - The appeal is proceeding on the ground set out in section 174(2) (a), (f) and (g) of the Act.
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Formal Decision

1. I direct that the enforcement notice be varied by the deletion of the figure "3" [months] in Schedule 5 of the enforcement notice and its replacement with the figure "6" [months]. Subject to this variation 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 Act.

Procedural matters

2. A second appeal [Ref. APP/T5150/C/17/3169208] was lodged against the same enforcement notice, but it was withdrawn in an email dated 16 May 2017. That appeal was lodged on additional grounds (b) and (d) and, as a consequence, the Council's statement addresses these grounds too. However, following the withdrawal of that appeal, I do not propose to comment on these grounds or take account of sections 3.1 and 3.2 of the Council's statement, except insofar as any points arising might be relevant to any of the current grounds of appeal.

Ground (a), planning merits: *Preliminary observations*

3. Paragraph 5.3 a) of the Appellant's statement says the building "*replaced*" an existing garage that had been there since the Appellant acquired the property in August 2006. Whilst I have not been provided with a full copy of the Land Registry details, based on the photographs and other evidence there is no reason to doubt the sequence of events. The garage was damaged in a fire and, to quote the Appellant's term, "*rebuild*" [sic], although that is probably meant to say rebuilt. The final sentence of that paragraph says however: "*In this regard, the proposed development does not require planning consent...*".

4. First, this point is made under the ground (a) head and, even as part of the withdrawn appeal, no case has been made in respect of ground (c) at any stage. Second, even if this might be said to be a hidden ground (c), it is admitted that the rebuilt building is "*larger*" than the original garage and so this is not a case of replacing, on a like-for-like basis, what previously existed. Third, with the withdrawal of ground (b), it is agreed that the development that has taken place as a matter of fact includes residential accommodation. The Council's statement describes it as: "*primary accommodation with a bathroom installed to facilitate this*", the latter being corroborated by my inspection. For these reasons I disagree with the claim that the development does not require planning consent. If a ground (c) appeal had been lodged it would have failed.

Main issues

5. The deemed planning application arises from the allegation in the enforcement notice and so is for the erection of a building for residential accommodation. In this respect the 3 main issues arising are: (i) the effect of the development on the character and appearance of the area; (ii) the implications of the development for neighbours' living conditions by reason of outlook; and, (iii) the implications of the development for the living conditions of residents of the building by reason of access arrangements, and bicycle and waste storage.

Planning policy

6. The Development Plan [DP] includes the Brent Core Strategy [CS] and the Development Management Policies Document [DMPD], which were adopted in 2010 and 2016, respectively. Although the CS pre-dates publication of the National Planning Policy Framework ["the Framework"], neither party has given me reason to find that relevant CS Policy CP17 is, applying paragraph 215 of the Framework, inconsistent with it. In the circumstances I attach this relevant policy significant weight. Relevant DMPD Policies include DMP1 and DMP18.

Reasons: (i) Character and appearance

7. Away from the higher density development in the immediate area around Ealing Road, existing development to the north and east of the main road has a suburban character in which principally 2-storey housing fronts onto streets. Within this, the appeal site occupies a corner plot with the result that the rear garden has a frontage onto Kathleen Avenue. The single storey appeal building is sited at the far end of the garden of No 13. It respects the building line that is established by the odd numbered houses in Kathleen Avenue but, in contrast to the prevailing character of this suburban area, the building has a flat roof.
8. CS Policy CP17 seeks to protect the distinctive suburban character of Brent from inappropriate development. It specifically says that the development of garden space and infilling of plots with out-of-scale buildings that do not respect the settings of the existing dwellings will not be acceptable. In terms of character, the Council's unchallenged claim is that there are no examples of similar buildings nearby. Whilst there appear to be outbuildings at the rear of nearby properties, such as those in Kathleen Avenue, these have a limited impact on the street scene, whereas the appeal building is conspicuous, for example when seen from the adjacent junction. By reason of its height the building is visible above the boundary fence and its overall massing renders the outbuilding out-of-scale with its environs. The Council says it resembles a bungalow and, in terms of its use, the building appears to be unprecedented.

9. DMPD Policy DMP18 is exceptionally clear that planning permission will only be granted for outbuildings that will not be residential accommodation. However that is what is sought in the deemed application and no material considerations are put forward that outweigh the clear conflict with this up-to-date DP policy.
10. Noting that the inside of the garage door has been plastered over, such that the outbuilding can only be accessed via the rear garden, and the existence of the bathroom, including shower cubicle, even if the building was not used as separate accommodation it could support the increased occupation of No 13. Any such use would also give rise to a conflict with DMPD Policy DMP18 and no planning conditions have been offered that could reasonably address this issue. My concern on this point is exacerbated by the fact that No 13 appears to be split into 4 flats, A-D, and so this is not a case where an outbuilding could be said to be incidental to a single dwelling house. Although it is said that the building was rented out in association with No 13A, specifically, that is a civil matter and it is unclear how that could be controlled by a planning condition.
11. It has been suggested that the outbuilding was rented out for the purpose of storage, but the design of the building might suggest otherwise. Amongst other things a storage use might best be served via a garage door or other direct access to the highway, rather than via the rear garden. The provision of a bathroom appears to be wholly inconsistent with a mere storage use, as does the incorporation of a door that can be locked from the inside and windows. No explanation is offered for the need to increase the size of the outbuilding from the not insubstantial former garage just to serve as a tenant's storage area. Whilst the Council has otherwise talked about landlord storage, this was not evident at the time of my inspection and no case has been made on that basis.
12. On the first main issue I conclude that the development harms the character and appearance of the area and, for the reasons given, I find a conflict with CS Policy CP17 and DMPD Policies DMP1, specifically criterion a, and DMP18.

(ii) Neighbours' living conditions

13. The Council estimates the building has a footprint of approximately 7 m x 4.4 m and that the building is around 2.65 m high; this is unchallenged. It extends up to the boundary of No 1 Kathleen Avenue and No 11 Stanley Avenue, but this appears to be little different to the siting of what existed.
14. Dealing with these in turn, the party boundary wall with No 1 appears to be identical, in terms of length, with the garage that it replaced. Whilst the flat roof of the current building is slightly higher than the eaves height of the old garage, there can be no question that it is materially lower than the pitched roof of the garage that it replaced. Noting that No 1 is principally orientated from front to rear and is separated by a side access that only appears to serve its rear garden, I consider that the building has not materially harmed the living conditions of the occupiers of No 1 by reason of a loss of outlook.
15. Turning to No 11, what has materially changed is that the length of the building along the party boundary has been increased by approximately 3 m. However, whilst the building is higher than the wooden fence that otherwise demarcates the party boundary, its siting means it is principally the end of the rear garden of No 11 that is affected by the building. Noting the absence of correspondence from that neighbour and that no concerns have been raised by the Council in terms of loss of sunlight or overlooking, I consider any loss of outlook to be

marginal and within the bounds of acceptability. In reaching this view I note the semi-mature tree within the rear garden of No 11, which I consider would assist in ameliorating the mass of the building when seen from that property.

16. On the second main issue I conclude that the development does not harm the living conditions of the neighbours at No 1 Kathleen Avenue and No 11 Stanley Avenue by reason of outlook, and I find no conflict with DMPD Policy DMP1.

(iii) Residents' living conditions

17. The Council says the building provides substandard separate accommodation, but no case has been articulated that the size of the unit is below the minimum space standards for new dwellings, as referred to in DMPD Policy DMP18. It is material that no conflict with London Plan Policy 3.5 Table 3.3, as referred to in DMPD Policy DMP18, has been alleged. Instead the Council's concern under this head is focussed on: i) access arrangements; and ii) bicycle and waste storage.
18. In terms of the former, given the good public transport network in the vicinity of the site and the scope to walk and/or cycle to local services and facilities, I find no reason to require the provision of any car parking facilities on the site. To the contrary, the lack of provision might reduce any prospective occupiers' reliance on the private car. Whilst access on foot is currently via the side gate that also serves No 13, the deemed application site comprises the land edged black on the plan attached to the notice. As such it would be possible to impose a planning condition to require a new pedestrian access to exclusively serve the outbuilding. There might, for example, be scope to modify the old garage door and in its place provide a new front door to serve the building. Given that this concern could be dealt with by the imposition of a planning condition this is not a sound basis to refuse to grant planning permission.
19. Turning to bicycle storage there appears to be scope to deal with this within the deemed application site by the imposition of planning conditions. It might for example be possible to provide a covered and secure cycle storage facility in the rear garden of No 13, either to serve all of the dwellings or for part of the garden to be segregated exclusively for occupiers of the building. In my view the same conclusion should be drawn in respect of waste storage. It is conceivable that a new gate through the existing fence could provide access to an area within which waste bins, any recycling receptacles and bicycles could all be stored without impacting on the street scene or detracting from either neighbours' living conditions or the residents' reasonable enjoyment of the property. This too is not a sound basis to refuse to grant planning permission.
20. On the third main issue I conclude that planning conditions could be imposed to ensure that the development provides satisfactory living conditions for the residents of the building in terms of pedestrian access, and bicycle and waste storage. As such I find no conflict with relevant DP policies.

Other matters

21. Whilst there is no doubt that there was a garage on part of the footprint of the outbuilding that has been erected, it is unclear the extent to which that garage has been incorporated into the new building. So whilst the original face of the garage might have been retained¹, the position is less clear on the return wall facing No 1 Kathleen Avenue. One photograph in the Council's evidence might

¹ The distinctive pattern of bricks around the now blocked up garage door entrance might support such a finding.

- suggest this wall has been largely retained and only marginally increased in height², but the position is unclear. At the site inspection I was unable to see the wall facing No 11 Stanley Avenue to make a similar assessment. However the Appellant has offered no evidence on this point and, amongst other things, the Council's claim that the original garage "...*was demolished entirely*" has not been rebutted at final comments stage. The position is therefore ambiguous.
22. Even if I were to assume that the external walls of the former garage had been incorporated into the new building, this would comprise a maximum of 3 walls³. Plainly, by reason of its revised form, there is a new roof. Accordingly, whilst I have considered the possibility, it would not be appropriate to grant planning permission for a lesser scheme comprising of the remnants of the old garage, namely a building comprising of 3 external walls and no roof. This would clearly contravene CS Policy CP17 and DMPD Policy DMP1. It is not open to me to grant planning permission for the old form of the garage because, with its ridged roof, that would be materially different from the appeal building.
23. I have considered the possibility that it would be possible to grant planning permission for a lesser scheme comprising of the retention of the building as it stands, but restricting its use to storage or some similar ancillary activity. The Council refers to the case of *SSCLG v Ioannou* [2014] EWCA Civ 1432 and says that planning permission cannot be granted for a development which was not originally enforced against. I agree to the extent that I have already found it is not within my gift to grant planning permission for the reinstatement of the old garage. However section 177(1)(a) of the Act allows for the grant of planning permission for the whole or any part of the matters stated in the notice. Here the allegation includes "...*the erection of a building*" and hence it is open to me to grant planning permission for the erection of the building as it stands.
24. Notwithstanding the above, I decline to do so here for a number of reasons that I have previously articulated in my consideration of the first main issue; see for example paragraph 8 above. Amongst other things there is no clear basis to justify the size of this large outbuilding and no conditions have been put forward, or are obvious, that could restrict the use of the building to an ancillary purpose, excluding residential, to one or more of the flats at No 13.
25. There is no reason to doubt that the unauthorised use ceased promptly and that it was in breach of the terms and conditions of the tenancy agreement. However the tenancy agreement is a civil matter and the Council are not a party to that private agreement, which could be varied at a future date. For these reasons I am only able to attach very limited weight to these arguments.

Ground (a): Overall conclusion

26. Despite my favourable conclusion on the other main issues, my findings on the first main issue leads me to conclude overall that the ground (a) appeal, the deemed planning application, should not succeed. In coming to this view I have taken account of all other matters raised in the Appellant's submissions but there are no material considerations of sufficient weight that indicate that the determination should be made otherwise than in accordance with the DP.

² Photograph dated 08/12/2016 at 10:56 hours that looks down the side access of No 1. The brickwork on most of that wall is in the "English bond" style, with one course laid lengthways and the next course with the narrow end of the brick exposed. However the top 2 courses of bricks are a different colour and both are laid lengthways.

³ To the south-east, north-east and north-west; the remaining wall of the original garage must have been demolished because the footprint of the building has been extended towards No 13.

Ground (f)

27. Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve, wholly or partly, any of the purposes set out in section 173(4) of the Act. These include remedying the breach by restoring the land to its condition before the breach took place. Paragraph 3.3.1 of the Council's statement says the requirement of the notice is to remedy the breach, within section 173(4)(a) of the Act, and both steps are consistent with this aim.
28. The grounds of appeal conflate a number of arguments. To take the last point first, even if there are "*...numerous similar developments in the locality*", there being no clear evidence to substantiate the claim, this goes to ground (a) and is a point I have already taken into account. I disagree with the claim that there is any requirement for the Council to undertake a survey to this end. The assertion that the Council should have negotiated with the Appellant ultimately goes to the question of expediency. My finding on ground (a) would suggest that the Council had grounds for concluding that it was expedient to issue the notice but expediency is ultimately a matter for the courts, not an Inspector.
29. Reference is made to in-depth details concerning the fire and subsequent new roof replacement, and I assume this is a reference to the exchange of emails at Appendix C to the Appellant's submission. However the Council's email dated 11 January 2017 at 12:12 hours gets to the nub of the matter in accepting that whilst there was a garage there it: "*seems to have been removed and a much larger building built in its place*". I have already speculated about the extent to which parts of the garage might have been incorporated into the new building but it is precisely that, speculation. No clear evidence has been put before me.
30. In those circumstances it would not be appropriate to vary the requirements of the notice to allow for, by way of example, up to 3 of the walls of the building that presently exists to be retained⁴. It is unclear if that was the condition of the land at the date of the breach, i.e. when fresh building operations started. What is clear is that the works went far beyond mere replacement of the roof. Since the Appellant has not clearly shown what part, if any, of the garage was retained and what "*additions*" have been made it is not possible to identify any lesser steps with any degree of precision.
31. Given the purpose of the steps in the notice this is not a case which falls within section 173(4)(b) of the Act. No alternative, or lesser, steps have been clearly articulated to address the injury to amenity. Although I have speculated as to whether the requirements of the notice should be varied to allow for up to 3 exterior walls of the building to be retained, such an outcome, which would give rise to an incomplete building, would not satisfactorily remedy the injury to amenity which has been caused by the breach. So, even if I am wrong and this is a case within section 173(4)(b) of the Act, in the absence of any obvious lesser steps the requirements of the notice are not excessive.
32. I conclude that no reason is advanced as to why the requirements of the notice exceed what is necessary to remedy the breach, which appears to be the limited scope of the ground (f) appeal. However even if I am wrong, in the absence of an obvious lesser step, the requirements of the notice would not exceed what is necessary to remedy the injury to amenity which has been caused by the breach. In these circumstances, the ground (f) must fail.

⁴ See paragraph 21 above for more details.

Ground (g)

33. The Appellant seeks 6 months, rather than the 3 months identified in the notice, in order to: "...*source a reputable builder to undertake the physical alterations*". As it stands there are no alterations required, only demolition. Accordingly 3 months would appear to be an appropriate period of time.
34. Notwithstanding the above I have speculated in this decision that there might be some basis for concluding that some of the pre-existing garage has been retained and incorporated into the new building. I consider that it would be appropriate to allow both parties more time to consider this point in detail on the basis of evidence and a thorough, potentially intrusive, examination of the building.
35. Moreover, given that No 13 is in use as flats, such that there are no relevant permitted development rights, it is likely that a full planning application would be required to reinstate the garage that, the Council accept, formerly existed. It is material to note that the definition of development in section 55 of the Act defines building operations to include "*rebuilding*" and so even if this were limited to the re-erection of the south-west wall of the original garage and the reinstatement of the garage roof it is likely that planning permission would be required. Accordingly I shall vary the period for compliance to enable additional time for both of these purposes. There is a realistic possibility that if evidence is provided that shows up to 3 walls of the original garage have been incorporated into the new structure that the Council might find this to be a material consideration of such weight that it might lead them to grant planning permission for a direct replacement of the garage that existed prior to the fire.
36. Allowing for evidence to be collated and considered, a planning application to be determined and for alterations to be made to the building to accord with any planning permission leads me to find that a 6 month compliance period would be appropriate. For all of the above reasons I consider that 6 months would represent an appropriate compromise between the factors identified above and the need to address the harm caused by the clear breach of planning control.

Conclusion

37. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the enforcement notice, subject to the identified variation. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew
INSPECTOR