



Appeal Decisions

Site visit made on 25 April 2018

by Debbie Moore BSc (HONS) MCD MRTPI PGDip

an Inspector appointed by the Secretary of State

Decision date: 04 June 2018

Appeal A: APP/T5150/C/17/3181155

59 Dunster Drive, London NW9 8EH

- 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 Yama Noorzai against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 20 June 2017.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a dwelling in the rear garden of the premises.
- The requirements of the notice are:
 1. Demolish the dwelling in the rear garden of the premises.
 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 the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (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.

Appeal B: APP/T5150/C/17/3181157

59 Dunster Drive, London NW9 8EH

- 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 Yama Noorzai against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 20 June 2017.
- 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:
 1. Cease the use of the premises as more than one dwelling.
 2. Remove all kitchens, except one, and all bathrooms, except three, and remove all other items, equipment, and materials associated with the unauthorised change of use from the premises.
 3. Remove the front door located at the front of the single storey side projection and brick up the opening with bricks to match the existing brickwork.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (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 variations.

Appeal C: APP/T5150/C/17/3181156 **59 Dunster Drive, London NW9 8EH**

- 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 Yama Noorzai against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 20 June 2017.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a raised decking area and a canopy extension to the rear of the premises.
- The requirements of the notice are:
 1. Demolish the unauthorised canopy extension and demolish the raised decking area at the rear of the premises.
 2. Remove all the debris and items arising from this demolition and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of decision: the appeal is dismissed and the enforcement notice is upheld.

Appeal A: APP/T5150/C/17/3181155

The appeal on ground (b)

1. In considering this ground of appeal it is necessary for me to determine whether or not the matters alleged factually occurred at the date of the notice. In this type of appeal, the onus of proof is firmly upon the appellant. In *Gabbitas*¹ the Courts have held that the relevant test of the evidence on 'legal' grounds of appeal is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
2. The main thrust of the appellant's argument is that the building is not a dwelling. There is no definition of "dwellinghouse" in the Town and Country Planning Act 1990 (the 1990 Act) as amended, but in *Gravesham*², it was accepted that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
3. The building is located at the rear of the garden and extends across its full width. It has a flat roof with two windows and patio doors, with a further window on the side elevation. Internally I saw that the building is divided into separate areas including a shower room and WC. The kitchen facility had been removed, by the time of my visit, and replaced by a storage area with a wooden screen. In the largest room there was a running machine and a bench with a small number of weights.

¹ *Gabbitas v Secretary of State for the Environment* [1985] JPL 630.

² *Gravesham BC v SSE and O'Brien*, [1983] JPL 306.

4. Although the building has been altered since the notice was served, to remove the kitchen, it formerly had the distinctive characteristic of a dwellinghouse as it contained all the facilities required for day-to-day private domestic existence. The appellant's evidence alone shows that this was the case at the date the notice was served. Consequently, on the balance of probability, the matters alleged factually occurred at the date of the notice. Therefore, the appeal on ground (b) must fail.

The appeal on ground (c)

5. The appellant considers that there has not been a breach of planning control. It is claimed that the building is not development as it falls within the exclusion provided by s55(2)(d) of the 1990 Act as amended. This refers to the use of any buildings within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse. The provision does not apply to the erection of a totally new building, as is the case here.
6. The appellant claims that the development falls within that permitted under Schedule 2, Part 1, Class E of the GPDO as amended. This enables the provision of a building within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse without the need to apply for a specific planning permission, subject to conditions and limitations.
7. Under E.1(e) of the GPDO as amended, development is not permitted if the height of the building would exceed 2.5 metres in the case of a building within 2 metres of the boundary of the curtilage of the dwellinghouse. The appellant maintained that the building has a maximum height of 2.5 metres, which was disputed by the Council. During the site visit, the appellant and the Council's representative measured the height of the building from the ground level immediately adjacent to the front elevation and agreed it to be 2.55 metres. Consequently, the height exceeds the relevant limitation and the building is not permitted under Schedule 2, Part 1, Class E of the GPDO.
8. The appellant strongly asserts that the building has always been used for purposes ancillary to the main dwelling, including as a games room, gym and social area for family and friends and has never been used as sleeping accommodation. Nonetheless, it is not necessary for me to consider whether or not the building is for purposes incidental to the enjoyment of the dwellinghouse, as it is not permitted development due to its height.
9. The appellant refers to *Uttlesford*³, however, this case is not comparable with the facts of the appeal before me. In that case, permission had been granted for a garage for incidental use. The accommodation gave the occupant the facilities of a self-contained unit, but was intended to function as an annexe only with the occupant sharing her living activity in company with the family in the main dwelling. There is no evidence that planning permission was granted for the building nor is it permitted development, for the reasons explained above.
10. I have considered the other cases referred to by the appellant⁴. Although the full details are not before me, they all appear to concern the conversion of existing outbuildings, which is not the case with the appeal building.

³ *Uttlesford District Council v SSE & White [1992]*.

⁴ Epping Forest DC (11/11/94), Bromsgrove (15/07/02) and Chelmsford (3/2/86).

11. The appeal for the retention of an outbuilding⁵ concerned the planning merits of that development and is not relevant to the matters before me. The appellant makes further points about the planning merits of the appeal building. As there is no ground (a) appeal, that planning permission ought to be granted for the matters stated in the notice, these matters do not fall to be considered.
12. The appellant has not shown that the development comprising the erection of the dwellinghouse has been granted planning permission or that it benefits from permitted development rights. Consequently, the appeal on ground (c) fails.

The appeal on ground (f)

13. Section 173 of the 1990 Act as amended, indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the reasons behind the notice refer to the amenity of the surrounding rear gardens, access arrangements, cycle and waste storage facilities and parking. The notice is directed at remedying the breach of planning control and what must be considered is whether the requirements exceed what is necessary to achieve that purpose.
14. The appellant considers the requirements could be varied so that the building is retained with changes to the internal layout. In addition to the kitchen, which has already been removed, this would involve the removal of a partition wall. The shower/WC would be retained. Although these alterations would make it more difficult to use the building as a separate residential unit, which the appellant suggests would address the Council's concerns, they would not remedy the breach of erecting a dwellinghouse.
15. I acknowledge that the enforcement procedure is intended to be remedial rather than punitive. Where it appears there is an 'obvious alternative' which would overcome the planning difficulties with less cost and disruption, the Inspector should feel free to consider it. However, in this case, the alternative suggested would not overcome the planning difficulties, which are related to the dwellinghouse.
16. The appellant indicates that there is a valid fall-back option in that a similar building could be constructed under permitted development rights. If it is found that planning permission may be granted for 'part of the matters', and an appeal is made under ground (a), the correct approach is to do so and uphold the requirements of the notice, relying on s180(1) to override the effects of the notice. However, as there is no ground (a) appeal, I am unable to use the powers under s177(1) to grant planning permission for a smaller building, even if it could be regarded as part of the development as built.
17. Neither of these lesser steps would remedy the breach of planning control, and the purpose behind the notice can only be achieved by complying with its requirements. Therefore, the appeal on ground (f) must fail.

⁵ Ref APP/R5510/D/15/3131056.

The appeal on ground (g)

18. The appellant is seeking further time to comply with the notice in order to raise the necessary funds for the demolition. I do not accept that, due to the nature of the work required by the notice, compliance would take longer than three months. Notwithstanding the appellant's personal circumstances, there is limited evidence to support the assertion that it could take six months.
19. Consequently, I am satisfied that three months would be an appropriate length of time for compliance. The appeal on ground (g) fails.

Conclusion

20. For the reasons given above, I consider that the appeal should not succeed.

Appeal B: APP/T5150/C/17/3181157

The appeal on ground (b)

21. As explained above, in "legal" grounds of appeal the burden of proof is on the appellant. The standard of proof is the balance of probabilities.
22. The appeal relates to a semi-detached house which has a single storey side and rear extension. The layout of the extension is largely open plan. It incorporates two bedroom areas, a shower room and kitchen facilities including a fridge/freezer, cooker and sink. The external front door to the extension has been altered to prevent access. The rear door giving access to the garden was in place but, at the time of my site visit, was blocked by fixed garden furniture.
23. The appellant claims that there has been no subdivision of the house and the extension is occupied by the family or by guests, living as a single household. The extension does not have a separate address, is not registered for Council Tax and does not have separate utilities.
24. The key issue is whether a separate planning unit has been created. In *Burdle*⁶ it was established that the planning unit should be determined by identifying the unit of occupation and whether there is physical and/or functional separation of primary uses as a matter of fact and degree.
25. The appellant contends that the accommodation in the extension is fully integrated with the main house. However, at the time the notice was served, the extension was physically separate. Although there is an inter-connecting door, this is substantial and lockable. The extension had a separate means of access and contained all the facilities for day-to-day living including sleeping, washing and cooking areas.
26. The evidence that the accommodation is used solely by family members or friends is limited. I appreciate that family members may wish to eat at different times, but this does not fully explain why this requires a separate kitchen. Presumably if people were eating at different times, they would be using the kitchen at different times. I also understand that some of the family members like to return home late and the separate external door was convenient. However, it is not entirely clear whether the extension is used on a regular or

⁶ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207.

occasional basis by the appellant's daughters. The evidence before me points to the latter, especially if the accommodation is also used by visiting friends and family. Overall the evidence presented in support of the appellant's claim is imprecise and ambiguous.

27. The appellant refers to *Uttlesford*, in which the Judge considered that, even if the accommodation provided facilities for independent day-to-day living it would not necessarily become a separate planning unit from the main dwelling; it would be a matter of fact and degree. As set out above, I have found that the extension with its living accommodation was not part of the same planning unit as the dwellinghouse as matter of fact and degree. As such, a material change of use has taken place.
28. The appellant has not shown that, at the time the notice was served, the dwelling was a single planning unit where the whole unit of occupation was used for one main purpose.
29. I conclude, therefore, on the balance of probability that the alleged breach of planning control comprising the material change of use of the premises from one to two dwellings occurred at the date the notice was served. The appeal on ground (b) fails.

The appeal on ground (f)

30. The reasons behind the notice refer to the use of the property and the standard of accommodation provided. The notice is directed at remedying the breach of planning control and what must be considered is whether the requirements exceed what is necessary to achieve that purpose.
31. The appellant wishes to retain the kitchen and shower room. It is stated that the kitchenette has been in situ for over four years and it should be immune from enforcement action. S173(5) of the 1990 Act as amended gives power to require the alteration of a building for the purposes of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development or be immune from enforcement action.
32. The key question is whether the kitchen and shower room are integral to or part and parcel of the material change of use. In this case, the facilities within the extension enable its use as a separate residential unit. As such, the kitchen and shower are part and parcel of the making of the material change of use, as these facilities would enable the occupants to live independently from the main dwelling. However, I accept that the retention of the shower room on its own would not enable the unauthorised use and the removal of the kitchen alone would be proportionate. Consequently, I am satisfied that the requirements should be varied to allow the retention of the shower room.
33. The notice also requires the removal of the front door and for the opening to be bricked up. The appellant has suggested an alternative, whereby a window would be installed and details have been provided. The external door facilitates the unauthorised use of the extension and its removal is necessary. However, the requirement could simply be to remove the front door without specifying its

replacement. This would enable the appellant to agree further works with the Council if necessary.

34. Therefore, to this limited extent, the appeal on ground (f) succeeds.

The appeal on ground (g)

35. The appellant is seeking further time to comply with the notice, in order to raise the necessary funds for the demolition. I do not accept that, due to the nature of the work required by the notice, compliance would take longer than three months. If more time is needed to agree the details in relation to the removal of the door, the Council may use its powers under s173A(1)(b) to extend the compliance period, but this would be at its own discretion.

36. Consequently, I am satisfied that three months would be an appropriate length of time for compliance. The appeal on ground (g) fails.

Conclusion

37. For the reasons given above, I consider that the appeal should succeed to a limited extent on ground (f). I shall uphold the enforcement notice with variations.

Appeal C: APP/T5150/C/17/3181156

The appeal on ground (a)

38. The appeal on ground (a) is on the basis that planning permission ought to be granted for the matters constituting the breach of planning control. The main issue is the effect of the development on the living conditions of neighbouring residents, with regard to outlook and privacy.

39. The appeal property is a semi-detached house located on a road of similar residential development. The garden slopes downwards towards the rear boundary. A raised patio/decking area with steps into the garden has been erected, with an area of covered decking adjoining a rear extension.

40. Due to the slope of the land, the raised decking and canopy increases in height above ground level the further it extends. Consequently, its impact on the neighbour's outlook does not diminish with distance from the rear of the house. The covered decking provides a level seating area and is screened along the boundary with No 61 by timber latticework and plastic sheeting. Although this is not a solid wall, it is a substantial structure on the boundary of the property.

41. The Council's Supplementary Planning Guidance No 5 "Altering and Extending Your Home" (SPG5) indicates that the maximum depth for a rear extension is 3 metres from the original rear elevation. The covered decking, when combined with the previous extension, exceeds this depth. I saw that No 61 does not have any windows to main habitable rooms close to the boundary.

Nonetheless, the covered decking extends along the shared boundary for a significant distance at a raised level above the neighbour's garden. The side of the structure is semi-solid and its impact is comparable to an extension. The structure does not respect the character and size of the house and it has an unacceptable dominant impact on the neighbouring property, and the outlook from its rear garden.

42. The notice is targeted at the covered decking and also the decking which extends into the garden from the slabbed patio area. Whilst this area of decking is not overly dominant, it enables views into the rear gardens of the adjoining properties. At present, views into the rear garden of No 61 are restricted by the side wall of the canopy, but views would be obtained should this be removed. However, I saw from the site visit that the rear gardens of neighbouring houses are not completely private at present due to inter-visibility between gardens and views from first floor and dormer windows. Although the decking enables views into neighbouring gardens, there is no material loss of privacy due to existing levels of overlooking. However, my concerns about the impact of the covered decking on the neighbour's outlook remain.
43. I have considered the previous structure that existed on the shared boundary. It is clear from the photographs and plans provided that this was an open sided canopy, which was sited at a lower level, and its impact would not be comparable.
44. The appellant has appealed under ground (f) and has proposed an amendment to the scheme. This would involve reducing the height of the canopy by 300mm, the removal of the raised decking beneath the canopy and a reduction in the canopy overhang by 300mm. This size reduction would be marginal and would not overcome the harm to the neighbour's outlook that has been identified.
45. I conclude on this matter that the covered decking has an adverse effect on the living conditions of the occupants of No 61 Dunster Drive due to loss of outlook. The development is contrary to Policy DMP1 of the London Borough of Brent Development Management Policies document (2016) and the advice contained in SPG5 (2002) which seeks to ensure that development complements the locality, and the National Planning Policy Framework insofar as it seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

The appeal on ground (f)

46. The appellant has appealed under ground (f) on the basis that the steps required by the notice to be taken exceed what is necessary. Alternatives are suggested. The reasons behind the notice refer to the impact of the canopy and raised decking. The notice states that it is directed at remedying the breach of planning control and, in that case, what must be considered is whether the requirements exceed what is necessary to achieve that purpose.
47. There is a ground (a) appeal, and the canopy extension may be taken to constitute part of the development enforced against. I have considered the lesser steps suggested by the appellant, which would involve reducing the size of the canopy, but I do not find that this would remedy the injury to the amenity. In any event, the purpose of the notice is also to remedy the breach by requiring the removal of the canopy extension and raised decking. This can only be achieved by its removal. No lesser steps, including the alternative scheme assessed above, would achieve the statutory purpose behind the notice. Therefore, the appeal on ground (f) must fail.

Conclusion

48. 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.

Formal Decisions

Appeal A: APP/T5150/C/17/3181155

49. The appeal is dismissed and the enforcement notice is upheld.

Appeal B: APP/T5150/C/17/3181157

50. It is directed that the enforcement notice be varied by:

the deletion of the words "and all bathrooms, except THREE" in Step 2 of Schedule 4 of the notice, and

the deletion of the words "and brick up the opening with bricks to match the existing brickwork" in Step 3 of Schedule 4 of the notice.

Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Appeal C: APP/T5150/C/17/3181156

51. 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.

Debbie Moore

Inspector