



Appeal Decisions

Site visit made on 16 December 2019

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 06 January 2020

Notice B: Appeal Ref: APP/A5270/C/19/3229543

1 Lonsdale Road, Southall, Middlesex UB2 5LS

- 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 Raj Verma against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 24 April 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a rear extension.
 - The requirements of the notice are:
 - i) Demolish the rear extension in its entirety.
 - ii) Remove all the resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Notice A: Appeal Ref: APP/A5270/C/19/3226678

1 Lonsdale Road, Southall, Middlesex UB2 5LS

- 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 Raj Verma against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 11 March 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a detached rear garage building.
 - The requirements of the notice are:
 - i) Demolish the detached rear garage building in its entirety.
 - ii) Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

Notice B: Appeal Ref: APP/A5270/C/19/3229543

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

Notice A: Appeal Ref: APP/A5270/C/19/3226678

2. 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.

Preliminary Matters

3. The Council failed to arrive at the appeal site at the appointed time but with the agreement of the appellant's agent I was permitted access to the site and carried out an unaccompanied site inspection. I was satisfied I was able to see everything I needed to determine the appeals and will proceed on that basis.
4. The Planning Inspectorate designated appeal 3229543 as the 'lead' appeal in this case and it therefore appears first in the summary details above. The Council describes this as notice B relating to the extension and the other appeal (relating to the outbuilding) as notice A. I have followed that description to avoid any confusion but will deal with them in the order that they appear above.
5. Many of the images that have been provided in evidence show mini coaches and similar-sized vehicles on the appeal site and within the buildings which appear to have been designed to accommodate such vehicles. While the appellant claims in respect of notice A that evidence shows that the use is lawful, that evidence has not been submitted (see paragraph 32 below). However, each notice alleges as the breach of planning control the erection of a building or structure and does not refer to their use. The use to which the land and buildings is put is not therefore material to my determination of the appeals on the legal grounds of appeal.
6. In its appeal statement the Council refers to a court judgement, gives a partial citation in footnote 1 and includes what it says is the full transcript at Appendix 8. However, at Appendix 8 is the later Court of Appeal judgement. The point from the judgement that the Council draws attention to and support from was the subject of the first of the four grounds of challenge that Dove J considered in the lower court. As is clear from paragraph 4 of Appendix 8, Lewison LJ granted permission on only one of those grounds. While the Court of Appeal dismissed the appeal in any event, the issues it considered do not relate to ground 1. As the Council gave full enough details of the lower court judgement to identify it (and they appear in any case on page 1 of Appendix 8), I have read the judgement that the Council intended to put in evidence. The appellant could have and, judging by the final comments made, may well have, done the same and is therefore not disadvantaged.
7. The appellant notes and by implication casts doubt upon the dates attributed by the Council to many of the images it has put in evidence. It is indeed unfortunate that the Council has not provided more information to verify the image dates. However, taken in the round together with the appellant's chronology of events, I consider on the balance of probabilities that the image dates are those the Council gives.
8. Finally, in respect of the notice A appeal on ground (a) both parties refer to The London Plan: the spatial development strategy for London consolidated with alterations since 2011 dated March 2016 (The London Plan). The draft London Plan was published in December 2017. Following examination in the early part of 2019 a consolidated version of the Plan incorporating all the suggested changes was produced in July 2019. In October 2019 the panel reported on this version of the draft Plan. Both parties' final comments were submitted after this date and neither make any reference to the draft Plan or its implications for the notice A appeal on ground (a). I have therefore determined that appeal against the cited policies in The London Plan.

Notice B: the appeal on ground (d)

9. The notice was issued on 24 April 2019. For the appeal on this ground to succeed, the appellant must show, on the balance of probabilities, that the structure in place when the notice was issued was substantially complete not later than 24 April 2015 (the material date). Case law has established that the burden of proof rests with the appellant. If the Council has no evidence itself, nor any 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 the appellant's evidence alone is sufficiently precise and unambiguous.
10. The appellant's evidence comprises, at initial appeal stage, three sworn statutory declarations, two receipts for work undertaken and Google Street View images of the building taken from Caxton Road and dated July 2008, August 2012, July 2015 and April 2016. At final comments stage, the appellant comments on the Council's interpretation of the images it has supplied and, as already addressed above, notes that some of these are either undated or dated by the Council itself.
11. The Council's evidence includes the same Google Street View images as supplied by the appellant plus an additional image dated June 2014; a series of Google Earth aerial images dated, according to the Council, between 2006 and June 2019; various images (both external and internal) of the building; images at June 2019 and, for comparison, images showing the same part of the structure at earlier dates; an email dated 16 November 2016 from the Council Tax and Business Rates section of the Council reporting on two visits (8 and 14 November 2016) and enclosing some images; and the Council's interpretation of all this.
12. Critical to my determination of this ground of appeal are events between the material date and April 2019. Evidence relating to the period prior to the material date is therefore primarily of use as context.
13. Helpfully, the appellant explains how the original structure was created in 2006. As the rear wall of the house and the boundary wall with the adjoining property provided two sides of the building, it can only be the elevation facing Caxton Road (wall A), the roof and the front elevation that are 'new build'. My assessment of the evidence therefore focusses upon when these elements were provided in the form that existed in April 2019. There is no evidence to suggest that what I saw during my visit is any different to that which was in place when the notice was issued.
14. I deal first with wall A. In my opinion, the Street View images do not really assist. Well before the material date, wall A was on its current line and, subject to what I say below, at its current height. However, in November 2016 the Council's image shows that wall A was quite clearly of timber construction. By the time the notice was issued it was built of brick and part-clad.
15. The appellant explains through the sworn statement of Mr Singh how in 2018 repairs to the drainage system required work to wall A. Mr Singh's sworn evidence is that "To do the work...it was necessary to ...remove part of the side wall. Once the drain was fixed we rebuilt and repaired the garage side wall as required. Once the brickwork of the wall had been repaired..." (emphasis

- added). The appellant argues that this work falls into the category of essential works of repair and renovation which, on one interpretation, may be correct.
16. However, in the appellant's final comments it is stated that "However, after the drainage issues arose in 2018 and (were) then corrected, the original metal wall was replaced with a brick-built wall and re-clad." (emphasis added).
 17. The onus is on the appellant to be precise and unambiguous. Mr Singh's evidence, in my view, strongly suggests that the brick wall was already in place in 2018 when the drainage works were undertaken. The appellant's final comments are inconsistent with that account since they imply that the brick wall was first built as part of the drainage repair project. There is no evidence at all that the wall it replaced was metal; the Council's image shows it as timber.
 18. I give significant weight to sworn evidence. It follows therefore that the appellant has not accounted for the date when wall A was built in brick, only when it was subsequently repaired. As the Council's evidence shows the timber wall still in place in November 2016, the brick wall that replaced it in its entirety must have been erected after the material date.
 19. I turn now to the front elevation. The Street View image dated June 2014 and supplied only by the Council shows garage doors in place rather than a roller shutter. The appellant's sworn evidence is that one of these "fell off" in high winds during August 2014. The sworn evidence of Mr Lal, a general builder, is that he visited the site to assist the appellant in this regard later that month, on 17 August. He is clear about the date because it is a religious celebration day and after advising the appellant he went straight to a function.
 20. He then says that he helped to remove the remaining door and install the new shuttering. While he says that he "improved the strength of the mounting", he gives no detail as to what this work comprised. He confirms that the installation of the new shuttering took "no more than a month or so" which would put the completion date around September or October 2014 and thus before the material date.
 21. The roller shutter is clearly shown as being in place on the July 2015 Street View image and it is still in place in the April 2016 Street View image. In both, it appears to be supported by a timber frame. In my view, this timber supporting frame is not clear in the single relevant image that the Council dates as 14 November 2016. What is clear however is that by April 2019, images taken by the Council show brick pillars to both sides of the elevation; they appear to be supporting the roller shutter door and housing above.
 22. The appellant gives no explanation at all about how or when the brick pillars were installed. It may be that they were built with the roller shutter door remaining in place or it may be that the roller shutter door and housing were taken down and re-installed onto the firmer frame. That is certainly the implication of the appellant's final comments which state "As a result of these works (meaning the works to wall A to address the drainage issue discussed above), the roller shutter housing had to be moved slightly, as it now rests on the new brick wall as opposed to the original metal structure." Nevertheless, the onus is on the appellant to be precise and unambiguous on these important matters of detail.

23. As the pillar at the Caxton Road side of the front elevation forms part of the brick-built wall A, I conclude on the balance of probabilities, that it was provided at the same time, namely after November 2016 but not later than September 2018. In the absence of any account from the appellant as to how the front elevation was altered without removing the shutter and housing, I conclude on the balance of probabilities that, in effect, it was completely rebuilt sometime after November 2016. That is after the material date.
24. Finally, I turn to the roof. While the Council contends that the roof has been altered or replaced on more than one occasion, I do not consider that the images provided allow that conclusion to be drawn, on the balance of probabilities, for the period since the material date. Nevertheless, the appellant has given no account of how the roof was held in position when one of the supporting walls, the timber wall A, was replaced by the brick structure now in place.
25. To conclude on this ground of appeal the judgement cited by the Council¹ confirms that whether what has happened in a particular case is an exercise of permitted development rights or the removal of the original and its replacement by re-building the structure is a question of fact and degree and inevitably fact sensitive. In this case, the evidence shows: that the timber wall A has certainly been demolished and rebuilt in brick since the material date; that the front elevation has, on the balance of probabilities, been taken down and repositioned slightly with the roller shutter door now "resting" (to use the appellant's term) on the brick pillars; no information about how the roof was supported during either of these substantial structural changes to the building.
26. Since two of the three elements that form the building have been removed and replaced in their entirety since the material date, I conclude, as a matter of fact and degree judgement, that the building as it existed when the notice was issued was not substantially complete until sometime after November 2016, the last date when the timber wall A is shown in an image submitted in evidence. That is well after the material date. The appeal on ground (d) therefore fails.

Notice B: the appeal on ground (g)

27. In an appeal on this ground the appellant has to explain why the period allowed to carry out the requirements of the notice is insufficient and why the longer period sought (six months) is necessary.
28. In proposing the longer period, the appellant is taking into account a period of time to find a contractor to do the work. As the Council points out and the appellant in effect confirms by setting out how the building has been created, no works are required or necessary to the house. Three months therefore seems to me perfectly adequate to carry out what is a simple removal of the three elements forming the building.
29. The Council also refers to the powers available under s173A of the principal Act to enable it to vary the period for compliance as circumstances may require. The appeal on this ground therefore fails.

¹ *Arnold v Secretary of State for Communities and Local Government* [2015] EWHC 1197 (Admin)

Notice B: conclusion

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

Notice A: the appeals on ground (d) and (b)

31. The appellant has been represented by two agents in the appeal against notice A. The case made by the second undermines that on ground (d) made by the first. Unusually therefore, I shall deal with these two grounds of appeal together and in the reverse of the normal order.

The appeal on ground (d)

32. The first agent submitted the initial appeal documents. Although appendices to the appeal statement are referred to, none have actually been submitted. Importantly, a statutory declaration by the builder employed by the appellant to undertake the work to the buildings has not been made available. While a case is made on ground (d), it simply asserts that the period during which enforcement action could be taken (four years) had passed when the notice was issued with very little evidence as to when the various works carried out took place and, more importantly, were substantially completed.

33. Final comments were submitted by the second agent who also dealt with the appeal against notice B from the outset. It is impossible to contest that the rear garage building that exists today is fundamentally different to that shown in Street View images captured in April 2016. Fairly, the second agent does not seek to do so. Moreover, the appellant does not now dispute that the works carried out to create the structure enforced against amount to operational development for which planning permission is required. As these works have taken place since 11 March 2015 (the material date in the appeal against notice A), the appeal on ground (d) cannot succeed.

The appeal on ground (b)

34. As pointed out above, the appellant accepts that there has been a breach of planning control. What is in dispute is whether the Council has described it properly in the notice. The only purpose served by this ground of appeal therefore is to define the terms of the deemed planning application to be considered next.

35. What has happened to create the structure enforced against is not in dispute. What needs to be determined is whether or not that amounts to the erection of a building as alleged in the notice.

36. Street View images provided in evidence by the Council show clearly the sequence of events. Briefly this is as follows:

- (a) By 2008 there are two structures at the rear of the site. That on the Caxton Road boundary is a low-level single-storey structure (the shed) with a window and pedestrian door in the inward-facing elevation. The second is a taller garage with a roller shutter door across part of the width of the inward-facing elevation. They appear to be constructed as separate buildings. The Council does not disagree with the appellant that both had planning permission.
- (b) Circumstances do not appear to have changed in the image dated June 2014. However, by July 2015, a full width and height roller shutter door

with housing above has been installed in the inward-facing elevation of the garage. The Council contends that two new brick pillars were added to the elevation to enable the new door to be fitted since it could not be accommodated in the previous elevation. The appellant does not dispute that and in the July 2015 image the building certainly stands forward of the inward-facing elevation of the shed. However, in both the 2008 and 2014 images vehicles parked within the site prevent visual confirmation of this relationship between the two elevations. No alterations are apparent to the shed.

- (c) The April 2016 image shows no discernible difference to either building. By coincidence, two of the vehicles parked on the road in this image appear to be those parked in what seems to be the same place in the previous image. Confirmation that the two images are nevertheless different is shown by the tree which is in full leaf in July 2015 but yet to leaf in April 2016.
 - (d) The photographs dated by the Council as 14 November 2016 (see paragraph 7 above) show no change from April 2016. One does however confirm that the garage and the shed are two separate buildings with a connecting pedestrian door towards the front elevation of both.
 - (e) By January 2019 the building is completely different. The window in the inward-facing elevation of the shed has been removed. The roof has been raised to the level of the garage roof with brick courses added over the door. In fact, the Council's undisputed evidence is that this elevation has been rebuilt slightly forward of its original position. The Caxton Road elevation is now full height (again, the Council's uncontested evidence is that it was completely rebuilt and extended slightly) and has a substantial full height roller shutter door and housing fitted, although at the time of my site visit this did not give access to the building. While the pedestrian door also in this elevation referred to by the Council was there at the time of my site visit, it is not shown in the Council's late January 2019 image. Although not evident in images provided by the Council, its undisputed evidence is that the original wall between the shed and the garage had been removed to create a single space. That was the position at the time of my site visit. Also uncontested is its evidence that the shallow pitch pyramid roof over the garage was removed and replaced.
37. It is fairly plain from the foregoing that where two previous buildings in this part of the site were situated, each with its own appearance and internal space, there is now one building of wholly different dimensions comprising a single internal space. In constructing this building, the shed has been substantially, if not wholly, demolished.
38. In reality, the appellant accepts this. It is acknowledged in the appeal statement that the shed (termed Building B) was, having been extended upwards, incorporated into the garage (Building A) "becoming Building AB"; in other words, a new building. It is further acknowledged that "...much of Building B was demolished during these works" and that "the exterior wall has been substantially repaired, with little of the original remaining."
39. Furthermore, the whole of the Caxton Road-facing wall of the garage has been removed so as to establish the single space and it is not disputed that the

inward-facing elevation has been removed and rebuilt. As a matter of fact and degree judgement, I therefore conclude that the garage as originally built has also, in effect, been demolished.

40. Applying the principle in the judgement cited by the Council to the facts in this case, I conclude, as a matter of fact and degree, that the works carried out sometime between November 2016 and January 2019 were so substantial that they amounted to the erection of a wholly new garage building. The Council's description of the breach of planning control is therefore correct and the appeal on ground (b) fails.

Notice A: the appeal on ground (a) and the deemed planning application

Main issue

41. The terms of the deemed planning application are defined by the breach of planning control alleged. Given my conclusions on the ground (b) appeal this is as set out in the notice. The main issue for the determination of this ground of appeal is the effect of the development on the character and appearance of the area and the host dwelling.

Reasons

42. While there are a public house and two local shops nearby, such uses are not unusual in residential areas and do not detract from the residential character and appearance of the area within which Lonsdale Road is situated. Although the appellant claims that the appeal site is in a *sui generis* use for storage and operation of mini buses, the Council states that there is no planning permission for such a use. In the absence of any substantiated evidence to the contrary (see paragraph 5 above), I have taken the lawful use of the appeal site to be residential.
43. Dwellings in the area are predominantly modest, two-storey buildings typically but not exclusively arranged in terraces. Rear service alleys sometimes run to the rear. Where there are gaps in the terraces or the road alignments allow, glimpses to the rear of properties can be gained. Outbuildings of various designs and size can usually be seen. However, they are not prominent in the street scene.
44. In contrast where, as with the appeal property, the dwelling is on a corner plot, any outbuilding is very prominent. The appellant has drawn my attention to two such at the junction of Caxton Road and Derley Road, quite near to the appeal property. While it is true that both have roller shutter doors in the Caxton Road elevation, both are set within the wall and the roller shutter housing is below the eaves height and set within the structure. Moreover, both are of domestic scale, neither roof is flat and the other elevations visible in the public domain are residential in appearance.
45. The character and appearance of the appeal building is fundamentally different. As set out above under the ground (b) appeal it is of industrial rather than domestic scale and appearance with the large roller shutter doors and the housings which stand above eaves height in both the Caxton Road and the inward-facing elevations very prominent in public view. The building is a dominant and incongruous addition to the street scene which is quite overbearing for anyone passing by.

46. As such it is not, in my opinion, of the high quality required by the relevant development plan policies and pays little regard to the need to be of human scale creating a positive relationship with street level activity while making people feel comfortable in their surroundings. Moreover, it detracts from the positive contribution that the host dwelling makes to the residential character of the area. That view is reinforced by the fact that the existing large extension to the dwelling will be removed upon compliance with the requirements of notice B.
47. The development carried out therefore conflicts with policies 7.4 and 7.6 of The London Plan and policies 7.4 and 7B of the Ealing Development Management Development Plan Document adopted in December 2013.
48. S177(1)(a) of the Act gives the Secretary of State or, in transferred cases, an Inspector the power to grant planning permission for the matters alleged in respect of any part of those matters. However, to be able to do so, the appellant must specify with sufficient clarity the details of the proposal so that, first, the planning merits may be assessed and, second, a suitable condition that meets the tests set out in the Planning Practice Guidance can be drafted to give effect to the scheme. The appellant has not provided that clarity in this case. I shall deal with this further in the appeal on ground (f).

Conclusion

49. The appeal on ground (a) does not therefore succeed.

Notice A: the appeal on ground (f)

50. The Council has confirmed that its purpose in issuing the notice is to remedy the breach of planning control, not the injury to amenity. Since the breach is, in effect, the erection of a building without planning permission, the onus is on the appellant to explain how steps other than those set out in the notice can achieve the Council's purpose. Nevertheless, the court² has held that the purpose of the enforcement regime is remedial rather than punitive and I have viewed the appellant's submissions in that context.
51. The appellant argues that it would be unjust to require the removal of the building in its entirety when planning permission exists for almost all of it. The appropriate remedy would therefore be to remove the extension and return the site to the position of the 1994 and 1996 planning permissions. Specifically, the appellant proposes to:
- (a) Remove the extension to the shed and return it to a 2.1m high building as per the 1996 planning permission;
 - (b) Remove the shutter from the Caxton Road elevation.
52. The Council accepts that the planning permission for the garage is capable of offering a fallback position.
53. There are several flaws in these propositions.
54. First, while s57(4) of the Act allows, in the specific circumstances set out, a previous use to be revived where an enforcement notice has been issued, that right of reversion does not exist where, as here, planning permissions for operational development have been implemented and the development then

² *Tapecrown v First Secretary of State* [2006] EWCA Civ 1744, [2007] 2 P&CR 7

demolished. In such cases the planning permissions have been spent and do not therefore represent a fallback position.

55. Second, no details of the 1996 planning permission have been provided; proposal (a) therefore lacks the clarity required to secure its implementation. Moreover, as set out under my assessment of the appeal on ground (b), the appellant acknowledges that the shed was, in effect, demolished. To 'return it to a 2.1m high building' as proposed would require the shed to be completely rebuilt.
56. Third, the proposed steps relate only to the shed; no remedial works are proposed to what was the garage. As found under the ground (b) appeal, the original inward facing elevation of the garage has been replaced. Furthermore, the wall between the shed and the garage has been removed. The building granted planning permission has, in effect, also been demolished.
57. The appellant does not explain how these structural matters are to be addressed, particularly how the wall above what would be a lower adjoining building is to be reinstated. If it was simply rebuilt while leaving the roller shutter door in place, this would be tantamount to the grant of a planning permission for a building not significantly different from that which the Council is enforcing against and requires to be removed. The Council's purpose in issuing the notice would therefore be defeated which cannot be an outcome of an appeal on this ground.
58. I acknowledge that the effect of the notice would be to bring about the cessation of the building's use as it would no longer exist. However, that "...would leave (the appellant) in a worse position than when he started..." as the agent puts it only if the use of the land and buildings claimed was lawful. At any point that could have been determined by the appellant through an application under, as appropriate, s191 or s192 of the Act. According to the evidence, no such application has been made.
59. For all these reasons, the appeal on ground (f) does not succeed.

Notice A: conclusion

60. 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.

Brian Cook

Inspector