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## Appeal Decisions

**by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 June 2020**

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**Appeal A: APP/T5150/C/19/3238965**

**Appeal B: APP/T5150/C/19/3238966**

**Appeal C: APP/T5150/C/19/3238967**

**15A Wyborne Way, London NW10 0TE**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Kamaran Shiwani, Appeal B by Mr Birwa Shiwani and Appeal C by Mr Sherzad Shiwani against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 2 October 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a dwelling in the garden of the premises.
- The requirements of the notice are:
  1. Demolish the dwelling in the 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 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (e) of the 1990 Act as amended. Since the prescribed fees have not been paid within the specified period, 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 have lapsed.

**Summary of Decision: The appeals are dismissed and the enforcement notice is upheld.**

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### Preliminary Matters

1. In response to travel restrictions currently in place due to the COVID-19 pandemic, I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available, supplemented by additional evidence from the main parties.
2. In this type of appeal, the onus of proof is firmly upon the appellant. 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 their evidence alone is sufficiently precise and unambiguous.
3. I note that there is another relatively large outbuilding within the garden of No 15 Wyborne Way. For the avoidance of doubt, I have confined my consideration of this appeal to the building in the position indicated on the plan attached to the notice, referred to as No 15A.

4. In an email exchange between Appellant A and the Council, which took place during 2019, it was argued that the subject building was already in existence when the property was purchased in 2010. It is claimed that the works were limited to a replacement roof and minor refurbishment to enable the building to be used as an office, with occasional dual-use as a place to sleep when the appellant was in the UK.
5. I have been provided with photographs by the Council, dated 2010, which show a smaller outbuilding sited to the side of the main house. This is a different structure to that enforced against, which is shown in the Council's photographs dated 16 and 28 August 2019. These show that No 15A has its own front door, and inside there is a shower room with WC, a bedroom and a small kitchen area. In addition, the Council has provided aerial images. The first was taken in 2015 and shows that there was previously a smaller outbuilding in a similar position within the garden. A later image, dated 2017, shows a much larger structure that extends to the side boundary. Also, the appellants have supplied photographs showing excavation for footings and various building works that show the works went beyond a conversion.
6. I have considered the representations from the builder who undertook the works which, it is stated commenced, in December 2013. However, from that letter, it is not clear whether the works were for a conversion or a new build. The quotation provided suggested the works were relatively extensive, comprising a new roof, walls, door and window. Crucially, the quotation was dated January 2015. This is after the date when the works are claimed to have commenced, which further renders this evidence ambiguous.
7. Therefore, I am satisfied that the allegation correctly describes the works as the erection of a dwellinghouse, as opposed to a conversion or a material change of use of an outbuilding. I have proceeded on that basis.
8. As there is no ground (a) appeal, and associated deemed planning application, the planning merits of the development are not before me. Therefore, I cannot take matters such as arrangements for waste storage, a gated access and the garden size into account since this would concern the planning merits.

### **The appeal on ground (e)**

9. The main issue to consider is whether the appellants have shown on the balance of probability that the notice was not served as required by section 172 of the 1990 Act as amended and, as a result, they have been substantially prejudiced.
10. The Council has provided a copy of the Land Registry entry for the property, showing Appellant A as the freeholder. Copies of the notice were served by mail and there is photographic evidence that the notice was hand delivered. I am satisfied from the Council's evidence that the notice has been properly served.
11. Moreover, the appellants have not provided any details to explain why they consider the notice was not served as required by s172. In any event, section 176(5) of the 1990 Act as amended provides that, where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither

the appellant nor that person has been substantially prejudiced by the failure to serve him.

12. As the appellants were aware of the notice prior to the date that it would have taken effect, they have not been prevented from exercising their right to appeal. Under these circumstances, I consider that the appellants have not been substantially prejudiced. Therefore, the appeal on ground (e) fails.

#### **The appeal on ground (d)**

13. In order to succeed on ground (d), the appellants must show on the balance of probability that the matters alleged were substantially completed four years prior to the issue of the notice, such that it is too late for the Council to take action. The relevant date is 2 October 2015.
14. The appellants claim that the subject building has been in place since before the relevant date and was occupied as a dwelling, by Appellant C, from August 2015 to December 2018. A copy of a Tenancy Agreement has been provided relating to the house and front garden at 15A Wyborne Way. This is signed but not dated, although the six month term seemed to commence on 8 August 2015. There is also a copy of a Management Agreement between Appellant C and an estate agent, dated 15 October 2015, which suggests he rented his former residence after moving to the appeal property. However, the appellant's address is given as No 15 Wyborne Way, not 15A.
15. The appellants have supplied photographs, dated June and August 2015, which show the interior of a room(s) and a damaged floor, however, it is not clear that these were taken inside No 15A. There are other photographs taken externally, but it is not obvious what these are purporting to show. One dated April 2014 is not the same structure as that enforced against and is irrelevant. An aerial photograph, July 2015, shows the property before the structure was erected. Further street view images, captured in November 2015 and June 2016, show the front and side of the main house but the structure is not present. This evidence casts doubt on the validity of the Tenancy Agreement.
16. Further evidence includes a utility bill addressed to Appellant C for the period 15 October 2015 to 8 March 2016 and a notice of moving for utilities final account purposes dated 15 October 2015, addressed to Appellant A. However, these relate to No 15, not 15A.
17. In addition, my attention is drawn to emails concerning Council Tax requirements, first dated September 2016, explaining that Appellant A owned No 15 Wyborne Way but lived abroad. I understand that Council Tax has been paid in respect of No 15A between 2017 and 2019. I have been provided with a copy of notification of a Council Tax new entry, dated 3 June 2019 at 15A Wyborne Way, and bills for 2019-2020, dated 3 June and 5 August 2019, all addressed to Appellant A. These are after the relevant date and do not assist the appellants' case.
18. The Council has provided evidence that contradicts that of the appellants. A street view image, dated November 2015, shows the front and side of the property. It is apparent from that image that the structure enforced against had not been erected. Nor is the structure evident on a later image dated June 2016. The dwelling is, however, clearly visible in an image dated March 2019.

19. The appellants argue that the street view images are out-of-date. However, the images I have been referred to are historic and are clearly dated. There is very limited evidence to suggest the Council's images are incorrectly dated.
20. Overall, the appellants' evidence is imprecise and ambiguous. It does not show on the balance of probability that the matters alleged were substantially completed four years prior to the issue of the notice, such that it is too late for the Council to take action.

### **Conclusion**

21. For the reasons given above, I conclude that the appeals should not succeed.

### **Formal Decision**

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

*Debbie Moore*

Inspector