



Appeal Decision

Site visit made on 12 October 2020

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 12 November 2020

Appeal Ref: APP/T5150/C/19/3222121

Rear of 290 and 290 Ealing Road, Wembley HA0 4LL

- 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 Gulam Mohayudin against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 28 December 2018.
- The breach of planning control as alleged in the notice is without planning permission, the erection of extensions to the rear of the premises.
- The requirements of the notice are
STEP 1: Demolish the extensions and restore the rear of the premises back to its original condition before the unauthorised development took place
STEP 2: Remove all debris, materials and items associated with the unauthorised extensions 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 (d) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be determined.

Summary of Decision: The appeal is dismissed and the Notice upheld.

Procedural matters

1. The appeal form indicated that the appeal was to proceed on grounds (c) and (f). However, the summary of the case made on those grounds was relevant only to an appeal on ground (d), so the Planning Inspectorate (PINS) wrote to the Appellant's agent requesting clarification of the grounds pleaded. By email dated 24 May 2019, the Appellant's agent confirmed that the appeal was made on grounds (a) and (d), outlined the evidence that would be produced, and confirmed that the prescribed fee for the appeal on ground (a) would be paid to the Council. On 24 May 2019 the Council confirmed that the prescribed fee had been paid.
2. However, no further communication has been received from the Appellant or his agent since the email of 24 May 2019, and no evidence or further information has been submitted. PINS sent an email dated 30 September 2020 to the Appellant's agent, advising that no Statement of Case or comment on the Council's Statement of Case had been received from the Appellant, and querying whether any had been submitted. No response was received. I am therefore obliged to determine this appeal on the basis of the information provided in the Appellant's appeal form and subsequent email of 24 May 2019; the information provided by the Council and a neighbouring property owner; and what I saw during my unaccompanied site visit.

The appeal on ground (d)

3. The ground of appeal is that by the time the notice was issued, it was too late to take enforcement action. S.171B(1) of the 1990 Act provides that where there has been a breach of planning control consisting in the carrying out of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The burden of proof is on the Appellant, and the evidential test is the balance of probabilities. So to succeed on this ground, the Appellant would need to demonstrate that on the balance of probabilities, the development that is the subject of the notice had been substantially completed by 28 December 2014.
4. The Appellant contended, in the appeal form and subsequent email dated 24 May 2019, that the rear extension had been erected more than four years ago and that evidence in the form of photographs, a signed statement from the neighbours, an image from Google Earth and scaled architectural drawings would be provided. However, as noted above, no such evidence has been provided.
5. The Council's case is that the construction of the rear extension has been a gradual process that has taken place over a number of years, such that the extension that exists today is a compound structure consisting of various sections, completed in or around December 2018. This is supported by photographic evidence, consisting of photographs taken during visits to the site, aerial images obtained from Google Earth, and other images obtained from Google Streetview.
6. The evidence shows that in July 2013, prior to the construction of the development here at issue, there was a small lean-to at the rear of the site. A larger extension (Section A) is visible in the Streetview image dated October 2015. By July 2018, when the Council visited the site in response to complaints about further works, a much larger rear extension was in place with Section B and Section C now added. By December 2018 the final part of the completed extension (Section D) had been added, as shown in photographs taken by the Council at a site visit. The compound structure as it then stood, and stands today, comprises all four sections.
7. On the basis of this undisputed evidence, I find that on the balance of probabilities the extensions to the rear of the property that are the subject of this notice were substantially completed between July 2018 and December 2018, which is less than four years before the enforcement notice was issued. The appeal on ground (d) must therefore fail.

The appeal on ground (a)

8. The ground of appeal is that planning permission should be granted for the matters alleged in the notice. The main issues are the impact of the development on highway safety, and its effect on the character and appearance of the area.
9. The ground floor of No. 290 is a commercial unit occupied by Alperton Express Newsagents. The unauthorised development that is the subject of this enforcement notice has resulted in the yard to the rear of the premises being covered, in its entirety, by built development. This means that it is no longer

- possible to accommodate any size of service vehicle on site, or to provide refuse storage within the site for the commercial premises and the flats above.
10. This is at odds with Policy DMP13 and Appendix 2 of the London Borough of Brent Local Plan Development Management Policies (2016), which state that for A1 retail units of less than 500m² one transit-sized bay for service vehicles should be provided, and that the loss of existing servicing will be resisted where it is still required to meet operational needs. The service road which runs along the side and rear of the site is narrow, and does not have any clear turning area at its far end. This means that in the absence of any servicing provision on site, service vehicles would be likely to obstruct this road, and would also need to reverse out of it on to the very busy Ealing Road, a manoeuvre which would carry a considerable risk of conflict with pedestrians and other highway users.
 11. The absence of any on-site provision for refuse storage has resulted in its unsightly placement alongside the rear service road. Further, while the main building at No. 290 is constructed of red brick, the rear extension is in parts finished in grey concrete render, and in other parts finished with white plastic cladding. These materials are out of keeping with those used in the host building, appear inferior in quality, and do not complement the locality. The development therefore conflicts with the aims of Development Management Policy DMP1, which seeks to ensure that new development provides high levels of external amenity and complements the locality.
 12. I conclude that the development has an adverse impact on highway safety, and on the character and appearance of the area, and so conflicts with relevant policies of the Development Plan. No material considerations of sufficient weight to overcome this conflict have been identified. I therefore find that the appeal on ground (a) should fail, and planning permission for the erection of the extensions to the rear of the premises should be refused.

Conclusion

13. 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 Decision

14. 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.

Jessica Graham

INSPECTOR