
Appeal Decisions

Site visit made on 24 August 2021

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 August 2021

Appeal A: APP/T5150/C/20/3250323

45 Burnt Oak Broadway, Edgware HA8 5JZ shown outlined bold black on the attached plan

- 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 M Hussain against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/16/0298, was issued on 27 February 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a two-storey rear extension at the basement and ground floor levels to the rear of the premises.
 - The requirements of the notice are step 1: demolish the two-storey rear extension, at the basement and ground floor levels, to the rear of the premises and step 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 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
-

Appeal B: APP/T5150/W/21/3266901

45 Burnt Oak Broadway, Edgware HA8 5JZ shown outlined bold black on the attached plan

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Hussain against the decision of the Council of the London Borough of Brent.
 - The application Ref 20/1942, dated 2 July 2020, was refused by notice dated 1 December 2020.
 - The development proposed is the erection of a rear extension to self-service grocer.
-

Decisions

Appeal A: APP/T5150/C/20/3250323

1. It is directed that the enforcement notice be corrected by deleting the words 'two storey' from the alleged breach of planning control in schedule 2. Subject to this correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/T5150/W/21/3266901

2. The appeal is dismissed.

Procedural Matters

3. A new London Plan (LP) was published in March 2021. This forms part of the development plan for the area. I have had regard to the policies in the LP as part of the determination of the appeal made under s78 of the Act as well as the appeal made under ground (a) of s174 of the Act.
4. The Council is currently reviewing its development plan. In respect of the Draft Brent Local Plan (Draft Plan), examination hearing sessions were completed on 16th October 2020. Having regard to the tests set out in paragraph 48 of the National Planning Policy Framework (the Framework), I afford the relevant policies in the Draft Plan (i.e. policies DMP1 and BT3) moderate weight as part of the determination of this appeal as material planning considerations.
5. The National Planning Policy Framework was revised on 20 July 2021 (the Framework). The main parties were afforded the opportunity to comment on the implications of the revised Framework in terms of the determination of both appeals.

Appeal A – The Notice

6. The breach of planning control alleged in the Notice refers to the *“erection of a two storey rear extension, at the basement and ground floor levels, to the rear of the premises”*. There is dispute between the parties as to whether the breach of planning control is two storey. The rear extension to the appeal building includes a basement and there is also a mezzanine floor. The reference to two storey is to some extent confusing as externally the breach of planning control has the appearance of being single storey. I shall correct the allegation in the notice by omitting the words *“two storey”* in schedule 2 and in doing so I am satisfied that there would be no injustice caused to any interested party.

Appeal A – appeal under ground (b)

7. The appeal on ground (b) is made on the basis that the matters comprising the alleged breach of planning control have not occurred. In other words, the ground (b) appeal is made by the appellant on the basis that when the notice was issued there was not a single storey rear extension at the basement and ground floor levels to the rear of the premises.
8. The appellant’s case under ground (b) is that only the roof over the yard requires planning permission. However, this is a matter which I shall consider below under ground (c). On the evidence that is before me, the alleged breach of planning control had occurred when the notice was issued. There is no reasonable or objective evidence from the appellant which would lead me to reach a different view. Therefore, the ground (b) appeal fails.

Appeal A – appeal under ground (c)

9. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control. The appellant’s claim under this ground is that a large part of the alleged breach of planning control has the benefit of planning permission as per planning permission ref 04/0492 dated 25 May 2004.¹

¹ 04/0492 Erection of single storey extension and loading bay to the rear of the shop

10. The appellant claims that development commenced within the five year commencement period in respect of the demolition of a rear outbuilding. Both the Council's and appellant's digital Google aerial imagery does seem to show a change in the appearance of the outbuilding from 2010, but there is no conclusive evidence before me to demonstrate that the demolition works in respect of this outbuilding took place prior to 25 May 2009. The appellant has referred to an email from Mr Robin Sedgwick (Senior Planner) to the appellant dated 25 February 2009 and claims that this demonstrates that works were begun prior to 25 May 2009. However, the email does not indicate that demolition took place prior 25 May 2009 and in fact it simply indicates that *'conditions need to be addressed before work can begin on the extension'* and that *'planning permission expires on 23/5/2009'*.
11. The evidence before me indicates that work on a rear extension started in 2016. Indeed, this view is reinforced in so far that a planning application form² states that the work started on 1 January 2016 and that it was completed on 1 January 2017. The Council's Building Control records also supports the view that work began in 2016 and the Council's dated photographs in appendix 5 of its appeal statement show a partly built rear structure in November 2016.
12. The onus is on the appellant to make their case under ground (c). The evidence from the appellant is not sufficiently clear or unambiguous to support the claim that development began within five years of the 2004 planning permission date. Furthermore, I would add that even if such clear and unambiguous evidence had been provided by the appellant, the 2004 planning permission includes two pre-commencement conditions (Nos 5 & 6). The appellant has not disputed the Council's comment that these conditions were not discharged. To my mind, these conditions are of significance and go to the heart of the planning permission. Consequently, this also demonstrates that the 2004 planning permission was not lawfully commenced in accordance with the planning permission.
13. In addition to the above, it is clear that relative to the 2004 planning permission, the breach of planning control now includes a roof and rear wall adjacent to the back street. The appellant claims that the aforementioned roof and rear wall were built separately and later on from the construction of the rest of the rear extension. However, I have not been provided with any reasonable or objective evidence to support this view and, in any event, there is no dispute between the parties that this part of the development requires planning permission and that it did not form part of the 2004 planning permission.
14. For the above reasons, I conclude that all of the matters alleged in the breach of planning control constitute a breach of planning control. Consequently, the ground (c) appeal fails.

Appeal A – appeal under ground (d)

15. In an appeal made under ground (d), it is claimed that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The burden of proving relevant facts is on the appellant, and the relevant test of the evidence is on the balance of probability.

² Planning application Ref 20/1942

16. The allegation in the corrected notice relates to the roof and rear wall on land which was permitted to be an open yard for parking and loading as part of planning permission 04/0492. The appellant has not provided me with any credible or objective evidence that persuades me that this development is immune from enforcement action due to the passage of time (i.e. constructed more than four years from the date of the enforcement notice).
17. The Council's photographs dated November 2016 and Google earth images show that the breach of planning control was not complete by 27 February 2016. Building Control inspections show that an initial inspection took place on 16 May 2016 where it was noted '*part excavation down 1 m into form brown clay*' and that the shell was complete by 12 July 2017 with further works including fire safety features still to be provided. Furthermore, the planning application form for Appeal B, indicates that works were not completed until 1 January 2017.
18. As a matter of fact and degree, and on the balance of probability, I find that the breach of planning control was not substantially completed more than four years before the issue of the enforcement notice and it is not therefore immune from enforcement. I therefore conclude that the appeal on ground (d) fails.

Appeal A – ground (a) and the deemed planning application and Appeal B

Main Issues

19. I have considered the reasons for issuing the enforcement notice (Appeal A) and the reasons for refusing planning permission (Appeal B), coupled with the main parties statements of case. The main issues in respect of both appeals are therefore (i) whether acceptable servicing and car parking provision is available and, if not, the effect of the development on highway safety, the free flow of traffic and on-street car parking demand; (ii) the effect of the development on the character and appearance of the area; and (iii) the effect of the development on the occupiers of neighbouring properties in respect of outlook and light.

Reasons

Servicing and car parking

20. The aforementioned 2004 planning permission is no longer extant and to this extent I cannot afford it any significant weight as a material planning consideration. It is therefore necessary that I determine the two appeals on the basis of the circumstances that exist now and against the most up to date planning policy position.
21. Notwithstanding the above, it is of note that when planning permission was approved for a rear extension to the appeal property in 2004 it included the provision of an open yard area which was to be used for servicing and car parking purposes. The rear extension is built in such a way that it does not include an open area for the parking of vehicles or for servicing.
22. Servicing requirements are provided in appendix 2 of the adopted London Borough of Brent Local Plan Development Management Policies 2016 (DMP). It states that '*for A1 retail units less than 500m² gross floor area, one transit sized bay for service vehicles should be provided*'. Associated policy DMP 13 of the DMP states that '*wherever possible servicing should be provided off the*

highway’ and the ‘loss of existing servicing will be resisted where it is still required to meet operational needs’. The evidence indicates that the unauthorised rear extension has resulted in the loss of open land which could otherwise have functioned as service space and there is nothing before me to indicate that service space is now not required in association with the operation of the shop. As the unauthorised development does not provide the necessary servicing provision for the shop, there is direct conflict with the requirements of policy DMP 13 of the DMP and associated appendix 2.

23. The appellant states that servicing takes place from the front of the premises. I do not know when and how this takes place but, in any event, I was able to see on my site visit that there was a designated bus, taxi and cycle lane to the front of the appeal property. There is also a bus stop close to the appeal site and there are stopping and timed loading restrictions in place. Servicing from Burnt Oak Broadway would severely interrupt the free flow of buses, taxis and bicycles, at any time, and the parking of any such service vehicles on this very busy road would have the effect of buses, taxis and bicycles having to manoeuvre around any such parked vehicles leading to unacceptable highway safety conflicts with other road users. The availability of some service space to the rear of the appeal property would have the effect of minimising these conflicts.
24. I do not therefore consider that there is any reasonable planning justification for departing from the requirements of policy DMP13 and appendix 2 of the DMP in respect of allowing the development and hence forcing all servicing to take place from Burnt Oak Broadway. Indeed, in this case allowing development with servicing taking place solely from Burnt Oak Broadway would be in direct conflict with the Framework which states, at paragraph 112, that development should create areas that are safe and which minimise the scope for conflicts between pedestrians, cyclists and vehicles. Furthermore, allowing servicing to take place from Burnt Oak Broadway would not accord with Policy T7(G) of the LP which states that *‘provision of adequate space for servicing, storage and deliveries should be made off-street, with on-street loading bays only used where this is not possible’.*
25. I accept that the access to the rear of the appeal property is single track, but with a reasonably sized open loading bay in place which is kept permanently unobstructed there need not be any reason why small van type service vehicles could not suitably manoeuvre into and out of the appeal site and consequently safely leave the rear access lane onto Limesdale Gardens in forward gear. In other words, I am satisfied, as was the case in respect of the 2004 planning permission, that it would be possible to have a safe and functional service yard space to the rear of the appeal site capable of accommodating some delivery vehicles.
26. In respect of Appeal A, reference is made to the loss of car parking space as a result of the erection of the rear extension. I acknowledge that the development has had this effect of removing the potential for the rear of the appeal site to be used for such a purpose. It is not, however, clear whether the Council’s concern relating to the loss of car parking space is related to use of the appeal site as a shop, use of the upper floors for residential purposes, or both.

27. Nonetheless, the evidence does not support the development's accordance with the requirements for on-site car parking provision as stipulated in appendix 1 of the DMP and as required by policy DMP12 of the DMP. While I have limited information before me, this town centre location does appear to have a relatively high level of accessibility including good bus service provision. Nevertheless, neither Appeal A nor Appeal B includes any controlling mechanism which would ensure that there was 'car free' development and which might therefore justify the loss of on-street car parking in an area where the evidence indicates that much of the surrounding highway network is the subject of car parking restrictions and hence potentially high levels of on-street car parking demand. Indeed, and while my site visit was only a snapshot in time, I did observe that there was very limited on-street car parking space available on the nearby side roads including Stag Lane and Limesdale Gardens.
28. To a large extent the car parking matter is not a determinative matter given the failure of the appeal development to meet servicing requirements in the DMP. I do not doubt, as was the case in 2004, that it would be possible to accommodate both car parking and servicing requirements on the site on a shared operational basis. However, the ground (a) appeal relates to the breach of planning control (i.e. no open land for car parking/servicing), and the s78 appeal relates to the same development. In other words, I am required to first consider development which exists on the site now. I do, however, consider a suggested alternative form of development below.
29. For the above reasons, I conclude that owing to the loss of servicing and car parking space the unauthorised development has a severe impact on the free flow buses on Burnt Oak Broadway and has the potential to lead to unacceptable highway safety conflicts and on-street car parking demand pressures in the locality. Therefore, it does not accord with the car parking, servicing and highway safety requirements of policies DMP1, DMP12 and DMP13 of the DMP; policy T7 of the LP; policy BT3 of the Draft Plan and paragraphs 111 and 112 of the Framework.

Character and appearance

30. The rear extension is very long and extends right up to the back street. When considered against the multi storey main part of the appeal building, the extension appears out of scale and hence of poor design. Its roof is also higher than the roof/raised terraced walkway of the main building and so this exacerbates what is seen as an extension which is not subordinate or in-keeping in scale with the host property and wider terrace.
31. I accept that the Council approved planning permission for a single storey extension in 2004 and that historically there was some development to the rear of the appeal site. However, the evidence is that the 2004 planning permission is not extant and, in any event, such approved development did not extend as far out towards the rear access road. In addition, the 2004 planning permission was subject to a condition (No 05) controlling the design and materials of the proposed rear extension. The end terrace property nearest to Limesdale Gardens includes an extension right up to the back street, but this has eroded the otherwise sense of spaciousness between the main terrace and the back street and does not justify exacerbating what I consider to be poor design in the context of the wider area.

32. I have taken into account other development to the rear of the terrace of buildings and acknowledge that there are other relatively long rear extensions. I have also had regard to planning permission³ for No 43 Burnt Oak Broadway, the details of which have been provided by the appellant, which permits a rear extension which is not too dissimilar to that approved by the Council on the appeal site in 2004. In the context of the immediate character and appearance of the area, there is justification for allowing a rear extension, but in this case the appeal development extends right up to the rear access road and hence it appears out of proportion and incongruous when seen against the appeal building and within its wider immediate setting.
33. While it may be possible by planning condition to improve the appearance of the untreated rendered walls of the unauthorised extension by applying a white paint, this would not overcome my primary concern relating to the overall disproportionate size of the rear extension and its prominence and dominance when viewed from the rear access road and immediately adjacent properties.
34. I therefore conclude that when the development is considered as a whole it does not represent good design and that significant harm has been caused to the character and appearance of the area. Consequently, it does not accord with the design, character and appearance requirements of policy DMP1 of the DMP; policy D4 of the LP; policy DMP1 of the Draft Plan; policy DMP1 of the Draft Plan and chapter 12 of the Framework.

Neighbouring properties – outlook and light

35. While the extension does extend close to the rear access road, there are other extensions either side of the appeal development. In addition, I have taken into account plans approved for a rear extension at No 43 Burnt Oak Broadway. In the context of this area, I do not consider that the development has caused significant harm to outlook or light afforded to the occupiers of neighbouring development at Nos 43 and 47 Burnt Oak Broadway.
36. I accept that the rear extension is visible from the upper floors of residential properties within the appeal property terrace, including from windows and roof gardens, but given the position and single storey nature of the appeal development, I do not consider that it has caused any material harm to the outlook or light afforded to the occupiers of these surrounding residential properties. The development is visible from these areas and looks out of place for the reasons I have identified above, but there is a difference between what might be a dominant and overbearing effect on outlook and the effect of the development on the general character and appearance of the locality.
37. I conclude that that the development has not caused any significant harm to outlook or light for the occupiers of neighbouring properties and to this extent it suitably accords with the amenity requirements of policy DMP1 of the DMP; policy DMP1 of the Draft Plan and paragraph 130(f) of the Framework.

Consideration of alternative development

38. Notwithstanding the above conclusions, the appellant has asked me to consider an alternative proposal which would look to retain a large part of the rear extension, but with the removal of the roof/development adjacent to the rear access road. I accept that simply removing the part of the roof/development

³ Planning permission Ref No 20/3782

adjacent to the rear access road would relate to part of the matters alleged in the breach of planning control. To this extent, it is therefore appropriate that I consider the appellant's suggested alternative development.

39. However, taking into account the dimensions shown on the planning application drawing (i.e. Appeal B, drawing No 01), the evidence is such that the removal of that development beyond the internal rear wall nearest the rear access road (including its roof) would leave an open yard area of about 3.95 metres in depth. This would be deficient in respect of service vehicle and car parking use. Indeed, and while I am not certain about specific Highway Authority requirements now for car parking and service space dimensions, the Highway Authority did comment in 2004 that a *'depth of 4.8 (depth) metres x 5.0 (width) metres would be sufficient space for the manoeuvring of vehicles into and out of the rear service yard'*. It is likely, therefore, that based on the evidence that is before me it would be necessary to remove more of the rear extension than suggested by the appellant in order to achieve servicing and car parking space to an acceptable standard.
40. In the absence of detailed drawings or absolute clarity about the above matters, and indeed the implications of removing what would possibly be more of the rear extension than suggested by the appellant, I cannot conclude with appropriate certainty that it would be possible to impose conditions relating to removal of parts of the breach of planning control and ensure an acceptable resultant development from the point of view of design, servicing, car parking and indeed the appellant's own operational requirements. Furthermore, it is possible that in order to make the unauthorised development acceptable in planning terms, this may necessitate very significant changes to the appeal property/site which would then go beyond matters specified in the enforcement notice.

Appeal A (ground (a)) and Appeal B conclusions

41. I conclude that in respect of Appeals A and B, the development as whole is unacceptable in respect of car parking/servicing provision and that unacceptable harm has been caused to matters of highway safety, the free flow of traffic and potential for undue pressure to be placed on the demand for on-street car parking. In addition, harm has been caused to the character and appearance of the area. I do not find that any material harm has been caused to outlook and light afforded to occupiers of neighbouring properties, but this is a matter of neutral consequence and does not alter or outweigh my conclusions relating to the other main issues.
42. In respect of Appeal A and the ground (a) appeal, I have considered whether it would be possible to approve an alternative development with sufficient clarity and precision while achieving an acceptable resultant development from a design, servicing, car parking point and operational point of view. I do not have enough clarity and detail about these matters particularly given that it would likely be necessary to remove more of the rear extension than suggested as an alternative development proposal by the appellant. In the absence of detailed plans, and further clarity about these matters, it has not therefore been possible for me to approve planning permission under ground (a) for an acceptable alternative development proposal relating to matters alleged in the breach of planning control.

43. For the above reasons, I conclude that in respect of Appeal A the ground (a) appeal fails and the deemed planning application is refused. In respect of appeal B, when the development is considered a whole it does not accord with the development plan for the area and there are no material planning considerations which outweigh the conflict with that development plan.

Appeal A – ground (f)

44. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
45. The appellant's ground (f) appeal is based on the contention that the majority of the rear extension has been built in accordance with the 2004 planning permission. I have considered this matter as part of the ground (c) appeal and have found that the evidence does not support the contention that the breach of planning control was carried out before the 2004 planning permission had expired and, in any event, there had been no compliance with pre-commencement conditions.
46. In addition to the above, I have considered whether I could approve an alternative development proposal as part of the ground (a) appeal. For the reasons outlined, I have been unable to do this. Given my conclusions in respect of the grounds (c) and (a) appeals, there are no lesser steps which would remedy the breach of planning control. Therefore, the ground (f) appeal fails.

Appeal A – ground (g)

47. The appeal made under ground (g) is that the period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed.
48. The compliance period in the notice is 6 months. However, the appellant says that a period of 12 months is required given the uncertain position relating to the Covid 19 pandemic and national restrictions. However, national restrictions are now being eased and it is possible to undertake building works during this time.
49. The appellant has commented that the construction industry workload during the pandemic has increased making it harder to source contractors. I do not know if the pandemic has actually had such an effect, but, in any event, a period of six months would reasonably enable both a contractor to be sourced and for compliance with the requirements of the notice.
50. I acknowledge the appellant's concern about the potential for further Covid 19 national restrictions and the possibility that this could prohibit construction activity. However, there is no reasonable evidence at this moment in time that that this is a likely possibility and, in any event, the local planning authority could, if required, waive or relax the compliance period under Section s73A(1)(b) of the Act. I therefore conclude that the ground (g) appeal fails.

Conclusions

Appeal A: APP/T5150/C/20/3250323

51. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Appeal B: APP/T5150/W/21/3266901

52. For the reasons given above, I conclude that the development does not accord with the development plan for the area taken as a whole and there are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

D Hartley

INSPECTOR