
Appeal Decisions

Site visit made on 12 October 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 November 2021

Appeal A Ref: APP/T5150/C/20/3254166

Appeal B Ref: APP/T5150/C/20/3254167

10 Elms Gardens, Wembley HA0 2RU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mrs Brenda Jules-Carbon against an enforcement notice issued by the Council of the London Borough of Brent.
 - Appeal B is made by Mrs Ophelia Jules against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 5 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building for residential purposes in rear garden of the premises.
 - The requirements of the notice are:
STEP 1 Demolish the building in the rear garden of the premises. 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 six months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (b) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended.
 - Appeal B 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.
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Decisions

1. It is directed that the enforcement notice is corrected by: the deletion of the words *for residential purposes* and the addition of the word *the* before *rear* from Schedule 2 of the Enforcement Notice The Alleged Breach of Planning Control.
2. Subject to these corrections, Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a building in the rear garden at 10 Elms Gardens, Wembley, HA0 2RU as shown on the plan attached to the notice.
3. I take no further action in respect of Appeal B.

The appeals on ground (b)

4. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellants and the relevant test is the 'balance of probabilities.'

5. The appellants do not dispute that the building is operational development for which planning permission is required and as permission has not been granted, it is unauthorised and a breach of planning control. The appellants contend that the building was not built for residential purposes.
6. At my visit I observed that the building is divided internally and includes a garage, a WC and two rooms, with all spaces in use for low key storage purposes with a fridge freezer in situ. My observations correspond with the Council's and photographs taken at their visit prior to issuing the enforcement notice.
7. The Council confirm in their submissions that they do not allege a material change of use and consider that the word 'residential' clarifies the purpose of the development is for domestic purposes. The Council's argument appears to be essentially that since the building and its use forms 'part and parcel' of the primary dwellinghouse use, its use can be described as being for residential purposes.
8. Whilst I acknowledge the Council's comments regarding the size of the garage, it is not uncommon for garages, including those of full size, to be used for storing domestic paraphernalia, indeed the appellants stated that the use of the building is to be for accessible storage. Furthermore, notwithstanding the reference in the Council's SPD¹, a toilet and washbasin do not alone constitute a form of primary accommodation.
9. Consequently, notwithstanding that the building has its own electric, water supply and sewage pipes, based on the evidence before me and my own observations, there is nothing to demonstrate that the building was built for and is used for additional living space or that it is used for anything other than domestically incidental purposes. Indeed, in their statement the Council state that the development is incidental to the use of the residential property.
10. An incidental use is a use which is not 'part and parcel' of but has a normal functional relationship with the primary dwellinghouse use. On ground (b) I therefore conclude that whilst a building has been erected its use is not for residential purposes and the allegation is inaccurate in this respect.
11. In view of the above, there is partial success under ground (b) however, the allegation can be corrected to reflect that the development was *The erection of a building in the rear garden of the premises*. Such a correction does not enlarge the scope of the breach or requirements and consequently, there would be no injustice to either party. I shall correct the notice accordingly under the available powers of section 176(1)(a) of the Act.

Appeal A on ground (a) and the deemed planning application

Background

12. Planning permission has, since the appeal was submitted, been granted for the retention of the building with proposed alterations to the internal layout, including removing the WC, extending the garage and external alterations consisting of replacing the roof with a flat roof and the relocation of the garage door, planning permission reference 20/2763.

¹ Residential Extensions & Alterations SPD 2 Jan 2018

13. Since it is evident that the appellant wishes to retain the building in substantially the same form, I consider this represents a realistic fallback. Consequently, I consider it is reasonable and legitimate to consider the development as built against that which the Council has found to be acceptable.

Main issues

14. The main issues are the effect of the building on (i) the character and appearance of the area and (ii) the living conditions of the occupiers of neighbouring houses with particular regard to outlook.

Character and appearance

- 15.10 Elms Gardens is a modest end of terrace house located in a residential area with houses in the terrace having relatively wide and long gardens to the rear, some of which back onto a private service road. At my visit I noted outbuildings in the gardens of surrounding properties of varying scale and design including a reasonably substantial flat roof building in an adjacent garden.
16. Viewed from within the garden the building has a straightforward appearance, which does not appear incongruous given the variety in design and scale of outbuildings evident in the locality. Whilst I acknowledge that in views from Priory Park Road the building appears relatively substantial due to the height of the roof at the rear, since the approved building would have the same footprint and would still project above the existing boundary fence by a reasonable amount, I find that the building as built does not have a materially greater impact as a result of its height. Additionally, the relocation of the garage door would make no appreciable difference to the appearance of the building.
17. For the reasons given, I find there is no conflict with the overall design aims of Policy DMP1 of the London Borough of Brent Local Plan November 2016 Development Management Policies (DMP), Policy CP17 of the Core Strategy² or the National Planning Policy Framework (the Framework).
18. As addressed in my reasoning on the ground (b) appeals I have found the use of the building to be for incidental purposes. Consequently, since the building is not used for residential accommodation or additional living space, I consider there is no harm to the character of the area and therefore no conflict with Policy DMP18 of the DMP or the SPD.

Living conditions

19. The outbuilding is located at the end of the garden in reasonably close proximity to the shared boundaries with neighbouring properties however, whilst it projects above the existing boundary fences it is located between outbuildings on either side. Consequently, although the outbuilding will be seen from neighbouring houses and their gardens, given its distance from the rear of the houses and as views from the gardens are otherwise largely unobstructed, I find there is no harmful overbearing impact on the outlook from within either the houses or gardens of the adjoining properties.
20. At the rear is the access to the side of 12 Priory Park Road and the gable end wall of no.12. As such and since the garden at no.12 is located at the rear of

² London Borough of Brent Core Strategy – Adopted 12 July 2010

the house away from the building, I find there is no harmful overbearing impact on the outlook from no.12.

21. Accordingly, there is no conflict with the overall amenity protection aims of Policy DMP1 of the DMP, the Framework or the SPD.

Conditions

22. A time limit or plans condition is not necessary since the building is complete. I considered whether a condition to restrict the use would be necessary and reasonable however, if there were to be a future material change of use then it would be open to the Council to investigate and take action if appropriate.

Conclusion

23. For the reasons given above, I conclude that Appeal A succeeds on ground (a) and planning permission will be granted. I shall grant planning permission for the development as described in the notice as corrected. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Felicity Thompson

INSPECTOR