



Appeal Decisions

Site Visit made on 3 November 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2021

Appeal Ref: APP/T5150/C/20/3258116 (Appeal A) & 3258117 (Appeal B) 110 Carlton Avenue East, Wembley HA9 8LY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Jitesh Kapadia (Appeal A) and Mrs Dipa Kapadia (Appeal B) against an enforcement notice issued by London Borough of Brent.
 - The notice, numbered E/15/0413, was issued on 14 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the outbuilding to the offices at the rear of the premises.
 - The requirements of the notice are:
 - Step 1 Cease the use of the outbuilding at the rear of the premises as an office.
 - Step 2 Remove from the outbuilding the KITCHEN and all associated drainage connection which facilitate the use.
 - Step 3 Remove from the outbuilding the BATHROOM/TOILET and all associated drainage connection which facilitate the use.
 - Step 4 Remove all items, materials and debris arising from that demolition and remove all the materials associated with the unauthorised change of use.
 - The period for compliance with the requirements is: 6 months after this notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
 - Appeal B is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The appeals are dismissed, 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.

Preliminary Matters

2. The Council refers to policy BH13 of its emerging local plan within the enforcement notice. However, the local plan is not yet adopted, and so I cannot be sure that the policy referred to would not be subject to change. The Core Strategy (2010) and London Borough of Brent Development Management Policies document (DMP), 2016 remain the development plan and it is on the basis of their adopted policies that I have based my decision.
3. The appellants state that the building has been used as a home office for a business and also as a study for the appellants' children, particularly during the Covid pandemic when the schools were closed. The building is also stated to be used as an exercise space. I saw that part of the building is also used for storage, with the only access to this part of the building from the rear garden.
4. Although this would point towards a mixed use, the Council state that during its visit on 13 February 2020, three people were working within the outbuilding,

with no exercise equipment seen and no space to carry out gym activity. Within dated photographs provided by the Council of that visit, there is no evidence of residential paraphernalia within the building, which would be expected if the building was also being used by the appellants' children or other family members.

5. The appellants have provided a photograph of an exercise bike and mat within the building, however, the photograph is undated. While an exercise bike was in the building at the time of my site visit, it was located between a desk and boxes. Anyone wishing to use it would have had to move it. Although this would not be particularly difficult, it would seem an odd place to locate it if it were in regular use. Moreover, what is relevant in this appeal is how the building was used at the time the enforcement notice was issued.
6. Significantly, the appellants do not dispute that the breach has occurred and have not appealed under ground (b) or raised concern regarding the notice. On the basis of the evidence provided and from my inspection of the site, I am satisfied that the allegation does not need to be amended.

Ground (a)

Main Issues

7. The main issues of the appeal are the effect of the appeal scheme on:
 - The character and appearance of the area; and
 - Highway safety; and
 - The living conditions of neighbouring occupants, having particular regard to noise and disturbance; and
 - The availability of residential amenity space.

Reasons

Character and appearance of the area

8. The appeal building is located in a generally residential area, with dwellings typically fronting on to Carlton Avenue East. The building sits at the bottom of the rear garden of No 110 and can be accessed either from the rear garden or from Princess Avenue. Princess Avenue has a slightly different character to Carlton Avenue, as buildings generally side onto it, including the nearby Church and car park. Nevertheless, it retains a generally residential character.
9. Policy CP17 of the adopted Brent Core Strategy (BCS) 2010 seeks to protect the suburban character of Brent and limit development outside of main town centres which would erode the character of suburban housing. Although there is no signage promoting the business, the appellant could choose to erect signage in future, which would erode the residential character of the site.
10. The appellant has provided a letter from the husband of one of his clients who does not feel the need to visit the appeal site. The appellant asserts that the level of clients visiting the business is low, however, precise evidence of movements has not been provided. Whilst the appellant has provided a letter from an outsourcing company which indicates accountancy support is provided electronically, this is not an indication of footfall. Furthermore, this presumably

would not remove the need for clients to visit the site and could change over time.

11. Visitors to the building, including employees, would be likely to access it via Princess Avenue and would need to wait outside the building until given access by the occupant. Occupants of the house, by contrast, would be more likely to access it from the rear garden and visitors to the house would be more likely to use the front door. The commercial office use, with its comings and goings, would be at odds with the generally residential character of the area.
12. I note the comments made by interested parties that the appellant's use of the outbuilding has helped reduce fly-tipping. However, in order for the users of the outbuilding to deter would-be fly-tippers, they would need to be visible from Princess Avenue, which suggests that use of the outbuilding is sufficiently frequent to do this and undermines the appellant's claims that footfall is low. Furthermore, while deterring would-be fly-tippers would be of benefit to the area, I am not persuaded allowing the appeal scheme is the only means to address it.
13. The appellant states that he is willing to accept a condition that the building should only be used for the purposes of an office in connection with the occupation of the main house, effectively limiting the office use to that of himself and his business, his wife, his parents and his children. However, I do not consider such a condition would be reasonable since it would effectively reduce the use of the building to an incidental use, which the appellant could do under section 57(4), once the enforcement notice has been complied with.
14. Once the appellant has complied with the notice, he could use the outbuilding to work from, so long as his use of the building was incidental to the enjoyment of the dwellinghouse. While the appellant needs to be close by to help care for his parents, this does not therefore, justify granting planning permission for an office use in this location.
15. For the reasons set out above, the use of the appeal building as an office would erode the residential character of the area, contrary to policy CP17 of the BCS, the requirements of which are set out above.

Highway safety

16. The appeal site is located within an area where on-street parking is limited to marked bays, with restrictions on event days. The appeal site is opposite a school, which is likely to generate significant demand for parking in the mornings and mid afternoons on weekdays.
17. Policy DMP1 of the Brent Development Management Policies (DMP) document (2016) seeks to ensure development is satisfactory in terms of parking, amongst other things and policy DMP12 supports development where it does not harm existing on-street parking conditions. The appellant asserts that ample parking is provided outside the outbuilding. While I saw there is a parking space adjacent to the outbuilding, it is not clear whether this would be used by visitors to the outbuilding or by the occupants of the host dwelling. I saw that off-street parking to the front of the dwelling is limited.
18. The business employs someone who is stated to walk to work each day. Whilst this may be true, the employee may choose, in the future, to purchase a

vehicle and drive to work. It would not be reasonable to include a condition to prevent employees from using vehicles to access the site.

19. Furthermore, visitors to the business may choose to visit the appeal site by car. While one or two clients are stated to come to the office a month, as set out above, precise evidence of movements has not been provided. Moreover, the number of visitors to the site could change. The appellant advises that he prefers to visit clients at their premises, however, it would not be reasonable to limit the number of visitors by condition.
20. I note that interested parties have stated they have not seen any parking issues. However, during my visit I saw A-boards by the appeal site, advising caution before parking, which suggests parking demand is an issue in the area. Given the proximity of the appeal site to a school, increased parking demand could lead to visitors to the area parking outside of the marked bays, which could in turn cause harm to highway safety.
21. In the absence of evidence to the contrary, I cannot be sure that the appeal scheme does not have an unacceptable impact on highway safety by virtue of its effect on on-street parking demand, either now or in the future, contrary to policies DMP1 and DMP 12, the requirements of which are set out above.

Living conditions

22. Policy DMP1 seeks to ensure development does not unacceptably increase exposure to noise and general disturbance, amongst other things. The appeal building is located to the rear of the garden, away from the dwelling and has its own access from Princess Road. The National Planning Policy Framework ('the Framework')(2021) seeks places with a high standard of amenity for existing and future users.
23. Given the nature of the office use and its location away from residential properties, I consider it highly unlikely that users of the building would cause noise or disturbance such that it would harm the living conditions of nearby residents. Furthermore, letters of support have been submitted, which state that the use of the building has not caused noise or disruption of any sort.
24. Consequently, I find that there is no harm to the living conditions of nearby residents and no conflict with policy DMP1 in this regard or the Framework.

Residential amenity space

25. Policy DMP1 of the Brent Development Management Policies document (2016) seeks to ensure that development provides high levels of internal and external amenity. Although the appeal building occupies part of the rear garden, a reasonable sized private space, which is separate from the office, has been retained. The building has its own access from Princess Avenue and so visitors of the building do not need to use the enclosed garden space for access. Consequently, I consider there would be no harm from the appeal scheme and no conflict with policy DMP1 in this regard.

Other Matters

26. The appellant states that he is happy for a planning condition restricting the use of the building to not include sleeping accommodation. However, the notice

does not attack the use of the outbuilding as sleeping accommodation and so such a condition would not be necessary.

Ground (a) conclusion

27. While I have found there would be no harm to living conditions or from the loss of residential amenity space, I have found the appeal scheme harms the character and appearance of the area and highway safety. I conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

28. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control. The breach of planning control alleged in the notice is the material change of use of the outbuilding to offices. The main thrust of the appellant's case is that the requirement to remove the kitchen and bathroom facilities is excessive.
29. It is well-established in case law that where an enforcement notice is issued in respect of a material change of use, the enforcement notice may require that works carried out to facilitate the material change of use are removed. Whether or not the kitchen and bathroom have been present in the building in excess of four years, in this case, is irrelevant. What matters is whether the kitchen and bathroom were installed to facilitate the material change of use.
30. I note within the letter dated 24 August 2015, it is stated that the bathroom and kitchen were installed before the property was purchased in November 2011. However, the plan accompanying the lawful development certificate (LDC) application, reference 13/3995, dated 12 March 2014, shows a different layout and does not identify either a kitchen or a bathroom, suggesting the works were carried out after the LDC application was made.
31. Furthermore, the officer report for the LDC states that the site was visited on 6 February 2014 and it was evident that no kitchen exists and that internally the building is in a poor state of repair rendering it uninhabitable. The certificate issued by the Council also explicitly states that the building shall not be used for primary residential accommodation, such as a kitchen or bathroom.
32. While the appellants may not use the shower and hob as part of the office use, a functioning toilet and washbasin and somewhere to prepare drinks and food are common features of offices. Indeed, it is not unusual for offices to provide showers for the use of workers who cycle to work. As such, the appellants have not demonstrated that the kitchen and bathroom were not installed to facilitate the material change of use.
33. The appellants state they are willing to remove the shower and hob. While such facilities could be used for work and domestic purposes, their retention would not remedy the breach as the works which facilitated the material change of use would remain. The appeals under ground (f) therefore fail.
34. The requirements of an enforcement notice must not purport to stop a developer from doing something they are entitled to do without planning permission, including right of reversion under section 57(4) of the Act.

However, it is unnecessary to vary an enforcement notice to state what must be obvious to everybody.

35. The use of the building by the appellant and other occupants of the dwelling for purposes which are incidental to the enjoyment of the dwellinghouse, which could include using it to work from home, are in my view obvious and so it is unnecessary for me to make a saving for this lawful use.

Conclusion

36. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR