



Appeal Decision

Site visit made on 18 January 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 10th February 2022

Appeal Ref: APP/T5150/C/21/3273870
25 Beresford Avenue, Wembley, HA0 1NU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ewelina Iwona Watkowska against an enforcement notice issued by London Borough of Brent.
- The notice was issued on 23 March 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of an outbuilding in the rear garden of the ground floor flat ("the unauthorised development").
- The requirements of the notice are to:
 1. Demolish the unauthorised development from the rear of the premises.
 2. Remove all items and debris 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),(f) and (g) of the Town and Country Planning Act 1990 as amended (the Act). 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.

Decision

1. The appeal 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 an outbuilding in the rear garden of the ground floor flat at 25 Beresford Avenue, Wembley, HA0 1NU as described in the notice.

Preliminary matters

2. The Council has referred to Policy BD1 of the emerging Local Plan in the notice and indicated that the emerging Plan would be adopted within the next 6 months. Whilst the emerging plan is not yet adopted and could be subject to change, it appears to be broadly consistent with the National Planning Policy Framework (the Framework) and can be given some weight.
3. The appeal site as identified on the enforcement notice as No 25 includes the semi-detached building containing two flats and the whole of the outdoor space for both flats. The appellant occupies the ground floor flat and the appeal relates to the outbuilding which is located in her section of the outdoor space which has been sub-divided.

The appeal under ground (a) and the deemed planning application

Main Issue

4. The main issue is the effect of the development on the character and appearance of the area.

Reasons

5. No 25 Beresford Avenue is a semi-detached property made up of 2 flats, in a row of similar properties on this side of the road. There is a gated emergency access for vehicles to the side of the appeal property which links to pedestrian access to a footpath running along the rear of the dwellings on Beresford Avenue. No 25 marks the end of residential development on this side of the road as there is a substantial commercial building to the other side of the gated access. On the opposite side of the road, work appears to have commenced for a six storey building with proposed light industrial, storage and distribution and office use. The overall character of the area is therefore a mix of residential and commercial uses.
6. The appeal site is roughly a triangular shape with additional outdoor space to the rear and side compared to the dwellings to the west due to its end location. The outdoor space is divided for the two flats with the ground floor flat having a larger area next to the emergency access way. The appeal outbuilding is located in the corner of the appeal site along the side and rear boundaries of the appeal site.
7. The outbuilding is rectangular with a flat roof and a canopy element to the front of the outbuilding which faces towards the side of the host building. There are other outbuildings as well as garages to the rear of the neighbouring dwellings and the first floor flat at No 25 also has an outbuilding. Viewed from within the garden, the outbuilding does not have an overbearing appearance due to the size of the remaining outdoor space.
8. The Council has issues with the size and height of the outbuilding and states that other outbuildings are not as large and are not visible from the street. It is the case that the other outbuildings are located to the rear of the dwellings where views of them are more limited. However, views from the street are dominated by the commercial building to the other side of the access way particularly the loading bay which is almost directly across from the development and is significantly taller than the outbuilding.
9. The size and height of the outbuilding are outside the respective limits of 30 square metres and a height of 2.5 metres referred to by the Council in the Brent Council the Supplementary Planning Document 2 (SPD2) 2018: Residential Extensions and Alterations (the Guidance) at around 31 square metres and 2.6 metres respectively. However, in the details provided by the Council, the Guidance also states the maximum size of an outbuilding will be determined by its location and the size of the garden and that only one outbuilding is *normally* (my emphasis) permitted in a rear garden. However, the outdoor space for No 25 does accommodate the appeal outbuilding without resulting in overdevelopment. Further, I do consider that in this particular instance, with the size of the garden and the location of the development, slight increases above the Guidance figures are not determinative. Although the Council has not referred to the Guidance in the reasons for issuing the

notice, I have addressed the specific parts of the Guidance raised by the Council in its evidence.

10. The Council has referred to a grant of planning permission creating an undesirable precedent which would make it difficult to resist other developments. The appellant has referred to an appeal decision¹ which it considers to be similar to the appeal outbuilding. Nevertheless, it remains the case that each proposal or development has to be assessed on its own particular circumstances and merits. For that reason, I have not relied upon the appeal decision referred to in reaching my decision as the circumstances and location and nature of the building are different and the Council had previously approved a similar building to the development being enforced against.
11. Given the edge of residential development location of the outbuilding, the size of the garden that it sits in and the visual relationship with the nearby commercial building, I do not consider that the outbuilding is obtrusive or overbearing as a result of its size, height and position.
12. For all the above reasons, the development does not materially harm the character and appearance of the area. It is therefore not in conflict with Policy CP17 of London Borough of Brent Core Strategy 2010 which, amongst other things, states that development of garden space and infilling plots with out of scale buildings that do not respect the settings of the existing dwellings will not be acceptable. It is also not in conflict with the aims of Policy DMP1 of the adopted London Borough of Brent Development Management Policies, the Policy BD1 of the emerging Brent Local Plan and Paragraph 130 of the Framework which collectively refer to development being sympathetic to and complementing local character. The appeal under ground (a) succeeds and it is not therefore necessary for me to consider grounds (f) and (g).

Conditions

13. Although the Council has referred to the use of the development in its evidence, the notice attacks operational development only. At the time of my visit, the outbuilding was being used for storage of domestic items such as toys with some seating and a computer desk. If the Council considers at any stage in the future that a material change of use has occurred then that is a matter for the Council to investigate. I do not therefore consider it necessary to impose a condition restricting use particularly when the use is not part of the allegation.

Conclusion

14. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.

E Griffin

INSPECTOR

¹ APP/M5450/C/19/3223210