



Appeal Decision

Site visit made on 14 March 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Ref: APP/T5150/C/21/3274175

18 Barn Rise, Wembley HA9 9NF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Adullam Support Ltd against an enforcement notice issued by London Borough of Brent.
 - The notice, numbered E/21/0075, was issued on 22 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding to the premises.
 - The requirements of the notice are to:
 - STEP 1 Demolish and remove the outbuilding in the approximate location shown hatched in black on the attached Plan A.
 - STEP 2 Permanently remove all items, materials, waste and debris, arising from compliance with the above step, from the premises.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended ('the Act').
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellant states that the structure is not in contravention of various policies. However, the appellant has not appealed under ground (a) and so I cannot consider the planning merits of the appeal scheme.

Ground (b)

3. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting the breach of planning control, have not occurred. The main thrust of the appellant's case under ground (b) is that they have not erected any structure as nothing was built on site.
4. The appellant states it purchased a fully portable cabin and placed it on the site whilst it occupies the property. Once the appellant leaves, it states it will take it with it, leaving behind no significant evidence of it being there. The structure is asserted to have no foundations and sits on adjustable legs, is transportable and is only affixed to the land via a buried electrical cord to supply it with electricity.
5. Section 55 of the Act describes development as 'the carrying out of building, engineering, mining or other operations in, on, over or under land...'. Building operations include other operations normally undertaken by a person carrying on business as a builder. Section 336 of the Act defines building as 'any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.'

6. It was established in *Skerritts of Nottingham Ltd v SSETR & Harrow LBC* (No. 2) [2000] EWCA Civ 5569; [2000] JPL 1025 that there are three primary factors in determining what is a building: size, permanence and physical attachment, none of which is necessarily decisive.
7. The outbuilding is substantial in size relative to the premises at which it is located. It has a depth of approximately 10m, which is comparable to the depth of the main building and about half the depth of the garden. The portacabin is visible from Barn Rise and from The Crossways, which slopes down towards the appeal site, and appears as a permanent feature within the rear garden.
8. The Council carried out a site visit on 27 October 2020 and established that the portacabin had been erected at the site. A Google Earth image dated March 2021 shows that the portacabin is in approximately the same place. During my site visit, I saw that the building is in approximately the same position and is unlikely to have moved since the Council first visited in 2020.
9. The appellant states that the portacabin is only affixed to the land via a buried electrical cord to supply it with electricity. The portacabin sits on legs which rest on concrete footings. The location and limited extent of the concrete footings is likely to limit where the portacabin can be located within the site. Permanent features, including concrete footings on which it sits and a wooden ramp further suggest the portacabin is unlikely to be moved from its current location.
10. The portacabin is of sufficient size to be of significance in terms of its visual impact and is likely to remain in place for sufficient time to have the quality of permanence. Thus, I consider that given its size and permanence, as a matter of fact and degree, the portacabin is a building for the purposes of the Act. Consequently, the appeal under ground (b) must fail.

Ground (c)

11. An appeal under ground (c) is made on the basis that those matters, if they occurred, do not constitute a breach of planning control. The appellant states that the structure does not exceed 30m² in total area, is less than 3m in total height and does not meet any of the thresholds set out in Schedule 2 (Class 6) of the Buildings Regulations Act 2010 so is therefore exempt.
12. Class E of the Town and Country (General Permitted Development)(England) Order 2015 (as amended)(the 'GPDO') permits buildings etc incidental to the enjoyment of a dwellinghouse. The appeal premises lies within the Barn Hill Conservation Area and is therefore Article 2(3) land for the purposes of the GPDO.
13. The GPDO sets at E.3 out that development is not permitted by Class E if, in the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building...would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.
14. Whether or not the building meets other limitations set out in the GPDO or is exempt for the purposes of Building Regulations, since it is situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse, it is not permitted by the GPDO. Since the building does not meet the limitations set out in Class E, it is not necessary

for me to consider whether the building is incidental to the enjoyment of the dwellinghouse.

15. Thus, for the reasons given above, the structure is development for which planning permission is required. The appeal under ground (c) must therefore fail.

Conclusion

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

M Savage

INSPECTOR