



Appeal Decision

Site visit made on 15 March 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 April 2022

Appeal Ref: APP/T5150/C/21/3273385

23 Vivian Avenue, WEMBLEY, HA9 6RQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ravi Pattni (GROUP 365 LIMITED) against an enforcement notice issued by the Council for the London Borough of Brent.
 - The notice, numbered E/18/0365, was issued on 11 March 2021.
 - The breach of planning control as alleged in the notice is material change of use to a 5 persons House in Multiple Occupation (HMO) and offices, and the erection of outbuildings in the rear garden of the premises and their use as offices, and the installation of hardstanding to the rear of the premises.
 - The requirements of the notice are: Step 1 Cease the use of the premises as offices; Step 2 Demolish the outbuildings in the rear garden of the premises, Step 3 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises, Step 4 Remove the unauthorised hard surface and remove all arising materials and debris associated with the unauthorised hard surface, ensuring that the surface material comprises soil.
 - 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), (f), (g) 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.
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Decision

1. The appeal is allowed insofar as it relates to the erection of outbuildings and installation of hardstanding 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 erection of outbuildings and installation of hardstanding in the rear garden and subject to the following conditions:
 - 1) The outbuildings shall not be used otherwise than as ancillary to the dwellinghouse.
 - 2) The bathrooms in the outbuildings will be removed within 6 months of the date of this decision.
2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the use of the outbuildings, and planning permission is refused in respect of the use of the outbuildings as offices on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. The Brent Local Plan 2019 – 2041 ('the BLP') was adopted in February 2022 and comprises part of the development plan to be considered in the

determination of this appeal. It replaces the previous Core Strategy adopted in 2010 and the Development Management Policies Plan adopted in 2016.

Ground (b)

4. An appeal brought under ground (b) is on the basis that the matters stated on the notice to constitute a breach of planning control have not occurred. In this case, the appellant is not arguing an appeal on ground (b) in relation to the totality of the allegation contained in the notice, but rather only in relation to Outbuilding A, the building furthest towards the back of the garden, as they state that it was not being used as separate offices on the date that the notice was served. The appellant is therefore arguing that as a matter of fact, the breach as alleged in the notice was incorrect insofar as it related to Outbuilding A.
5. However, the appellant accepts that both outbuildings (A and B) were used as offices separate to the dwellinghouse prior to the service of the notice. This constituted a material change of use of the planning unit to a mixed used HMO and offices as alleged, and it is irrelevant whether the use had in fact stopped before the notice was issued. Section 174(2)(b) is worded in the past tense and the question is whether the breach had occurred by the date of issue of the notice, as is accepted by the appellant to be the case here.
6. The appeal on this ground is therefore unsuccessful.

Ground (c)

7. An appeal on this ground is on the basis that the matters alleged in the notice do not constitute a breach of planning control. The appellant is arguing ground (c) in relation to the hardstanding only.
8. Their case is that the hardstanding benefited from permitted development rights under Schedule 2, Part 1, Class F of the Town and Country Planning (General Permitted Development) (England)(Order) 2015 ('the GPDO'), as development within the curtilage of a dwellinghouse. However, the appellant accepts that the outbuildings were used as separate offices (and rented as such from November 2018), and has not suggested or produced evidence to show that they were initially used ancillary to the dwellinghouse prior to this office use. In addition, the parties agree that the works constituting the outbuildings and hardstanding were undertaken at the same time, as is evidenced by a photograph provided by the Council dated 21 February 2018.
9. To rely on the Part 1 permitted development rights as set out above, the appellant would need to prove, on the balance of probability, that the premises was still a single dwellinghouse when the hardstanding was installed but has not done so. Whilst I accept that the outbuildings were not used as offices until completed, and that this was also after the completion of the hardstanding, the works formed one building operation and its purpose was to facilitate the change of use of the planning unit to a mixed use. The appellant has therefore not proven on balance that the hardstanding benefitted from the permitted development rights (arising as development within the curtilage of a dwellinghouse) and the appeal on this ground cannot succeed.

Ground (a) and the deemed application for permission

10. A ground (a) appeal is that planning permission ought to be granted for any breach of planning control constituted by the matters stated in the notice. The notice alleges three elements to the breach:

- The material change of use of the premises to a 5 persons HMO and offices;
- The erection of outbuildings in the rear garden and their use as offices; and
- The installation of hardstanding to the rear of the premises.

11. The appellant is seeking planning permission to retain the operational development only i.e. the appellant is not seeking an office use separate to the dwellinghouse, and in fact the office use has already ceased. The notice also alleges use as a 5 person HMO as part of the mixed use but the requirements do not seek to prevent this use. The Council acknowledges that a change of use from a Class C3 dwellinghouse to a Class C4 dwellinghouse (such as a 5 person HMO) would not require express permission in this location. The notice is therefore under-enforcing in that it does not require the HMO use to cease.

12. The main issues in this case are the effects of the development on:

- the living conditions of the occupiers of the host dwelling;
- the living conditions of neighbouring houses;
- on the character and appearance of the area;
- and the risk of flooding.

13. The appellant's case is that the 2 outbuildings are no longer used as separate offices to the main dwellinghouse but instead used as a home office (Outbuilding B) and gym (Outbuilding A), both incidental to the dwellinghouse use. They also wish to retain the hardstanding. This development would constitute part of the matters alleged on the notice, and I have therefore determined the ground (a) appeal on this basis only.

14. The outbuildings are located in the rear garden which is over 100m². Outbuilding A is approximately 30m² and has been constructed in the same location as the original garage which has been rebuilt and extended. The front element can be seen from the street appears as the same scale and massing as the original garage and shares the party wall with the garage at No. 25. The original structure has been extended at the back with a flat roof at a lower level than the pitched front roof, and this cannot be seen from the public highway.

15. Outbuilding B is located at the rear of the garden and is approximately 27.11m². It cannot be seen from the street, but can be seen from the host dwellinghouse, and neighbouring properties.

Living conditions of occupiers of dwellinghouse

16. The outdoor amenity space has been reduced by the outbuildings, but the back garden is still a reasonable size, with sufficient private space for outdoor use for 5 people, and it is not contrary to the space standards set out in the BLP. In addition, the occupiers of the dwellinghouse would also have the use of the

additional space inside the outbuildings, and the appellant's case is that these would have an incidental use as home office and gym (which accords with my observations during the site visit). I do not therefore find that any harm is caused to the occupiers of the dwellinghouse by the outbuildings used for purposes incidental to the host property.

Living conditions of occupiers of neighbouring properties

17. The Council's main concerns regarding the effect on the occupiers of neighbouring properties arose from the additional and separate office use, so that the issues regarding additional noise, disturbance and parking would clearly not arise if the use of the outbuildings was incidental to the dwellinghouse. The Council's case is also that the excessive height and close proximity to the boundaries of both of the outbuildings is obtrusive and overbearing which would cause harm to the occupiers of neighbouring properties.
18. The Residential Extensions and Alterations Supplementary Planning Guidance 2018 ('the SPG') states that outbuildings will normally be restricted to a single-storey so that they do not overbear the neighbouring gardens and that if any part of the outbuilding would lie within a distance of 2m of the boundary with the neighbours' garden then the maximum height permitted would be 2.5m. The front of the Outbuilding B remains at its original height (which is the same as the adjoining garage at No.25) and the extended rear element which adjoins the side boundary is 2.3 m high. No harm is caused to the occupiers of No.25, or any other neighbouring properties in terms of the building being overbearing or overly obtrusive, by the extension to the garage.
19. Outbuilding A is about 2.6 meters high and is located at the back of the garden next to the rear boundary, is a similar location to a previous structure. It is therefore slightly higher than the height which would be permitted development¹, and the height parameter set out in the SPG but the additional 10cm does not cause harm to the occupiers of any adjoining properties. There is planting along the adjoining rear and side boundaries which reduces the effects further, and which are in any event not harmful due to the location of the outbuilding and configuration of the buildings on the adjoining plots.
20. Taken separately and together, the outbuildings used ancillary to the dwellinghouse, do not cause harm to the occupiers of adjoining properties.

Character and appearance

21. It is not possible to see Outbuilding A from the public highway, and Outbuilding B appears as very similar in design, scale and massing to the adjoining garage at No.35 (and therefore the original garage). It is common in the near vicinity to be able to see the garage or outbuilding through the gaps between the semi-detached houses, and Outbuilding B still reads as such in terms of size and materials. The garage door has been removed, but it is not the only property in the area to no longer have a garage door in the visible front elevation.
22. The SPG states that only one outbuilding will normally be permitted in a rear garden. However, the evidence submitted by the appellant, including the aerial photographs, shows that there was previously a structure at the rear of the garden, in addition to the original garage, and in a similar location to

¹ Schedule 2, Part 1, Class E, GPDO

Outbuilding A. The aerial photographs show that many of the houses in the area have good size rear gardens with either very large, or more than one outbuilding. It would therefore not be out of keeping in this location to have two outbuildings for uses incidental to the dwellinghouse.

Conditions

23. The reasons given above are predicated on the outbuildings being used as ancillary to the dwellinghouse, and not supporting the increased occupation of it. The BLP provides that buildings ancillary to residential accommodation should have a condition attached restricting the use of the building not to include sleeping accommodation, bathrooms, laundry rooms or kitchen, and this would meet both the statutory and policy tests to ensure that the outbuildings were only used ancillary to the dwelling. Conditions to restrict the use to that ancillary to the dwellinghouse, and to require the removal of the bathrooms from the outbuildings would be compliant with policy and help to prevent any future breach of planning control.

Flood risk

24. The development is in an area with a low probability of risk of flooding and does not require a Flood Risk Assessment under Policy BSU13. There is no evidence that the development would impact on the current drainage regime (and therefore required to be accompanied by a drainage strategy) but Policy BSU14 also provides that householder development should make use of sustainable drainage measures wherever feasible.
25. I have not been provided with evidence that the development fails to make adequate provision for the control and reduction of surface water run-off and indeed there is nothing before me to show that any harm is caused by the hardstanding in terms of its effects on the water run-off. The London Plan Policy SI 13 Sustainable Drainage states that development proposals of impermeable surfacing should normally be resisted unless they can be shown to be unavoidable, including on small surfaces such as front gardens and driveways.
26. The hardstanding in the rear garden did not benefit from permitted development rights as set out above. However, Schedule 2, Part 1, Class F permits the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse, and it is the appellant's case that the development would be permitted if installed as incidental to the C4 use. Neither party have provided any information regarding whether the material is permeable or porous, but I do note that there are gaps between the paving slabs through which grass and other small weeds are growing (which suggests that water can get through). I do not therefore find that any harm is caused by the hardstanding.

Conclusion on ground (a) appeal

27. I do not find that the 'unauthorised development' of the two outbuildings and hardstanding (as defined in the notice) cause any harm and that it should therefore be granted permission. However, I do find that the use as separate offices would cause harm and should not be permitted.

Overall Conclusion

28. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the erection of outbuildings in the rear garden of the premises and installation of hardstanding to the rear of the premises, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the material change of use of the premises to a 5 person HMO and offices, and use of the outbuildings as offices. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.
29. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Zoë Frank

INSPECTOR