



Appeal Decisions

Site visit made on 15 March 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 April 2022

Appeal A Ref: APP/T5150/C/21/3267510 and Appeal B Ref: APP/T5150/C/21/3267511 36B Court Parade, East Lane, WEMBLEY HA0 3HS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Suresh Pattni and Appeal B is made by Mrs Bhavna Suresh Pattni against an enforcement notice issued by the Council for the London Borough of Brent.
- The notice, numbered E/17/0468, was issued on 15 December 2020.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a dwelling at the rear of the premises.
- The requirements of the notice are:
 - STEP 1 Demolish the dwelling at the rear of the premises.
 - STEP 2 Remove all debris and items arising from this demolition and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) and Appeal B is proceeding on the grounds set out in section 174(2)(b), (d), (f) and (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.

Decision

1. The appeals are allowed, and the enforcement notice is quashed.

Preliminary matters

2. While appeals on ground (b) were not identified on the appeal forms, the appellants' statement of case included one. The Council has had an opportunity to comment on the ground (b) case and no injustice would arise from my consideration of the appellants' ground (b) appeals. I shall proceed on that basis.
3. Photographs attached at appendix 4 of the Council's statement of case show a lean-to abutting the side of the dwelling at 36B Court Parade. This lean-to is located at 35 Court Parade, outside the land identified on the plan attached to the notice. I concur with the appellant that this lean-to does not form any part of the dwelling located at No36B.

Appeals A and B – the appeal on ground (b)

4. To succeed on this ground the appellant needs to show that the erection of a dwelling has not occurred as a matter of fact. The onus of proof rests with the appellant and the relevant test is the balance of probability.
5. The appellant claims that the part of the building where the '*erection of a dwelling*' is alleged to have occurred has existed for well over 20 years. They

also claim that this part of the building was converted into a dwelling more than 10 years before the notice was served and that the only recent works include the extension and refurbishment of a dwelling.

6. The Council's evidence shows that they first visited the premises on 27 June 2017, at which time they confirm the accommodation provided included kitchen, toilet, shower room and bedroom facilities. Photographs of that date show that a partially covered walkway led down to the entrance in the side of the building. The part of the building containing the toilet had a mono-pitched roof and a window facing down the side walkway. There is no dispute that a dwelling existed on 27 June 2017.
7. On 6 March 2020, the Council saw that the dwelling had been extended into part of the walkway, the interior had been nominally reconfigured and was being refurbished, and the side canopy had been extended to abut 37 Court Parade. Photographs taken on this date show that cladding was still to be applied to the exterior of the extension and that the interior was still to be decorated. On 10 September 2020, the Council saw that the cladding had been completed and a further canopy had been added to the front of the building. It is the Council's case that these works constitute the erection of a new dwelling.
8. Aerial images¹ show that the appearance of the roof over the dwelling changed sometime between May 2018 and June 2019. The changes to the dwelling's flat roof include its extension over the void, mono-pitched roof area and the side canopy, so that it abuts the side wall of No37. The roof covering over the kitchen and hall had also been changed. Furthermore, these images also clearly show that the 2 roof lanterns remain throughout. As such, I find it more likely that the original flat roof over the dwelling at No36B has been extended both to cover all the side walkway, the shower room extension and toilet. From the colouring of the roof membrane over the kitchen and hall, this part of the roof membrane has also been replaced.
9. The Council's photographs of the interior show that the main room has only been changed by the relocation of the entrance door. The original entrance doorway now provides access into the shower room extension from the inner hall. The area that formerly accommodated the toilet has been incorporated into the original kitchen, and I saw that it retains its sloping ceiling.
10. The appellant claims that the dwelling needed extensive refurbishment after a tenant was evicted in 2018, and those refurbishment works were what the Council witnessed. At most the evidence provided by the Council shows that the dwelling has been extended to provide a shower room, its entrance door has been relocated, and its roof has been extended and partially recovered.
11. There is no evidence to suggest that the dwelling was demolished and rebuilt or that any of the main walls of the dwelling were taken down and rebuilt. In the absence of any compelling evidence to undermine the credibility of the appellant's evidence, I find that the works identified by the Council amount to extension and alteration, not demolition and new build. The erection of a dwelling has not, on the balance of probability, occurred as a matter of fact.

¹ Appendix 8 of the Council's Appeal Statement

12. For this reason, the appeal on ground (b) succeeds. I shall quash the notice and there is no need for the appeals on grounds (d), (f) and (g) to be considered.

M Madge
INSPECTOR