



Appeal Decisions

Site visit made on 11 April 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal A Ref: APP/R5510/C/20/3260467

Appeal B Ref: APP/R5510/C/20/3260468

Land at 17 Woodgate Crescent, Northwood HA6 3RB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr M Shah (Appeal A) and Mrs M Shah (Appeal B) against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice was issued on 26 August 2020.
- The breach of planning control as alleged in the notice is:
 - (i) Without planning permission, the erection of Outbuilding A (as shown in the approximate position hatched in blue on the attached plan);
 - (ii) Without planning permission, the erection of Outbuilding B (as shown in the approximate position hatched in green on the attached plan ("the breach").
- The requirements of the notice are:
 - (i) Demolish and remove Outbuilding A as shown in the approximate position hatched in blue on the attached plan;
 - (ii) Demolish and remove Outbuilding B as shown in the approximate position hatched in green on the attached plan;
 - (iii) Remove from the Land all debris, waste, building materials, fixtures and fittings, plant equipment and machinery resulting from the demolition works listed in (i) and (ii) above.
- The period for compliance with the requirements is Three (3) months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) (b) (c) (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 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (b) (c) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision Appeal A: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out in the formal decision.

Summary of Decision Appeal B: The appeal is dismissed, but the enforcement notice is quashed.

Applications for costs

1. Applications for costs were made by Mr and Mrs M Shah against the Council of the London Borough of Hillingdon. These applications are the subject of separate Decisions.

Procedural Matters

2. I have dealt with other appeals on this site (APP/R5510/X/21/3269020 & APP/R5510/X/21/3269017). Those appeals are the subject of separate decisions.
3. A revised version of the National Planning Policy Framework (the Framework) and the London Plan 2021 has been published since the appeal was lodged. The main parties were given the opportunity to comment on relevant implications for the appeal and have not therefore been prejudiced. I have had regard to the responses and the Framework in reaching my decision.

Appeals A & B on grounds (b) and (c)

4. The main issue is whether as a matter of fact the appellant has constructed the two outbuildings identified in the notice (ground (b)), and if so, whether the construction of those two outbuildings constitutes a breach of planning control (ground (c)). The burden of proof falls on the Appellants to make out their case on these legal grounds.
5. S174(2)(b) of the Town and Country Planning Act, 1990 advises that an appeal may be brought against an enforcement notice if those matters have not occurred. It is worded in the past tense, and the question is therefore whether the breach had occurred by the date of the issue of the notice.
6. The Appellants do not dispute that they have constructed the outbuildings but consider that those operations were lawful at the time the enforcement notice was issued. From the evidence before me and my own observations on my site visit, as a matter of fact the construction of two outbuildings, as alleged in the notice, has taken place. Whether a breach of planning control had occurred by the date of the issue of the notice is a ground (c) point and considered in the paragraphs below.
7. It is the Appellants' case that the construction of the outbuildings and the use to which they were being put to when the enforcement notice was served was lawful. However, they accept that the use of the buildings has changed from the use they were originally intended for and put to when they were first constructed, including at the time when they submitted an application for a lawful development certificate. That application was refused by the Council and subsequently dismissed on appeal¹.
8. I appreciate that at the time the notice was served, the Appellants had reacted to the previous appeal findings and altered the use of the outbuildings from that proposed when first constructed. However, the Town and Country Planning General Permitted Development (England) Order 1990, as amended (GPDO) does not grant retrospective planning permission. The development undertaken would need to have been permitted by the GPDO in force when the development was begun.
9. From the evidence before me and considering the decision of the previous Inspector, the development when constructed was not reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. Consequently, the development is not permitted under Class E, Part 1, Schedule 2, Article 3 of the GPDO or any other part of the Order. Development

¹ APP/R5510/X/19/3232789

took place for which no planning permission was granted by the local planning authority. A breach of planning control has occurred and the appeals on ground (b) and (c) must fail.

Appeal A on ground (a), deemed planning application

10. The main issues in this appeal are the effect on the:

- character and appearance of the host property and Gatehill Farm Estate Northwood Area of Special Local Character; and
- living conditions of neighbouring residents at 15 Woodgate Crescent, with particular regard to outlook, light and privacy.

Reasons

Character and appearance

11. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice. The development comprises two separate outbuildings within the garden area of 17 Woodgate Crescent. Outbuilding A was originally constructed for use as a Yoga Room and includes a toilet and shower. Outbuilding B was for use as an entertainment and hobby room, with ancillary kitchen and storage space. The host property is a 1920's red brick detached property situated in substantial grounds and within the Gatehill Farm Estate, which is designated as an area of Special Local Character.
12. The Gatehill Farm Estate was developed within the grounds of Gatehill Farm in the years after the first world war. From the evidence before me, and observations on my site visit, its character is largely derived from its planned layout, low-density streetscape with boundary hedges and mature planting, homogeneity in plots size and the number of large and well detailed houses which combine to form an attractive townscape. The houses vary considerably in their individual design and style and are constructed in a number of different external facing materials.
13. Outbuilding B is situated to the rear of the property's garage and adjacent to its common boundary with No 15 Woodgate Crescent. It is constructed in block with a rendered finish and has a flat roof. The only windows in the building are contained within its southern elevation and face towards the host property. At the time of my visit the outbuilding was predominantly in use as an art studio. Within the building there was also a sink unit, some kitchen style store cupboards utilised for general storage, a sewing machine and some seedlings being grown.
14. Outbuilding A is situated in the north-eastern corner of the site where the original ground level is slightly higher than that of the adjacent dwellings. It is similarly constructed in block with a white rendered finish, and has a shallow hipped roof covered in tiles. At the time of my site visit it was being utilised as a gym/table tennis room and a small WC/ shower room is contained within the building.
15. The position of the outbuildings to the rear of the garage and their single storey form mean that they are not visible to public views from the street. They are further screened along the site's northern boundary by trees and shrub planting. In addition, situated within the rear/side garden of the host

- property the outbuildings do not impinge or detract from views of the property's principal and well detailed elevations.
16. Policy DMHD 2 of the Hillingdon Local Plan: Part 2 (HLP:Part2) requires residential outbuildings to be constructed to: a high standard of design, without compromising the amenity of neighbouring occupiers; be proportionate to the footprint of the dwelling and the residential curtilage in which it stands and have regard to existing trees; use for a purpose incidental to the enjoyment of the dwellinghouse and not capable of use as independent residential accommodation; and primary living accommodation such as a bedroom, bathroom, or kitchen will not be permitted.
 17. I appreciate that the external materials of construction of the outbuildings is not facing red brickwork to match the host property. However, the outbuildings are not extensions to the host property but are separate garden buildings. The use of render for such buildings is not uncharacteristic, and I noted on my visit to the Gatehill Farm Estate that render is commonly utilised in the area as an external finish. Therefore, subject to a condition to require the rear elevation of Outbuilding B to be painted in a suitable finish, I am satisfied that the overall design and appearance of the outbuildings is acceptable for their intended use and location within a rear private garden.
 18. In addition, the overall size, scale and form of the outbuildings are both physically and visually subservient and proportionate to the host property which is a substantial two-storey dwelling with attic. They do not therefore appear as dominant or incongruous buildings within the garden area. Furthermore, the outbuildings do not detract from the spatial qualities of the Gatehill Farm Estate, and despite the additional floorspace created by them, and loss of some trees and planting, the host property retains a large undeveloped and mature landscaped garden.
 19. When first constructed and utilised Outbuilding B had a full fitted kitchen within it. However, this has since been removed and only a sink and storage cupboards remain. The building is now in use as an art studio and hobby room which is incidental to the use of the dwelling. Without a bathroom or cooking facilities it is not suitable for use as independent residential accommodation and there is no conflict with Policy DMHD 2. Outbuilding A is in use as a gym/table tennis room, and contains a small shower and toilet. Whilst those facilities might be considered to be primary living accommodation, I am satisfied that a toilet and shower is reasonably required within this building. It is not unreasonable to have a toilet within a garden building sited some distance from the house, nor a shower given its use as a gym. However, given the size of the buildings and their utilities, it is necessary and reasonable to attach a condition to ensure they are retained for use ancillary to the main dwelling. Subject to that condition there would be no conflict with Policy DMHD 2.
 20. I conclude that the outbuildings do not have a harmful effect on the character or appearance of the host property or Gatehill Farm Estate Northwood Area of Special Local Character. There is no conflict with the development plan, including Policy BE1 of the Hillingdon Local Plan: Part 1 (HLP: Part 1), which seeks to ensure, amongst other things, that new development protects the amenity of surrounding land and buildings, and in particular residential properties. I also find no conflict with the design and heritage aims of Policy

HE1 of the HLP: Part 1 or Policies DMHB 5, DMHB 6, DMHB 11 and DMHD 2 of the HLP: Part 2. In addition, there is no conflict with the design and heritage aims of paragraph 203 of the Framework or the aims of Policies HC1 and D4 of the London Plan 2021.

Living conditions

21. Outbuilding B sits close to the boundary of No 15 Woodgate Crescent. However, it is only single storey in height, and it is sufficiently distant from the facing windows within the flank wall of No 15 so as not to be an overbearing or dominant structure, despite its position on slightly higher ground.
22. No 15 is situated within a generous landscaped garden and I was able to view the outbuilding from No 15's garden and dwelling when I visited the site. I appreciate that when taken together with the extended garden store, there is now an extensive length of wall close to No 15's boundary. However, the existing coniferous trees along the common boundary substantially screen views of the building from No 15. In addition, considering the scale, form and distance of the outbuilding from facing windows in No 15, it does not result in any overshadowing or loss of light to the property.
23. As set out in the paragraphs above, the facing wall of Outbuilding B has not been finished/painted. Subject to a condition requiring details of that finish to be agreed and implemented, I am satisfied that Outbuilding B does not have a significantly harmful impact on the visual amenities of neighbouring occupiers. I have taken into consideration the Council's suggested condition for additional boundary treatment. However, taking into account the existing planting between the adjacent properties, I do not consider that any additional boundary treatment is reasonable or necessary.
24. Outbuilding A is situated in the north-eastern corner of the site where land levels are higher than those of the host dwelling and No 15. Consequently, its floor slab is approximately level with the first floor windows of No 15. I noted on my site visit that from within this outbuilding there was a line of sight towards those first floor windows within No 15's rear elevation. However, the significant distance between those facing windows and slightly oblique angle of sight is such that I do not consider there to be any significant loss of privacy to the occupiers of No 15.
25. I appreciate that the removal of vegetation on this part of the site means that Outbuilding A is visible to the occupiers of No 15 from their property, including their garden. However, the building is well designed and not unsightly. In addition, I noted on my site visit that there has been recent planting along this boundary, and when this matures it will provide some additional screening. I am also aware that there is a dispute about the location of the boundary between the appeal site and No 15, and whether the building has been constructed wholly on the host property's land. However, this is a civil matter and not for my consideration in this appeal.
26. I conclude that the outbuildings do not have a harmful effect on the living conditions of the occupiers of No 15 Woodgate Crescent. I find no conflict with the development plan, and in particular with Policy BE1 of the HLP: Part 1, the aims of which are set out above. I also find no conflict with Policies DMHB 11 and DMHD 2 of the HLP: Part 2 which seek to ensure, amongst other things,

that development proposals, including outbuildings do not adversely impact on the amenity, daylight and sunlight of adjacent properties and open space.

Other Matters

27. I have taken into consideration objections from local and neighbouring residents. The previous appeal decision¹ by my colleague related to a certificate of lawfulness for these buildings. However, that decision did not consider the planning merits of retaining those buildings. The appeal on ground (a) in this case is a deemed planning application and those planning merits are now a matter for my consideration. I understand the anxiety that these developments may have caused to neighbours, however, as set out above, disputes over land and boundaries are civil matters.

Conclusions

28. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the erection of Outbuilding A and Outbuilding B as described in the notice. The enforcement notice will be quashed, and it follows that Appeals A & B on grounds (f) and (g) do not fall to be considered.
29. The purpose of condition 1 in Appeal A is to require the appellant to comply with a strict timetable for dealing with the finish of the rear elevation of Outbuilding B. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of planning permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the secretary of state on appeal), and implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the use would have to cease, and Outbuilding B would have to be removed.

Formal Decisions

Appeal A

30. 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 Outbuilding A and Outbuilding B on Land at 17 Woodgate Crescent, Northwood HA6 3RB referred to in the notice, subject to the following conditions:
- 1) Outbuilding B hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within one month of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within one month of the date of this decision a scheme for the materials and finish of the northerly/rear elevation of Outbuilding B shall have been submitted for the written approval of the local

planning authority and the scheme shall include a timetable for its implementation.

- ii) If within two months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) The outbuildings hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 17 Woodgate Crescent, Northwood.

Appeal B

31. The appeal is dismissed but the enforcement notice is quashed.

Elizabeth Pleasant

INSPECTOR