



Appeal Decision

Site visit made on 16 March 2022

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13 May 2022

Appeal Ref: APP/T5150/C/21/3272908

64 Beverley Gardens, WEMBLEY, HA9 9RA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Razak Al Hamani against an enforcement notice issued by London Borough of Brent.
 - The enforcement notice, numbered E/17/0033, was issued on 4 March 2021.
 - The breach of planning control as alleged in the notice is failure to comply with condition imposed on a planning permission ref APP/T5150/C/15/3135072 granted on 8 March 2016.
 - The condition is:
 - 3) The side-to-rear extension hereby permitted shall be demolished to ground level and all materials resulting from the demolition shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i) Within 3 months of the date of this decision a scheme for the internal layout and details of replacement garage door and side entrance to the side-to-rear extension hereby permitted shall include a timetable for its implementation.
 - ii) Within 11 months of the date of this decision, if the local planning authority refuses to approve the scheme or fail to give a decision within the prescribed period an appeal shall have been made to, and accepted as valid by, the Secretary of State.
 - iii) If an appeal is made in pursuance of (iii) above, that appeal shall have been made to, and accepted as valid by, the Secretary of State.
 - iv) The approved scheme (ref.16/2611) has not been carried out and completed in accordance with the approved timetable (i.e. by 21 December 2016), and the side-to-rear extension has not been demolished to ground level and all materials resulting from the demolition removed within 3 months of that date (i.e. by 21 March 2017) ("the unauthorised breach of condition)
 - The requirements of the notice are to demolish the side-to-rear extension to ground level and remove all items, debris and materials resulting from that demolition from the premises.
 - The period for compliance with the requirement is: 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e), (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 dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (e)

2. An appeal on this ground is on the basis that copies of the enforcement notice were not properly served as required by the 1990 Act. The appellant's case is that, as owner of the property, they did not receive a copy of the notice until they were sent a copy from the Council by an email dated 19 March 2021. This is less than the 28 days before the date on which the notice came into effect and also not in accordance with the service provisions set out in the Act.¹ The Council disputes this and has provided evidence to show that a copy of the notice was signed for on 9 March 2021.
3. However and in any event, the appellant did receive a copy of the notice in time to make a valid appeal and has not provided any information to suggest that he has been substantially prejudiced by the failure to serve him fully in accordance with the Act. Due to the lack of substantial prejudice it is not necessary, pursuant to section 176(5), to consider this ground any further and it does not succeed.

Ground (c)

4. To succeed on ground (c), the appellant must prove on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control. The appellant states that all of the conditions imposed by the inspector in the previous appeal decision APP/T5150/C/15/3135072 have been met.
5. Whilst the appellant argues that the extension has not been used other than for purposes incidental to the residential use of the main house, and that the materials used match those in the existing building, he is not contending that Condition 3 was complied with in its entirety. It is not his case that a scheme was approved by the Council which was then implemented in accordance with its approved timetable.
6. It is therefore evident from the appellant's own case that he accepts that Condition 3 was not complied with, and that rather his argument is that the works that have been undertaken addressed the previous inspector's concerns as set out in the decision.
7. It is also clear from the photographs supplied by the Council that the works approved under planning permission 16/2611 (to discharge condition 3i)) were not completed in accordance with the approved drawing number 1361 or in accordance with the approved timetable by 21 December 2016. The appellant has therefore not complied with Condition 3.
8. The appeal under ground (c) does not succeed as it was accepted by the appellant the matters stated in the notice, the failure to comply with condition 3, had occurred and it is a matter of law that this is a breach of planning control.

Ground (a)

9. The deemed application for permission is for Condition 3 to be removed from the planning permission which was granted pursuant to appeal decision

¹ Section 329, TCPA 1990

APP/T5150/C/15/3135072. If the ground (a) appeal was successful, the permission would still be subject to conditions 1 and 2, but not condition 3.

10. The main issue is the effect of the development on the character and appearance of the area and the host dwelling.
11. The appeal property is a large semi-detached house located in a residential area. The side to rear extension has been altered since the date of the previous decision, although the plans² provided by the appellant which purport to show these changes are not accurate as they show (in the elevational drawing) that the side extension has been further extended towards No.62 whereas the previous inspector noted that it already went to the common boundary with that property. However, it is clear from the photographs, plans and observations during the site visit that the original garage door and side doors on the front elevation of the extension have been replaced with windows, and that there is now an internal doorway connecting to the host dwelling. The new window has also not been installed as shown on the appellant's plans as it is in fact at a lower level.
12. The join between the flat roof element of the side extension and the sloped 'catslide' roof is clumsy, badly constructed and appears of extremely poor design when seen next to the host property and the boundary with No.62. Whilst the brick work on the front of the side elevation has been altered, it still appears discordant because the patterns in the brickwork do not tie in together so that the wall appears as 4 sections with vertical seams. The side extension appears overly high in comparison to the bottom of the catslide roof which it abuts some considerable way up. The white fascia board on the side extension does not match any materials on the original roof and as a result looks overly prominent and inappropriate as part of the host property. These elements, taken together, cause harm to the appearance of the host dwelling and area.

Other matters

13. The safeness of the structure and issues associated with the drainage and sewers have also been raised. I have taken these into account and they do not alter my decision regarding the main issues.

Conclusion on ground (a)

14. For the reasons set out above, the development as built, causes material harm to the character and appearance of the host building, and to the wider area. This is contrary to Policies DMP1 and BD1 in the Brent Local Plan 2019 – 2041 (which is part of the development plan for the area) which seek to ensure that all development complements the locality and is of the highest architectural and urban design. In the absence of any other considerations which are of sufficient weight to overcome this harm, the appeal fails and the deemed application for permission is refused

Ground (g)

15. The appellant has requested that the period for compliance be extended to 6 months in order to give the existing tenants notice to leave the property and instruct some builders. However, I agree with the Council that the works can

² Drawing title, 2104R, 001, 'Surveyed Drawing as Existing Showing the Changed Made to the Plan and Elevation after Notice was Served (01.08.2017)'

be done without the host dwelling necessarily needing to be vacant as it would be possible to seal up the internal door, and no compelling reason has been provided regarding why additional time would be required in order to engage a suitable builder. In light of all of the circumstances including the harm being caused as identified above, I find that 4 months is a proportionate timescale for compliance and the appeal on this ground fails.

Zoë Franks

INSPECTOR