



Appeal Decisions

Site visit made on 13 March 2022

by Roy Curnow MA BSc(Hons) CMS MRTPI

An Inspector appointed by the Secretary of State

Decision date: 16th May 2022

Appeal A Ref: APP/T5150/C/21/3273366 79 Dollis Hill Avenue, London NW2 6QU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Padraic Curley against the decision of Council for the London Borough of Brent.
 - The enforcement notice, numbered E/20/0643, was issued on 17 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a two storey outbuilding to the rear of the premises.
 - The requirements of the notice are: Step 1 Demolish the outbuilding to the rear of the premises; Step 2 Remove all items, contents, materials and debris associated with the demolition of the outbuilding from the premises; and Step 3 Restore the land to the situation as shown on Plan A attached to this notice.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (b) (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/T5150/X/20/3259447 79 Dollis Hill Avenue, London NW2 6QU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Padraic Curley against the decision of Council for the London Borough of Brent.
 - The application Ref 20/1938, dated 2 July 2020, was refused by notice dated 13 August 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is Construction of two new outbuildings in the rear garden.
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Decision

1. Appeal A - For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (c), (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.
2. Appeal B - The appeal is dismissed.

Procedural Matter

3. In Appeal B, there are minor differences between the description of development on the application form and that on the Council's decision. I have used that from the former.
4. Given the similarities in the two appeals, I have addressed them in a single decision letter. However, the reasoning for the two decisions is given separately.

The Appeal Site

5. 79 Dollis Hill Avenue (No 79) is a two-storey semi-detached dwelling with gardens to the front and rear. The land rises significantly from the front to the rear of properties on this side of Dollis Hill Avenue. Much of the rear garden to No 79 has been excavated and levelled. The rearmost part of the garden, together with its side area adjoining 77 Dollis Hill Avenue (No 77), retain their original level. Those areas are retained by a rendered blockwork wall and gabion baskets, respectively.

Reasons

Appeal A Ground (b)

6. An appeal made under ground (b) is that the matters that were alleged in the Notice have not occurred. This is a legal ground of appeal where it is incumbent upon the Appellant to prove his case, on the balance of probability.
7. The Appellant's ground (b) case is that this is not a single outbuilding, as claimed by the Council, but two separate outbuildings. At this stage, when referring to the building work that has been undertaken I shall do so in a neutral manner, referring to the 'upper' and 'lower' elements. Construction work on both elements was fairly well advanced when I visited the site.
8. The upper element is fairly narrow and runs for most of the width of the garden to No 79, with a short return running towards the house close to the boundary with No 77. It has windows looking back towards No 79 with doorways at both ends, one onto the higher part of the garden that has not had its levels reduced and the other onto a further retaining 'wall' made of gabion baskets.
9. The front wall of this upper element is partially built off the retaining wall that was constructed as part of the re-profiling of the garden. Most of the building lies to the rear of the retaining wall, between it and the property's rear boundary. Its short return is built on top of the side garden retained by the gabion baskets.
10. The lower element sits in front of the upper one, its floor level is at the level of the remodelled garden. It is slightly wider and shorter than the upper element, and has windows and a patio door opening onto the garden.
11. The Council's Ground (b) case is that the two elements under construction form a single, two-storey outbuilding. It states that Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, ('GPDO'), does not allow for the erection of a building with more than one storey. It says that the Appellant's submissions do not demonstrate separation between the two elements and that the two elements overlap and therefore form a single, two-storey building.

12. In support of its position, the Council points to an appeal decision from Waterloo¹ arising from an application for a certificate of proposed development. In that case, an Inspector found that what was proposed was a two-storey outbuilding and, therefore, did not benefit from permitted development rights under Class E.
13. Each case has to be assessed on an individual 'fact and degree' basis. Although I have not been given copies of the plans that were submitted with that application, my reading of the case is that it was markedly different than that which is before me. There, the Inspector refers to internal stairs linking the upper and lower levels. Furthermore, there were 'voids' proposed in the upper level above rooms at the lower level. The Inspector found that these were merely a design device to achieve what the appellant contended a 'storey' to be. On the basis of what was before him, he went on to find that the proposed building would clearly have more than one level or storey.
14. Here, there is no internal link between the two elements. They are separately accessed from external doors. From what I saw at my site visit, and critically in the light of the terms of Class E and the conclusion reached by the Inspector in the Waterloo case, it appeared to me that no parts of the two elements overlap. The lower element is built onto the front face of the retaining wall. It is constructed to stand forward of the front of the upper element, not beneath it creating a two-storey building.
15. The Council did not specify where the two elements, as being built, overlapped and it appeared to me at my site visit that they did not. Whilst both the upper and lower elements utilise the retaining wall, they do so in different ways. The former is supported by it, whilst the latter projects out from it. Although the two buildings are being built at the same time, this is not surprising given their proximity to one another. I do not equate this with their being a single, two-storey building. The Council's suggestion that "its facilities are connected" is unexplained. However, as there are two outbuildings in close proximity within the same garden, is not unexpected that the same services would serve both.
16. On a fact and degree basis, taking account of the evidence before me, including what I saw at my site visit, I find that there are two separate outbuildings, rather than a single outbuilding as alleged in the Notice.
17. I have taken note of the comment made by a third party in connection with the effects of the development on the local sewerage infrastructure. However, they can play no part in this Ground (b) case, which deals solely with whether what the Notice alleges has taken place.

Conclusion on Appeal A

18. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.
19. In these circumstances, the appeals on grounds (c), (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

¹ APP/M1710/X/15/3138453

Appeal B

20. Amongst its terms, S192(1) of the Act provides for the making of an application to ascertain whether: (b) any operations proposed to be carried out in, on, over or under land would be lawful. My decision has to be made on the basis of the circumstances at the time of the application. The main issue in this appeal is whether the Council's decision was well-founded, and it is for the Appellant to prove his case on the balance of probability
21. Amongst other things, Class E, Part 1, of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the 'GPDO') sets out that, subject to certain conditions and limitations, outbuildings can be erected within the curtilage of a dwellinghouse for purposes incidental to the main dwelling without the need to expressly apply for planning permission. That is to say, it would be permitted development.
22. The Council has raised a number of reasons as to why what was proposed would not be permitted development. Foremost in the Council's case, is that what is proposed would be a two-storey building. This would be contrary to E.1.(d), which states that if the building would have more than a single storey it would not be permitted development.
23. The drawings show that, for its most part, the upper element would not stand above the lower element. However, when read together, I find that Drawings 2002/351 and 2002/352 show that there would be a degree of overlap between the two. Part of the short return in the upper element, which I describe in Appeal A, would run above a section of the lower element and be supported by it.
24. This would result in a building that would be two-storeys high, albeit in a small part. Whilst the degree of overlap is minor, there is nothing in the terms of Class E to suggest that a building with such a minor two-storey portion would be permitted development. I find that E.1.(d) is definitive; a building with more than one storey is not permitted development, and that there it gives no allowance for a part of a building to have two-storeys.
25. I accept the point that the two elements might be built independently of one another. However, even were this to be the case, the result would still be an outbuilding with two storeys.
26. Although this might at first appear to contradict my finding in Appeal A, it does not. That dealt with what has been built and, from what I was able to see, it appeared that the two buildings that have been built are separate. They do not accord with the drawings submitted with the certificate application.
27. In the light of my reasoning, above, I find that the two outbuildings that are proposed would not be permitted development that would accord with the terms of Class E of the GPDO.

Conclusion on Appeal B

28. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of Construction of two new outbuildings in the rear garden was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Roy Curnow

Inspector