



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: 18 May 2022

Appeal A Ref: APP/T5150/C/21/3271613 and

Appeal B Ref: APP/T5150/C/21/3271614

8 Holt Road, WEMBLEY HA0 3PS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Ajit Vekria and Appeal B is made by Ms Sheila Patel against an enforcement notice issued by the Council for the London Borough of Brent.
- The notice, numbered E/18/0045, was issued on 4 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of two storey side and rear extensions, rear dormer window, single storey rear extension, and a detached outbuilding with canopy in the rear garden. And without planning permission, the material change of use of the premises from ONE to TWO dwellings.
- The requirements of the notice are to:
 - STEP 1 Cease the use of the premises as two dwellings.
 - STEP 2 Demolish the outbuilding and canopy extension in the rear garden of the premises and remove all items, materials and debris arising from the demolition from the premises.
 - STEP 3 EITHER
 - Alter the internal configuration of the premises as shown in the plans – Ground, First and Loft – attached to this notice.
 - OR
 - Demolish the unauthorised two storey side and rear extensions, rear dormer window, single storey rear extension and remove all materials associated with the unauthorised use and 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), (c), (d) and (g) and Appeal B is proceeding on the grounds set out in section 174(2)(b), (c), (d) 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.

Summary of Decision: The appeals are allowed in part on ground (b) and the enforcement notice is quashed after planning permission is granted in the terms set out below in the Formal Decision.

Appeals A and B – Ground (b)

1. There is no dispute that the erection of the two-storey side and rear extensions, rear dormer window, single storey rear extensions, and a detached outbuilding with canopy in the rear garden have occurred. The appeals on this ground are that the material change of use from one to two dwellings has not occurred as a matter of fact. The onus of proof is on the appellants and the relevant test is the balance of probability.
2. The starting point for determining whether a material change of use has occurred is to identify the extent of the planning unit. Established boundary features define the extent of the planning unit associated with the residential

- use of 8 Holt Road as a single dwelling. This planning unit will have changed if an additional dwelling has been created.
3. There is no planning definition of what constitutes a dwellinghouse. A dwellinghouse is both a concept of design and use. In *Gravesham*¹ it was said, '*whether a building was or was not a "dwellinghouse"...was a question of fact; that a distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence...*'. However, in *Uttesford DC v SSE & White* [1992] JPL 171 it was found that, even if accommodation provided facilities for independent day-to-day living, that accommodation would not necessarily become a self-contained planning unit separate from the main dwelling, it would be a matter of fact and degree.
 4. There is no dispute that the self-contained living unit provides facilities for independent day-to-day living. However, it is necessary to consider whether that self-contained living unit is a self-contained planning unit separate from the main dwelling.
 5. The host property retains the appearance of a single dwelling when viewed from Holt Road as there is only one external entrance door, one letter box and one doorbell. The front garden is hard surfaced and provides off-street parking facilities and a single area for storing waste bins. Access to the rear garden is only available through the main dwelling. The outside amenity space is not divided in any way.
 6. The appellants claim that while the approved extensions were under construction, a need to accommodate appellant B's father arose and the plans were changed accordingly. To provide a degree of independence for appellant B's father, the appellants created the self-contained living unit within their dwelling. The appellants advise that while being self-contained, the self-contained living unit shares services with the main dwelling, and once the self-contained living unit is no longer needed, the accommodation will be subsumed into the main dwelling. Furthermore, the appellant advises that appellant B's father shares some meals with the family, uses the laundry room in the main dwelling and assists with childcare responsibilities, along with using the private rear garden.
 7. Appellant B's father lives as part of the household occupying the main dwelling. The self-contained living unit shares facilities such as access, parking, garden amenity space, services and utilities with the main dwelling. The self-contained living unit occupies part of the main dwelling and is significantly smaller in size than its host. Taking all these factors into account, I find that, as a matter of fact and degree, the use of the self-contained living unit is ancillary to the occupation of the main dwelling. The self-contained living unit is not a self-contained planning unit separate from the main dwelling and an additional dwelling has not therefore been created.
 8. For the reasons given above, the appeal on ground (b) succeeds to this limited extent.

¹ *Gravesham BC v SSE* (1982) 47 P & CR 142

Appeals A and B –Ground (c)

9. Due to the partial success on ground (b), the appellants' appeal on this ground relates to the rear dormer window only, and the onus of proof is on them to show that it does not constitute a breach of planning control. The relevant test is the balance of probability.
10. Class B, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended ('the GPDO') sets out permitted development rights relating to the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The rear dormer window of itself may fall within the limitations set out in Class B.1, however the appellant has not shown that the rear dormer window was constructed separately to the other alterations to the roof arising from the two-storey side and rear extensions. Taking all the extensions together, this single building operation required the benefit of planning permission, and that planning permission has not been shown to have been granted.
11. Article 3(5) of the GPDO confirms that permitted development rights do not apply to an existing building where *'the building operations involved in the construction of that building are unlawful'*. Even if the rear dormer window had been constructed in isolation, the appellants have not shown that it was constructed before any of the other unauthorised works took place, and therefore before permitted development rights were lost.
12. For the reasons given above, the appeals on ground (c) fail.

Appeals A and B – Ground (d)

13. An appeal on this ground is that, at the date the notice was issued, it was too late to take enforcement action against the breach of planning control due to the passage of time. The relevant date for the purposes of assessing immunity is 4 years prior to the date of issue of the notice, which is 4 March 2017 ('the material date'). The appellants claim that the outbuilding was substantially complete by the material date. The burden of proof is on the appellants and the relevant test is the balance of probability.
14. The phrase 'substantially completed' must be taken as having the meaning established by Lord Hobhouse in *Sage v SSETR & Maidstone BC* [2003] UKHL 22. In the case of building operations, what is required is *'a fully detailed building of a certain character'*. The appellants therefore need to show that the building operations associated with the erection of the outbuilding, both internally and externally, provided a fully detailed building. The evidence submitted is considered below:
 - The Easymix Concrete invoice dated 29 February 2016 cites '8 Holt Road' as the order number but 'MultiSteel Ltd 117-119 Brent Terrace, London NW2 1LL' is given as the delivery address. There is nothing in the invoice to confirm that it relates to the foundations of the outbuilding.
 - The BurntOak Builders Merchants invoices dated 13 April 2016 and 13 May 2016 are cash invoices made out to 'MultiSteel Ltd, 12 Brember Road, South Harrow HA2 8AX'. They contain no confirmation that the materials listed were used in the erection of the outbuilding.

- The email receipt from Progressive Products Ltd dated 22 July 2016 confirms that the goods purchased, which the appellant refers to as being floor and roof insulation, were to be delivered to the appellant at the appeal premises.
 - The Bright Windows invoice is undated, contains no delivery address and is addressed to 'MultiSteel Ltd, 12 Brember Road, South Harrow HA2 8AX'. However, the invoice includes listings and sketches of the windows purchased and shows two sets of 'Smart Grey Aluminium Visoglide Plus'. I saw that one set of glazing matching this description is fitted in the rear elevation of the single storey extension and the other is fitted in the outbuilding. There is nothing in this invoice to show when these windows were fitted.
 - The Sunleigh Windows Ltd order acknowledgement, dated 6 January 2017, identifies the appellant at the appeal premises as the customer. The job number listed, the sketches of the windows to be supplied and the costs are the same as those on the Bright Windows Ltd invoice. While no explanation is offered for the different company names, it is plausible that the order and invoice details relate to the same windows. There is nothing in this order acknowledgement to show when the windows were delivered or fitted.
 - The satellite image dated April 2017 shows the roof of the outbuilding. It also shows the rear garden of the property covered with what appear to be building materials. This image does not show conclusively that the outbuilding was substantially complete as the walls, doors and windows are not visible.
 - The expenditure tracker shows several highlighted entries, which relate to the outbuilding. The tracker only shows entries up to 16 July 2016, which is before the windows were ordered. Again, this does not show that the outbuilding was substantially complete by 4 March 2017.
15. While the appellants' own evidence does not need to be corroborated for it to be accepted, it does have to be precise and unambiguous. The appellants' evidence does not show with any precision when the foundations were laid, the walls and roof were erected, the windows were installed or the internal floors, plastering, electrics etc were completed. The appellant has therefore failed to show that a fully detailed outbuilding existed at the material date. For the reasons given above, on the balance of probability, the outbuilding was not substantially completed by 4 March 2017.

16. The appeals on ground (d) fail.

Appeal A – Ground (a) and the deemed planning application

17. Due to the partial success on ground (b), the appeal on this ground and the deemed planning application relate to the erection of the two-storey side and rear extensions, rear dormer window, single storey rear extension, and the detached outbuilding with canopy. The **main issues** are the development's effect on:
- the character and appearance of the host property and surrounding area; and

- the living conditions of residents and neighbours.

Character and appearance

18. The dwelling is in a residential area, characterised by large, semi and detached dwellings. Properties in the surrounding area have a variety of designs, although projecting front gables and render to the upper floors are a common theme throughout. The extensions and alterations respect the original design and appearance of the dwelling and those in the surrounding area. Matching materials have been used and original architectural features have been retained and replicated. This delivers high architectural and urban design quality. The rear extensions and outbuilding exhibit a more contemporary design, which respects and complements the character of the host dwelling.
19. The development causes no significant harm to the character and appearance of the host property or surrounding area. The development conforms to policies DMP1 and BD1 of the Brent Local Plan 2019 – 2014 (February 2022), which seek to deliver good urban design that compliments the locality, amongst other things. The development also conforms to the guidance set out in Brent Design Guide SPD1 (November 2018) and Residential Extensions & Alterations SPD2 (January 2018), which aim to deliver sympathetically designed, high quality developments.

Living conditions

20. The extended dwelling and annexe provide spacious accommodation for an extended family. The outbuilding accommodates incidental residential accommodation and provides a large garden store suitable for cycle and other domestic storage purposes. Parking provision is retained for at least two cars at the front of the premises. The dwelling continues to provide a high level of internal and external amenity facilities, compatible with a family dwelling.
21. The extensions, outbuilding and canopy do not cause any significant over shadowing of adjacent properties. The orientation of the buildings and window locations ensure that any potential overlooking of adjacent properties is negligible and not dissimilar to what would occur from the original dwelling.
22. The development causes no significant harm to the living conditions of residents or neighbours. The development therefore conforms to policies BH13 and BT2 of the Brent Local Plan 2019 – 2014 (February 2022), which seek to ensure adequate amenity space and appropriate parking facilities for dwellings, amongst other things.

Other matters

23. As an additional dwelling has not been created, policies BH6, BH10 and B11 of the Brent Local Plan 2019 – 2014 (February 2022) and policy D6 of the London Plan 2021 (March 2021) are not relevant.

Conclusion on ground (a)

24. The appeal on ground (a) succeeds, and planning permission shall be granted.

Overall conclusions

25. From the evidence before me, and on the balance of probabilities, the appeals on ground (b) shall succeed, following the correction of the notice, in respect of the material change of use from one to two dwellings.
26. In respect of the erection of the operational development, for the reasons given above, Appeal A shall succeed on ground (a) and I shall grant planning permission as described in the notice. The appeals on ground (g) do not fall to be considered, because the notice will be quashed.

Formal Decisions

27. The appeal on ground (b) succeeds insofar as it relates to the material change of use from one to two dwellings and it is directed that the enforcement notice is corrected by:

In SCHEDULE 2 THE ALLEGED BREACH OF PLANNING CONTROL, the deletion of all the words after "without planning permission, the erection of the two-storey side and rear extensions, rear dormer window, single storey rear extension, and a detached outbuilding with canopy in the rear garden. ("the unauthorised development")".

It is further directed that the notice is varied by:

In SCHEDULE 4 WHAT YOU ARE REQUIRED TO DO TO REMEDY THE BREACH OF PLANNING CONTROL – S173 (40(A) delete STEP 1, and renumber 'STEP 2' as 'STEP 1' and renumber 'STEP 3' as 'STEP 2'.

28. Subject to the correction and variation, 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 operational development already carried out, namely the erection of two storey side and rear extensions, rear dormer window, single storey rear extension, and a detached outbuilding with canopy in the rear garden at 8 Holt Road, Wembley HA0 3PS as shown on the plan attached to the notice.

M Madge

INSPECTOR