The Planning Inspectorate

Appeal Decision

Site visit made on 14 March 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2022

Appeal Ref: APP/T5150/C/20/3254360
53 Wakemans Hill Avenue, London NW9 0TA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Faisal Shindi against an enforcement notice issued by London Borough of Brent.
- The notice was issued on 21 May 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a two-storey side and rear extension, single-storey rear extension, rear dormer window and roof extension.
- The requirements of the notice are to:
  STEP 1 Demolish the unauthorised development and restore the premises back to its original condition to before the unauthorised works took place.
  STEP 2 Remove all items, debris and materials, arising from that demolition, and remove all materials associated with the unauthorised development at the premises.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is varied by:

   by the deletion of '6 months' and the substitution of '9 months' as the period for compliance.

2. Subject to the variations, the enforcement notice is upheld.

The Appeal on ground (c)

3. The appeal on this ground is that what is alleged does not constitute a breach of planning control. The onus is upon the appellant to demonstrate their case.

4. The appellant suggests that the Council should have enforced conditions imposed on planning permission that was given in 2013 (ref 13/0952). However, even if that was an option, what needs to be demonstrated to succeed on this ground of appeal is that there has not been a breach of planning control as alleged. The appellant does not argue that what was approved has been entirely complied with.

5. In order for conditions to be enforced, it would be necessary for the appellant to demonstrate that the planning permission has been initiated as defined by s56 of the Act. I deal with these matters within the appeal on ground (f) because they relate more appropriately to whether the steps required exceed what is necessary to achieve the purpose of the notice.

6. Adding to the complexity of this case is that the appellants also, in 2015, submitted a prior approval application for a single storey rear extension extending to the rear of the dwelling by 6m. This was under the provisions of Schedule 2, Part 1, Class A of the GPDO[1] (ref 15/2593) and the Council issued a decision following the normal procedural requirements stating that their prior approval was not required.

7. There are some broad similarities between what had received planning permission in 2013 and what has been built in terms of the general design, the width of the main part, the hipped roof and also the size of the 2-storey rear element. There are also significant differences such as the height of the single-storey front part, the depth of the single-storey rear extension which appears similar to the 2015 prior approval scheme and a much larger dormer on the rear roof-slope than was approved in 2013.

8. The claims with respect to the appeal under ground (d) are that the development was carried out between January 2016 and April or May 2016. This short amount of time would appear to give little scope for the development approved in 2013 to have been substantially completed (even if it had been initiated in compliance with the approved plans) and then subsequently altered and extended at roof level or at ground floor level. The extensions as alleged from this and the other evidence appear, as a matter of fact and degree, to have been undertaken as one operation not in severable, distinct parts. Whether or not any individual parts when looked at separately could have potentially been permitted development under the terms of the GPDO or if they were carried out in compliance with the 2013 planning permission, looked at as a whole, the development has not been authorised in this form.

9. The development as alleged required planning permission and was not authorised. The appeal on ground (c) therefore fails.

The Appeal on ground (d)

10. The appeal on ground (d) is whether, at the date that the notice was issued, it was too late to take enforcement action against the unauthorised development. In this case, operational development has taken place and the relevant period as defined by s171B(1) of the Act, is 4 years beginning with the date on which the operations were substantially completed. The relevant date is therefore 21 May 2016. It is necessary for the appellant to demonstrate that the whole development was substantially completed before that date.

11. It has been held in well-established case-law that 'substantially completed' must be taken as meaning a fully detailed building of a certain character. If a building is not carried out internally and externally, that does question whether it can be considered as substantially complete.

12. The appellant's evidence includes a photograph which is dated 14 May 2016, which shows the front and side of the dwelling. The high roof-dormer can clearly be seen in this photograph. However, there is no other photographic evidence from that time to show that the development existed as a whole. The 'statement of truth' does not explain what existed and merely states that the extension was substantially completed before 21 May 2016. The Council questions the weight that can be given to this statement. However more

[1] The Town and Country Planning (General Permitted Development) (England) Order 2015

significant is the lack of detailed explanation in that statement. I cannot dispute that the appellant in signing that document may well have believed that the extension was substantially completed by that time. However, without a detailed breakdown it does not assist me in reaching a view about what existed. The statement does not confirm what was in place internally and externally at by 21 May 2016. Although the Council have not provided any first-hand evidence of what existed by 4 years prior to the notice being issued, the onus is not upon them, it is upon the appellant to prove their case. The appellant's evidence is not sufficiently detailed to show precisely what existed 4 years before the notice was issued.

13. Added to this, as the Council point out, the planning application submitted on 25 December 2018 which sought to retain at least part of the development, indicates that "development or work" was not started until 1 April 2016 and not completed until 24 October 2016. This does indicate that at least part of what is alleged on the notice was not finished and therefore the development as a whole may not have been substantially completed 4 years before the notice was issued. Whether the exterior shell was in existence at the relevant date is not clear and the degree of further works required is not precisely explained.

14. On the balance of probabilities, the appellant has not demonstrated that the development was substantially completed 4 years prior to the issuing of the notice and the appeal on ground (d) must therefore fail.

The Appeal on ground (f)

15. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The requirements of the notice seek to return the building to its condition before the breach took place, thereby its purpose is to remedy the breach of planning control.

16. It is a matter of fact and degree whether the development has involved the partial implementation of the previous scheme or whether it is a materially different development. I have been provided with broad statements from both parties about the similarities and the differences but neither main party has given me any precise details to enable full consideration of these matters. I have explained above the similarities between the 2013 planning permission and what has been constructed. There are however clearly some significant differences.

17. Section 173(4)(a) of the Act makes it clear that a notice can seek the remedying of the breach of planning control by making the development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land. It seems possible to me that the very early parts of what has been constructed may have been very similar to what was given planning permission although I have reached this view by eye and without the benefit of any accurate survey work. The Council has referred to differences in ground levels from the approved plans and I could see that the front part of the extension is higher relative to the pre-existing dwelling.

18. A planning condition (No 6) which requires the submission and agreement of further details before commencement on site. When I sought additional information from the main parties asking for additional views about whether the 2013 planning permission had been initiated, I expressed the view that this was not a condition precedent and neither party disagreed with that. In their

response to my request for further comments, the appellant refers to the lack of dispute about the development having been begun within the 3 year period. The Council does dispute however that the works undertaken complied with the planning permission and I have not been provided with any precise evidence to enable me, to consider that they are wrong.

19. An enforcement notice cannot take away an extant planning permission but I simply do not have the information available to me to know whether or not there is such a fallback position here. In these circumstances, notwithstanding the outcome of this appeal, the parties may need to consider this matter between them as a separate process. It may need to be considered whether the planning permission was begun lawfully and can be continued with. However, I cannot reach a view on the balance of probabilities that the 2013 planning permission is as an obvious alternative to the existing requirements.

20. Within the appellant's case on this ground of appeal, they refer to the need for local planning authorities to act proportionately. It would be disproportionate to require the removal of all of the extension if the 2013 permission is extant and if what has been constructed could be adapted to comply with that planning permission. However, it is also possible that permission may be spent and cannot be continued with. My request for further submissions about these matters has proved inconclusive.

21. I cannot consider the planning merits of the case because ground (a) and the deemed planning application were not pleaded. I cannot therefore assess in this appeal whether any change in planning circumstances would mean that if the 2013 planning permission has expired, it should be approved again. The planning merits of what currently exists were considered at appeal as recently as 2019 (Appeal ref: APP/T5150/D/19/3225274) and I cannot reconsider those or the planning merits of any part of what presently exists.

22. It has not been demonstrated on the balance of probabilities that lesser steps are required to achieve the purpose of the notice. The appeal on ground (f) therefore fails.

The Appeal on ground (g)

23. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice requires compliance within 6 months from the effective date. The notice will not come back into effect until the issue of this decision and the 6 months will run from that point. The appellant's initial case on this ground of appeal seems to have misunderstood this. However, the appellant does refer to the need for the house to be vacated, services switched off and a contractor to be appointed in order to comply. I recognise that these matters do take considerable time to organise but the submissions are not backed up with evidence to indicate that the requested 9 months is required.

24. With respect to ground (f), I have however raised matters which I am conscious may take some time to resolve between the parties. These include whether the 2013 planning permission had been initiated and could be required to be completed in compliance with the permission overall. On the other hand, I need to consider the harm caused by the development and as I have already stated, due to the lack of an appeal under ground (a), I cannot reconsider the planning merits of the case. I will therefore take the harm as set out on the

reasons for issuing the notice at face value. This includes harm with respect to the character and appearance of the area but also the living conditions of neighbouring properties due to loss of light and outlook. It is necessary to reach a proportionate and reasonable view about the time required to comply with the requirements and overcome the harm, whilst also potentially considering these other matters.

25. Whilst allowing 9 months as requested would exacerbate the harm caused by the development, in the overall public interest, it would be reasonable to allow some extra time for the appellant and Council to discuss alternative solutions if they do exist. To this extent, the appeal on ground (g) succeeds.

Conclusion

26. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Andy Harwood

INSPECTOR