



Appeal Decision

Site visit made on 22 March 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th June 2022

Appeal Ref: APP/T5150/C/21/3276213

Land at 71 Manor Drive, Wembley HA9 8EB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ahmad Najib Qadir against an enforcement notice issued by The Council of the London Borough of Brent.
- The notice, numbered E/20/0601, was issued on 23 April 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the premises from one to two dwellings, AND without planning permission, the erection of a building in the rear garden of the premises.
- The requirements of the notice are:
 - STEP 1 Cease the use of the premises as two dwellings.
 - STEP 2 Demolish the outbuilding in the rear garden of the premises and remove all items and debris arising from that demolition.
 - STEP 3 EITHER Alter the internal configuration of the premises as shown in the attached plans (Ground and First Floors)
 - STEP 4 OR Demolish the unauthorised single storey side and rear extension to the dwellinghouse and remove all items and debris arising from that demolition, and remove all materials associated with the unauthorised use and development from the premises.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

Summary Decision: The appeal succeeds and permission is granted for part of the breach of planning control as set out below in the formal decision.

Preliminary Matters

1. The site visit was conducted with a representative of both parties present. After the site visit had concluded, I was approached by the appellant and asked to view something else at the property. As the Council's representative was no longer present, I declined the request, but gave the appellant a further opportunity to provide photographs of the matter he had asked me to view. These were submitted a week or so after the site visit. The Council were advised of the appellant's request and given an opportunity to comment on the photographs submitted. All of this has been taken into account when reaching my decision.
2. In addition to the above, and with regard to the allegation of a material change of use of the premises from one to two dwellings, the appellant's case made

under ground (c) includes submissions that relate to a ground (d) appeal, which is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. I note the Council has highlighted the lack of a ground (b) appeal in its appeal statement. Nevertheless, it has responded to the elements of the appellant's case that fall within ground (b). As such, I have considered a ground (b) appeal in this case. Before doing so I sought the views of the parties and have had regard to these in reaching my decision.

3. In his appeal statement the appellant acknowledges that the building in the rear garden subject of the enforcement notice (the outbuilding) is not permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended or by any other permissions. As such, his appeal in respect of the outbuilding is only made under grounds (a), (f) and (g).
4. On a final matter, since the issue of the enforcement notice and the submission of the appeal, the Brent Local Plan 2019-2041 was adopted February 2022 (BLP). This replaces the London Borough of Brent Local Development Framework – Core Strategy dated July 2010 and the London Borough of Brent Local Plan Development Management Policies document, dated November 2016. I have not, therefore, had regard to the policies of the replaced core strategy and local plan in reaching my decision. The comments of the parties were sought with regard to the effect of the change to the development plan. I have had regard to these in reaching my decision.

Ground (b)

5. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. The test of the evidence is on the balance of probability. As noted above, the appellant's case under ground (b) relates only to the alleged material change of use.
6. The appeal site is occupied by a semi-detached building that has been extended to the side and rear with a single storey addition. The allegation is of the material change of use of the appeal site from one to two dwellings. It is the Council's case that there has been a material change of use of the side element of the extension (the side extension) to a dwelling separate from the use of the remainder of the appeal site as a dwelling. The appellant suggests that the appeal site has not been divided into two dwellings, but that the side extension is an annexe, and is part of the main house at No 71.
7. The distinctive characteristics of a dwelling-house are identified as being its ability to afford to those who use it the facilities required for day-to-day private domestic existence. With this in mind, the extension comprises a bedroom and a bathroom with w.c. and shower, as well as a kitchen and living room. I noted a fitted kitchen area with a sink, cooker and free standing fridge freezer.
8. Patio doors in the bedroom provides access from the side extension into the garden to the rear of the site. The garden has not been sub divided in any way and is open to both the side extension and the remainder of the property. I did not observe any separate parking areas for the side extension, to the front of the site, and there is a single front door, providing access to the side extension and the remainder of the property.

9. In the porch there are two doors, one to the side extension and one to the remainder of the building. My attention has been drawn to the locks on these doors. Notwithstanding this, I noted the shoe storage area in the porch.
10. Having regard to the above, it is clear that the side extension contains the facilities required for day-to-day private domestic existence. However, the appellant's account of how it is used is not consistent with its use as a dwelling separate from the remainder of the property at No 71. The appellant says that the side extension is occupied by family members, the appellant's brother and his brother's wife, but that all occupiers of No 71 share facilities in the whole property, including the kitchen, living space, garden and parking area. He suggests that all occupiers live as one family unit and dine together the majority of the time. The appellant also claims that the side extension does not have a separate postal address or separate utilities, and it is not subject to a separate council tax bill.
11. Whilst the appellant may have advertised the accommodation for rent in August 2020, there is no suggestion that this has resulted in the side extension having been occupied in any way other than that set out in the appellant's evidence. That there are locks on the doors separating the side extension from the remainder of the property is not decisive in this case. It would provide privacy for the appellant's brother and his brother's wife, but it does not prevent the shared nature of the use of No 71, as suggested by the appellant.
12. Although there are doors separating the side extension from the remainder of the building, I find that as a matter of fact and degree there is very little physical or functional separation between the use of these two parts of the appeal site. The evidence before me points to the use of the accommodation comprised in the side extension being part and parcel of the use of the whole of the appeal site as a single dwellinghouse, rather than it being in a use that is separate, or indeed ancillary or incidental to the main dwelling at No 71.
13. The Council refer to the layout of the side extension and suggest that it does not accord with the plans approved by reason of the planning application (Council reference 18/1288) granted for a single storey side and rear extension. Whilst this may be the case, the allegation as it relates to the side extension is of a material change of use, rather than a failure to comply with a condition of a planning permission. That the layout of the side extension differs from the approved scheme does not alter my findings with regard to its use.
14. To conclude, whilst I have found that the side extension has the characteristics of a dwelling, the evidence is sufficient to demonstrate that it is not used as a dwelling separate from the use of the remainder of the appeal site. It is more likely than not that the appeal site is used as a single dwelling and the extension is part and parcel of that dwelling. For this reason I find that the development consisting of the material change of use of the appeal site from one to two dwellings has not occurred. The ground (b) appeal should succeed and I will remove from schedule 1 of the notice the allegation of a material change of use, together with the corresponding requirements set out in step 1, step 3 and step 4 of schedule 4. The ground (c), (a), (f) and (g) appeal do not fall to be considered insofar as they relate to this matter.

Ground (a) and the deemed application for planning permission

Main Issues

15. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. Having regard to my conclusion on the ground (b) appeal, the ground (a) appeal has been considered only with regard to the outbuilding.
16. I note the substantive reasons for issuing the enforcement notice and from these I have identified the following main issues:
 - The effect of the outbuilding on the character and appearance of the site and the surrounding area; and
 - The effect of the outbuilding on the living conditions of the occupiers of the site and neighbouring properties.

Reasons

Character and Appearance

17. The area surrounding the appeal site is characterised by semi-detached residential properties, most with a good sized garden to the rear. The outbuilding subject of this appeal occupies part of the rear garden of the appeal site and is close to the rear boundary. The evidence suggests that the outbuilding has a flat roof, and its design is such that the roof provides an overhang to the front and side elevations. The building has a white painted render finish and a sliding patio door in the elevation facing the rear of the dwelling.
18. Whilst the building has a contemporary appearance, this is in keeping with the dwelling at No 71, which has a similar rendered finish and window frames. The design of the outbuilding's roof is also sympathetic to the roof form of the side and rear extension of No 71.
19. I note the guidance for outbuildings in part 2.10 of the Supplementary Planning Document No. 2 on Residential Extensions and Alterations, dated January 2018 (SPD2). Where a garden is more than 100 square metres, the SPD2 advises that an outbuilding should be no more than 30 square metres. Whilst I note that the appellant does not agree that the area occupied by the outbuilding conflicts with the stated dimensions, I note that the location of the outbuilding within the site allows for a degree of separation between it and the dwelling at No 71. Although the footprint is large for such an outbuilding, it does not dominate the rear garden area. Its location is such that it relates well to the dwelling and the remaining garden space.
20. Having regard to the roof form, I do not consider its height or overall size to be excessive. There are similar outbuildings in the immediate vicinity of the appeal site, and I note that the outbuilding has a height, width and depth that is comparable to the building to the rear of the adjoining property. As such, the size of the outbuilding and its appearance is in keeping with other such development in the area. Furthermore, its single storey and roof form do not make it a prominent building within its context.

21. Having regard to the above, I conclude that the outbuilding has an acceptable effect on the character and appearance of the site and the surrounding area. As such, I cannot find conflict with BLP policy DMP1 (Development management general policy), which requires, amongst other matters, that development is of a siting, scale, materials and design that provides high levels of external amenity and complements the locality.

Living Conditions

22. The SPD2 advises that outbuildings will normally be restricted to a single-storey so that they do not overbear the neighbouring gardens. The guidance provides permitted dimensions for outbuildings. The SPD2 limits the height of outbuildings to 2.5 metres if within 2 metres of the boundary with a neighbour's garden.
23. The parties agree that the height of the outbuilding exceeds that permitted by SPD2. Nevertheless, I have had regard to its location and its proximity to the boundaries shared with neighbouring properties. The outbuilding exceeds the permitted height by around 0.3 metres, but it is set off the side boundaries of the appeal site. The building is also not particularly deep, and so effects only a short length of the shared boundaries. As such, I do not regard its overall height as being overbearing with regard to its effect on neighbouring gardens.
24. I note the Council's suggestion that the outbuilding is harmful to the use or purpose of the rear garden, and that it does not preserve or enhance this open space. Despite the size of the outbuilding, I note that the appeal site retains a good sized area of garden, that is a practical shape and suitable for siting out or for children to play. I am also satisfied that there is sufficient space for other garden activities, including composting and refuse storage, some home food production, and clothes drying space. Indeed, I noted that the areas to the side of the outbuilding are already used for outdoor storage.
25. The evidence before me suggests that the remaining area of garden space is comparable to that serving other adjoining properties. Whilst the development may well have resulted in the loss of outdoor space to serve No 71, this is not a reason to refuse permission for the outbuilding, particularly having regard to the area and usability of the outdoor space remaining.
26. All things considered, I conclude that the development has an acceptable effect on the living conditions of the occupiers of the site and neighbouring properties. As such, it does not conflict with BLP policy DMP1, in particular the requirement for development to be of a siting and scale that provides high level of external amenity.

Other Matters

27. I acknowledge that the dimensions of the outbuilding do not comply with some of those stated in the SPD2, including those considered above. However, I note that paragraph 1.1 of the SPD2 confirms that the document is a material consideration in the determination of planning applications, rather than it being part of the development plan. Whilst the development may not accord with the guidance it contains, I have found it to accord with the development plan.

28. Having regard to my findings on the main issues in this case, I cannot conclude that a failure to comply with certain parts of the SPD2 is a material consideration of sufficient weight to indicate that my determination of this appeal should be made otherwise than in accordance with the development plan.

Conditions

29. Neither party has suggested any conditions for the deemed application for the outbuilding, and I am unable to identify any that might be necessary.

Planning Balance and Conclusion

30. I have not found any conflict with the development plan and have not been given a reason to conclude that planning permission ought not to be granted for the outbuilding subject of the enforcement notice. The ground (a) appeal should, therefore, succeed with regard to the matter of the outbuilding. The ground (f) and (g) appeal do not fall to be considered insofar as they relate to this matter.

Conclusion

31. For the reasons given above, I conclude that the appeal should succeed on ground (b) insofar as it relates to the material change of use of the premises from one to two dwellings. I also conclude that the appeal should succeed on ground (a) insofar as it relates to the erection of a building in the rear garden of the premises. I shall grant planning permission for the erection of a building in the rear garden of the premises, as described in the notice.
32. In these circumstances, the appeal on grounds (a), (c), (f), and (g) 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 insofar as they relate to the material change of use of the premises from one to two dwellings. Also, the appeal on grounds (f) and (g) does not fall to be considered insofar as it relates to the erection of a building in the rear garden of the premises.

Formal Decision

33. It is directed that the enforcement notice is corrected by:
- the deletion of the words 'Without planning permission, the material change of use of the premises from ONE to TWO dwellings AND' from schedule 2; and
 - the deletion of the words 'STEP 1 Cease the use of the premises as two dwellings.' and 'STEP 3 EITHER Alter the internal configuration of the premises as shown in the attached plans (Ground and First Floors) STEP 4 OR Demolish the unauthorised single storey side and rear extension to the dwellinghouse and remove all items and debris arising from that demolition, and remove all materials associated with the unauthorised use and development from the premises.' from schedule 4.
34. Subject to the corrections, 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 a building in the rear

garden of the premises at 71 Manor Drive, Wembley HA9 8EB, as shown on the plan attached to the notice.

J Moss

INSPECTOR