



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: 4 July 2022

Appeal Ref: APP/T5150/C/20/3256667

2 Berkeley Road, London NW9 9DG

- 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 Feroze Nisar against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 19 June 2020.
 - The breach of planning control as alleged in the notice is: "Without planning permission, the erection of extensions to the side and rear of the property and the erection of a building in the rear garden."
 - The requirements of the notice are:
STEP 1 Demolish the extensions or alter them to accord with the Plan A attached to this notice.
STEP 2 Demolish the buildings in the rear garden and remove all items, materials and debris associated with the unauthorised development from 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)(b) and (d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. Step 1 on the notice allows for alternative requirements. The first is to remove the extensions. The second part cross refers to 'Plan A' which was attached to the notice. Planning permission ref '15/0227' was given in 2015 for "first floor side and rear extension, rear dormer window, 1 front rooflight and 1 rear rooflight to dwellinghouse" and 'Plan A' appears to have been a plan approved at that time. The second part of 'Step 1' does not require compliance with the 2015 planning permission, only that the extensions accord with that plan. This therefore allows for the extensions to be adapted to the same form as was previously approved.

The Appeal on ground (b)

3. To succeed on ground (b), the appellant needs to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact.
4. The appeal site includes a semi-detached dwelling which has been previously extended including into the modest rear garden. The appellant clarifies within their submissions that they do not dispute that the ground floor and first floor extensions have been undertaken. On that basis, this ground of appeal cannot succeed in relation to those elements.

5. The appeal on this ground also relates to the alleged “erection of building in the rear garden”. The appellant states that it is not clear what the Council is referring to, a store in the south-eastern corner which it is claimed has been in place for many years, or another building in the north-eastern corner.
6. The outbuilding in the south-east corner of the site has in effect been partly subsumed within the extensions and it seems clear to me that the notice only therefore concerns the other outbuilding. Part of that building has been demolished. However, from the information submitted, it appears that the other walls that are on the side and rear boundary were also part of that building which seems to have been constructed in stages. The Council’s photographs show different types of block-work externally but the evidence does not indicate to me that the earlier stages were, for example, only a wall functioning as a means of enclosure. The appellant’s own photograph shows a different type of block-work which is only evident on the upper parts of the walls in the Council’s images and which has been extended down for the entire height of the wall within the appeal site. There is also a remaining part of what looks like a rudimentary roof. From what the appellant says within their supporting documents it seems clear that they understood that the notice related to the outbuilding that has been partly demolished and not that which planned to be subsumed within the extensions.
7. I therefore consider that, on the balance of probabilities, the alleged breaches of planning control had taken place as described, at the date the notice was issued. The appeal on ground (b) therefore fails.

The Appeal on ground (d)

8. 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 material date is 4 years prior to the issuing of the notice, therefore 19 June 2016.
9. There is no dispute that side and rear extensions have taken place and that they do not comply with previous planning permissions including the 2015 planning permission ref 15/0227. The appellant’s previous agent had written to the Council on 11 June 2016 indicating that the first-floor part of the extension would be reduced from 2.3m to 2.7m and for that to be offered indicates to me that the development may by that stage have still been a work in progress. However, that is not entirely clear from that or subsequent correspondence.
10. For an appeal to succeed on ground (d), the whole of the alleged development must be substantially completed. It has been held that a development must be regarded holistically. Where some parts are incapable of being completed then the whole development becomes unlawful. Whether the development has been substantially completed is a fact and degree judgement. However, it has been also been held that a building could not be regarded as substantially completed for the purposes of s171B(1) of the Act even if outstanding works affected only the interior. This is the case even where the internal works would not in themselves involve ‘development’ under s55(2)(a).
11. In this case it is clear that building works had commenced and had been well

advanced when the Council officers visited and took photographs on 2 occasions in June 2016. That is close to the material date. A final certificate for Building Regulations purposes had been issued on 10 September 2015. I am not provided with any expert evidence about what that means precisely in terms of at what stage of construction such a certificate can be issued. This does not necessarily in and of itself indicate therefore that the building was substantially complete with respect to s171B(1) of the Act. This and the electrical installation certificate do however assist the appellant's case but are not the end of the matter, in my view.

12. The appellant's 'existing' ground floor plan (Exhibit A) was prepared in 2020 and doesn't show what existed in 2016. There are rear doors in the elevation facing the garden on that plan. When the Council officers visited on both 2 and 23 June 2016, their photographs show that there was no door or door-frame in place within the side elevation close to what is proposed to be a bathroom (as shown on Exhibit A) and the cavity with insulation is still clearly visible. This doorway aperture faces towards the adjoining property and an access that runs between the 2 properties. Having no door to shield the internal part of the property from the elements or to ensure privacy for occupants is a significant hindrance to the normal use of the building whether the layout on that plan is still intended to be implemented or not. The threshold of that door is a substantial height up from the external concrete base outside which would make it inconvenient for walking in and out of. In the earlier image, boards form a ramp up to enable more convenient access. The glimpse through the doorway shows an internal space which is still under construction, with construction materials in view and 'image 3' from 2 June 2016. This also clearly shows that another door aperture on the opposite side of the building which does not have a door within it.
13. The Council's photographs also show the partly constructed walls of the outbuilding referred to on the notice, which on 2 June 2016 did not have a completed roof. Aerial images have also been provided by both parties although neither has provided the original certified source images, relying instead upon internet sources where the dates may not be completely reliable. However, there appears to be no suggestion that either party's images are wrong. Neither party has provided expert interpretive evidence of these images or of any stereographic images that are often available.
14. It is therefore difficult to interpret precisely what the aerial images show. However, the image from 2017 and that from 2018 are similar in so far as they show what appears to be the same extent of building at first floor, ground floor and with respect to the outbuilding. There is a significant degree of uneven texture across each of the parts of the buildings on the 2017 image which may represent building materials or may indicate incomplete elements of the structures. I cannot be precisely sure what that represents without further expert evidence but the surface of the first-floor extension is in stark contrast to what is shown in 2018 where a uniform texture of the flat roof can be seen. The appellant states that the first-floor extension had been originally installed with plastic domes which performed badly and were subsequently removed. These domes were covered by plastic sheeting for an undefined period but it is not clear at all that this is what the 2017 aerial image shows. From the narrative presented by the appellant I can only consider that there was a state of flux where the roof of the first-floor extension was not finalised.

15. I therefore consider on the balance of probabilities that a shell was in place more than 4 years prior to the issuing of the notice which had services connected to it. Furthermore, some elements of the extensions have been clearly useable for some time as indicated by the appellant's own statutory declaration. However, it appears that there were still a significant degree of building operations taking place which would have limited the useability of the extension as a whole and that it could not be considered as substantially complete, as a matter of fact and degree, for the purposes of s171B(1).

16. The appeal on ground (d) fails.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Andy Harwood

INSPECTOR