



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/20/3264303

70 Bush Grove, London NW9 8QX

- 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 Abdullatif Al-Fardan against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 3 November 2020.
 - The breach of planning control as alleged in the notice is:
 - "Without planning permission, the erection of a porch, single-storey side extension and rear outbuilding to the premises (the unauthorised development)"; and
 - "Without planning permission, the material change of use of the outbuilding at the rear of the premises to a living accommodation (the unauthorised change of use)".
 - The requirements of the notice are:
 - STEP 1 Demolish the unauthorised porch to the front of the premises.
 - STEP 2 Remove the unauthorised single storey side extension to the premises.
 - STEP 3 Cease the use of the unauthorised outbuilding at the rear of the premises as primary living accommodation.
 - STEP 4 Remove from the unauthorised outbuilding the kitchen and all associated drainage connection.
 - STEP 5 Remove from the unauthorised outbuilding the bathroom and all associated drainage connection.
 - STEP 6 Demolish the unauthorised outbuilding at the rear of the premises.
 - STEP 7 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development and change of use from the premises.
 - The period for compliance with the requirements: 6 Months.
 - The appeal is proceeding on the ground[s] set out in section 174(2)(a), (b), (c), (d), (f), (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.
-

Decision

1. It is directed that the enforcement notice is corrected by:
 - Deletion of the whole of the alleged breach of planning control set out in Schedule 2 and its substitution with:

"Without planning permission, the erection of a porch and single-storey side extension (the unauthorised development)"
 - Deletion within Schedule 4 of 'Step 3', 'Step 4', 'Step 5' and 'Step 6'
2. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely without planning permission, the

erection of a porch and single-storey side extension (the unauthorised development) at 70 Bush Grove, London NW9 8QX as shown on the plan attached to the notice.

Preliminary Matters – the notice

3. The notice alleges 2 different forms of unauthorised development. It can be acceptable to do so, as long as it is possible to understand what has been done wrong and what must be done to comply with the terms of the notice.
4. I have a duty to ensure where I can, that the notice is in order where there are defects, errors or misdescriptions. I can do so only where, given the powers of s176(1) of the Act, this would not cause injustice to the appellant or the Council. It is important to get a notice in order because of the potential for subsequent legal action if the notice is upheld but not complied with.

The outbuilding

5. The first allegation refers to operational developments in the form of a “porch”, “single-storey side extension” and “rear outbuilding”. These are categorised as “the unauthorised development”. The reasons for issuing the notice states that “the unauthorised development” took place within the last 4 years.
6. The second allegation refers to “the unauthorised change of use” of the outbuilding within the rear garden “to living accommodation”. The corresponding reason for issuing the notice refers to the “unauthorised change of use took place within the last 10 years”. This suggests that the Council considers that the nature of that “living accommodation”, has not involved the change of use of the building as a single dwellinghouse to which a 4 year period of immunity with respect to s171B(2) of the Act would apply.
7. The Council’s appeal statement says that the “unauthorised change of use of the outbuilding has as a matter of fact also taken place within the last 4 years”. The notice itself describes occupation but does not clarify the nature of that occupation. The appeal statement however acknowledges that the building had existed previously when the planning application Ref 17/2840 was considered, albeit with subsequent alterations. Reference is also made to a breach of planning condition on that previous planning permission. The notice does not allege a breach of planning condition and that is reaffirmed by reference to s171A(1)(a) of the Act, within the heading to the notice, development without planning permission, rather than failing to comply with a condition to which s171A(1)(b). I am furthermore confused by the requirements set out in Schedule 4 of the notice. Step 3 requires the cessation of the use of the outbuilding as “primary living accommodation” when the allegation only refers to “living accommodation”.
8. The notice is unclear in terms of what precisely is alleged with respect to the outbuilding. The Council’s appeal statement appears to attack the use of the outbuilding as a separate dwelling but the notice does not specify that. The statement also indicates that the breach of planning control of concern is a breach of a planning condition but that again is not what the notice relates to.
9. I cannot correct these elements because I am unsure precisely what the Council is alleging even before considering any evidence that they may have submitted on these matters. I do not consider that these parts of the notice can be corrected using my powers under s176(1)(a) of the Act because that

could fundamentally affect the grounds of appeal and also the submissions made. Furthermore, I do not completely understand the Council's case in order to change with the wording and this must also affect how the appellant has considered the notice.

10. At the very least therefore, the notice requires correction to remove reference to the outbuilding. I can only undertake this under the provisions of s176(1)(a) if it would not cause injustice to either the Council or the appellant. Reducing the scope of the notice would not cause injustice to the appellant and the Council would have the opportunity to issue a further notice if they consider it is expedient to do so. I have considered whether the notice could be corrected as suggested by the appellant to relate to the previous planning permission but the evidence and submissions are not made on that basis. If I were to do that, it could cause prejudice to both main parties.
11. I will therefore go on to consider the grounds of appeal in relation to the altered allegation relating only to the erection of a porch and single-storey side extension.

The Appeal on ground (b)

12. 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.
13. The appellants case on this ground relates to the outbuilding which I am not considering. There is no dispute that the porch and the single-storey side extension do exist. I therefore consider that the alleged breaches of planning control had taken place as described. The appeal on ground (b) therefore fails.

The Appeal on ground (c)

14. 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.

Porch

15. Photographs have been provided of the front of the house. The dates are not disputed. Until 2018, the porch was predominantly glazed. The roof at that time looks to have clay tiles and the gable ended, ridged roof appears to be supported on the headers of the windows and supporting posts.
16. The image in 2019 shows a porch of similar proportions. The roof however appears from the photograph to be slightly higher to the eaves although has a similar basic shape albeit with grey slates or tiles replacing the previous red tiles. I am not provided with detailed construction differences but even if the previous brick-work plinth that supported the windows in the previous structure remained, the walls have been built up further, replacing the glazing that had dominated the appearance of the porch in earlier photographs.
17. Section 55(1) of the Act provides a definition for "development" which it states includes "the carrying out of building, engineering, mining or other operations in, on, over or under land". Section 55(2) then specifies some operations that do not involve "development". This includes at s55(2)(a) the carrying out of maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building.

18. The works to construct the current porch were not internal. Furthermore, they changed a substantial amount of the structure as I have outlined above. The building works did materially affect the external appearance of the building and did therefore constitute operational development.

Side extension

19. The side walls of the lean-to single storey extension are constructed on the boundary between the appeal site and the adjoining property. I looked carefully at this and boundary green-mesh fence between the properties is directly up against the external face of side wall. The gutter extends further out and over-hangs the green-mesh fence. I do not have precise details of ownership but in terms of the land within the appeal site that can functionally be used as part of its curtilage clearly ends at the green-mesh fence. The gutter therefore overhangs the boundary of the curtilage and albeit marginally extends into the curtilage of the adjoining property. Although this is a marginal situation, the onus of proof is upon the appellant.
20. The appellant relies upon the permitted development (PD) rights granted by Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015, as amended (GPDO). Part 1 of Schedule 2 to the GPDO provides the details of the PD rights "within the curtilage of a dwellinghouse". Notwithstanding other matters concerning the effect of the outbuilding on PD rights, such rights cannot apply because part of the structure extends into the curtilage of another dwellinghouse.
21. The appeal on ground (c) fails.

The Appeal on ground (d)

22. 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.
23. The material date by which the porch and single-storey side extension would need to have been completed by, is therefore 3 November 2016. The onus is upon the appellant to prove their case on the balance of probabilities.
24. The photographs provided by the appellant show that in 2018, the previous porch and a different structure were still in place on the site. As such, the appeal on ground (d) fails.

The Appeal on ground (a) and the deemed planning application

25. I have to consider whether planning permission should be given for what is alleged on the enforcement notice as corrected.

Main issue

26. The main issue is the effect of the development on the character and appearance of the building and surrounding area.

Reasons

27. The appeal site is in a residential area with mainly semi-detached dwellings of a

similar era although there are also some examples of more contemporary dwellings. There is a range of colours that have been used to paint the front elevations of the buildings along with a variety of styles and sizes of front additions such as canopies, porches as well as more substantial extensions. There is no particular overriding character in terms of the front additions or the materials used in their construction and external appearance. Many of these varied structures are positioned in prominent positions within the street-scene. There are some examples of some very basic canopies over the front doors which may well have been original features but from what I saw, there have been a lot of substantial porches and front extensions added.

28. The porch in this case has a simple appearance with rendered and painted walls, a gable ended, pitched-roof and with a contemporary front door. There is also a modern glazed canopy over the front door into the porch which is difficult to notice apart from at close quarters. The porch is of a similar scale to other porches within the road and looks of similar proportions to what preceded it. The porch covers a proportionate amount of the front of the property sufficient to do what is functionally required. The Council's Supplementary Planning Document¹ (SPD) suggests that porches should take into account the most appropriate position, size and height that will compliment the design of the home. I consider that the porch does achieve these aims and is not disproportionately large or of excessive height or depth.
29. The side extension also has a very simple appearance with the basic lean-to with the modern door similar to that of the porch and is recessed behind the front elevation of the dwelling. The SPD encourages modest side extensions complimenting the house with a size and shape being subservient and allows for them to be built up to the boundary. The development largely complies with this advice and the slight incursion over the boundary is a minor matter in relation to these matters.
30. Within the context of an eclectic range of styles of additive forms and materials used elsewhere nearby along Bush Grove, the developments do not appear out of scale with the dwelling itself or on the context of the street-scene. They provide elements of modern elegance. The materials, detailing and design provide high levels of internal and external amenity complimenting the locality.
31. In relation to the main issue, the development does not harm the character and appearance of the building and surrounding area. This complies with the Brent Local Plan² Policy DMP1. The advice of the National Planning Policy Framework to seek high quality design has been achieved.

Conditions

32. No planning conditions have been suggested. Given that the developments have been completed, I do not consider that there is any necessity for any planning conditions.

Conclusion on ground (a)

33. Having had regard to the development plan as a whole, I conclude that the appeal should be allowed. The ground (a) appeal therefore succeeds.

¹ Residential Extensions and Alterations, Supplementary Planning Document, January 2008

² London Borough of Brent, Local Plan November 2016. Development Management Policies

Conclusion

34. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The appeal on grounds (f) and (g) do not therefore fall to be considered.

Andy Harwood

INSPECTOR