



Appeal Decisions

Site visit made on 8 June 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 4th July 2022

Appeal A Ref: APP/T5150/C/21/3279264

Appeal B Ref: APP/T5150/C/21/3279298

Appeal C Ref: APP/T5150/C/21/3279549

Land at the rear of 110 and 112 Wembley Park Drive, Wembley, HA9 8HP

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Stephanie Stupack, Appeal B is made by Susan Woolf and Appeal C is made by Abdulhamid Abukar against an enforcement notice issued by London Borough of Brent.
- The notice was issued on 16 June 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a rear extension (as identified hatched in black on Plan A attached to this notice) and the installation of a shipping container to the rear of the premises ("the unauthorised development")

AND

Without planning permission, the material change of use of the land at the rear of the premises for vehicle repair and use as a parking area for mini cab/taxi/private hire vehicles. ("the unauthorised change of use")

The requirements of the notice are to

STEP 1 Permanently cease the use of the land at the rear of the premises for vehicle repair and as parking area for minicab/ taxi/ private hire vehicles

STEP 2 Permanently remove the shipping container and its content from the rear of the premises

STEP 3 Demolish the extension to the rear of the premises identified hatched in black on Plan A attached to this notice

STEP 4 Remove all vehicles, debris and items arising from the compliance with steps 1 to 3 of this notice and remove all materials associated with the unauthorised development and use from the premises

- The period for compliance with the requirements is 6 months.
- Appeals A and B are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended (the Act) and Appeal C is proceeding on grounds (b) (e) and (g)

Summary of Decisions: Subject to the stated variations, the appeals are dismissed.

Decisions

Appeals A, B and C

1. I direct that the notice be varied as follows :

- i) Adding the following wording to the end of the requirement at Step 3 "and remove all debris arising from the said demolition"
- ii) Deleting Step 4 of the requirements in full and replacing it with "Remove all vehicles, debris and items arising from the compliance with Steps 1 and 2 of this notice and remove all materials associated with the

unauthorised development (other than the rear extension which is addressed separately in STEP 3) and use from the premises”

- iii) Deleting the period for compliance with the notice in full and replacing it with “The period for compliance with the requirements is 6 months other than for Step 3 where the period for compliance is 8 months.”
2. Subject to those variations, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. There are three separate appeals against the same notice. Appeals A and B are made by the two owners of the whole appeal site who rely upon the same statement in support of their appeals. Appeal C is made by the lessee of part of the appeal site regarding the rear extension.

The Notice

4. Case law¹ has established that an appellant must be able to understand from the four corners of the notice what the allegation is and what the Council is expecting the recipients to do in order to comply with the terms of the notice.
5. A previous enforcement notice relating to the appeal site was withdrawn by the Council who state that there was an error with the plan. The appellant for Appeal C holds a lease relating to the part of the appeal site which includes the rear extension only and considers that a separate notice should have been served for the rear extension which would have avoided the need for an appeal.
6. However, the lessee appellant has understood the notice and his grounds of appeal include a ground (g) appeal which is limited only to the rear extension. The appellant’s concern is about what happens in the event of the notice being upheld in terms of non-compliance. In the event of the notice being upheld and the requirements of the notice not being complied with, further action is a matter for the Council. However, the starting point for any further action would be ‘who is responsible for any ongoing breaches?’ The appellant has previously provided the Council with details of his interest in the appeal site which does not include the material change of use or the shipping container. The extent of his compliance is therefore limited to the rear extension.
7. Whilst two separate notices could have been served, the rear extension has been separately identified on the enforcement plan as operational development which falls outside the use allegation. The appellant wishes to ask for more time to comply with the notice in respect of the rear extension and he has been able to do that through this appeal. I do not therefore consider that there has been injustice to any party or that the notice should be quashed.

. Appeal C – ground (e)

8. An appeal under ground (e) is that copies of the notice were not served as required by Section 172 of the Act. Section 172(2) of the Act requires that any enforcement notice is served on the owner and occupier of the land to which it relates, and to any other person having an interest in the land that the Council thinks is materially affected by the notice. A failure to serve an owner or

¹ Miller -Mead v MHLG {1963} 2 WLR 225

occupier or person who is materially affected can lead to the notice being quashed unless it can be shown that a failure to serve has not resulted in substantial prejudice. However, the appellant's complaint with regard to service is not lack of service but that he should not have been served with a notice that includes land that he does not have an interest in. However, as the appellant does not contend that there has been any failure of service, the appeal under ground (e) must fail.

Other matters relevant to ground (e)

9. The freehold owners of the appeal site are clearly aggrieved at having been served with the notice and consider any breaches to be the respective lessees' responsibility. Although the owners state that they were informed that both lessees had lodged appeals against the notice, no appeal has been made by the lessee of the majority of the appeal site. However, it remains the case that where breaches of planning control are alleged, the Council is required by Section 172 of the Act to serve the notice upon the owners as well as occupiers of the land and any other parties with a material interest.

Appeal C – ground (b)

10. An appeal made under ground (b) is that the breach of planning control has not occurred as a matter of fact. The onus of proof with regard to this ground is on the appellant. As the appellant has a lease of only part of the appeal site, his argument is that the alleged change of use is not occurring on land which is within his control. However, the appellant is not arguing that the breach of planning control relating to the rear extension has not occurred within the appeal site and he is not presenting any arguments about the shipping container or the material change of use as he is not an occupier or a person with an interest in the rest of the appeal site. There is therefore no evidence before me that the matters alleged have not occurred as a matter of fact within the appeal site. The ground (b) appeal therefore fails.

Appeals A and B – ground (c)

11. An appeal under ground (c) is that there has not been a breach of planning control and the onus is on the appellants to make out the case that there has not been a breach. The owner appellants state that that the "construction is temporary and removable and does not constitute a breach of planning control". The appellants refer to the construction on land occupied by the lessee of No 110 and set out on Plan A, which is identified as the rear extension in the allegation. However, when asked for clarification about which structure the appellants were referring to, they referred to a pharmacy building which is not the rear extension in the notice. However I have assessed the rear extension as a temporary or moveable structure in any event.
12. A breach of planning control comprises the carrying out of development without the required planning permission. Section 57 of the Act sets out that planning permission is required for development. The definition of development as set out in Section 55 of the Act includes "the carrying out of building, engineering, mining, or other operations in, on over or under land..." Section 336(1) of the Act sets out a list of definitions for the purposes of the Act. A "building" includes any structure or erection and is therefore wider than a dictionary definition of a building.

13. The Council's evidence indicates that the timber structure has been in place since at least October 2020 and it is therefore not clear how it can be considered to be temporary or moveable. From my site visit and the photographs provided, there is no evidence to support this argument. The rear extension is clearly a structure which falls within the definition of a building. As a "building" it falls within the definition of development which without the benefit of planning permission constitutes a breach of planning control.
14. Permitted development refers to categories of development contained in the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) and which do not need express planning permission. However, I have not been directed by the owner appellants to any specific category of permitted development rights which would apply to the structure. As there is no evidence before me to show that the structure benefits from permitted development rights or express planning permission, a breach of planning control has occurred. The ground (c) appeal therefore fails.

Appeal C- ground (g)

15. An appeal under ground (g) is that the period of compliance is too short. The period for compliance with the notice is 6 months for all of the requirements. The appellant has limited his appeal under this ground to Step 3 which relates to the rear extension only. He has asked for 12 months to comply with the notice as he wishes to apply for planning permission for a replacement extension to ensure that his business continues to trade. However, 12 months does appear to be an excessive period to apply for planning permission and to build in the event of planning permission being granted.
16. The Council has referred to its discretion under Section 173A(1)(b) of the Act to extend the period for compliance where there are justifiable reasons to do so. However in this particular case, there is no indication that the Council has taken into account of the logistics of demolition and removal when the rear extension is located between the shipping container and the parked vehicles and the rear access road.
17. Whilst all of the lessees and the owners of the appeal site can liaise about how in practical terms compliance takes place, it does appear to be appropriate to allow the appellant a slightly longer timescale to remove the rear extension given its location further within the appeal site. The site photographs clearly show the rear extension wedged in between the shipping container and a pharmacy building to the side. The time period will also allow the appellant to pursue discussions with the Council about the suitability or otherwise of a replacement building. I will therefore amend the period for compliance to 8 months in relation to the rear extension only. The appeal under ground (g) succeeds to that limited extent.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice prior to making variations.

E. Griffin

INSPECTOR