



Appeal Decisions

Site visit made on 1 November 2022

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 18th November 2022

Appeal A Ref: APP/T5150/C/21/3279401

8 Wakemans Hill Avenue, London, NW9 0TY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mr M Bhudia against an enforcement notice issued by London Borough of Brent.
- The notice was issued on 30 June 2021.
- The breach of planning control as alleged in the notice is:
Without planning permission, the erection of an extension onto an existing extension to the rear of the premises AND
Without planning permission the erection of an outbuilding to the rear of the premises.
- The requirements of the notice are:
STEP 1 Demolish the extension onto the existing extension to the rear of the premises. For avoidance of doubt, the rear extension has been outlined in red on Plan A attached to the notice.
STEP 2 Demolish the outbuilding to the rear of the premises.
STEP 3 Remove all items and debris arising from that demolition and remove all materials 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)(a), (c) and (f) of the 1990 Act. 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 1990 Act.

Summary Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/T5150/W/21/3279405

8 Wakemans Hill Avenue, London, NW9 0TY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr M Bhudia against the decision of London Borough of Brent.
- The application Ref 21/1447, dated 20 April 2021, was refused by notice dated 15 June 2021.
- The development proposed was originally described as:
Retrospective planning for extension to existing detached garage.

Summary Decision: The appeal is allowed.

Appeal C Ref: APP/T5150/W/21/3279410

8 Wakemans Hill Avenue, London, NW9 0TY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr M Bhudia against the decision of London Borough of Brent.
- The application Ref 21/1446, dated 20 April 2021, was refused by notice dated 15 June 2021.
- The development proposed was originally described as:
Retrospective planning for store incidental to house.

Summary Decision: The appeal is allowed.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. The appellant has stated that the outbuilding cited within the description of the alleged breach *'has been on site for a number of years, at least since 2000. The appellants have extended this to the rear by 1.6m keeping the same height as previously.'* The Council have stated that the outbuilding is *'a new building that includes a new larger roof, new render, new blockwork, new insulation, new plaster, new flooring, new electrical installations, a new toilet, new guttering, new windows, new door, new waste and plumbing services, a new garage door, new fascia boarding, and the removal of parapet and external walls.'*
3. In 2000 planning permission was granted for *'demolition of existing garage and erection of single-storey side extension and erection of garage at rear'*. The aerial photographs within the evidence before me indicate that a detached garage/outbuilding has been on the appeal site adjacent to the boundary with 2 The Ridgeway (No 2) since 2000. I observed that the front and side elevations of the existing outbuilding appear to be sited in the same places as those of the detached garage/outbuilding shown in those aerial photographs. The existing outbuilding measures 9.17 metres in length and 5.74 metres in width. There is no dispute that the rear wall of the garage has been removed to enlarge the size of the garage.
4. I acknowledge that a parapet on the front of the garage has been removed and that the flat roof appears to have been altered to increase the overhang of the roof over the front and the side elevation that faces into the garden. The walls of the garage have also been rendered and painted whereas they appear to have been painted blockwork previously. The garage roller shutter door has been replaced with another roller shutter door. The side elevation facing the garden currently has a window and door in it. The submitted photographs indicate that prior to the unauthorised works taking place that a window and door of very similar design and appearance were in similar positions on that elevation. It is not clear if that window and door have been replaced. Internally the walls and ceiling have been plastered, the floor tiled, cupboards fitted and a small room formed to house a toilet and sink.
5. Based on my observations and the submitted evidence it is more likely than not that the front and side walls and the roof structure of the garage have not been rebuilt. The roof has been extended slightly to the front and side to create the overhangs. In my judgement, on the balance of probability, the garage that has been on the site since 2000 has been refurbished internally and externally. Those refurbishment works have not materially altered its external appearance and the plastering, tiling, fitted cupboards and formation of a room only affect its interior. Nevertheless, the garage has been extended at the rear towards the boundary with 6 Wakemans Hill Avenue (No 6).
6. As a result, there is a misdescription of the alleged breach in relation to the outbuilding. To ensure accuracy within the description I intend to correct it by adding the wording *'extension to the'* between the words *'an'* and *'outbuilding'* within the second part of that description. Both parties were given the chance

to comment on these corrections and whether any injustice would be caused by them. The Council has stated that no injustice would be caused by the corrections.

7. The appellant considers that to amend the notice would result in a material alteration of the alleged breach and that he would be prejudiced by it. He has not stated how injustice would be caused to him. The alleged breach would relate to part of the outbuilding rather than to all of it. The planning application (Appeal B) relates to the extension to the garage/outbuilding. The appellant has submitted evidence to support his grounds of appeal relating to the extension of that building. Furthermore, the requirements would need to be varied to reflect the corrected description. Therefore, I also intend to insert the wording '*extension to the*' between '*the*' and '*outbuilding*' in Step 2 of the requirements.
8. Overall, I therefore consider that the corrections and variations would make the enforcement notice less onerous on the appellant and they would not materially alter the alleged breach. As such, no injustice would be caused by them.

Procedural Matters

9. As set out above there are three appeals on this site. They relate to an enforcement notice and 2 planning applications. The appellant is the same for all three and the alleged breach of planning control relates to the development cited within the planning applications. To avoid duplication I have dealt with them together, except where otherwise indicated.
10. The descriptions of development, in relation to the 2 planning applications, were amended by the Council during the planning application process and those descriptions have been utilised by the appellant on the appeal forms. I have used the descriptions entered on the appeal forms in the formal decisions removing the wording '*retrospective application for*' in each description which is not an act of development. I noted on my site visit that the developments have been completed. I have therefore determined the appeals on the basis that the developments have already occurred.
11. It has been brought to my attention that the new Brent Local Plan (LP) was adopted in February 2022 and replaces the policies contained in the Brent Core Strategy and the Brent Local Plan Development Management Policies. This policy document must now be given full weight in the decision-making process. Both parties have had the opportunity to comment on the relevant policies in the LP, and so have not been prejudiced.
12. There is documentation before me relating to a medical condition of an occupier of the appeal dwelling, but I do not consider that I need to refer to the detail of that documentation. The documentation includes matters which relate to a protected characteristic. I am aware that the public sector equality duty (PSED) applies¹.

The ground (c) appeal – Appeal A

13. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. In an appeal on this ground the appellant has to demonstrate on the balance of probability that the matters

¹ Section 149 of the Equality Act 2010.

alleged, to have occurred, in the notice do not constitute a breach of planning control. For example, the appellant needs to demonstrate that development has not occurred for the purposes of section 55 of the 1990 Act, or that the matters alleged in the notice have been granted planning permission, or that they constitute 'permitted development'. The appellant's case on ground (c) is limited to the extension onto the existing extension (the store). Accordingly, there is no basis on which the notice could be quashed under ground (c), but there is scope for argument over whether the notice can require removal of the store.

14. Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for development within the curtilage of a dwellinghouse subject to limitations and conditions. Class A of Part 1 allows for the enlargement, improvement or other alteration of a dwellinghouse (Class A). Paragraph A.1 and A.2 set out limitations which development must adhere with to benefit from the permitted development right. There is no dispute between the parties that the store falls to be considered under Class A. Nor is there any dispute that it would adhere to the limitations under Class A set out at paragraph A.1 (a) through to (d) and (h) through to (k) and paragraph A.2. I have no reason to disagree with these findings.
15. Paragraph A.1 (e) states that development is not permitted by Class A if *'the enlarged part of the dwellinghouse would extend beyond a wall which—....(ii) fronts a highway and forms a side elevation of the original dwellinghouse;'*. The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance (September 2019) (TG) whilst not determinative provides a useful guide to interpretation of the GPDO. It states that the extent to which an elevation of a house fronts a highway will depend on factors such as the angle between the elevation of the house and the highway and the distance between them.
16. The house sits on a corner plot at the junction of Wakemans Hill Avenue and The Ridgeway. The appellant contends that the single storey element to the rear of the property was part of the original house. The Ridgeway is at a slight angle to the side elevations of the 2-storey parts of the house but the house is relatively close to that highway. Those side elevations can reasonably be treated as fronting a highway.
17. The TG states on page 22 that *'A wall forming a side elevation of a house will be any wall that cannot be identified as being a front wall or a rear wall. Houses will often have more than two side elevation walls'*. 'Original' means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date. In my judgement, given the architectural design of the house and the houses nearby, the house was constructed prior to 1 July 1948. It is clear, through the planning history², that single storey and 2-storey extensions have been erected, since that date, on the side/rear of the house.
18. However, the 2-storey part of the original house is still clearly apparent as the first-floor part of the 2-storey side extension is set back from the front elevation. The side wall, nearest to The Ridgeway, of the 2-storey part of the original house cannot be reasonably identified as a front or rear wall therefore

² Ref Nos: 00/2212 & 14/0244

it is a side elevation of the original dwellinghouse. Even if the single storey element cited by the appellant existed on 1 July 1948, the store extends beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse.

19. I acknowledge that the appellant considers that the store does not extend beyond the rear wall of the original dwellinghouse by more than 3 metres and does not exceed 4 metres in height. Nevertheless, whether the store meets the remaining limitations of Class A does not alter the fact that it does not meet the limitations of paragraph A.1 (e)(ii) of Class A. As such, on the balance of probability the store has not been shown to constitute permitted development under Class A. I have no evidence before me to indicate that planning permission is not required or is granted for the store. Accordingly, the appeal on ground (c) fails.

The ground (a) appeal and deemed planning application (Appeal A) and the section 78 appeals (Appeals B and C)

Main Issues

20. The main issues are:

- The effect of the development on character and appearance of the house and the surrounding area. (Appeals A, B and C)
- The effect of the extension to the outbuilding on the living conditions of the occupiers of neighbouring properties with regard to outlook and light. (Appeals A and B)

Reasons

Character and appearance

21. 8 Wakemans Hill Avenue (No 8) is a semi-detached house located in a suburban environment consisting of semi-detached and terraced houses constructed with render/pebbledash walls and tiled roofs. The dwellings have relatively generous gardens to the rear.
22. At my visit I observed that the front elevations of the houses remain relatively unaltered however, to the rear many of the houses have been extended and altered and include outbuildings within the gardens of varying size and design. Flat roof forms are not uncommon either in extensions to the houses or outbuildings, as seen in the aerial photographs submitted by the appellant. It is not known whether all or some of these extensions/outbuildings are lawful. However, it is reasonable to consider that a large proportion of them are lawful due to the passage of time of they were erected as permitted development. In any case, they form part of the character and appearance of the area.
23. Brent's Residential Extensions and Alterations SPD2, 2018 (SPD) advises that rear extensions should be designed to respect the character and size of the house, and that the maximum depth normally permitted is 3metres (m) from the wall of the house. It also advises that the maximum size of an outbuilding will usually be determined by its location and the size of the garden. Where a garden is over 100m² then normally no more than 30m² may be acceptable and that it should be located within the final fifth of the garden. It goes onto

state that if any part of the outbuilding would be within 2m of the boundary then the maximum permitted height would be 2.5m.

24. The store is attached to a single storey element that extends to the side and rear of the main 2-storey part of the house. As such, the store together with that element extends significantly more than the recommended 3m from the rear wall of the house. Nonetheless, the store itself is modest in scale and straightforward in appearance, with the walls in a render finish to match the house and with a flat roof form which is broadly the same height as the element it is attached onto. The store is scarcely visible from the public highway and consequently, there is no harm to the street scene. The principal views of the store are from the upper floor windows of the nearest neighbouring houses. Cumulatively the area covered by buildings at the rear and side of the house is reasonably significant. However, the mass of the extensions to the rear of the house is, in my view, only appreciated in aerial views, which as already stated are limited to the nearest neighbouring houses.
25. As stated previously the garage/outbuilding has been within the garden since 2000. That building has been extended to the rear towards the boundary with No 6. The floor area of the extended outbuilding is approximately 53m² which exceeds the recommended 30m² and its height is greater than 2.5m. Nevertheless, it is at the bottom of the garden and when viewed from the public realm the extended outbuilding still appears to be of domestic proportions. It does not, in my view, appear excessively large in the context of the relatively generous garden within which it is sited.
26. At my visit I could see that the outbuilding was in use as a garage with a car within it, as a home office and for the storage of boxes of medical equipment and supplies. The appellant has stated that the extension gives additional safe and clean storage space to the rear for medical equipment and medicines. Even though there is a toilet and sink within it there is no evidence that the outbuilding is not used for incidental purposes associated with the residential use of the house.
27. Taken as a whole, when viewed from within the garden, I do not find that the extensions either individually or cumulatively, represent a dominant or imposing feature/s which results in a sense of over development of the original dwelling and there remains a reasonable amount of usable garden space. Furthermore, given the limited public views of the store and seen in the context of the variety of developments to the rear of houses in the locality, I find that the extensions cause no material harm to the character and appearance of the house or area generally. There is therefore no conflict with Policies DMP1 and BD1 of the LP. Amongst other things these state that development will be acceptable provided it is of a siting, layout, scale, type, density, materials, detailing and design that complements the locality, and that development must be of the highest architectural and urban design quality. The development also complies with the design aims of the SPD.

Living Conditions

28. I appreciate that the extension to the outbuilding extends towards the boundary with No 6 and that the rear wall of the outbuilding is now close to that boundary. However, the outbuilding does not extend beyond the rear elevation of the 2-storey part of the extension to No 2. Therefore, there are no views of the flank walls of the outbuilding extension from No 2's rear facing

windows and it therefore has not had a harmful effect on outlook for the occupiers of No 2. Furthermore, the extension does not restrict the amount of daylight or sunlight available to those occupiers.

29. With regard to No 6 the boundary is formed of a wall with mature landscaping within No 6's garden adjacent to that boundary. The ground level of No 6's garden is at a noticeably lower level than that of the appeal site. Nevertheless, the extension to the outbuilding will be viewed from inside No 6 in the context of the 2-storey extension to No 2. Moreover, the house at No 6 is an appreciable distance from the extended outbuilding and views out over the garden offer an otherwise relatively open aspect. As a result, I do not consider that the extension to the outbuilding has materially affected the neighbour's, at No 6, outlook in the sense of it being overbearing or resulting in a sense of enclosure when viewed from within their dwelling.
30. The extended outbuilding is at a higher ground level to that of No 6's garden but it is adjacent to the bottom of that garden where there are outbuildings/sheds. Moreover, the mature landscaping on the boundary softens the visual impact of the extended outbuilding. Consequently, even when viewed from the garden of No 6 I do not consider that the extension has adversely affected the outlook experienced by the occupiers of No 6.
31. The extended outbuilding is located broadly northwest of No 6 however, because of its single storey, flat roof form and the separation distance, I find that it is highly likely that there is no materially harmful effect as a result of overshadowing of the house nor a material reduction in the amount of daylight No 6 receives. The extension to the outbuilding is closer to the boundary with No 6. Nonetheless, it extends no further than the adjacent 2-storey extension to No 2. Given the orientation of the garden to both of those extensions I consider that it is highly likely that the extended outbuilding does not materially reduce the amount of daylight or sunlight received within the garden of No 6. No technical evidence has been submitted, but my assessment of the appeal site and the extended outbuilding as built lead me to conclude that it is more likely than not that the extension does not materially harm the living conditions of the nearby occupiers with regard to light.
32. Overall, for the reasons given I conclude that the extension to the outbuilding causes no material harm to the living conditions of neighbouring occupiers with regard to outlook and light. Therefore, there is no conflict with the amenity protection aims of Policy DMP1 of the LP.

Conditions

33. The Council has stated that if I am minded to grant planning permission for the extended outbuilding due to personal circumstances it should be a conditional permission on the basis that it would be removed when no longer required for the purpose of medical treatment. However, I do not consider that such a condition is necessary as I have found that the extension to the outbuilding complies with the policies of the LP despite the personal circumstances of the appellant and the occupiers of No 8.
34. I considered whether a condition to restrict the use of the outbuilding would be necessary and reasonable however, if there were to be a future material change of use of that building then it would be open to the Council to

investigate and take action if appropriate. Neither party has suggested any other planning conditions, and none are necessary in my view.

Conclusion – ground (a) appeal and deemed planning application

35. 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 ground (f) does not therefore fall to be considered.

Conclusion – the section 78 appeals

36. For the reasons given above I conclude that the appeals should be allowed.

Formal Decisions

Appeal A

37. It is directed that the enforcement notice is corrected and varied by:

- adding the wording '*extension to the*' between the words '*an*' and '*outbuilding*' within the second part of the description of the alleged breach.
- inserting the wording '*extension to the*' between '*the*' and '*outbuilding*' in Step 2 of the requirements.

38. Subject to the corrections and variation, Appeal A 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 for the development already carried out, namely the erection of an extension onto an existing extension to the rear of the premises and the erection of an extension to the outbuilding to the rear of the premises at 8 Wakemans Hill Avenue, London, NW9 0TY as shown on the plan attached to the notice.

Appeal B

39. The appeal is allowed and planning permission is granted for an extension to existing detached garage at rear of dwellinghouse at 8 Wakemans Hill Avenue, London, NW9 0TY in accordance with the terms of the application no: 21/1447, dated 20 April 2021, and the plans submitted with it.

Appeal C

40. The appeal is allowed and planning permission is granted for single storey store in the rear garden of dwellinghouse at 8 Wakemans Hill Avenue, London, NW9 0TY in accordance with the terms of the application no: 21/1446, dated 20 April 2021, and the plans submitted with it.

D Boffin

INSPECTOR