



Appeal Decisions

Site visit made on 30 November 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal A Ref: APP/T5150/C/21/3284115

59 Alder Grove, LONDON, NW2 7DE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Tamara Kramer against an enforcement notice issued by London Borough of Brent.
 - The notice, numbered E/21/0036, was issued on 25 August 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building in the rear garden of the premises (shown hatched in black on the attached Plan A) for uses which are not incidental to the main dwelling house.
 - The requirements of the notice are: STEP 1 Demolish the unauthorised building in the rear garden of the premises (shown hatched in black on the attached Plan A). STEP 2 Remove all items and debris, arising from that demolition, and remove all materials associated with the unauthorised development from the premises.
 - The periods for compliance with the requirements is: 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) 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.
 - An identical appeal without ground (a) has been made by Mr Raymond Kramer APP/T5150/C/21/3284116
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Decisions

APP/T5150/C/21/3284115

1. The appeal is allowed, but the enforcement notice is upheld 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 59 Alder Grove, LONDON, NW2 7DE as shown on the plan attached to the notice and subject to the following conditions:
 - 1) The development hereby permitted shall be limited to the building shown outlined in red on Drawing No 21-116.8 dated July 21 and all other elements of the building shall be demolished, including the removal of one bathroom and one kitchen.
 - 2) The development hereby granted permission shall be used only for purposes incidental to the dwellinghouse at 59 Alder Grove, and no part of it shall be let out, rented or hired for holiday, residential, commercial or any other purpose.

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

Background to the Appeal

3. No 59 is a semi-detached house with a modest back garden. The appellant lives at the site and is a professional dancer, choreographer, model, teacher and director, all within the umbrella of the performing arts. She has had constructed in the back garden a series of buildings that are all linked together and which occupy most of the garden space. The overall structure is divided into 4 sections, each of which was built at a separate time.

The appeals on ground (c) and (d)

4. The appellant argues that sections 1 and 2, which comprise the main part of the structure are within permitted development limits and that section 1 was built in 2015 and so is immune from enforcement action.
5. The first question is therefore whether the overall structure can be treated as a single building or 4 joined buildings. Internally, I saw that the internal walls defining each section remained in place, but various changes had been made over time to the doors linking them together. Nevertheless, the structure was used as a single unit. From aerial photographs it is clear also that as the structure grew, each individual element was integrated into the whole. Particularly once section 3 was added the whole was re-roofed with rooflights inserted. The latter becoming necessary because the additions meant that section 1 no longer had any external walls for windows. Consequently, even though it may be technically possible to disassemble the structure so that sections 1 and 2 are left with measurements that are within the permitted development limits, I consider it is, in construction and use, a single structure. It is not possible to disaggregate it and argue that certain parts are permitted development when others are not. Even if sections 1 and 2 were permitted development when constructed, which the Council argue is not the case, they are no longer. Permitted development rights cannot be obtained retrospectively, the building as a whole is unlawful and the appeal on ground (c) fails.
6. It follows from the above conclusion that the appeal on ground (d) must also fail as the building as a whole was not built more than 4 years before the issue of the enforcement notice.

The Appeals on Ground (a) and (f)

7. The Council argue the structure represents overdevelopment of the garden, it is overbearing and obtrusive and harms the amenities of neighbours and increases parking on the street.
8. A number of these objections are based on the fact that parts of the building were rented out on AirBnB for a period and allegations that the studio part was used for dance classes.
9. The Council note there are numerous reviews for the property which include renting the gym part as well. The appellant accepts that 1 part was rented out for AirBnB and has provided evidence from AirBnB that this was only for a short period in April-May 2021 and that it is no longer active on the website.
10. I can understand why the Council thought there were at 2 rental units as internally there is clearly still the potential for 2 self-contained units within the structure. One is apparently the AirBnB unit which will be decommissioned

should the appeal succeed, the other is used by the appellant for cookery demonstrations as part of her healthy living media presence and the bathroom is necessary as there is a hot tub in section 4. This is all very unsatisfactory as the actual evidence for any of these matters is sparse or unclear, but whatever the truth of the matter it can be controlled by conditions.

11. Similarly with the concern over outside classes being held, the evidence for this is sparse and the appellant argues that the building is used solely for her own purposes. In any event this also can be controlled by conditions.
12. Consequently, the issues revolve around character and appearance, overlooking and overdevelopment. A number of policies have been provided by the Council but the most obviously relevant is CP17 of the Core Strategy which states that garden space should not be developed with out of scale buildings. The building occupies the full width of the back garden (apart from a small cut-out in section 2 adjacent to the neighbour's fence), and it surrounds and incorporates two trees at the bottom of the garden. A modest area of artificial grass is retained between the house and the building which does provide some amenity space but the rest of the garden is built on. This is clearly out of scale, is overdominant and is contrary to CP17. While the building may not be visible from any public vantage points it is seen from neighbours' windows and gardens, and would look harmful and dominant.
13. The roof of section 4 is taller than allowed by permitted development, but that is because the floor is raised to enable the room to be built over the tree roots. But even so it presents a large triangular side on the boundary with the neighbour which is out of scale and over dominant. The roof of section 3 has large windows that directly overlook the neighbour's garden. From the inside of the building these are clearly seen as high level and designed solely to let light in. Nevertheless, from outside they create an oppressive feeling of being overlooked. The cumulative harm identified means the building should clearly not be granted planning permission. The appellant says she needs the building for her work, but there is no suggestion that her work could not be carried out from a commercially rented building – there is no evidence she needs it to be in her back garden.
14. However, the appellant has suggested a number of alternative solutions should I reach an unfavourable conclusion on the main issue. One of these is shown in drawing no 21-116.8 which shows sections 1 and 2 which are described as immune from enforcement and compliant with the GPDO. The latter is correct in a technical sense, should I require the whole structure to be removed then sections 1 and 2 could be rebuilt. They could then be used for purposes incidental to the enjoyment of the dwelling. The whole structure was used, as I saw it, for a mix of personal relaxation, keep fit, blogging, and dance training. Some of this could be described as a business use but when one is self-employed and is busy promoting oneself on social media it is difficult to draw a line between what is an incidental use and what would be commercial. It would be important to look at not just what was the activity being undertaken but what were its wider impacts. In this case, as long as there was no private hiring out, or classes, there would be no impact on amenity and the use of the reduced structure would not be harmful. By reducing it in size and removing the excessively tall sections the resulting building would also not be overbearing nor take up too much space and so would no longer be contrary to CP17.

15. The Tapeccrown¹ judgement makes it clear that where there is a ground (a) and (f) there is an obligation to look at any alternative options that have been suggested bearing in mind that enforcement action should be remedial rather than punitive. By reducing the size of the building as suggested and restricting its use by conditions the harm identified in the notice will be overcome.
16. I shall attach conditions to ensure the permission is only for the building as shown outlined in red in drawing 21-116.8, to require it to be restricted to an incidental use, to remove one of the bathrooms and kitchens and to specifically prevent any hiring out on AirBnB or for dance classes or other commercial uses. All of these issues have been fully discussed in the representations made by both parties and should not come as a surprise. The Council suggest that redesigning the building is not appropriate as neighbours will not have been notified and will not be able to comment. However, neighbours have commented on the larger building and those comments have been taken into account. As the smaller structure would not overlook or over-dominate the neighbours I do not think there is any injustice in allowing it without seeking further comments.

Conclusion

- 17.** I shall uphold the notice but grant planning permission for the reduced building as discussed above. This planning permission will override the requirements of the notice where they are incompatible. 4 months should be adequate time to arrange for the necessary demolition and alterations to happen. As there are 2 appeals, I shall dismiss the second appeal to avoid confusion.

Simon Hand

INSPECTOR

¹ Tapeccrown Ltd v Secretary of State & Another, CoA [2006]