



Appeal Decision

Site visit made on 6 December 2022

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd December 2022

Appeal Ref: APP/R5510/C/21/3279314

8 and 9 Bentinck House, Bentinck Road, West Drayton UB7 7RQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Ahmadi Aslami against an enforcement notice issued by the Council of the London Borough of Hillingdon (the LPA).
- The enforcement notice was issued on 11 June 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the development of a two (2) storey structure extending the side elevation of the property on land known as 8 and 9 Bentinck House, Bentinck Road, West Drayton.
- The requirements of the notice are:
 1. Demolish the two (2) storey structure extending to the side elevation of the property and advertisements attached hatched in purple on the attached plan.
 2. Remove from the land all debris, waste, building materials, plant, equipment, and machinery resulting from the works carried out in compliance with (i) above.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e) and (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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

The Enforcement Notice

1. The notice requires the removal of the advertisements from the Land. Advertisements do not form part of the alleged breach. Enforcement notices can require the removal of works which do not form part of the breach but have facilitated it, even if they do not in themselves amount to development. However, it strikes me that the advertisements here have not in themselves facilitated the development. As a result, I will vary the notice to delete the requirement to remove the advertisements. I am satisfied that I can do so without injustice to the appellant or the LPA.
2. The appellant raises a point regarding the extent of the alleged breach as stated in the notice. The development has a steel structure attached to it which the appellant states was substantially complete more than 4 years prior to the date the notice was issued.
3. Paragraph 4(a) of the notice explains that the unauthorised structure subject of the notice has been constructed using wood and corrugated metal sheeting. Moreover, paragraph 5(i) requires the demolition of the structure hatched in purple on the attached plan. It appeared from my site visit that the area

hatched on the plan solely covers the timber construction. I am satisfied therefore that the notice is clear on its face that it relates solely to the timber and corrugated sheeting structure attached to the side of the steel structure and not the steel structure itself. In light of that finding, the appellant's appeal on ground (d) does not fall to be considered, since it was made solely on the basis the steel structure is immune from enforcement action.

The appeal on ground (e)

4. An appeal on ground (e) is made on the basis that copies of the enforcement notice were not served as required by S172 of the Act.
5. The Land to which the notice relates is described as 8 and 9 Bentinck House as shown edged red on the attached plan. The appellant argues that the correct address is "Unit 8" and the plan attached to the notice does not relate to the address. Such an argument does not strictly fall under ground (e). It essentially is an argument that the notice is defective as it fails to specify the precise boundaries of the land to which the notice relates as required by S173(10) of the Act through ENAR¹ 4(c).
6. Nonetheless, it was clear from my site visit that the alleged breach has been carried out on part of the Land edged red on the plan attached to the notice. Moreover, the LPA point out that the Title Register for the Land refers to the property as 8 and 9 Bentinck House. Similarly, the Title Plan correlates with the enforcement notice plan.
7. Furthermore, the appellant has made the appeal within the requisite timescales and has been able to fully argue their case on various grounds. Thus, even if there were a misdescription in the address stated in the notice, then the appellant has not been prejudiced by it. It is clear from the evidence of the appellant that they have an interest in the Land to which the notice relates, regardless as to how it is described in the notice. As it is, there is little compelling evidence from the appellant which demonstrates that the Land to which the notice relates has been incorrectly described.
8. The appeal on ground (e) therefore fails.

The appeal on ground (b) and ground (c)

9. An appeal on ground (b) is made on the basis that those matters stated in the notice as constituting a breach of planning control have not occurred. An appeal on ground (c) is made on the basis that those matters, if they did occur, do not constitute a breach of planning control.
10. The notice alleges the development of a two storey structure extending the side elevation of the property. The appellant argues that what has taken place is not a two-storey structure, but rather the construction of a canopy. It is said that the canopy is attached to a pre-existing canopy and comprises wood supports with corrugated material for the top and part of the sides. Otherwise, all other elevations are open. The appellant thus argues that it does not amount to development under S55 of the Act.
11. The notice is directed against a breach of planning control comprising of development without planning permission. S55(1) of the Act states that

¹ The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (ENAR)

development includes the carrying out of building operations. S55(1A) makes clear that building operations includes structural alterations of or additions to buildings. S336(1) of the Act defines building as including any structure or erection. The ordinary dictionary definition of the word "structure", is "a building or other object constructed from several parts²."

12. The notice relates to the construction of several pieces of timber, arranged to support a roof of corrugated sheeting. It is attached to the side and front boundary walls of the Land and partly attached to the aforementioned existing steel structure. The timber is affixed to the walls, structure and one another by screws. The roof is similarly affixed and there is metal sheeting on one elevation which effectively provides a side wall.
13. Whilst no walls have been provided on two elevations, the works are nevertheless of considerable size, extending to two storeys in height. It seems clear to me that it would have been constructed in situ on the Land. Moreover, there is nothing to suggest it is capable of being moved. Indeed, it is difficult to see how there could ever been any intention of it being moved. It is physically fixed to the existing structures on the Land and would not be capable of being moved without being dismantled. Functionally, there is no reason to believe it is anything other than a permanent addition. Furthermore, whilst it may not necessarily have been, it is an operation which one would typically regard as being normally undertaken by a person carrying on business as a builder.
14. Thus, I am satisfied that the alleged breach amounts to the development of a two-storey structure as described in the notice. Moreover, that structure amounts to building operations as defined in the Act. Even if one were to describe what has been done as a canopy, that would still amount to a structure and a building for the purposes of the Act.
15. As a result, I find the alleged breach has occurred as a matter of fact. Moreover, the alleged breach amounts to development under S55 of the Act. In the absence of any evidence of planning permission having been granted for the development, it amounts to a breach of planning control under S171A(1)(a) of the Act.
16. Both the appeal on ground (b) and the appeal on ground (c) therefore fail.

The appeal on ground (a)

Main Issues

17. The main issues are:

- the effect of the development on the character and appearance of the area; and,
- the effect of the development on the living conditions of neighbouring residents with regard to outlook.

² OED 7th Edition 2012

Reasons

Character and Appearance

18. The appeal site lies in an area which I was able to see from my site visit is predominately residential in character. Whilst there are some commercial uses in the area, including the appeal site, the prevailing character is one of two-storey residential properties. Properties are generally constructed in stock brick with pitched tiled roofs.
19. The development comprises a timber and corrugated metal structure in a prominent position within the street. I note that the structure is designed to provide a shelter for a vehicle repair business. However, it is two storeys in height and appears in stark contrast to the prevailing design and appearance of surrounding buildings. As a result, it appears as an unduly obtrusive and incongruous addition to the street scene.
20. I conclude, therefore, that the development has a harmful effect on the character and appearance of the area. As a consequence, it conflicts with Policies DMHB 11 and DMHB 12 of the Hillingdon Local Plan Part Two – Development Management Policies 2020 (the DMP) which state all development will be required to be designed to the highest standards and should be well integrated with the surrounding area.

Living Conditions

21. The development is located opposite residential properties on Bentinck Road and Padcroft Road. The structure will be clearly visible in the outlook from several rooms within those properties.
22. However, the Land is separated from the properties on Bentinck Road by the highway and from the properties on Padcroft Road by a large area of hardstanding which is used for car parking. Occupiers of the neighbouring properties will retain an outlook of surrounding buildings typical of the suburban setting. The scale and proximity of the development is not such that it will be unduly dominant from within those properties. As a result, I find that the development will not unduly reduce outlook to harmful levels.
23. I conclude, therefore, that the development will not have a harmful effect on the living conditions of neighbouring residents with particular regard to outlook. As such, the development accords with DMP Policy DMHB 11 insofar as it states that development should not adversely impact on amenity.

Conclusion

24. Whilst I have found the development will not result in harm to the living conditions of neighbouring residents, I have found it will result in harm to the character and appearance of the area. That is the prevailing consideration. For the reasons given above, I conclude that the appeal should not succeed and the planning permission on the application deemed to have been made under S177(5) of the Act refused.

The appeal on ground (g)

25. An appeal on ground (g) is made on the basis that the period specified in the notice for compliance falls short of what should reasonable be allowed. The notice gives a period of 3 months for the demolition of the development and

the removal of all debris, waste, materials, machinery plant and equipment from the Land.

26. The appellant argues that a 12 month period would be necessary. It is said that this would allow the materials to be sold or reused elsewhere and would also provide more time to allow the business to continue to operate.
27. However, little substantive evidence of any potential selling or reuse of the materials has been put forward. Thus, it is not clear why their removal and reuse could not be done within 3 months. It seems to me that the demolition of the development would be a relatively straightforward task and could be done within 3 months.
28. I note the appellant's concerns regarding the ongoing operation of the business, however, there is nothing to say an alternative arrangement could not be put forward and dealt with through the submission of a planning application, if necessary, within 3 months. In any event, the appellant has the benefit of the existing steel structure to provide cover for vehicle repairs. Moreover, any period beyond 3 months would not suitably deal with the planning harm I have identified with sufficient expediency.
29. The appeal on ground (g) therefore fails.

Formal Decision

30. It is directed that the enforcement notice be varied by the deletion of the words "and advertisements attached" from paragraph 5(i) of the notice. Subject to the variation, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

J Whitfield

INSPECTOR