



# Appeal Decision

Site visit made on 22 November 2022

**by G Robbie BA(Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 January 2023**

**Appeal Ref: APP/T5150/C/22/3293969**

**146 Church Road, London NW10 9NH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Michael Mcbill against an enforcement notice issued by London Borough of Brent.
- The notice, numbered E/21/0175, was issued on 25 October 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a single storey extension to rear of the premises.
- The requirements of the notice are to:
  - Step 1  
Demolish the single storey extension and restore the rear of the premises back to its original condition before the unauthorised development took place.
  - Step 2  
Remove all debris and items arising from this demolition and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is:  
3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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 Decision: The appeal is dismissed and the enforcement notice is upheld.**

## Formal Decision

1. The appeal is dismissed, 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.

## Preliminary Matters

2. The appeal property has a lengthy planning history including the current, and a previous, enforcement notice regarding the alleged erection of a single storey rear extension and a planning permission granted in 2011 (the 2011 scheme) for a replacement single storey rear extension<sup>1</sup>. The notice that is the subject of this appeal seeks the removal of the extension in its entirety but, since the service of the notice, the appellant has removed part of the subject extension. What remains, the appellant states, is akin to the extension previously granted planning permission in 2011.
3. The appellant has not appealed on ground (f); that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control. Although the reasons for issuing the notice cite the effect of the development on visual amenities of neighbouring residential properties, it is

<sup>1</sup> LPA Ref No: 11/0373 – decision and plans attached as Appendix 3 to LPA Statement of Case

clear that the purpose of the notice in seeking removal of the works carried out is to remedy the breach, not any injury to amenity.

4. Nevertheless, planning permission has previously been granted for works akin to those which remain following the appellant's removal of part of the extension. The enforcement regime is intended to be remedial rather than punitive. As such, an alternative set of required steps to the complete removal of the extension, such as the partial removal of the extension in the manner already undertaken by the appellant, has been set out. These works are, the appellant seeks to demonstrate, akin to the previous planning permission and should be considered as an alternative to the steps set out in the notice.
5. However, whilst no appeal has been lodged under ground (f), there nevertheless exists a 'hidden' ground (f) appeal by way of the alternative scheme akin to that previously approved by the Council and as set out by the appellant. There is little in the way of compelling evidence however to challenge the Council's planning history timeline that the 2011 scheme had not been implemented in accordance with the approved plans. I consider the planning merits of the alternative scheme within the ground (a) appeal, below.
6. In addition to policies D1 and D3 of the London Plan (2021), the Council also refer to Policy DMP1 of the '*Brent Development Management Policies*' (2016) (DMP) and emerging policies DMP1 and BD1 of the '*Brent Local Plan (December 2019 draft)*' (BLP) in their reason for issuing the notice. The Council has confirmed that since the notice was issued the BLP has been formally adopted. The Council has also confirmed that the BLP version of Policy DMP1 has the same wording as the superseded DMP version of the policy of the same name. I have determined the appeal accordingly.

## **The appeal on ground (a)**

### **Main Issues**

7. The main issues are the effects of the development upon:
  - The character and appearance of the appeal property and the surrounding area; and
  - The ability to make adequate provision for the storage of refuse.

### **Reasons**

#### *Character and appearance*

8. The extension as initially built, and as enforced against, extended to occupy the entire yard area associated with the appeal property. The photographs submitted as an appendix to the Council's Statement of Case show a somewhat ramshackle extension to the rear of the appeal property which extended considerably above the height of the rear lane wall, and above those walls and structures on either side of the appeal property. The harmful impact of the extension's incongruous bulk and scale was further exacerbated by its black painted panel elevations giving it an unfinished and unpleasant appearance. Notwithstanding the varied mix of outriggers and build outs along both sides of the rear lane, the extension as enforced against fails to secure the high quality, visually attractive design and good architecture sought collectively by BLP

policies DMP1 and BD1, London Plan policies D1 and D3 and the National Planning Policy Framework (the Framework).

9. Since the service of the notice the appellant has reduced the size of the extension to something akin to that previously granted planning permission by virtue of the 2011 scheme and it is this that the appellant wishes to be considered as an alternative scheme. What now remains is a truncated extension, set back from the rear yard wall by between 0.9 metres and 1.29 metres<sup>2</sup>. Although still higher than the yard wall, the structure is slightly less visually intrusive within the rear lane environment than the previous iteration was, the resulting yard wall height also being broadly similar to those around it.
10. Nevertheless, the extension's end elevation and the short return elevation to the rear lane are clad in what appear to be a mix of timber planks and decking boards. So too the fascia to the flat felted roof. Combined with the painted render finish to the retained exposed elevation, the extension still has a ramshackle and unappealing appearance. Whilst I accept that the site lies within a row of commercial premises, and thus sits within a commercial context, the rear of the terrace opposite is not commercial in nature and thus serves to highlight the incongruous nature and appearance of the extension in both its original, and truncated, forms.
11. It is not clear whether what remains of the extension as built could reasonably be considered to be part of the extension enforced against. However, even in its truncated form, the extension as remains amounts to poor design which by virtue of its size, positioning and construction materials would cause harm to the character and appearance of the appeal property and the surrounding area. Nor, for reasons outlined above, does the 2011 scheme provide a fallback position for the appellant. For these reasons, the extension falls short of the high quality design which BLP policies DMP1 and BD1, London Plan policies D1 and D3 and the Framework seek to secure, and is therefore contrary to those policies and provisions.

#### *Storage of refuse*

12. The extension as initially built, and as enforced against, left no external space associated with the appeal property. The Council's photographs of that iteration of the building, at Appendix 4 of its Statement of Case, show it extending up to the inner face of brickwork of the wall with the rear lane. A gate, similar to many others along the rear lane, provided access directly to the extension's interior. As a consequence, the extension afforded no external space for the storage of refuse or refuse containers and thus made no provision for such. The alternative to storage of refuse within the building would therefore have been to leave refuse storage receptacles within the back lane.
13. BLP policy BD1 sets out the Council's broad approach in seeking to secure high quality design, whilst BLP policy DMP1 states that development will be acceptable provided, amongst other things, it is satisfactory in terms of servicing, layout and design provides high levels of internal and external amenity, is safe and secure and reduces the potential for crime and does not unacceptably increase, and where possible reduce, exposure to smells and waste. The 'Brent Design Guide: SPD1 (Nov 2018)' (SPD1) sets out general

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<sup>2</sup> As per plan extract on page 4 of 5 of appellant's Statement of Case – Log Creation Design and Build – 15/11/21

design principles which, with regard to services and bin storage, should be provided in safe, convenient and sheltered locations. As enforced against, the extension failed to make adequate provision in these respects, contrary to London Plan policies D1 and D3, BLP policies DMP1 and BD1 and SPD1 and the Framework.

14. The development undertaken by the appellant since the service of the notice has reduced the extent of the extension by limiting its rearward protection to somewhere approaching that of the 2011 scheme. The result being the creation of a small yard area between the end of the extension and the yard wall. Although barely deeper than the open swing of the rear gate, there is a small amount of space to either side of the roughly centred gate and doorway into the reduced extension. Nevertheless, this space is cramped and its usability limited because of the position of the gate / door and because access between the rear lane and the extension is taken through this area.
15. For the reasons set out, the truncated form of the extension also fails to make adequate provision for servicing and the storage of refuse / refuse receptacles. As such, it is contrary to London Plan policies D1 and D3, BLP policies DMP1 and BD1, SPD1 and the Framework.

### **Conclusion on ground (a) and the deemed planning application**

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **The appeal on ground (g)**

17. Although the appellant has appealed on ground (g), no alternative time period for compliance is given. Or rather, an alternative period is specified but the dates given amount to a shorter period than that specified by the notice.
18. The extension in question appears to be a fairly rudimentary structure and, in the absence of a compelling justification to the contrary, the 3 month period set out by the Council on the notice seems to be fair and reasonable. The appeal on ground (g) therefore also fails.

### **Conclusion**

*G Robbie*

INSPECTOR