



Appeal Decision

Site visit made on 19 January 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/T5150/C/22/3300133

Flats 1 - 5, 21 Aldbury Avenue, Wembley HA9 6EY

- 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 Mrs Paula Lourenco against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, numbered E/22/0157, was issued on 6 May 2022.
- The breach of planning control as alleged in the notice is *Without planning permission: The erection of a rear extension to the former house, which links to the first outbuilding; The erection of a side extension to the first outbuilding; The erection of a new roof to the first outbuilding, and the installation of a rear extension to the first outbuilding linking to the second outbuilding; and The erection of an extension to the front of the second outbuilding, and the installation of a new roof to the second outbuilding.*
- The requirements of the notice are (1) Demolish the unauthorised rear extension to the former house which links to the first outbuilding, side extension to the first outbuilding, the new roof to the first outbuilding, the rear extension to the first outbuilding linking to the second outbuilding, the extension to the front of the second outbuilding, and the new roof to the second outbuilding [these requirements are shown on Plan A attached to the notice]; and (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 three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as varied is upheld as set out below in the Formal Decision.

Main Issues

1. The Council's reasons for issuing the notice were that the various elements of the development cumulatively amount to a visually intrusive development, detrimental to the character and appearance of the host property and the area; and that it results in a loss of outlook and light when viewed from adjoining properties, constituting an overdevelopment of the site. Thus the two main issues in the appeal are the effect of the development on the character and appearance of the area and the effect on the living conditions of the neighbouring properties.

Reasons

The notice and its requirements

2. 21 Aldbury Avenue was at some point a semi-detached dwellinghouse, but in 2005 an enforcement notice alleging its conversion into five self-contained

- residential units was quashed on appeal, the Inspector having found that the use was sufficiently long-standing so as to be immune from enforcement action. Its neighbours are no. 23, to which it is attached, which lies to the south-west, and no. 19, lying to the north-east.
3. The residential units found to be lawful on appeal in 2005 comprised three within the former house itself, and a further two making use of outbuildings in the property's garden. One of the units ('the first outbuilding') forms an approximate rectangle against the property's north-east boundary against the garden to no. 19. The other ('the second outbuilding') forms another approximate rectangle across the bottom of the garden.
 4. Works have been carried out to extend both of these units, to replace their roofs, to add storage sheds replacing some previous development, and to build a canopy roof extension from the rear of the former dwelling, covering part of the rear yard and extending to the first outbuilding.
 5. Both parties have referred me to the Council's Supplementary Planning Document ('SPD') concerning residential extensions and alterations, and thus there is no dispute that it applies here. The relevant policies of the Local Plan, adopted last year, are DMP1, a general development policy requiring any development to be complementary to its surroundings and to result in high levels of amenity; and BD1, requiring all new development to be of the highest architectural and urban design quality. No specific policies relating to living or space standards for occupiers resulting from new development are brought to my attention, but policy DMP1 requires high levels of both internal and external amenity.
 6. In order to apply these policies and guidance to the appeal on grounds (a) and (f) here, it is first necessary to consider and address the requirements of the notice. This is because the resulting position, if the appeal is dismissed, inevitably affects my reasoning on whether it should be allowed.
 7. As drafted, the notice alleges the erection of extensions and the erection or installation of new roofs. The requirements are limited to demolishing these works.
 8. The appellant explains that the previous felt roofs over the outbuildings as they formerly stood were at the end of their useful lives and required replacement. They have been replaced (and extended, over the increased footprint of the outbuildings) with new fibre glass roofs. It is contended that these roofs should be allowed to be retained 'as they constitute repair works'.
 9. No appeal is brought on grounds (b) or (c), which is to say that it is not expressly claimed by the appellant that the roof works do not amount to development, or do not require an express grant of planning permission if they do. In any event the new roofs are larger than those formerly existing, and do not appear to have been erected or installed as discrete operations but as part of the overall works to each outbuilding. Therefore any such grounds of appeal would be unlikely to succeed, and I do not think this is a case of there being 'hidden' grounds of appeal that require consideration, notwithstanding the appellant's assertion that the roof works have amounted to 'repair'.
 10. I do consider, however, that the notice's requirements as drafted are incomplete and require amendment.

11. Section 173(4) provides that the steps imposed by a local planning authority to remedy the breach may be by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place. Those steps may be imposed to achieve, wholly or partly, the remedying of the breach of planning control.
12. The Council here contend that restoring the land to its former condition before the breach took place requires only the demolition of the unauthorised development as alleged. (In the alternative, it may be that requiring only demolition and not reinstatement results in a partial restoration of the land, commensurate with the statutory scheme.) In this they cite *Iddenden* and suggest that if these steps leave the appellant with unusable outbuildings then this is a consequence of the choice made by the appellant to destroy part of what was previously there.
13. I find this case to be distinguishable from *Iddenden*. Two significant points emerge. First, that the demolition of the buildings in that case was a discrete act of development that was not in itself a breach of planning control. Secondly, that the local planning authority may only specify the steps that in their discretion they consider are necessary to remedy the breach of planning control (which in that case did not require the re-erection of the former buildings).
14. Here, I do not find that the removal of the previous roofs was a discrete act of development, as was (at least technically) the case in *Iddenden*. The works appear to have been carried out as an integrated project, and the removal of the former roofs and openings and their replacement with the new extended roofs was integral to the extension works that have been carried out. Whilst the outcome of the notices as drafted would leave each outbuilding partly open to the elements on one side and without a roof, I do not find that this would restore the land to its former condition (whether wholly or partly). Both theoretically and practically I consider that the removal of the previous roofs was carried out as an integrated part of the whole development that has resulted in what is now there. (The same applies to the removal of any previously external walls or parts thereof.)
15. The Council in this case freely admit that the outcome of the notice if upheld would be to render the outbuildings unusable. Whilst they do not consider for one moment that the appellant would be content to leave them that way, they urge me to dismiss the appeal because the unauthorised development has consolidated and encouraged the use of buildings which are unsuitable for living accommodation. Whilst undoubtedly substandard in size, nonetheless the buildings have been found to be in a lawful use for that purpose and I agree with the appellant that the steps imposed by the Council are excessive inasmuch as they are directed at the purpose of removing a lawful use rather than (or in addition to), as stated in the reasons for issuing the notice, to achieve well-designed development that does not unreasonably impact on neighbouring living conditions.
16. Although the Council consider that to uphold the notice as drafted would inevitably result in the appellant submitting a planning application to repurpose the buildings, the appellant has given no indication of any intentions in this

regard and I cannot be confident that this is the case. If the notice were upheld as drafted, the position would be that the property would contain two unfinished outbuildings each with no roof. It is surprising that the Council consider this would address their concerns about the character and appearance of the development, and its impacts on neighbouring outlook, that have caused them to issue the notice. It would inevitably result in buildings that are a relative eyesore when compared with the former buildings, or with what is there now. If the notice's existing requirements are to remain, this fallback position would add significant weight to the appellant's appeal on ground (a).

17. However, for the above reasons I think it necessary to correct and vary the requirements of the notice in order to reflect the development works as a whole, and to require the restoration of the buildings to their former condition. Insofar as this addresses the appeal on ground (f) I do not think that this results in more onerous requirements on the appellant: although additional works may be required, in terms of the outcome, it would result in complete rather than incomplete buildings and thus facilitate the continuation of the established use. In the round, this is a less onerous outcome. Nor do I consider that it results in any injustice to any party. The appellant specifically seeks an outcome allowing roofs of some sort. It puts the Council in no worse a position than if no development had ever taken place, and enforcement action is after all intended to be remedial rather than punitive.
18. Making these changes to the notice thus establishes a fallback position that includes two self-contained residential units somewhat smaller than the existing development. There is some dispute between the parties as to whether the former residential units were still useable prior to the works having taken place: the appellant admits that the roofs were in need of repair but, contrary to the Council's assertion that the outbuilding units are unviable without the extensions, each outbuilding has been lived in for over two decades. Replacing a felt roof with another of like appearance would be unlikely to amount to development. Thus the starting point for consideration is that the appeal site consists of five self-contained residential units of the same appearance as those formerly existing before any development was carried out.

The appeal on ground (a)

Character and appearance

19. The significant differences between the current and former appearances of the site are that the two outbuildings have been extended, a canopy extension to the rear of the house has been formed to integrate with the first outbuilding, and two storage sheds have been constructed between the two outbuildings alongside the north-eastern boundary wall of the property, making use of that wall as the rear wall of the sheds.
20. The first outbuilding has been extended by around a metre along most of its length, thus bringing the building nearer to the rear garden of the adjoining semi-detached dwelling at no. 23. The addition has facilitated an internal reconfiguration of the residential unit, whereby the entrance door opens onto a lobby leading variously to the kitchen, bathroom and bedroom, unlike the former arrangement whereby the entrance door led directly into the bedroom.
21. This small increase in available living space coupled with a reconfiguration undoubtedly improves the internal amenity of the occupier of the unit,

consistently (on that issue) with policy DMP1. Although the Council are concerned about substandard living accommodation in the unit, with or without the extension, the appellant points out that the unit has been continuously occupied for over two decades. Whilst not referred to any housing space standards that might usually apply, I sympathise with the Council's view but nonetheless, for the reasons explained above, must take as my starting point the lawfulness of the pre-existing building's use for residential accommodation.

22. The same is the case for the second outbuilding, whereby a small square extension has been added to the front south-western side, enabling the provision of a new bathroom and thus the expansion of the space forming the living room/kitchen area. The additional space undoubtedly improves the internal amenity of the occupier. In both cases the extensions serve to reduce the external amenity space potentially available to the occupants of the property.
23. The addition to the rear of the main house does not so serve to reduce the external amenity area in the same way, because it is open-sided to the rear, although the external perception of it (save when observing it from the rear) is that it is nonetheless an intact building. I saw it was being used to store motorcycles at the time of my visit. It consists of a fibreglass canopy roof extending between a former rear extension, of around 3 metres from the original rear wall of the dwelling house, to connect with the roof of the first outbuilding at a depth of some 5.3m.
24. The various elements are not internally linked: the first and second outbuildings and the storage sheds each have their own separate entrances. Nonetheless, as the Council point out, the external appearance of the development as a whole is that of a continuous extension of some 23m to the rear of the dwellinghouse, stretching the entire length of the garden on the north-east side and the full width of it at the rear. This is very different from the former appearance of two separate outbuildings. A canopy roof to the rear of the house is shown on an aerial photograph of 2018, but it is not suggested that this in itself was ever immune from enforcement action and it is anyway not what is there now.
25. The SPD advises generally that single storey rear extensions should be no more than 3m from the original rear wall of the main house. Extensions of up to 6m in depth may be acceptable but these usually require a set-in from the boundary of the property. Here I accept the Council's case that what has been created is a significantly deeper extension plainly contrary to the advice in the SPD.
26. Its appearance on the north-eastern side is largely unchanged from the first outbuilding and beyond, with the buildings retaining the same roof profiles on that boundary and the storage sheds aligning with the height of the pre-existing boundary wall. Closer to the house, however, the canopy extension (which is walled in on that side) creates a cumulative effect of continuous development which is incongruous in its overall effect. Although the amount of development in some of the other properties' gardens in the vicinity is quite extensive, the continuous built form along the entire depth of the plot from the front of the house onwards is wholly out of character with the prevailing form of residential development in the area. Thus the works as a whole do not comply with the aims of the relevant policies.

27. Unpicking the different elements, I find the rear canopy extension to the house to significantly contribute to this harm, because it is this element that is crucial to the creation of the effect of continuous development on the north-eastern side. Removing that element would make a significant difference to the perception of the amount of built development on the site and would successfully sever the main house from the outbuildings.
28. I do not consider the replacement roofs to be at all problematic in themselves; insofar as they are replacements for the former felt roofs, described by the parties as being at least past their best, I find them to be an improvement and consistent with the policy aims to achieve well-designed development. Obviously they are larger, and I consider the effects of the extensions below.
29. Turning to the storage sheds, although they replace previous development, that development has been voluntarily removed. I am not asked to consider reinstating it as part of the notice's requirements, and it appears to me that, as formerly separate built development voluntarily and entirely removed prior to the construction of the current storage sheds, the reasoning in *Iddenden* would apply to those. Therefore I consider the sheds against the fallback position of the boundary wall.
30. The storage sheds are not especially conspicuous, being relatively narrow, lower in height than the second outbuilding, and not protruding above the boundary wall to the north-east. Thus they make no contribution to the perception of the development from that side. From the south-western side, they are not so large as to compromise the separation of the first and second outbuildings from each other and I find them acceptable.
31. As to the extensions to the outbuildings, removing the rear canopy would leave the two extended outbuildings as discernibly discrete elements of built development on the site. The storage sheds, although attached to both, are a small and distinct element. The extensions amount to around 5 or 6 sq.m. of additional floor area in each building. The Council is concerned that the cumulative development on the site amounts to an overdevelopment of the rear garden and amounts to a dominant and incongruous form of development which covers an excessive footprint within the appeal site.
32. Whilst agreeing with that assessment, by removing the rear canopy extension, I find that the Council's concerns in these respects would be overcome. The outbuildings would remain perceptibly distinct from the house and from each other, and a reasonable amount of the rear garden area would remain open and free of development. Thus on this issue, and subject to the removal of the canopy extension, I find that the storage sheds and extensions to the outbuildings, and their roofs, are (or, with the imposition of appropriate planning conditions can be made) acceptable so as to comply with the development plan for the area as it relates to matters of character and appearance.

Living conditions

33. The Council's complaint is that the development results in a loss of outlook and light. On the second of these, I consider that the rear canopy roof may result in some loss of light to the north-eastern neighbouring property, but that the other elements of the development do not affect it because the profile of the development when viewed from that property is unchanged. As to the south-

western neighbour, given the orientation of the properties I do not consider that the unauthorised development results in any harmful loss of light. The extension to the second outbuilding may overshadow the neighbour's property in the mornings but this is likely to be limited to affecting the neighbour's own rear outbuilding and would not cause any undue loss of light to that building or to the neighbouring garden. The relatively low profile of the first outbuilding and the storage sheds are unlikely to result in any loss of light whatsoever to any neighbouring property.

34. As to the neighbouring outlook, I do not consider that this would change significantly or prejudicially as the result of the development. The north-eastern neighbour would have largely the same outlook as before, save in respect of the canopy extension. For the south-western neighbour, the buildings would be appreciably closer but in the context of the pre-existing development I do not find that the development would result in undue harm to their outlook. Physically, the buildings are still a reasonable distance from the neighbouring house. Although the land falls away to the south-west, the single-storey nature of the buildings means that the effects of the extensions are relatively slight. Although not referred to it in this regard by the Council, I have had regard to the Council's SPD as it relates to outbuildings, where the advice is given in order to avoid overbearing effects on neighbours, which is not alleged here. The outbuildings do appear to depart from the SPD advice by exceeding the recommended heights and by taking up more of the garden area than the SPD suggests. However the effect is not overbearing, and the encroachment onto the amenity space enjoyed by the host property is limited.
35. The second outbuilding, although extended, has been designed so as to 'turn in' on itself, with the bathroom window facing back towards the building's entrance. The door to the first outbuilding is to a lobby area, with the bedroom window no closer than previously; whilst the living room/kitchen window is closer to the boundary, it looks onto a high wall separating the properties. Thus, although the living quarters are brought closer to the neighbour, they have been done so in such a way as to avoid intrusion.
36. Therefore, overall, I do not consider the neighbouring outlook to be unacceptably compromised as a result of the works, and find the neighbouring levels of amenity to be maintained, consistently with policy DMP1.

Conclusions on the ground (a) appeal

37. Subject to the removal of the rear canopy extension, I find the extensions to the two outbuildings, the construction of the storage sheds, and the new roofs to be, on balance, acceptable development in overall compliance with the development plan for the area, subject to the imposition of planning conditions which I consider below. Not determinative but adding some weight in favour of the development is the inevitable improvements to the living conditions of the occupiers of the two outbuildings if the extensions are permitted. A 'split' decision will be made, granting permission for most elements but refusing it for the rear canopy extension.

Conditions

38. No planning conditions have been suggested by either party. However, the development was unfinished at the time of my site visit and I consider that a

condition is required in order to achieve acceptable finishing materials to the Council's satisfaction. No other conditions appear to me necessary.

The appeal on ground (f)

39. It follows from my findings above that the notice will be corrected and varied so as to require the restoration of the property to its pre-existing condition. Although allowing the ground (a) appeal in large part, it is nonetheless my duty to get the notice in order where possible and it will be upheld (the provisions of section 180 of the 1990 Act having effect). Hence I will make these variations notwithstanding the outcome on ground (a).
40. All other elements being permitted on ground (a), that leaves the rear extension for consideration on ground (f). Here, the demolition of the rear extension is required to remedy the breach of planning control alleged, and that requirement is not excessive. The appeal on ground (f) will not succeed on this issue.

Conclusions

41. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with variations and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Formal Decision

42. It is directed that the enforcement notice be corrected by inserting in Schedule 2, after "new", each time it appears, "and replacement".
43. It is further directed that the enforcement notice be varied by inserting, after the text to 'STEP 1' in Schedule 4:
- "STEP 1A Restore the land to its condition before the breach took place"
44. The appeal is allowed insofar as it relates to the alleged breach save in respect of the erection of a rear extension to the former house at Flats 1 – 5, 21 Aldbury Avenue, Wembley HA9 6EY 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 erection of a side extension to the first outbuilding; the erection of a new and replacement roof to the first outbuilding, and the installation of a rear extension to the first outbuilding linking to the second outbuilding; the erection of an extension to the front of the second outbuilding, and the installation of a new and replacement roof to the second outbuilding, subject to the following condition:
- (1) Unless within two months of the date of this decision a scheme for the exterior materials, including their colour, to be used in the finish of the development hereby permitted is submitted in writing to the local planning authority for approval, and unless the approved scheme is completed within two months of the local planning authority's approval, the development hereby permitted shall be demolished and all constituent materials removed from the land and the land restored to its former condition.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the development hereby permitted shall be demolished and all constituent materials removed from the land and the land restored to its former condition.

Notwithstanding any permitted development rights that may otherwise be conferred by any Order made under section 59 of the 1990 Act or otherwise, upon implementation of the approved scheme specified in this condition, the exterior materials forming the approved scheme shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

45. The appeal is dismissed and the enforcement notice is upheld as corrected and varied and planning permission is refused in respect of the erection of a rear extension to the former house at Flats 1 – 5, 21 Aldbury Avenue, Wembley HA9 6EY on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Laura Renaudon

INSPECTOR