



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: 9 March 2023

Appeal Ref: APP/T5150/C/22/3296541

6 Park Road, Wembley HA0 4AT

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Ravi Pattni against an enforcement notice issued by London Borough of Brent.
- The notice, numbered E/18/0196, was issued on 2 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land to the rear of 6 Park Road to commercial / business use.
- The requirements of the notice are to:
 - Step 1
Cease the use of the land to rear of 6 Park Road for commercial / business use.
 - Step 2
Remove from the outbuilding currently on the land the kitchen and bathroom facilities and all associated drainage connections that facilitate the use of the land for separated commercial / business use.
 - Step 3
Demolish and remove from the land the outbuilding currently on the land.
 - Step 4
Remove from the land all resultant waste items, materials and debris, and restore the land to the condition it was in before the breach took place.
- The period for compliance with the requirements is:
6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (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 with a variation in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is varied by deleting the requirements at 'Step 3' and 'Step 4' of Schedule 4 of the notice. Subject to this variation, 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 appellant has not appealed under ground (e); that the notice was not properly served on everyone with an interest in the land. The Council however suggests that the appellant has no standing in this matter and that he does not appear to be an owner, occupier or have any other interest in the appeal premises.

3. The appellant refutes this. Section 172(2) of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) provides that a copy of the notice shall be served on the owner and occupier of the land to which it relates, and upon any other person having an interest in the land which in the opinion of the Local Planning Authority, is materially affected. Section 174(1) of the 1990 Act provides that a person, which may be a limited company, may appeal the service of an enforcement notice.
4. A copy of the notice was served, amongst others, upon the appellant and upon Group 365 Ltd, the latter being the registered owner¹ of the appeal property of which the appellant is stated to be a Director. The Council has not said that it has served a planning contravention notice or used its powers under section 330 of the 1990 Act to obtain information regarding those with an interest in the appeal site. Nevertheless, and despite the submissions of the respective parties, I am not persuaded, on the balance of probability, that the appellant is not entitled to pursue this appeal. I have determined the appeal accordingly.

The appeal under ground (a)

Main Issues

5. The main issues are the effects of the material change of use upon:
 - The character of the surrounding area; and
 - The living conditions of occupiers of 6 Park Road and those of neighbouring properties

Reasons

Character

6. The appeal property is a residential property located within a predominantly residential area. Access to the rear of the property is taken via a hard-surfaced forecourt at the front which leads to a gated access at the side of the property. At the rear, the land is laid to a hard-surfaced yard area within which a flat-roofed, detached outbuilding is located towards the rear of this area. There is a raised timber deck which provides access directly into the ground floor rooms of No. 6 from the yard area.
7. Neither the area of land to the rear of the appeal property nor the outbuilding itself are directly visible from Park Road. Although views of the building are available at the rear over and across neighbouring gardens, these are not widely available views and the outbuilding is not widely visible beyond these viewpoints. As such, there is nothing about the appearance or siting of the outbuilding itself, or the treatment or appearance of the outside area, that marks it out as obtrusive, incongruous or out of character when viewed from the rear. Indeed, I saw during my visit that outbuildings are not uncommon within rear gardens and that the building in question is not dissimilar to others on neighbouring garden plots.
8. I accept that the building is of limited internal proportions and thus its capacity to accommodate significant numbers of workers is limited. I have noted the appellant's statement that most recently only 2 people previously worked there. Nevertheless, the two main rooms within the building provide sufficient

¹ Appendix 1, LPA Statement of Case

flexibility that more than two people could work from the building. The removal of the sink and cooking facilities, rather than address the building's commercial use, further encourages its flexibility for such purposes, as does its continued marketing for use as office space.

9. Furthermore, for those that work at the building they are able to access the workspace independently of the dwellinghouse itself. The appellant accepts that those most recently working there were not resident at No. 6 and commuted to the site, whilst the continued marketing of the building as short-term office space perpetuates its use as a separate facility independent of the dwellinghouse at No. 6.
10. I disagree with the appellant's statement that this level of activity is commensurate with and not significantly greater than a residential use, or that workers arriving at the appeal building would be no different to residents leaving No. 6 to commute to a remote workplace. Rather, the very fact that the building's use as office space independent of the occupation of No. 6 encourages workers to commute to the site makes the commercial use of the building materially different to its use as a home office associated with a dwellinghouse.
11. Such differences are manifested in the pattern of movements, whether on foot by individuals or by car to and from the property which would, in my experience, be materially different to either its use as a home office, or with occupants of No. 6 commuting to other remote workplaces. So too, in terms of cumulative car parking demand for residents of No. 6 and workers, refuse and general storage and deliveries. It may have been the case that most recently workers commuted by public transport and on foot to the appeal building, but I have no reason to believe that such patterns would remain in perpetuity.
12. I accept that 'home offices' are not uncommon features in domestic residential outbuildings, increasingly so during and since the COVID-19 pandemic and associated lockdowns. However, the aspects noted above relating to the appeal building's independent occupation and use as a commercial office are just some of those that mark out its use as being materially different to 'home offices' and therefore at odds with, and materially harmful to, the prevailing residential character of the appeal site and surrounding area. Although the appellant has drawn my attention to the presence of commercial uses on Ealing Road which extend back towards the rear of the appeal site, these are not sufficiently prominent to dilute the residential character of the appeal site or its surrounding area or to allow the alleged use of the building to acceptably or unobtrusively blend into the surrounding area.
13. I am satisfied that the appeal building does not cause material harm to the character of the surrounding area in terms of its appearance, scale or siting. However, its use for a commercial / business use occupied and used independently of occupation of No. 6, and all that arises from it in terms of storage of waste and parking for employees who drive to the premises, would be incongruous within a residential setting such as the appeal site's and cause harm to the residential character of that area. A condition to control the hours of operation would not alter this conclusion as the effects of the use of the building on the residential character of the area would still be felt during 'office hours' even if controlled by condition.

14. It is stated by the Council that the commercial / business use of the outbuilding has given rise to complaints since its inception, but I have no evidence of any such comments before me. However, the apparent absence of neighbour objections to the use of the outbuilding is a neutral matter, weighing neither in support of nor against the proposal.
15. Policy DMP1 of the Brent Local Plan 2019-2041 (2022) (BLP) sets out the Council's general approach to development proposals and adopts a generally positive approach. Development will be acceptable where, amongst other things, it is of a use and type that provides high levels of external amenity and complements the locality and does not unacceptably increase exposure to noise and general disturbance. For the reasons set out, the use of the outbuilding for commercial / business uses independent of the residential occupation of No. 6 fails to align with the provisions and aims of BLP Policy DMP1.

Living conditions

16. Access to the appeal building is taken via the paved area to the side and rear of No. 6. This area, together with an area of raised timber decking immediately outside ground floor rear patio doors, provides the private outdoor amenity space for occupants of No. 6.
17. Although the opposing faces of the outbuilding and rear of No. 6 are a reasonable distance apart, they directly face each other. In the context of employees unconnected with occupants of No. 6 taking access to the appeal building, this degree of proximity would be intrusive and disruptive, particularly given the large patio doors at ground floor level. Furthermore, the amenity space, albeit shared between occupants of No. 6, is no longer private to them and does not afford them the relative privacy that may otherwise be expected of such space.
18. Whilst the number of employees most recently working from the appeal building may have been limited, there is no reason to believe that that would necessarily continue to be the case. The same could also be true with visitors and deliveries. To provide free and unfettered access through the outdoor amenity space of residential occupants of No. 6 for these purposes therefore causes significant harm to the amenity and living conditions of those occupiers.
19. BLP Policy DMP1 expects acceptable forms of development to provide, amongst other things, high levels of external amenity and to complement the locality. Development must also not unacceptably increase, and where possible reduce, exposure to a range of forms of pollution including noise, and general disturbance. For the reasons I have set out, the commercial / business use of the outbuilding at the rear of a residential property by persons unconnected to its residential occupation would have an adverse impact upon the privacy and living conditions of occupants, with particular regard to noise and disturbance arising through the comings and goings of users of that commercial / business use.
20. BLP Policies BT3 and BH12 are also cited in the reason for issuing the notice. Policy BT3 sets out the Council's approach to freight and servicing in developments and seeks to ensure provision of optimum servicing and delivery arrangements. However, as the continued use of the outbuilding in the manner alleged by the notice causes harm to the residential character of the area, contrary to BLP policy DMP1, the provisions of BLP Policy BT3 are not

determinative in this instance. With regard to BLP Policy BH12, whilst the outbuilding is not used for the purposes of residential occupation in the manner set out in the supporting text to this policy, the absence of a direct conflict with this policy is a neutral matter which weighs neither in support of, nor against, the alleged breach.

The appeal on ground (f)

21. The stated breach of planning control is the material change of use of the land to the rear of the appeal property to commercial / business use which, it appears to the Council, has occurred within the last 10 years. It is also clear from the reasons for issuing the notice that it is the ramifications of the unauthorised use and their effect on character of the area and the living conditions of occupiers of neighbouring properties that are of concern to the Council.
22. The stated alleged breach of planning control does not refer to the erection of the outbuilding itself, yet the steps required to be taken by the notice are fourfold. These include the demolition and removal of the outbuilding currently on the land and the removal of all resultant waste and materials arising from its demolition. I have already concluded that the appeal should fail on ground (a) and the planning application deemed to have been made for the material change of use to commercial / business be refused for the reasons set out. The removal of the kitchen and bathroom facilities which facilitated the use of the outbuilding for those uses, and the drainage connections associated therewith, are justified as a means to ensure that the matter alleged on the notice is ceased.
23. However, the notice also requires the demolition and removal of the outbuilding currently on the land, and the removal of all subsequent waste items, materials and debris from the site. Yet, whilst I recognise that the building services to facilitate the targeted use, the notice does not specify the presence of the outbuilding as part of the alleged breach. Whilst the demolition of the outbuilding would ensure the cessation of its commercial / business use, so too do steps 1 and 2 of the notice's requirements. These would, I am satisfied, be sufficient to remedy the stated breach of planning control. It follows therefore that the requirement to demolish and remove the outbuilding (and the subsequent removal of any materials, waste and debris) exceed what is necessary to remedy the alleged breach of planning control, namely the material change of use of the land to commercial / business use.
24. In support of the appeal under ground (f) the appellant has set out alternative uses for the outbuilding, suggesting an alternative set of lesser requirements that would stop short of the requirements of step 2 of the notice. A number of appeal cases have been cited by the appellant in support² of this approach. However, from the limited evidence before me, neither the Vivian Avenue³ nor the Courtenay Avenue⁴ examples are directly comparable to the case before me if, for no other reason than the alleged breach of planning control in both instances includes the construction of a detached outbuilding (in addition to their use for office purposes). In any event, it is not open to me to grant a planning permission for the outbuilding on the basis it is used for ancillary

² As set out at appendices 2 and 3, and recited by extracts at section 12, of the appellant's 'Planning Statement'

³ APP/T5150/C/21/3273385

⁴ APP/M5450/C/13/2210356

purposes, as this would not form part of the alleged breach or deemed planning application in this case. I therefore give the examples cited in section 12 of the appellant's 'Planning Statement' limited weight.

25. In any event, as the facilities and connections set out in step 2 of the notice's requirements facilitated the use for commercial / business use by persons not resident at No. 6, to stop short of the requirements of step 2 in the manner suggested by the appellant would fail to remedy the alleged breach of planning control. Whilst I agree that steps 1 to 4 in their totality exceed what is necessary to remedy the alleged breach of planning control and the appeal should succeed on this ground, I do not share the appellant's view as to the suitability of the alternative steps set out in the grounds of appeal, having regard to the alleged breach of planning control. It would of course remain open to the appellant to pursue with the Council the possibility of using the outbuilding for incidental residential purposes. Nevertheless, the appeal succeeds in respect of ground (f), the requirements as set out within the notice are excessive and I will vary the requirements accordingly by deleting requirement steps 3 and 4.
26. I have noted that there is a divergence of opinion between the main parties as to the manner and extent of the occupation of No.6, and thus in the opinion of the Council, questions over how a retained outbuilding could be used in connection with the main building's occupation as a house in multiple occupation. However, I have no compelling evidence before me regarding the nature of its occupation or the status of the outbuilding itself.

The appeal on ground (g)

27. Although the appellant has sought under ground (g) an extension to the period for complying with the notice to 12 months, this was largely justified on the basis of the works of demolition required to remove the outbuilding. Whilst I have concluded that the appeal should fail on ground (a), it succeeds in part on ground (f) in that the demolition of the outbuilding would exceed the steps required to remedy the breach. The period of 6 months set out in the notice is therefore entirely reasonable and proportionate in my judgement, and from the evidence before me, for the cessation of the commercial / business use and the removal of the kitchen / bathroom facilities and drainage connections. Thus, the appeal on ground (g) fails.

Conclusion

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

G Robbie

INSPECTOR