



Appeal Decisions

Site visit made on 7 December 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 17th April 2023

Appeal A Ref: APP/T5150/C/22/3298411

Appeal B Ref: APP/T5150/C/22/3298412

4 Chudleigh Road, London, NW6 7AH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Richard Selby and Appeal B is made by Sarah Selby against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 30 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding with basement in the rear garden of the premises. ("the unauthorised development")
- The requirements of the notice are
STEP 1 Demolish the unauthorised outbuilding and basement and fill in the basement with earth so that the level of the land is commensurate with the adjoining land levels and restored to the condition before the unauthorised development took place.
STEP 2 Remove all associated waste, debris, items and materials resulting from compliance with Step 1, from the premises.
- The period for compliance with the requirement is 9 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (g) of the Town and Country Planning Act 1990 (the Act) as amended. Since Appeal A has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B is proceeding on ground (g) only as the deemed planning application under ground (a) has lapsed.

Decisions

1. Appeal A is allowed, the enforcement notice is quashed 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 an outbuilding with basement in the rear garden of the premises at 4 Chudleigh Road, London NW6 7AH as shown on the plan attached to the notice and subject to the following condition:
 - 1) The outbuilding with basement hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 4 Chudleigh Road London NW6 7AH.
2. I take no further action with regard to Appeal B.

Preliminary Matters

3. The Council has also issued an enforcement notice relating to a breach of a condition attached to Planning Permission Ref 18/2507 which granted planning

permission for the existing dwelling at the appeal site. A separate Decision Letter¹ has been issued in respect of that appeal.

Appeal under ground (a) and the Deemed Planning Application (the DPA)

Main Issue

4. The main issue is the effect of the development on the character and appearance of the area.

Reasons

5. 4 Chudleigh Road is a substantial detached dwelling in a row of similar dwellings which have frontages and generous rear gardens. Planning permission Ref 18/2507 was granted for on 29 September 2018 for *"Demolition of existing dwelling house to accommodate a 3 storey dwelling including; excavation of a basement level with rear lightwell and glass balustrading; and habitable space in the loft with rear facing terrace; associated boundary and landscaping works to the front of the dwellinghouse."*
6. The planning permission was subsequently implemented and the replacement dwelling now exists. Plans provided show a 4 bedroomed house with a basement. To the rear, there is a generous garden with an extensive patio area as well as a swimming pool of around 30 square metres which was built under permitted development rights prior to the appellant's occupation.
7. The development consists of an outbuilding with a basement that is at the end of the garden. The Council's sole reason for issuing the notice is that the development is obtrusive and overbearing. The appellant states that the above ground element has a pitched roof with a ridge height of 4 metres and a maximum eaves height of 2.5 metres.
8. Whilst the measurements provided by the appellant indicate that the above ground elements of the development is likely to fall within permitted development rights, it is not disputed by the parties that the outbuilding cannot be considered to be permitted development as the basement is part of the building.
9. Nevertheless, the extent to which the development can be seen is relevant to an assessment of harm to character and appearance of the area. Whilst each development has to be assessed upon its own merits, the above ground element is similar in size or appearance to an outbuilding that could be constructed under permitted development rights.
10. Both parties refer to an outbuilding at 29 Aylestone Avenue which is in close proximity to the appeal site and was built pursuant to permitted development rights. The Council has not commented upon the dimensions of the above ground element of the development but states that the total floorspace is in excess of 100 square metres and that the building at Aylestone Avenue is smaller in terms of overall floorspace.
11. The Council's Residential Extension & Alterations SPD2(SPD 2) states that outbuildings should not normally be more than 30 square metres. However, the document also refers to the maximum size of an outbuilding usually being determined by its location and the size of the garden." The location at the end

¹ APP/T5150/C/22/3298409

of the garden and the size of the garden comfortably accommodates the development. Whilst the Council states that basements are not part of the character of the area, the planning permission for the existing dwelling included a basement of around 240sqm including lightwells and a basement patio which has been constructed.

12. The Council's 'Basement' Supplementary Planning Document adopted June 2017, ('Basement SPD') provides guidance on the provision of basement extensions. In essence, it provides support for their provision subject to there being no harm to either amenity or the character and appearance of the building and wider area.
13. The development is used as an art studio by Sarah Selby and also by her daughter who is studying photography. The basement does have a modest kitchen area and shower and toilet. The Council has referred to the size of the development being more akin to a building required for business purposes than incidental purposes to the main dwelling. However, there is no evidence of business use. Whilst there is a modest kitchen area, toilet and shower, a condition restricting use of the outbuilding to ancillary use can ensure that the outbuilding remains as part of the single planning unit and to protect amenity of nearby residents.
14. Policy BD3 of the Brent Local Plan does refer specifically to basement development of an existing property rather than an outbuilding with a basement. However, the development is not wider than the building above, and extends down one storey and the appellant has indicated that it has been constructed to design standards. The supporting text indicates that many aspects of concerns raised about basements are controlled by regimes outside the planning system. The policy focusses on size, use and environmental impacts and in those respects, I find no policy conflict subject to an appropriate condition with regard to use and have addressed the issue of size.
15. There is no harm to the wider street scene as the development cannot be seen from the street. I therefore find that the development as a whole does not harm the character and appearance of the area.
16. For all the above reasons, the development does not materially harm the character and appearance of the area. It is not in conflict with the aims of Policy DMP1 of the adopted London Borough of Brent Development Management Policies(the Brent Local Plan) which refers amongst other things to development completing the locality or Policy BD3 of the Brent Local Plan to the extent that the policy applies to an outbuilding with a basement. The development does largely comply with the criteria set out for Outbuildings in the Council's Residential Extension & Alterations SPD2 (SPD2) and I have addressed the issue of size.
17. It complies with Policy BSU14 of the Brent Local Plan Policies which requires the separation of surface and foul water systems. I find no conflict with Policy SI 13 of the London Plan 2021 which refers to sustainable drainage as the appellant has introduced a number of drainage measures. I do not find the development to be contrary to the Basement SPD which primarily addresses size and use.
18. I find Policy D10 of the London Plan to be less relevant than other policies as it states that Boroughs should establish policies in their Development Plans to

address the negative impacts of large scale basement development beneath existing buildings where there is identified as an issue locally. The policy therefore addresses policy making rather than planning applications.

Other Matters

19. Although not reasons for issuing the notice, the Council's evidence states that the development has a detrimental impact on general amenity due to loss of trees and soft landscaping and refers to flood risk. From my site visit observations, there are trees and there is soft landscaping specifically around the outbuilding as well as measures to reduce surface water run-off. The Council appears to have last visited the appeal site in August 2021 when the outbuilding was in the course of construction and has not commented specifically upon the existing landscaping around the development.
20. However, the Council has served a separate notice relating to non-compliance with a landscaping condition that was imposed on the original permission. The appellant states that he has installed a grey water recycling system that collects rainwater and irrigates the planting framing at the rear of the outbuilding. There is also a land drainage system of perforated pipes as well as an ACO drain to aid surface water run-off.
21. With regard to flood risk, the Council has not provided any further details other than that the development should not unacceptably increase exposure to flood risk. The validation requirements in the Basement SPD refers to a Flood Risk Assessment and Drainage Strategy being required where proposals are in flood risk zone 2 or 3 or where there are localised flooding issues. The Council has not indicated how the development falls within those criteria or requested any separate drainage or flood risk conditions but has requested a landscaping condition to reduce flood risk which I will assess separately.
22. The occupier of No 3 Chudleigh Road which is next door to the appeal site objects to the development. He refers to outbuildings being built at No 2 and No 29 Aylestone Avenue under permitted development rights which are both in very close proximity to the appeal site without basements. He considers that allowing an outbuilding with a basement would set a precedent and the outbuilding was constructed without planning permission.
23. The retrospective nature of the development is not a matter that I can consider in making my decision. With regard to setting a precedent, every decision whether for a proposal or existing development is based upon the particular circumstances and merits that apply in each case so that any single decision based upon planning merits is very unlikely to create a wider precedent for other development.
24. Whilst the neighbour disputes the measurements of the development, it is being assessed as a planning application not as permitted development. His view that the land that the outbuilding is located on has been raised by between 1-1.50 metres and the whole garden by 0.7 metres is not a view expressed by the Council. An incident occurred in October 2021 when part of the neighbour's garden was flooded. The appellant indicates that the incident occurred as a result of trying to drain the pool cover with an ACO drain installed by the previous owner which is cosmetic rather than functional. There is no evidence before me of any later incidents or that the flooding incident related specifically to the presence of the outbuilding.

25. The neighbour alleges damage to tree roots in his garden due to the extent of excavation and lack of care of building regulations. However, building regulations are a separate regime to planning and any dispute over tree damage or extra drainage work on the land at No 3 are matters to be resolved directly with the appellant.

Conditions

26. Any proposed conditions need to meet the statutory tests set out in Paragraph 55 of the National Planning Policy Framework. A condition to ensure that the use of the outbuilding remains as ancillary to the host dwelling is appropriate to protect the amenities of nearby occupiers. The condition controls use rather than being prescriptive about what features can be in the outbuilding. The Council made a request for a landscaping condition "depending on the outcome of the other appeal." That appeal has been determined and does impose a new condition requiring a landscaping scheme for the whole of the appeal site. Imposing a separate condition for either a specific area or the whole of the appeal site would result in duplication and is not necessary and would not therefore meet the statutory tests.

Conclusion

27. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice subject to the condition. Ground (g) for Appeals A and B does not therefore fall to be considered.

E Griffin

INSPECTOR