



Appeal Decision

Site visit made on 4 April 2023

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 2nd May 2023

Appeal Ref: APP/A5270/C/22/3300869

Premises known as 18 The Fairway, Northolt, Middlesex UB5 4SL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Ms Swee Liew against an enforcement notice issued by London Borough of Ealing.
 - The notice was issued on 26 May 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission: The construction of an outbuilding and raised platform at the rear of the land.
 - The requirements of the notice are:
 1. Demolish the outbuilding and raised platform;
 2. Remove all resultant debris.
 - The period for compliance with the requirements is: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the 1990 Act.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs was made by London Borough of Ealing against Ms Swee Liew. This application for costs is the subject of a separate decision.

Preliminary Matters and Background

3. The evidence before me cites the impact of the development on the privacy of nearby occupiers. However, an appeal on ground (a) has not been made. Therefore, the planning merits of the case before me are not relevant to my decision as that decision rests on the facts of the case, on relevant planning law and judicial authority. Furthermore, I am not empowered to consider whether planning permission should be granted for the development.
4. The appeal property is an end of terrace dwelling in a largely residential area. In December 2019 the Council confirmed that prior approval¹ was not required for a single storey (Max 6m deep and Max 3m high) rear extension (the prior approval). Also, in December 2019 the Council granted a Certificate of Lawful Development (the LDC) in relation to the proposed alteration of roof from hip to gable end; rear roof extension, and installation of two roof lights to front roof slope; single storey detached garden outbuilding. The single storey detached garden outbuilding was shown on the submitted drawings to 'wrap around' the pre-existing garage that was on the site. The resultant building

¹ Ref No: 194660PALHE

would have extended between the site boundaries with 16 and 20 The Fairway and is shown with a flat roof and a total height of 2.5 metres (m).

5. A single storey extension to the rear elevation of No 18, a detached outbuilding at the bottom of the rear garden and a raised patio/path adjoining that outbuilding have been erected at the appeal property.

The ground (b) appeal

6. To succeed on this ground, the onus is upon the appellant to demonstrate that the alleged breach has not occurred, as a matter of fact. The appellant's representations refer to the effect of the development on the privacy of her neighbours rather than whether the development as alleged has occurred as a matter of fact. She has also stated that this part of the property already existed when she bought the property. Within the ground (c) and (d) appeals it is stated that the platform/ground has not been raised and this is a point that is relevant to the ground (b) appeal.
7. I acknowledge that prior to the development occurring that a garage existed on the site. Nevertheless, the Council's evidence indicates that the garage was demolished prior to the alleged breach occurring. When I visited the site, there is no visible evidence that the pre-existing garage has been incorporated into the development that is before me. Moreover, there is no evidence before me to indicate that the outbuilding itself has been constructed at a materially different ground level to that of the pre-existing garage. Nevertheless, a path/patio adjoining the outbuilding's elevation facing No 18 has been constructed utilising a brick wall that has been constructed within the rear garden area. Photographs within the Council's evidence show the outbuilding, extension and the brick wall in the garden area during their construction. That path/patio is at a noticeably higher ground level to the remainder of the rear garden area and therefore it forms a platform that is raised from the remainder of the garden area.
8. As such, the development as described in the notice was in place and therefore, the matters alleged in the notice have occurred. The ground (b) appeal must therefore fail.

The ground (c) appeal

9. The appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is upon the appellant.
10. The appellant argues the same points as raised under the ground (b) appeal and states that planning permission was granted for an extension and that the restrictions on that permission have been followed. The LDC was granted in 2019 but no specific alterations to the ground levels nor any path/patio or steps to the elevation facing 18 The Fairway (No 18) are shown on the drawings submitted with the LDC.
11. Schedule 2, Part 1, Class E (Class E) of the Town and Country Planning (General Permitted Development) (England) Order 2015, (GPDO) permits buildings required for a purpose incidental to the enjoyment of the dwellinghouse, to be built within the curtilage of a dwelling house without the need for express permission. The Council considers that the total area of the ground covered by the single storey extension, the prior approval, the

detached outbuilding and the raised path/patio exceed 50% of the total area of the curtilage of No 18. Furthermore, it considers that the path/patio adjoining the outbuilding constitutes the provision of a raised platform.

12. Paragraph E.1(b) of Class E states that development is not permitted if *'the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)'*. Paragraph E.1(h) of Class E states that development is not permitted if *'it would include the construction or provision of a veranda, balcony or raised platform'*. Paragraph I of Part 1 of the GPDO states that for the purposes of Part 1 *"raised" in relation to a platform means a platform with a height greater than 0.3 metres*.
13. Article 2 (2) of the GPDO states that unless the context requires otherwise, the height of a building refers to its height as measured from 'ground level', this being the level of the surface of the ground immediately adjacent to the building in question or where the surface of the ground on which it is situated is not uniform, the level of the highest part of the surface of the ground adjacent to it. There is no dispute that the outbuilding does not exceed 2.5m in height when measured from the highest part of the surface of the ground adjacent to it. Moreover, there is no evidence before me to indicate that the dimensions of the outbuilding and the extension are materially different to those shown on the submitted drawings for the LDC and the prior approval.
14. Nonetheless, based on the evidence before me, the patio/path adjoining the outbuilding's elevation that faces No 18 has been constructed to facilitate access to the outbuilding due to the differences in ground levels between that outbuilding and the remainder of the rear garden area. That path/patio has been built utilising a brick wall that has been constructed within the rear garden area. There are steps from the lower garden level to the path/patio level. It is an integral part of the outbuilding both in its construction and functionality. As such, when considered holistically, it is reasonable to consider that the whole of the development described in the alleged breach has been designed and constructed as a single operation.
15. The Council's Officer Reports relating to the LDC and the prior approval indicate that the size of the plot excluding the original dwellinghouse is 204.6m², that the prior approval would be 35.5m² and the outbuilding in combination with the existing garage would be 61m². The prior approval and LDC would have amounted to approximately 47% of the total area of the ground covered within the curtilage based on those figures. The Council considers that the addition of the raised platform formed by the path/patio area means that the total area of ground covered by the outbuilding, extension and that raised platform exceeds 50% of the total area of the curtilage of No 18. Based on my observations on site I have no reason to dispute that finding and the Council's figures have not been challenged by the appellant. Therefore, the outbuilding and raised platform in combination with the single storey extension do not meet paragraph E.1(b) of Class E of the GPDO.
16. Furthermore, there is no evidence before me to contradict the Council's stance that the path/patio area exceeds 0.3m in height. Based on my observations and the photographs showing the structures during construction I have no reason to dispute that finding. As such, the path/patio area can reasonably be

considered to form a raised platform for the purposes of Class E. The outbuilding does not therefore comply with paragraph E.1(h) of Class E of the GPDO.

17. Drawing all of the above together, when considered holistically, it is reasonable to consider that the whole of the development described in the alleged breach has been designed and constructed as a single operation. That operational development does not fall within permitted development rights. Therefore, express planning permission is required.
18. I conclude that the matters alleged constitute a breach of planning control. There is no evidence that planning permission has been granted, therefore, the appeal on ground (c) must fail.

The ground (d) appeal

19. The ground of appeal is that at the date the notice was issued, no enforcement action could be taken. In this case the burden of proof lies with the appellant to show that the operations involved in the construction of the outbuilding and the raised platform were substantially completed prior to 26 May 2018.
20. The appellant has stated within the ground (d) appeal that she received a notice with no prior warning and that no one has said she is doing anything wrong until months after the completion of my extension to this property. However, this is not a relevant argument under this ground of appeal. It is stated within the other grounds of appeal that the outbuilding was in place when the property was purchased, and it has been refurbished. As stated previously, I acknowledge that prior to the development occurring a garage existed on the site but there is no visible evidence that the pre-existing garage has been incorporated into the development that is before me. Furthermore, based on the information within the Council's evidence relating to the aerial photographs, complaints from the neighbouring occupiers and the photographs of the outbuilding and raised platform during construction it is apparent that the outbuilding and the raised platform were substantially completed after 26 May 2018. The appeal on ground (d) therefore fails.

The ground (f) appeal

21. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or to remedy any harm to amenity resulting from the breach. Given that the requirements in paragraph 5 of the notice require the demolition and removal of the outbuilding and raised platform, the purpose of the notice is clearly to remedy the breach of planning control.
22. The appellant has stated that to remove the outbuilding is excessive and costly and that there has always been an outbuilding at the higher level. It is also stated that the outbuilding has full permission, and that the platform has not been raised. Nevertheless, I have found that express planning permission is required for the outbuilding and the raised platform. There is no appeal on ground (a) in this case and therefore I am unable to consider the planning merits of the development.
23. Therefore, the only way to remedy the breach is to remove the outbuilding and the raised platform. No lesser steps have been suggested and there are none that I can think of that would remedy the breach alleged. For these reasons I

find that the requirements of the notice to secure the removal of the unauthorised development go no further than remedying the breach of planning control. As such, the requirements are not excessive and the appeal on ground (f) therefore fails.

Conclusion

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

D Boffin

INSPECTOR