



Appeal Decision

Site visit made on 13 June 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2023

Appeal Ref: APP/T5150/C/22/3296620

70 Norwood Avenue, Wembley HA0 1LY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act"). The appeal is made by Mr Kamaran Shiwani against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/20/0672, was issued on 25 March 2022.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of canopy extensions to the main house and outbuilding to the rear of the premises and the erection of a shed to the rear of the premises.
- The requirements of the notice are: (1) Demolish the canopy extensions to the main house and outbuilding to the rear of the premises; (2) Demolish the shed to the rear of the premises; and (3) Remove all debris and items arising from compliance with (1) and (2) and remove all materials associated with the unauthorised developments from the premises.
- The period for compliance with the requirements is: 6 months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) and (f) of the Act. 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 of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld.

Preliminary matters

1. The address stated in the notice is 70 Norwood Avenue. The appellant has given an alternative street number of 70B and has also referred to No. 70A, which appears to reflect the fact that the main building comprises 2 flats. However, Nos. 70A and 70B must both lie within the larger site identified on the plan accompanying the notice, and which the notice describes as No. 70. I shall therefore use the address given in the notice.
2. A member of the public requested a full investigation of "previous breaches"; however, I only have authority to consider the breach of planning control alleged in the notice the subject of this appeal.

The appeal on ground (b)

3. An appeal on this ground must relate to matters of fact and may succeed if the appellant can show that the breach of planning control alleged in the notice had not occurred or has been incorrectly described.
4. The appellant does not dispute that the canopy extensions and the shed had been erected prior to the notice being issued. While he may have made subsequent changes to the canopy extensions, it remains that it, and the shed, had been erected. How long the shed was erected before the notice was issued will be considered in the appeal on ground (d).

5. For these reasons, the matters constituting the breach of planning control had occurred on or before the date on which the notice was issued and the appeal on ground (b) must fail.

The appeal on ground (c)

6. For an appeal to succeed on this ground, the appellant needs to demonstrate that one or more of the matters alleged in the notice does not constitute a breach of planning control. This could be because it is not development or does not require planning permission.
7. The appellant does not dispute that the erection of the shed is development, but it remains to be determined whether it is development requiring planning permission. Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("Article 3 and Class E" of "the Order") grant planning permission for certain buildings, including sheds. However, that permission is for buildings that are "incidental to the enjoyment of a dwellinghouse" and Article 2 of the Order confirms that "dwellinghouse" does not include a flat or a building containing one or more flats. As No. 70 has been converted to flats, the permission granted by Article 3 and Class E does not apply.
8. While that describes the present situation correctly, the appellant claims the shed was erected in 2007 or 2008. I shall consider whether that means it is immune from enforcement action in the appeal on ground (d). However, some examination of the facts is necessary to consider the appeal on ground (c).
9. While the appellant does not explicitly state the shed was erected before the dwellinghouse was converted to flats, it is wise to consider that possibility. A structure can be seen at the foot of the back garden in an aerial image dated 3 May 2008, although the resolution is too poor to conclude it is the shed that was in place when the notice was issued. Nevertheless, it seems likely that an outbuilding had been erected in the approximate position of the shed at around the time claimed by the appellant.
10. However, the appellant stated that the dwellinghouse was converted to flats soon after he bought it, in 2007, in an earlier appeal decision¹. This, and the absence of an accurate date when the shed was erected, make the evidence before me imprecise. It has therefore not been demonstrated, on the balance of probability, that the shed now in place, even if it is the structure shown in the aerial image, was erected incidental to the enjoyment of No. 70 as a dwellinghouse.
11. The canopy extensions constitute development and the larger, attached to the rear of the main building, has been reduced in depth and width. However, as noted above, Article 2 of the Order confirms that a building containing one or more flats, or a flat contained within such a building, is not a "dwellinghouse". Accordingly, neither canopy is granted planning permission by Article 3 and Schedule 2, Part 1, Class A of the Order.
12. For these reasons, it has not been demonstrated that the erection of the shed or of either canopy is not development or was permitted by the Order and the appeal on ground (c) must fail.

¹ APP/T5150/C/17/3183223, 3183703 and 3183704, allowed 22 August 2018.

The appeal on ground (d)

13. The appeal on this ground is only brought in respect of the shed, which the appellant states was built in 2007 or 2008 and has existed since then. To succeed, he needs to demonstrate, on the balance of probability, that it was substantially completed on or before 25 March 2018 ("the Relevant Date"), 4 years before the notice was issued. If that can be shown, it will be immune from enforcement action.
14. As noted in the appeal on ground (c) a structure had been erected in the approximate position of the shed by 3 May 2008, long before the Relevant Date. However, the Council contends that was a different, smaller shed than now exists. It contends the present shed is 200mm taller and at least 1 metre closer to the outbuilding and formed of different materials. The Council accepts, however, that the shed incorporates the door of the previous one.
15. Photographs taken by the appellant in August 2017 confirm that the shed then existing was different from what was in place when the notice was issued. The roof was covered in felt, whereas it is now polycarbonate, and the facing materials in the front wall are not the same. There are no images of the side or rear walls from that time. Aerial images suggest a significant change occurred between April 2020 and March 2022, with the shed either being extended or replaced with a larger shed, although the resolution of the March 2022 image is poor. The appellant contends that the shed is no closer to the main building and outbuilding by reference to the number of panels within the garden fence on the adjacent common boundary with 68 Norwood Avenue.
16. The polycarbonate roof and the frame on which it rests appear to be a unified structure. Photographs provided by the Council indicate that the roof is higher, relative to fence posts and panels on the common boundary fence, than what had existed in March 2017. While the panels within the fence have been replaced since then, the posts they stand between appear unchanged, providing consistency for the purposes of comparison.
17. There have been other significant changes in fabric. The front wall is formed with a new fencing panel. The timber within the roof frame and in the framework supporting the walls and roof is similar, indicating that those elements are contemporary and therefore unlikely to have been present in 2007 or 2008, when the appellant claims substantial completion occurred. The fence on the boundary with No. 68, re-erected in spring 2020, also forms part of one of the side walls.
18. In contrast, the appellant has not provided evidence that these elements of the shed structure were in place on or before the Relevant Date. While he has shown that a shed was in the same position then, he has not demonstrated that the shed now present is the same one.
19. From the foregoing, and from what could be seen during the site visit, I conclude that, at most, only a small proportion of the fabric of the shed that existed in 2017 remains in place. This, and the far greater proportion of new fabric, mean that the original shed no longer exists as a recognisable structure. It has therefore not been demonstrated that any remaining original fabric provides anything more than modest support to the shed that now exists. Accordingly, the shed the subject of the notice is not the one that was erected

in 2007 or 2008 but a different building. No evidence of a date on which this new shed was substantially completed has been presented.

20. For these reasons, it has not been demonstrated, on the balance of probability, that the shed the subject of the notice was substantially completed on or before the Relevant Date. Consequently, the appeal on ground (d) must fail.

The appeal on ground (a)

21. The main issues in this appeal are:

- The effect of the shed and canopies on the character and appearance of the area.
- Their effect on the living conditions of neighbours and occupiers of the appeal premises.

Reasons

Character and appearance

22. The shed and the canopies are single storey structures that stand within an enclosed private garden area. Accordingly, they are not prominent in views from any public area, although glimpses of the canopy on the outbuilding are possible from Norwood Avenue, particularly if the garden gate is open. However, it is difficult to discern any effect on the character and appearance of the area because the canopy is seen against the backdrop of the outbuilding.
23. Considering this, and the range of domestic extensions and outbuildings found in the area, the shed and the canopies in their current forms respond to and complement the locality. Accordingly, they do not conflict with London Plan ("LP") policies D3 and D4, Brent Local Plan 2019-2041 ("BLP") policies BD1 and DMP1, or the Council's Supplementary Planning Document on Residential Extensions and Alterations ("SPD2") in this respect.

Living conditions

24. The alleged effect on the living conditions of neighbours is in respect of the canopy extensions. The canopy extension to the main building is over the doorway to the ground floor flat and adjoins the common boundary with No. 68, which has not been extended to the rear. It has been reduced in depth, and slightly in width since it was first erected. The appellant gives differing accounts of when that reduction in depth was made; either on the date the notice was issued or a week earlier, in his appeal form and statement of case respectively. Notwithstanding that difference, neither the notice nor the Council's submissions state the depth of the canopy when the notice was issued, so I shall consider what exists now.
25. The canopy extensions provide covered amenity areas that enhance, rather than reduce, the usability of the amenity area associated with the dwellings within the appeal site. They are of relatively lightweight construction, being open at the front and sides. As such, they allow a high level of external amenity to be achieved for the occupiers of the appeal premises and neighbours. They therefore do not conflict with LP policies D3 and D4, BLP policies BD1 and DMP1, or SPD2 in this respect.

26. The appeal premises form part of a group of 4 properties that turn the corner of Norwood Avenue and Queensbury Road, all with tapering back gardens. This serves to restrict the private amenity area available for the dwellings within the appeal site and further restrictions are caused by the outbuilding and shed. The Council contends that it has resulted in an overdevelopment of the rear garden area and a failure to provide what it calls "real" amenity space.
27. The Council's reasons for issuing the notice allege overdevelopment of the garden but no reference is made to any standards for amenity space in development plan policies. As noted, the canopies allow the areas beneath them to continue to provide amenity space. Nevertheless, the shed severely restricts the availability of private amenity space for the dwellings within the appeal site and the areas between buildings are small and constrained.
28. The previous shed occupied a very similar position and therefore may have had a similar effect on the quantity of private amenity space. However, the new shed must be considered having regard to the needs of the occupiers of the dwellings now within the appeal site. In that context, the small and constrained areas do not achieve a high standard of amenity for existing and future users, contrary to paragraph 130 f) of the National Planning Policy Framework.

Other Matters

29. The appellant states the canopy extension to the main building creates a better life environment for occupiers of the flats within that building, by providing space for socialising and children's play. While the area covered by the canopy was available for those purposes before, it remains available, and the shelter afforded by the canopy may facilitate more frequent use.

Conclusion on ground (a)

30. For the reasons given above, the shed severely restricts the availability of private amenity space for the dwellings within the appeal site and is therefore unacceptable. I shall refuse to grant planning permission for it.
31. The canopy extensions are acceptable in terms of their effect on the character and appearance of the area and on the living conditions of neighbours and occupiers of the appeal premises for the reasons given. No planning conditions have been suggested by either party and I shall therefore grant unconditional planning permission for them as seen.
32. In these circumstances, the appeal on ground (f) does not fall to be considered in respect of the canopies and is limited to the erection of the shed.

The appeal on ground (f)

33. The notice states, in Schedule 4, that its objective is to remedy the breach of planning control, namely the erection of the shed insofar as this ground of appeal is concerned. Step 2 of Schedule 4 is to demolish the shed. No lesser steps that would remedy the breach of planning control have been advanced. It has therefore not been demonstrated that the requirements of the notice are excessive and the appeal on ground (f) must fail accordingly.

Conclusion

34. For the reasons given above, I conclude that the appeals on grounds (b), (c), (d) and (f) fail and that the appeal on ground (a) succeeds in part. I shall grant

planning permission for the erection of the canopy extensions, but otherwise I shall uphold the notice and refuse to grant planning permission.

Formal Decision

35. The appeal is allowed and planning permission is granted insofar as it relates to the erection of canopy extensions to the main house and outbuilding to the rear of the premises on the application deemed to have been made under section 177(5) of the Act for the development already carried out at 70 Norwood Avenue as shown on the plan attached to the notice and in the photographs forming Appendix A to this Decision.
36. The appeal is dismissed and planning permission is refused insofar as it relates to the erection of the shed to the rear of the premises on the application deemed to have been made under section 177(5) of the Act for the development already carried out at 70 Norwood Avenue as shown on the plan attached to the notice.
37. The enforcement notice is upheld.

Mark Harbottle

INSPECTOR

Appendix A: photographs of the canopy extensions to the main house and outbuilding to the rear of the premises

