



Appeal Decision

Site visit made on 13 June 2023

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2023

Appeal Ref: APP/T5150/C/22/3304748

120 and 120A Kingsbury Road, London NW9 0AY

- 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 Fraidon Sharifi against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/20/0307, was issued on 30 June 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the premises to two dwellings; the erection of a building in rear garden of the premises; and the erection of a timber framed canopy extension onto the existing single storey rear extension to the premises.
- The requirements of the notice are: (1) Cease the use of the premises as two dwellings; (2) Remove all internal partitions, items, materials and debris associated with the unauthorised change of use, including the removal of all kitchens, except the one, on the ground floor, and restore the internal configuration to the original layout before the unauthorised change of use took place; (3) Remove the partition fencing within the rear garden of 120 Kingsbury Road, and reinstate a boundary fence between 118 and 120 Kingsbury Road; (4) Demolish the building in the rear garden of the premises, including the concrete base; (5) Demolish the timber framed canopy extension erected onto the existing single storey rear extension to the premises; and (6) Remove all items and debris, arising from that demolition, and remove all materials associated with the unauthorised change of use and unauthorised development from the premises.
- The period for compliance with the requirements is: 6 months from the date the notice comes into effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) 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 is dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary matter

1. While the notice describes the land as 120 and 120A Kingsbury Road I shall refer to it as No. 120 for conciseness. Any reference to "120 and 120A" in this Decision means the 2 dwellings within the main building.

The appeal on ground (b)

2. This appeal is limited to the erection of a building in the rear garden of the premises. The appellant contends the notice is factually wrong because the building was not erected in the rear garden of No. 120 but within the enlarged curtilage of No. 118.
3. There is no requirement for a notice to define the planning unit or curtilage. While the appellant suggests the allegation could refer to other operational development such as sheds, fences, canopies and patios, he assumes that it is the outbuilding that occupies roughly half of what used to be the rear garden of

No. 120. That building is the only structure to the rear of No. 120 shown within the line of the plan accompanying the notice. Accordingly, it is clear which building the notice attacks. Even if there were any misdescription, it could be corrected by exercising authority under section 176(1)(a) of the Act.

4. For these reasons, and while I shall return to the question of curtilage later, it is fact that the building shown on the plan had been erected when the notice it accompanies was issued. The appeal on ground (b) must therefore fail.

The appeal on ground (c)

5. This appeal is also limited to the erection of the building. The appellant considers the building has planning permission by reason of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("Class E" of "the Order").
6. Class E may permit the provision, within the curtilage of a dwellinghouse, of a building that is required for a purpose incidental to the enjoyment of that dwellinghouse. The definition of a dwellinghouse within the Order excludes a building containing one or more flats, or a flat contained within such a building, and therefore cannot apply to No. 120 or either flat.
7. The building is on land that was part of the back garden of No. 120 when the appellant acquired that property in 2015. However, it is now intimately associated with his adjacent dwellinghouse, No. 118, both physically and functionally. The appellant contends that he erected the building after he had transferred the land on which it stands to the curtilage of No. 118. In his words, "Once the curtilage of the respective land was absorbed into that of [No. 118], the outbuilding was constructed." This confirms the transfer of land, and the erection of the building were closely connected, although precise dates for both events have not been provided.
8. Although it may mark the start of a new chapter in the relevant planning history, no evidence that the exchange of land between private residential gardens is development requiring planning permission has been provided. Nos. 118 and 120 were, and remain, in the same ownership and I see no reason why a record of a land transfer need exist in those circumstances.
9. What the appellant must demonstrate, on the balance of probability, is that the land on which the building stands was already within the curtilage of No. 118 when construction commenced.
10. The Order does not define curtilage; however, for a dwellinghouse it is understood to be land which forms part and parcel with the dwellinghouse. It is usually the area of land within which the dwellinghouse sits, or to which it is attached, such as the garden. In some instances, especially in the case of dwellinghouses with large grounds, it may be a smaller area.¹
11. The concept of curtilage is not unique to dwellinghouses, and it is widely accepted that whether a building is within the curtilage of another building should be determined having regard to 3 relevant factors. These are the physical layout of the 2 buildings, their past and present ownership, and their past and present use or function.²

¹ Permitted development rights for householders - Technical Guidance, September 2019.

² HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC [1983] JPL 310

12. The physical layout is unusual because the building lies to the immediate rear of No. 120 and the L-shaped plot of No. 118 now existing is uncharacteristic of the area. However, the dwellinghouse and the building are closely associated in terms of their proximity and the unimpeded access between them that is now afforded exclusively to the occupiers of No. 118. As noted earlier, the land on which the building stands was, and remains, in the ownership of the appellant, who lives at No. 118. Accordingly, the dwellinghouse and the building are also closely associated in terms of their past and present ownership.
13. The dwellinghouse and the building are closely associated in terms of their use or function now, and in all probability, they were just as closely associated when the notice was issued. The building included a television viewing area, a desk with computer, storage cupboards and a bathroom at the time of my site visit. It can only be reached from the rear garden of No. 118.
14. I see no reason not to accept that it was the appellant's intention all along to use the building in ways that are intimately associated with his occupation of the dwellinghouse at No. 118. However, the relevant test is whether the land on which the building was erected had become, in terms of use and function, associated with that dwellinghouse when construction commenced. Notwithstanding the appellant's description of events, he has not demonstrated that the land on which the building stands had been used in association with his enjoyment of No. 118 as a dwellinghouse prior to construction. Neither has evidence been provided to show any functional connection between that land and No. 118 until after the building was substantially completed.
15. It has therefore not been demonstrated that the physical layout or use and function of the land involved had changed sufficient for it to be within the curtilage of No. 118 when construction began. The land and the dwellinghouse were not intimately associated in terms of use and function at that time, as they are now. Thus, the building did not benefit from the permission conferred by Class E and therefore requires an express grant of planning permission.
16. For these reasons the appeal on ground (c) must fail.

The appeal on ground (d)

17. This appeal relates to all matters comprising the alleged breach of planning control, namely the material change of use of the premises to 2 dwellings; the erection of the building; and the erection of the canopy extension.
18. To succeed in respect of the material change of use, the appellant needs to demonstrate that it was instituted on or before 30 June 2018 ("the Relevant Date"), 4 years before the notice was issued. He also needs to demonstrate that the use continued thereafter without significant interruption. In respect of the erection of the building and the timber framed canopy extension, he needs to demonstrate that they were substantially completed on or before the Relevant Date. In each case, the facts must be demonstrated on the balance of probability.

The material change of use of the premises to 2 dwellings

19. The appellant states, in a statutory declaration, that he blocked off a rear room and a ground floor extension from the rest of No. 120 in August 2017 with the intention of using that part as his home office. While his statement of case

indicates the work was carried out in September 2017, greater weight should be afforded to a statutory declaration.

20. The ground floor front and upper floor (No. 120) was first let under a tenancy agreement dated 28 September 2017. The statutory declaration relates that a kitchen was installed in the rear part of the building (No. 120A) around that time, to facilitate occupation by a Mr Hassan. However, no evidence of Mr Hassan's occupation of that part of the building has been provided.
21. A statutory declaration by the person who installed the kitchen in No. 120A dates the work to the summer of 2017, thereby introducing a degree of ambiguity in the appellant's evidence. The installer's description of work is "Built in a kitchen counter and fitted a sink with hot water as well as cupboards underneath made for a tenant moving in at the rear". Importantly, this does not confirm the installation of cooking facilities.
22. This evidence is therefore not sufficiently precise to demonstrate, on the balance of probability, that all the facilities required for day-to-day private domestic existence were present in No. 120A in August or September 2017, or that it was occupied residentially at that time.
23. Nos. 120 and 120A were registered for Council Tax on 15 July 2019, after the Relevant Date. A tenancy agreement ("TA") dated 17 September 2018 contains contradictory references, "120Kings" and "120AKings", and gives the property address as 120 Kingsbury Road. Subsequent TAs dated 6 January and 23 September 2020 avoid that contradiction, consistently describing the premises as "120A Kingsbury Road" and the rooms as "120AKings". The letting agent's statutory declaration refers to tenancies that began on 8 April 2021 and 22 February 2022, stating they were for No. 120A, but the relevant TAs describe the premises to be let as "120 Kingsbury Road".
24. The ambiguity in evidence of tenancies before January 2020 and since April 2021 reduce the likelihood that No. 120A was occupied and the use as 2 dwellings had begun on or before the Relevant Date or, if it had, that it continued without significant interruption.
25. Streetview images show that the front garden was paved, pipework was installed in the side elevation and a letter box was mounted on the front of the building after June 2016 and by April 2018. The April 2018 images show 2 cars on the front paved area, another on the driveway between Nos. 118 and 120, and 2 sets of bins (4 in total) in front of No. 120. While these matters may suggest use of No. 120 as 2 dwellings, it is not possible to identify who each car belonged to or whether the bins served No. 120 alone, given that No. 118 was in the same ownership and appeared to have 2 sets of bins (4 in total) in the image dated June 2016. The earliest image showing 2 sets of bins outside No. 120 and bins also outside No. 118 is dated May 2019.
26. The Streetview images lack precision because the ownership of the various cars is unknown and, prior to May 2019, it is unclear which of the appellant's properties the bins served. The precise function of the pipework is not explained, so it is unclear what significance, if any, it may have. The letter box may suggest the existence of a second dwelling but cannot demonstrate it was occupied, and therefore that the use as 2 dwellings had been instituted, or was continuing, on the date of the image.

27. Accordingly, it has not been demonstrated, on the balance of probability, that the material change of use of the premises to 2 dwellings was instituted on or before the Relevant Date.

The erection of the building

28. The earliest evidence of the building the notice is directed against is in photographs taken by the Council in July 2020. The appellant has offered no evidence of the date of its substantial completion, but aerial images confirm that it would have been erected between 29 June 2019 and 24 March 2020. It was therefore not substantially completed on or before the Relevant Date.

The erection of the canopy extension

29. What appears to be the frame of the canopy is visible in an aerial image dated 7 May 2018, but the earliest evidence of its roof is in a photograph taken by the Council in July 2020, some 2 years after the Relevant Date. This photograph appears to show a mix of new and older components within the frame. Without the roof, the structure could not function as a canopy and would therefore not have been substantially complete.
30. The available evidence does not, therefore, demonstrate that the addition of the roof, which resulted in the canopy becoming substantially complete, occurred on or before the Relevant Date.

Conclusion on ground (d)

31. For these reasons, it has not been demonstrated, on the balance of probability, that the use of the premises as 2 dwellings was instituted on or before the Relevant Date or that it has been continuous since its institution. Neither has it been demonstrated, on the balance of probability, that the building or the canopy were substantially completed on or before the Relevant Date.
32. Accordingly, the appeal on ground (d) must fail.

The appeal on ground (a)

33. This appeal is limited to the erection of the building. The main issues are:
- Its effect on the character and appearance of the area.
 - Its effect on the living conditions of neighbouring occupiers.

Reasons

34. The Council does not consider the building to be incidental to No. 120. The appellant states that it is used in association with No. 118 as an office, a study room, a gym, and a place where he can care for his pet on religious grounds. While I did not see a pet, I see no reason to disagree with this description of the building's function. There is no evidence to suggest the building provides separate residential accommodation or supports the increased occupation of any dwelling, so there is no conflict with policy BH12 of the Brent Local Plan 2019-2041 ("the BLP").
35. The building contains a bathroom and the Council's Supplementary Planning Document on Residential Extensions and Alterations states that outbuildings should not include such features. However, while the bathroom could become

part of a self-contained dwelling, the formation of that dwelling would be development subject to planning control.

Character and appearance

36. The building occupies approximately half of what was originally the back garden of No. 120 and stands close to the common boundaries to the side and rear. However, when considered in the context of the substantial outbuildings of comparable size, height and position found in several nearby back gardens it does not appear obtrusive or overbearing, or out of character with the dwelling or the area. In view of this, and considering its function, the building complements the locality and accords with policy DMP1 of the BLP.

Living conditions

37. While the Council contends the building is detrimental to the visual amenities of the neighbouring properties, it does not explain how that might affect any occupier's living conditions. The adjacent garden on Kingsbury Road, belonging to No. 122, is relatively large and benefits from the open aspect of the grounds of a church on the other side. Any effect on the living conditions of the occupiers of the dwelling to the rear, 1 Mardale Drive, is limited by reason of that property standing on higher ground.
38. However, as found in the appeal on ground (c), there is an intimate connection between the transfer of land from the rear garden of No. 120 and the erection of the building used in connection with No. 118 on that land. There is no evidence that the land was put to any purpose associated with or incidental to the residential occupation of No. 118 until after the building had been substantially completed. Thus, while an exchange of garden land between dwellings may not be development, it is highly unlikely that No. 120 would have lost external private amenity space but for the appellant's wish to have an outbuilding for No. 118.
39. The result of the transfer is a significant reduction in the external private amenity space available for No. 120, whether it is used as 2 dwellings or one. While neither party has specified the remaining space, it is undoubtedly less than the 50 square metres required for family housing and the 40 square metres required for No. 120 if subdivided into 2 dwellings. Consequently, the erection of the building has resulted in there not being external private amenity space of a sufficient size and type to satisfy the needs of the residents of No. 120 or of Nos. 120 and 120A and allow them high levels of external amenity. It is therefore contrary to policies DMP1 and BH13 of the BLP and unacceptable in terms of the living conditions of neighbouring residents.
40. For this reason, the appeal on ground (a) must fail.

The appeal on ground (f)

41. It is argued that the requirement, at step 2, to remove all internal partitions associated with the unauthorised change of use, is excessive. The appellant states that no partitions were formed, but that a door was blocked up, so the reintroduction of that door would be sufficient. However, a partition is widely understood to separate 2 things, in this case the 2 dwellings, so it accurately describes whatever was used to block up the doorway. Therefore, this aspect of the requirement is not excessive.

42. The appellant states he is not sure what “items, materials and debris” should be removed in accordance with the requirements of the same step. While the notice does not specify what the items or materials are, the appellant will know what he installed to facilitate the use as 2 dwellings. The same is true of the requirement, at step 6, to remove all materials associated with the unauthorised change of use and unauthorised development. Returning to step 2, no debris was installed, it could only be consequential to removing items and materials. This aspect of the requirement is not excessive and should be clearly understood.
43. The reasons for issuing the notice, set out in schedule 3, do not refer to the partition fencing to be removed as part of step 3. However, it is inseparable from the erection of the building that has unacceptably diminished the external private amenity space available to the occupiers of No. 120, a principal reason why the building is unacceptable. Accordingly, step 3 is not excessive.
44. For these reasons, the appeal on ground (f) must fail.

The appeal on ground (g)

45. The appellant considers the 6-month period for compliance given by the notice is too short, citing the effects of the Covid-19 pandemic and a financial crisis. While shortages of building materials and difficulties in engaging contractors were common at the height of the pandemic, the situation has now improved, such that 6 months is not an unreasonable period in this respect.
46. No estimate of the cost of complying with the notice has been provided, neither has any explanation as to why the necessary funds could be raised within 12 months, the suggested alternative, but not within 6 months. In any event, 12 months have passed since the notice was issued and that has allowed time to raise the required funding. It has therefore not been shown that the 6-month period given in the notice is too short.
47. For these reasons, the appeal on ground (g) must fail.

Conclusion

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

Formal Decision

49. 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 Act.

Mark Harbottle

INSPECTOR