



Appeal Decision

Site visit made on 17 October 2023

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2023

Appeal Ref: APP/T5150/C/22/3307326

798 Harrow Road, Wembley HA0 3EL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr B Suresan against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice, numbered E/20/0490, was issued on 16 August 2022.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of an extension to the rear of the premises ("the unauthorised development").
- The requirements of the notice are:
 - Step 1 – Demolish extension to the rear of premises.
 - Step 2 – Remove all debris and items, arising from this demolition, and remove all materials associated with the unauthorised development 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 sections 174(2)(a) and (d) 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 allowed, the enforcement notice is quashed and planning permission is granted in the terms set out in the Formal Decision.

Procedural matters

1. The appeal form indicates that the appeal was made on ground (a). However, by subsequent email, it was confirmed that ground (d) should be added. The main parties have provided evidence in respect of both grounds and so the appeal proceeds on this basis.

Ground (d)

2. For success on ground (d), it must be shown that, on the balance of probabilities, the enforcement notice (the Notice) was issued after the end of the period of four years beginning on the date that the development was substantially completed. The onus is on the appellant to make their case to the standard of the balance of probabilities.
3. There is no dispute that the extension relates to the long-standing commercial use of the ground floor of the premises, or that an extension of some form has existed for at least 14 years. The appellant advises that a fire damaged the extension in 2018 and after that, the roof was repaired, wall rendered, and a previous shutter at the rear was replaced with a wall.
4. However, the Council has produced evidence from fire brigade records indicating that the fire was, in fact, in 2020 and that rebuilding took place after that. The date, in public record, casts significant doubt over the appellant's version of events.

5. Photographic evidence from 2019 shows that the extension had a different appearance at that time, with the previous structure clad in timber boarding. A photograph of the post-fire extension under construction appears to show new blockwork to the side wall, evident from an absence of fire damage on the blocks. Finally, reference to the position of features on adjoining external walls also appears to show the new extension being slightly taller and this has not been disputed by the appellant.
6. In light of the above, the evidence shows that the current extension appears to be a significantly different development to that which existed before the fire. This is reinforced by a schedule of 'fire reinstatement works' provided by the appellant that includes items such as 'demolish & cart away rear extension', 'excavate new foundation' and 'rebuild in solar blockwork'.
7. As such, I conclude that it is more likely than not that a new extension structure was built after the fire and that the structure was not substantially complete until sometime during or after 2020. Four years did not pass between 2020 and the issue of the Notice and, therefore, the ground (d) appeal should fail.

Ground (a)

8. Ground (a) is that planning permission should be granted for the matters alleged in the Notice. The main issues are the effect on the character and appearance of the area, the living conditions of adjoining residents with regard to outlook, and highway safety.

Character and appearance

9. The extension is at a terrace of commercial properties in a shopping parade, with residential accommodation above. The rear of the buildings have a fairly utilitarian design with flat roofed appearance. To the rear, a roughly surfaced lane provides service access to the terrace and while there have been some ground floor extensions, most have an open, hard-paved yard between the main part of the building and the service lane.
10. The square profile of the extension and its rendered walls is reflective of the wider form and rear elevation of the main buildings, while the small roller shutter door is befitting the commercial character of the ground floor uses and not out of place in the context of some garages to the rear of dwellings on the opposite side of the lane.
11. While the Council allege that the development is of poor architectural and design quality, this claim is not substantiated by detailed evidence. Moreover, for the reasons given, I find it integrates well with the surrounding built form and its small height, relative to the main buildings, prevents it being dominant in views of the site.
12. Therefore, I find that the extension does not harm the character and appearance of the area and does not result in conflict with those aims of Policies DMP1 or BD1 of the Brent Local Plan 2022 (BLP), nor guidance in the National Planning Policy Framework (the Framework) that seek to ensure that development is of high design quality that complements the locality.

Living conditions

13. My above findings that the development has an appropriate appearance means that its physical form does not result in a structure that has an incongruous or intrusive appearance when viewed from residential properties within the area. Moreover, its position and size is such that it is set away from nearby habitable windows so that it does not intrude into views out of them. In this regard, there is no obvious reason why the extension causes harm to the living conditions of nearby occupiers.
14. Accordingly, the building does not result in conflict with those aims of BLP Policy DMP1 or the Framework that seek to ensure development provides good living conditions. Nor is there any conflict with those aims of BLP Policy BD1 that may seek to ensure good design quality in the interests of wellbeing. The Council's reasons for issuing the Notice refer to Policy D5 of the London Plan 2021 (LP) which relates to inclusive and accessible design, but it has not been shown why there would be a conflict with the aims of this policy, and I do not see any reason why one would arise.

Highway safety

15. The extension occupies the entire area between the rear of the main buildings and the service lane. While the roller shutter door means that servicing of the building is possible from the rear, it is not possible to park a vehicle clear of the lane. Accordingly, any servicing activities are likely to impede the passage of vehicles to those properties beyond.
16. BLP Policy BT3 seeks to prevent the loss of existing servicing arrangements. However, while the current extension has only been in place for a short period of time, the evidence indicates that a previous structure of comparable footprint stood here for some time before that. Whether or not that previous structure was lawful, there is no substantive evidence that the presence of a building in this particular location has caused any detrimental effect on servicing arrangements in the locality. Nor has it been shown that any inconvenience that may have been caused has been particularly problematic for nearby occupiers or resulted in harm to highway safety. Moreover, servicing is still possible from the rear, away from the main highway, albeit that some temporary obstruction and inconvenience to users of the lane could arise.
17. I, therefore, find that the extension causes no conflict with those aims of LP Policy T6, BLP Policies DMP1, BT2 or BT3, or guidance in the Framework that seek to ensure appropriate vehicle parking is provided alongside efficient servicing and delivery arrangements within new development.

Other Matters

18. My attention has been drawn to another appeal decision in respect of an unauthorised development at Ealing Road. However, in that case, the extension was found not to complement the character and appearance of that area and would result in service vehicles having to reverse onto the very busy Ealing Road. The present case is accessed from a comparatively quiet side road. From the Ealing Road Decision, it also appears that at most, a smaller extension predated the one being enforced against, which is materially different to the present situation where a large structure has existed for some time. The Ealing Road case is, therefore, materially different to the present one and the findings

of that Inspector do not lead me away from my own findings in respect of this appeal.

Conclusion on ground (a)

19. For the reasons given, I find that the extension complies with the development plan when read as a whole and there are no material considerations that indicate that a decision should be taken otherwise than in accordance with it. My decision in this regard is based upon the particular circumstances and evidence before me. It does not, therefore, indicate that other similar developments would also be acceptable.
20. Accordingly, I shall grant planning permission for the matters alleged in the Notice and the appeal should, therefore, succeed on ground (a).

Formal Decision

21. The appeal 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 Town and Country Planning Act 1990 as amended, for the development already carried out, namely the erection of an extension to the rear of the premises at 798 Harrow Road, Wembley HA0 3EL as shown on the plan attached to the Notice.

M Bale

INSPECTOR