



Appeal Decisions

Site visit made on 17 October 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2023

Appeal A Ref: APP/R5510/C/22/3297168

42 Raynton Drive, Hayes, Middlesex UB4 8BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jasdeep Singh against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The notice was issued on 11 March 2022.
- The breach of planning control as alleged in the notice is breach of condition for failure to comply with condition 4 of planning permission reference 73142/APP/2019/2068 dated 19 August 2019 (single storey outbuilding to rear for use as storage) (retrospective), requiring "the outbuilding hereby approved shall only be used for the purpose(s) stated on the application form and approved drawings and shall not be used for purposes such as a living room, bedroom, kitchen, study, as a separate unit of accommodation or for any business purposes" ("the breach").
- The requirements of the notice are: A Demolish the single storey outbuilding to the rear and remove from the land all debris, building materials, plant and equipment resulting from compliance; or B (i) Cease the unauthorised use of the outbuilding as residential accommodation. (ii) Remove the fixtures, fittings and appliances from the kitchen area in the outbuilding to include the sink(s), worksurfaces(s), cooker-oven(s)/hob(s), fume extractor unit(s), kitchen style wall and floor cupboards and hot and cold-water services and foul waste drainage pipes. (iii) Remove the bathroom suite to include all fixtures and fittings, shower(s), basins(s), WC(s), hot and cold-water service pipes and foul waste drainage pipes from the outbuilding. (iv) Remove all the internal wall(s) separating the bathroom, bedroom and living/sleeping area in the outbuilding and supporting the unauthorised use. (vi) (*sic*) Cut back the foul waste drainage pipe to the entry point to the outbuilding, seal and backfill with concrete or similar material. (vii) Remove the gas boiler supplying hot water and central heating and all associated pipework and radiators from the outbuilding. (viii) Remove from the land all debris, items, appliances, units, building materials, plant and machinery resulting from compliance with points (ii) to (vii) above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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.

Appeal B Ref: APP/R5510/C/22/3297173

42 Raynton Drive, Hayes, Middlesex UB4 8BE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Jasdeep Singh against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The notice was issued on 11 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a garden shed.
- The requirements of the notice are: (i) Demolish and remove the garden shed of (*sic*) the premises. (ii) Remove from the land all debris, items, building materials (to include metal fixings, wooden joist and uprights, roofing and guttering), plant and machinery resulting from compliance with point (i) above.
- The period for compliance with the requirements is three months.

- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) 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.
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Decisions

1. Appeal A-It is directed that the enforcement notice be varied by the deletion of step A and the subsequent 'or' in paragraph 5. Subject to these variations 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 1990 Act as amended.
2. Appeal B-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 1990 Act as amended for the development already carried out, namely the erection of a garden shed on land at 42 Raynton Drive, Hayes, Middlesex UB4 8BE referred to in the notice, subject to the condition in the Schedule at the end of this Decision.

Appeal A

Ground (a) appeal

Main Issues

3. The stated reason for imposing condition 4 is *"To avoid any future fragmentation of the curtilage or the creation of a separate residential or business use, so as to protect the amenity of adjoining residential properties..."* Therefore, the main issues in this ground of appeal are:
 - The effect of removing condition 4 to permit the use of the outbuilding as residential accommodation on the living conditions of neighbouring occupiers, having regard to noise and disturbance and outlook.
 - The effect on the living conditions of existing and future occupiers of the main dwelling, having regard to the provision made for outdoor amenity space.

Reasons

Living conditions-neighbouring occupiers

4. The appeal property contains an enlarged two storey, semi-detached dwelling. The outbuilding has masonry walls under a monopitch roof and is located towards the end of the rear garden. The outbuilding has a kitchen containing a cooker, hob, worktops, sink and drainer, wall cupboards and household electrical appliances including a fridge/freezer. There is a separate bedroom containing a double bed, other furniture items and a TV. In addition, there is a shower room. An item of exercise equipment is in the entrance lobby.
5. I am given to understand that the outbuilding is occupied by an elderly relative of the appellant. I also understand that the occupier requires ground floor accommodation due to difficulty in accessing bedrooms on the upper floors in the main dwelling, the separate kitchen and washing facilities being necessary for observance of their religion. The circumstances in which the outbuilding is used as residential accommodation are therefore not dissimilar to a residential annexe, where the facilities for day-to-day private existence are provided but the occupier nevertheless shares their living activity in company with the family residing in the main dwelling. There is little to suggest that the outbuilding has been used as residential accommodation separately and unrelated to the main dwelling. The available evidence indicates that the outbuilding was occupied by

other members of the appellant's family when the Council visited in January 2022.

6. Nevertheless, the use as residential accommodation is highly likely to have given rise to a considerable increase in the level of day-to-day activity at the outbuilding, as well as a significant amount of extra daily comings and goings thereto, compared to the lawful storage use. As a result, there is likely to have been a substantial and harmful increase in the levels of noise and disturbance experienced by neighbouring occupiers at the rear of their property, where they might ordinarily expect to enjoy reasonably high levels of peace and quiet. Whilst some current neighbours might not find the increased levels of noise and disturbance objectionable, there is no reasonable assurance that this would continue to be the case in future. Although there has been no adverse effect on the outlook enjoyed by occupiers of adjoining residential property, the scale of the outbuilding being unchanged, that has little bearing on the levels of noise and disturbance experienced by neighbours.
7. Therefore, use of the outbuilding as residential accommodation has unacceptably harmed the living conditions of neighbouring occupiers. This is in conflict with Policy DMH 6 of the Hillingdon Local Plan: Part 2 Development Management Policies (LP), which amongst other things seeks to ensure that garden development maintains the neighbouring residential amenity of existing homes and gardens. Furthermore, there is conflict with LP Policy DMHD 2, which amongst other things requires residential outbuildings to not compromise the amenity of neighbouring occupiers and for there to be no use other than for a purpose incidental to the enjoyment of the dwelling, with no capability for use as independent residential accommodation.

Living conditions-occupiers of main dwelling

8. The outbuilding footprint is unchanged and, as noted above, its use as residential accommodation is associated with the main dwelling. Therefore, there has been no reduction in the outdoor amenity space provision for the occupiers of that dwelling, there is no harm to their living conditions and no conflict with LP Policy DMHB 18.

Other matters

9. I have carefully considered and can empathise with the outbuilding occupier's circumstances, set out above. Nevertheless, planning permission usually runs with the land and it is rarely appropriate to provide otherwise. Personal circumstances can change relatively quickly, whilst the consequences of the use of the outbuilding as residential accommodation will endure for a long time. Therefore, I attach limited weight to this matter.

Planning Balance & Conclusion-Ground (a) appeal

10. The use of the outbuilding as residential accommodation contrary to condition 4 is harmful to the living conditions of neighbouring occupiers, in conflict with relevant Development Plan policies referred to above and the Development Plan taken as a whole. I have had due regard to the Public Sector Equality Duty (PSED) contained in s149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity and foster good relations between people who share a relevant protected characteristic and people who do not share it. Having regard to the outbuilding occupier's age and religious faith, they have protected characteristics for the purposes of the PSED. However, it has not been shown that the occupier's accommodation needs cannot be met in another way, or that the harm caused by the use could be overcome by imposing conditions. Consequently, upholding the enforcement notice and refusing to grant planning permission for the use of the outbuilding as

residential accommodation would be proportionate, and doing so is necessary to foster good relations in accordance with the PSED. There are no material considerations that outweigh the conflict with the Development Plan. Therefore, I conclude that the ground (a) appeal should not succeed.

Ground (f) appeal

11. The ground of appeal is that the notice requirements are excessive.
12. An enforcement notice can have the purpose of remedying the breach by making development comply with the terms, including conditions and limitations, of any planning permission which has been granted in respect of the land or by restoring the land to its condition before the breach took place, or it can remedy any injury to amenity caused by the breach. The notice requirements include ceasing the unauthorised use as residential accommodation contrary to condition 4 and removing the works that facilitate the use. Therefore, although the notice does not state as such, its purpose must be to remedy the breach.
13. Construction of the outbuilding benefits from a grant of planning permission. The allegation is a breach of condition, not unauthorised building operations. That being the case, requiring the outbuilding to be demolished is not a proportionate remedy to the breach. It would deprive the appellant of the opportunity of reverting to the lawful use of the outbuilding for storage and would exceed what is reasonably necessary to comply with the terms of the planning permission, or to restore the land to its condition before the breach took place. Therefore, I shall exercise the power available in s176 (1) of the Act to vary the notice to delete step A. There would be no injustice in doing so.
14. The kitchen and bathroom fixtures and fittings, the heating system, internal partitions and services specified in the requirements at B are part and parcel of, and integral to, the unauthorised use; such works facilitate the use of the outbuilding as residential accommodation. It was not suggested that any of those works were associated with the lawful storage use. As a result, any step that stopped short of requiring the total removal of the works, for example only securing removal of the cooking facilities and the bedroom partition wall, would sustain part of the breach and so would not achieve the purpose of the notice. No other alternatives to the requirements were advanced in support of the appeal and to my mind, there are none that would also remedy the breach. Accordingly, the remaining requirements are not excessive and are proportionate, being the minimum works necessary to comply with condition 4 and thereby remedy the breach.
15. For the above reasons, the ground (f) appeal succeeds to the limited extent set out above.

Appeal B

Ground (c) appeal

16. The ground of appeal is that the matter stated in the notice does not constitute a breach of planning control. It is for the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
17. A freestanding timber shed has been erected on one side of the rear garden, adjacent to the outbuilding in Appeal A. Erecting the shed has involved 'development' as defined in s55 (1) of the Act. Planning permission is required for the development of land, having regard to s57 (1) of the Act.
18. In Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO)

planning permission is granted for the provision within the curtilage of a dwelling of a building required for a purpose incidental to the enjoyment of the dwelling as such. There is no dispute that the shed meets the relevant size, height and locational limitations in Class E paragraph E.1, whilst paragraphs E.2 and E.3 do not apply in this instance.

19. In the context of a dwelling, an 'incidental purpose' is generally regarded as being a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it. The Government's Technical Guidance advises that a large range of buildings can fall within Class E, including garden sheds, other storage buildings and garages, as long as they can properly be described as having a purpose incidental to the enjoyment of the dwelling¹. It is not unreasonable to regard the use of the shed for storage in association with the residential use of the dwelling as an incidental purpose.
20. However, in Class E 'required' for an incidental purpose should be interpreted as 'reasonably required' and does not rest on the unrestrained whim of a householder; it is therefore necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. My understanding is that the shed is required to provide storage displaced by the unauthorised use as residential accommodation of the outbuilding in Appeal A. The outbuilding is of a size capable of accommodating all of the items stored in the shed with ease. Erecting the shed in such circumstances does not, to my mind, sit easily with what would ordinarily be regarded as being genuinely and reasonably required to accommodate the storage use. Moreover, if the outbuilding reverted to its lawful storage use it is entirely possible that the shed would be largely redundant.
21. Accordingly, on the basis of the available evidence, as a matter of fact and degree and on the balance of probability, I am not persuaded that the shed is required for a purpose incidental to the enjoyment of the dwelling as such and planning permission is not granted for its erection by the GPDO. The definition of a breach of planning control in s171A (1) of the Act includes carrying out development without the required planning permission.
22. As the appellant has been unable to show that erection of the shed does not constitute a breach of planning control, the ground (c) appeal fails.

Ground (a) appeal

Main Issues

23. The main issues in this ground of appeal are:

- The effect of the shed on the living conditions of the existing and future occupiers of the dwelling, having regard to the provision made for suitable outdoor amenity space.
- The effect on the living conditions of neighbouring occupiers, having regard to outlook.

Reasons

Living conditions-existing and future occupiers of the dwelling

24. Erecting the shed has meant that, together with the built footprint of the outbuilding in Appeal A and the open-sided canopy at the rear of the dwelling, perhaps as much as half of the original rear garden is covered by built form.

¹ Permitted development rights for householders: Technical Guidance MHCLG 2019.

Differences in the figures notwithstanding, both main parties assessed the size of the rear garden as falling significantly below the 100 m² minimum requirement in the LP for a private outdoor amenity space serving a dwelling with four or more bedrooms. There are four rooms on the upper floors of the dwelling capable of being used as bedrooms, albeit one of which is quite small. It is therefore appropriate to regard this as a four-bedroom property.

25. Nevertheless, removing the canopy as proposed would significantly increase the size of the rear garden. The appellant estimated that following removal of the canopy, the rear garden would have an area of around 95 m²; there is no sound reason to doubt the accuracy of this figure. This would still entail a slight shortfall in size compared to the LP minimum requirement. Even so, sufficient outdoor space would be available to occupiers of the dwelling for activities such as drying washing, cultivating plants, children's play or for informal recreation. In addition, with the canopy removed the rear garden would be of a size which would compare favourably with those of neighbouring properties. Therefore, subject to removal of the canopy the shed would not harm the living conditions of existing and future occupiers of the dwelling, as suitable provision would be made for outdoor amenity space and there would be no conflict with LP Policy DMHB 18.

Living conditions-neighbouring occupiers

26. The shed has a reasonably low profile, having a similar overall height to the outbuilding. It is situated mid-way down the rear garden, on the far side from the boundary with the attached dwelling at No 44, well away from windows serving habitable rooms at the rear of that property. On the other side, the shed is a considerable distance from the windows of habitable rooms at the rear of No 40. Also, No 40's rear garden contains an outbuilding of similar scale which sits alongside the shed.
27. Given the above factors, the shed is viewed as a relatively modest and unassuming built feature. It is not visually dominant or oppressive in relation to neighbouring property, either on its own or, subject to the canopy being removed, in combination with other structures in the curtilage. There is little harmful effect on levels of outlook enjoyed by the neighbouring occupiers. There is no conflict with Policy DMHB 11, which amongst other things requires development to not adversely impact on the amenity, daylight and sunlight of adjoining properties. There is also no conflict with LP Policy DMHD 1, which amongst other things requires householder development to not cause an unacceptable loss of outlook to neighbours. Furthermore, there is no conflict with Policy BE1 of the LP Part 1: Strategic Policies which amongst other things requires new development to protect the amenity of surrounding land and buildings.

Conditions

28. I shall impose a condition requiring the canopy to be removed, for the reasons set out above. The specified period affords the appellant sufficient time to undertake the necessary works. The condition is drafted in the form set out below because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the implementation of the required works, because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the shed may only remain if the appellant complies with its requirements. No other conditions were suggested and none are necessary.

Conclusion-Ground (a) appeal

29. The shed does not cause unacceptable harm to the living conditions of the existing and future occupiers of the dwelling or to those of neighbouring occupiers and accords with the Development Plan. Therefore, I conclude that the ground (a) appeal should be allowed.

Overall Conclusions

30. Appeal A-For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

31. Appeal B-For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted.

Stephen Hawkins

INSPECTOR

SCHEDULE OF PLANNING CONDITIONS

Appeal B:

- 1) Unless within three months of the date of this decision the existing open-sided canopy at the rear of the dwelling has been demolished and the associated materials have been removed from the site, the shed hereby permitted shall be demolished, with all of the associated demolition materials being removed from the site.