



Appeal Decision

Site visit made on 17 January 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 30th January 2024

Appeal Ref: APP/T5150/C/23/3314863

631 Harrow Road, Wembley, HA0 2ET

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ahoud Hassan Hamza Al Mashan against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 9 December 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a timber framed extension onto the existing single storey rear extension to the premises ("the unauthorised development")
- The requirements of the notice are
STEP 1 Demolish the timber framed extension to the rear of the premises.
STEP 2 Remove all debris and items, arising from the demolition of the unauthorised development and remove all materials associated with the unauthorised development from the premises.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 ('the Act') as amended.

Decision

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

Preliminary Matters

2. The appellant originally appealed on ground (f) only. As there is no appeal under ground (a) which would have included a request for planning permission, the planning merits of the development are not matters for my consideration within this appeal. As the appellant has referred to the extension being temporary, I have addressed that matter as a hidden ground (c).
3. The appellant has now removed elements of the extension. However, as the appeal has not been withdrawn, it still needs to be determined. In determining the appeal, I have assessed the extension that existed prior to the notice being issued based upon the photographs provided and my site visit.

An appeal under ground (c)

4. An appeal under ground (c) is that the breach of planning control has not occurred. The onus of proof is on the appellant to show that there has not been a breach. It is for the appellant to therefore show that extension does not require planning permission. The appellant maintains that the development can be classed as temporary due to being used for short periods and being made of quickly removable building materials without any permanent foundations or steel beams or concrete. How often the extension is in use is not relevant when the allegation relates to the physical extension only and not the use.
5. Section 57 of the Act states planning permission is required for the carrying out of any development of land. Section 55 of the Act defines development as 'the

carrying out of building, engineering, mining or other operations in, on, over or under land'. A building is defined by section 336 of the Act as including 'any structure or erection and any part of the building'. Case law indicates that there are three primary factors to consider in determining whether a building has been constructed. Size, permanence and physical attachment are the primary factors with no single factor being determinative.

6. In terms of size, the development is single storey and extended across around two thirds of the rear elevation of the dwelling. The materials used in the construction included timber posts in steel casing shoes 'possibly concreted in the ground' together with a ceiling and two sides and a floor. An extension can be permanent without having permanent foundations or including concrete or steel.
7. The extension was attached to the appeal dwelling and constructed at the appeal site providing a degree of physical permanence. It was designed to be structurally stable and even at the point of filing of statements had been in place for 4 months from the issue of the notice which is not temporary. Having regard to matters of size, physical attachment and degree of permanence, I do consider that the extension is a building which falls within the definition of development and requires planning permission. Whether or not car ports, gazebos or similar wooden structures require planning permission will depend upon the location and circumstances in each individual case. Development has taken place which does not have planning permission and a breach of planning control has therefore occurred. The appeal under ground (c) therefore fails.

An appeal under ground (f)

8. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those been caused by any such breach. As the requirement of the notice is to remove the extension, the purpose of the notice is to remedy the breach.
9. The appellant has referred to the development being allowed to stay until the children in the household are older. However, that matter relates to ground (a) which falls outside the remit of this appeal. I have addressed the argument that the building is temporary under ground (c). No reasons are given as to why the requirements are excessive to remedy the breach under ground (f). As the purpose of the notice is to remedy the breach, the requirement to demolish is not excessive and the appeal under ground (f) fails.

Conclusion

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

E Griffin

INSPECTOR