



Appeal Decisions

Site visit made on 17 January 2024

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 26th February 2024

Appeal A Ref: APP/T5150/C/22/3308066

Appeal B Ref: APP/T5150/C/22/3308067

7 Wellacre Road, Harrow HA3 0BN

- Appeal A is made by Bansi Shah and Appeal B is made by Preeti Shah under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 16 September 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building to the rear of the premises (as identified hatched in black on Plan A attached to this notice) ("the unauthorised development").
 - The requirements of the notice are
 - STEP 1 Demolish the building to the rear of the premises as identified hatched in black on Plan A attached to this notice
 - STEP 2 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises
 - The period for compliance with the requirements is 6 months
 - The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (the Act) as amended.
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Decisions

Appeals A and B

1. The appeals are dismissed and the enforcement notice is upheld.

Planning History

2. Planning permission was granted on the 31 March 2021 for "Demolition of attached garage, store, detached greenhouse & shed and erection of a part single, part two-storey side extension, single-storey rear extension, detached single-storey outbuilding, cycle store and 1 x rear and 2 x side rooflights to the main roof slope to dwellinghouse"
3. A similar planning permission was granted on the 25 February 2022 for "Demolition of attached garage, store, detached greenhouse & shed and erection of a part single, part two-storey side extension, single-storey rear extension, detached single-storey outbuilding, removal of solar panels and 1 x rear and 2 x side rooflights to the main roof slope to dwellinghouse". A non-material amendment to add rooflights to the single storey rear extension was granted on the 17 August 2022.

Preliminary and Background Matters

4. The appeal is made under ground (c) only. There is no appeal under ground (a) which would have included an application for planning permission and consideration of planning matters. In the absence of a ground (a) appeal, the planning merits of the development including comparisons with other buildings and compliance with planning policies and guidance are not matters that I can consider in determining this appeal. The Human Rights Act 1998 does not apply to legal grounds of appeal which includes ground (c).
5. The Council made a Direction under Article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) on 18 December 2021. The effect of the 2021 Direction is to remove permitted development rights for classes of development including Schedule 2 Part 1, Class E of the GPDO which deals with incidental buildings within the curtilage of a dwellinghouse. In the absence of reliance upon permitted development rights, express planning permission is required for such buildings. The 2021 Direction superseded an earlier Article 4 Direction made on the 1 February 2005 (the 2005 Direction).

The appeal under ground (c)

6. An appeal under ground (c) is that the matter alleged in the notice does not constitute a breach of planning control. The allegation is the erection of a building which is in the rear garden. For example, the appellants need to demonstrate that development has not occurred for the purposes of Section 55 of the Act or that the development is permitted development. The burden of proof is on the appellants and the relevant test is on the balance of probabilities.
7. The appellant has questioned whether or not planning permission is required for a replacement shed. It is not disputed that the original shed has been demolished. The development is a new building which has to be assessed as such. Section 55 of the Act defines development as 'including the carrying out of building engineering or other operations in on over or under land'. It comprises activities which results in some physical alteration to the land¹ which has some degree of permanence. The building is a permanent structure which involved building operations which is 'development' requiring planning permission.
8. The appellants maintain that the development is permitted development under Class E of the GPDO and that reliance upon Class E is not excluded by the 2005 Direction. The 2005 Direction was in force until the 18 December 2021 and excludes Class E buildings which front onto a relevant location. A relevant location is defined in the Direction itself as "a highway, waterway or open space." The development is in the rear garden of the appeal site and does not front onto a highway. The 2021 Direction is more prohibitive as it excludes reliance upon permitted development rights for all Class E buildings irrespective of location.
9. In order to be able to rely upon Class E of the GPDO, the appellants therefore need to show that the 2005 Direction which was in force until 18 December

¹ Section 336 of the Act defines a building as including any structure or erection and any part of a building but not plant and machinery within a building.

2021 is the relevant Direction in relation to the development and that it fell within the limitations and conditions set out in Class E.

10. The appeal dwelling itself has undergone extensive works including demolition of attached garage, store, detached greenhouse & shed and erection of a part single, part two-storey side extension, single-storey rear extension, detached single-storey outbuilding, as a result of the planning permissions. The planning permissions include the demolition of a shed and a new garden room in the rear garden.
11. The development is located towards the boundary with No 5 and is in front of the approved garden room which is at the end of the garden. The location of the development means that the shed referred to in the planning permissions had to be demolished before the development could be constructed.
12. The appellants state that 'the Council is fully aware that the relevant Article 4 Direction that is applicable is Article 4 (2005) as they granted planning permission for our planning when the 2005 Direction was in force. Our works had also commenced in October 2021 well before the Article 4 Direction (2021) was ratified in December 2021.' It is not clear if the 'works' that had commenced refers to the development or the works authorised by the earlier planning permission. No details are provided of work carried out in relation to the development before the 18 December 2021. The dates of the grants of planning permissions are unrelated to which Article 4 applies to the development.
13. The Council's investigation began on 28 March 2022 when the Council received a complaint that a building had been erected in the rear garden. Third party comments refer to a second building appearing in the garden in addition to the approved garden room. Photographs taken by the Council on 20 April 2022 show the development with the approved garden room behind it. Works were ongoing at the dwelling around that time as the side extension had not been constructed.
14. The two buildings shown in the photographs were not finished but the development had wall coverings, a roof and glazed doors to the front and was recognisable as a building. The appellants confirm that further work was needed and that work has now been done. The development was present on site at the end of March 2022. However, the appellants have not provided any evidence about what had occurred on site in terms of physical works to construct the development prior the 18 December 2021.
15. The appellants have therefore not shown, on a balance of probabilities, that in determining whether or not the development benefits from permitted development, the 2005 Direction is the relevant direction. The development does therefore require planning permission even if it complies with Class E due to the exclusion of all Class E buildings under the 2021 Direction which came into force on the 18 December 2021.

Other matters

16. The appellants have referred to exchanges with the Council before the issue of the notice. The Council responded to a query from the appellants in June 2022. The email response did attach the earlier 2005 Direction. The reply referred to an Article 4 Direction and stated that planning permission was required for a

new building within the curtilage of a dwellinghouse which remains the Council's position. Whilst the appellants have concerns about how the Council dealt with matters prior to the issue of the notice, that is a matter for the parties as it is outside the remit of this appeal.

Conclusion

17. The building is development as defined in Section 55 of the Act which requires planning permission. It does not have express planning permission and it does not benefit from permitted development rights. A breach of planning control has therefore occurred and the appeal under ground (c) fails.
18. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

E Griffin

INSPECTOR