



Appeal Decision

Site visit made on 18 September 2024

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 October 2024

Appeal Ref: APP/T5150/C/23/3314276

81 Manor Farm Road, Wembley HA0 1BN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr W Nassarallah against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 28 November 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a dwelling in the rear garden of the premises.
 - The requirements of the notice are to:
STEP 1 Demolish the dwelling in the rear garden of the premises.
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 six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - 1) Deleting the alleged breach of planning control in Schedule 2 of the notice and replacing it with the following: *Without planning permission, the extension, alteration, and material change of use of an outbuilding to use as a dwelling.*
 - 2) Deleting STEP 1 and STEP 2 from schedule 4 of the notice and replacing them with the following:
STEP 1 Cease the use of the outbuilding as a dwelling.
STEP 2 Demolish the extension to the outbuilding and restore the outbuilding to its previous condition before the breach of planning control took place.
STEP 3 Remove all items, materials, and debris, arising from compliance with STEPs 1 and 2.
2. Subject to the correction and 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.

The appeal on ground (b)

3. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant and the relevant test is the 'balance of probabilities.'
4. In this case the onus is on the appellant to demonstrate that they have not erected a dwelling in the rear garden. Compliance or partial compliance with the enforcement notice, since the notice was issued, does not mean that what is alleged did not occur or did not constitute a breach of planning control.
5. The appellant's case on this ground is that they have not erected a dwelling, but extended an existing outbuilding which has been used as ancillary accommodation to 81 Manor Farm Road.
6. What emerges from the caselaw referred to by the Council is that, in principle, the retention of some of the fabric of an original building within the building that has been erected, does not preclude a finding by the decision-maker that the resulting building is, physically, a 'new' building. However, the facts and circumstances of every case will be different, and it is a matter of fact and degree.
7. The pre-existing outbuilding has been extended, a new window and door opening created, and the building has been reroofed. Whilst the exterior has been rendered, the appellant's photographs clearly show the blockwork extension and blockwork around one of the windows.
8. In respect of the use, the Council visited the site on 19 October 2022 and noted that the building was occupied, and cooking and sleeping facilities had been installed since their previous visit. Their photographs show that the kitchen included a hob, microwave, kitchen counter, and sink containing used cups, cutlery, and plates. Based on the Council's submissions, it was fitted out to provide all the facilities necessary for day-to-day private existence. The front door was also numbered (4) and the Council observed a pair of trainers and used ashtrays outside the door.
9. Although the appellant stated that the outbuilding has only been used by family members as temporary accommodation, they provided no substantive explanation about the nature of their relationship with the occupiers and use, with regards to the level of self-containment. Moreover, it is not clear why an outbuilding used for ancillary purposes would have its own number, letterbox, and access from the street.
10. Whilst it is not unusual for an outbuilding to have a water and electricity supply, that it has no gas supply or separate utility metres, is not registered for council tax and there are no tenancy agreements, are not determinative.
11. When making an appeal on legal grounds, the burden of proof rests with the appellant. Whilst the Council's evidence is limited, the evidence provided by the appellant is not, of itself, sufficiently precise and unambiguous to demonstrate their case, and it seems more likely than not, that the outbuilding has been used as a dwelling.
12. On ground (b) I conclude that the outbuilding, as a matter of fact and degree, is not a new building, and the allegation is inaccurate in this respect. The

allegation can, however, be corrected and the requirements varied, to reflect that the development was the extension, alteration and material change of use of an outbuilding to use as a dwelling. Such corrections do not enlarge the scope of the breach or requirements and consequently, there would be no injustice to either party. I shall correct the notice accordingly under the available powers of section 176(1)(a) of the Act.

The appeal on ground (c)

13. The appeal on this ground is that the matters alleged in the notice do not constitute a breach of planning control.
14. The appellant contended that the extension and alterations to the outbuilding constitute permitted development by virtue of Part 1 Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which grants planning permission, subject to conditions and limitations, for the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building.
15. It seems, in the absence of contrary evidence, that the extension, alterations and material change of use to use as a dwelling were carried out as a single act of development.
16. Notwithstanding the dispute about height, to constitute permitted development by virtue of class E, any extension to the building could only be for accommodation required for purposes incidental to the enjoyment of the original dwellinghouse. However, the use as a dwelling is not an incidental use, it is a primary use. Accordingly, it does not constitute permitted development by virtue of Class E.
17. Since the development is not development that is permitted by any development order and there is no record of planning permission having been granted for it. The appeal on ground (c) fails.

The appeal on ground (a) the deemed planning application

18. The main issues are the effect of the development on (i) the character and appearance of the area (ii) the living conditions of occupiers with regard to the standard of accommodation (iii) the living conditions of neighbouring occupiers.

Character and appearance

19. 81 Manor Farm Road is an end of terrace house located at the corner of the junction with Eden Close, and the outbuilding is located at the end of the rear garden, accessed from Eden Close. Dwellings on Manor Farm Road and Eden Close are predominantly terrace, and in the absence of contrary evidence, detached dwellings in rear gardens are not characteristic of the locality.
20. I observed outbuildings in the rear gardens of dwellings which vary in design and include flat roof buildings of typical domestic scale. The extension to the outbuilding has continued the previous form but increased the mass, such that the outbuilding appears incongruously large in relation to No.81 and surrounding outbuildings and fails to harmonise with its rear garden setting.

The existence of nearby large-scale industrial buildings does not provide justification for the development.

21. For these reasons, the development is contrary to Policy BD1 of the London Borough of Brent Local Plan 2019-2041 Adopted February 2022 (Local Plan), Policy DMP1 of the London Borough of Brent Local Plan November 2016 Development Management Policies (DMP) and Policy D3 of The London Plan 2021. Together these require development to be of the highest architectural and urban design quality and of a scale, detailing and design that complements the locality and enhances local context by responding to local distinctiveness through their layout, orientation, scale, appearance, and shape.

Standard of accommodation

22. Policy BH13 of the Local Plan requires that all new dwellings, of this size, provide 20sqm of private external amenity space. Even if this could be provided, along with bin and cycle storage, it would reduce the amenity space at No.81 and erode the quality of that space, contrary to Policy BH13 and DMP1 of the DMP which requires development to provide high levels of external amenity. It also conflicts with the National Planning Policy Framework (the Framework) which seeks to ensure a high standard of amenity for existing and future users of buildings.
23. The floor area of the dwelling is said to be around 47sqm which would exceed the requirement for a one bedroom one person dwelling set out in Policy D6 of The London Plan 2021. Since the number of occupiers is unknown, I cannot conclude there is conflict with this policy.

Living conditions of neighbouring occupiers

24. Whilst the Council have raised general concerns regarding noise and demand for car parking, no evidence has been provided to indicate that the use has caused local problems in those respects. Accordingly, there is no conflict with the amenity protection aims of Policy DMP1 of the DMP, Policy BT2 of the Local Plan or policies T6 and T6.1 of The London Plan 2021 which set out maximum standards.

Other Matters

25. The appellant proposed that the outbuilding be retained and used for a purpose incidental to No.81, as a gym with storage and games room.
26. However, the terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice. The allegation cannot be corrected to enable a development different to that which is correctly defined in the notice. I am therefore unable to consider granting permission for this alternative development.
27. The Council referred to Policy D4 of The London Plan 2021, the strategic aims of which are not directly relevant to the detailed considerations in this case.

Conclusion on ground (a)

28. For the above reasons, I conclude that the appeal on ground (a) should not succeed.

The appeal on ground (f)

29. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice as varied, requires the use as a dwelling to cease, the extension to be removed and the outbuilding restored to its previous condition, the purpose is to remedy the breach of planning control.
30. In this situation, the only appeal that can be made on ground (f) is that the requirements of the notice are excessive to remedy the breach. The appellant's suggested alternative, being the removal of the internal fittings that facilitated the use as a dwelling, with the retention of the extension, would not remedy the breach of planning control.
31. Consequently, since the requirements would do no more than seek to achieve the purpose of the notice – to remedy the breach of planning control, they are not excessive. The appeal on ground (f) therefore fails.

The appeal on ground (g)

32. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant suggested a period of nine months to enable them to raise the necessary funds and to find a contractor to complete the works.
33. The purpose of the period within an enforcement notice is to allow for the use to cease and the physical works associated with the notice to be removed. The appellant's submissions largely relate to the time before the works can commence.
34. Whilst the appellant's concerns are understandable, in the absence of substantive explanation regarding the availability of builders and considering the variations to the requirements, I consider the period of six months, as specified in the notice, is proportionate to the breach of planning control that has occurred.
35. Accordingly, the appeal on ground (g) fails.

Conclusion

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Felicity Thompson

INSPECTOR