



Appeal Decision

Inquiry held on 1 October 2024

Site visit made on 1 October 2024

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal Ref: APP/T5150/C/24/3345632

60 The Ridgeway, London NW9 0UA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Rabbi Moshe Nissim Dadoun on behalf of RSM Property Investments Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 29 April 2024.
 - 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 and its use for the cultivation of drugs.
 - The requirements of the notice are to:
 1. Demolish the outbuilding to the rear of the premises and cease the use of the land for the cultivation of drugs.
 2. Remove all items, debris, and materials, arising from that demolition of the unauthorised development, and remove all materials and items associated with the unauthorised development and cultivation of drugs from the premises.
 - The periods for compliance with the requirements is 3 months.
 - The appeal was made on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (as amended).
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Decision

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

Applications for costs

2. An application for costs was made by the London Borough of Brent against Rabbi Moshe Nissim Dadoun on behalf of RSM Property Investments Ltd. This application is the subject of a separate Decision.

Preliminary Matters

3. The notice was served on RSM Property Investments Limited and Moshe Dadoun. The appeal was made by Rabbi Moshe Nissim Dadoun on behalf of RSM Ltd. The appellant has confirmed that RSM Ltd is the same as RSM Property Investments Limited and I have changed the company name in the banner heading accordingly.
4. The appeal was made on ground (d), but the appellant introduced evidence in their Inquiry Statement that it is more appropriate to consider under other legal grounds of appeal. The appeal is therefore proceeding under grounds (b), (c) and (d). The appellant indicated that they are seeking to retain the existing outbuilding and continue its use for ancillary storage associated with the

residential use of 60 The Ridgeway but as there is no appeal on ground (a) there is no deemed planning application to determine.

5. It became clear at the Inquiry that Mr Narolski has limited English language ability. My offer to adjourn the Inquiry so that an interpreter could be found was declined. I am satisfied that his English was sufficient to allow him to understand and answer the questions put to him.
6. Evidence was given on oath by all the witnesses.

Background

7. The appeal relates to an outbuilding to the rear of an end of terrace property. To the side of the property is a public footpath with steps that links Hay Lane with The Ridgeway.
8. An enforcement notice was issued in October 2005 in relation to the erection of a dwelling to the rear of 60 The Ridgeway. One of the requirements of the notice was the removal of the dwelling. An appeal against the notice was dismissed in 2007. Direct action was taken by the Council in 2008 when they demolished the roof and part of the walls.

The appeal on ground (b)

9. The ground of appeal is that the development alleged in the notice has not occurred. The appellant asserts that the outbuilding has not been used for the cultivation of drugs. The burden of proof lies with the appellant and the standard of proof is the balance of probabilities.
10. Section 172(1) of the 1990 Act sets out that a local planning authority may issue an enforcement notice where it appears to them that there has been a breach of planning control. It has been established by case law¹ that it is not necessary for the breach of planning control to be occurring when the notice is issued.
11. The appellant accepts that the outbuilding was used for the cultivation of drugs at some point following his visit to the property in September 2019 and that the use finished prior to January 2020. Since then, the use that he permitted was for ancillary storage purposes by tenants living at 60 The Ridgeway. The use could therefore only have been taking place for a short period of a few months. At the time when he discovered the use for the cultivation of drugs, there were hundreds of plants and it took a long time to clear the building. Mr Narolski explained that he had cleared the site over a period of time in 2019, including disposing of plants.
12. The Council undertook a site visit in November 2023 when they observed and photographed plants within the outbuilding. The photographs indicate a number of plants with supporting canes. In the professional experience of the Council's planning witness, the photographs show the typical remnants of cannabis production, with harvested plants in pots, evidence of ventilation equipment, polythene and silver foil lining to the room. Electrical leads are hanging from various points in the ceiling with no light fittings attached.
13. While I accept that the November 2023 photographs illustrate the situation at a single point in time, it seems unlikely that the insulation, ventilation equipment

¹ Blackburn v SS and South Holland DC [2003] EWHC 671 Admin

and lighting points associated with the cultivation of cannabis would have been installed unless the use was more than fleeting. The planning witness did not undertake the site visit but reported that he had discussed the visit with Mr Rolt who had visited the site and had been able to identify the smell of cannabis even before entering the building. This led to the enforcement notice being issued.

14. It is unlikely that the plants shown on the November 2023 photographs were the remnants of those present in December 2019 as suggested by the appellant. The internal construction and decoration of the building in the November 2023 photographs is similar to that which I observed at my site visit, indicating that they were taken after the roof was added in 2020. It seems unlikely that it took between December 2019 and November 2023 to clear the building of materials relating to drug cultivation and that therefore the plants seen in November 2023 were the same as those discovered by the appellant in December 2019. That building works to add the roof took place during this period casts further doubt on the appellant's version of events.
15. Furthermore, the building was rented to Mrs Babaeva for the storage for household items in May 2020, indicated by her tenancy agreement and confirmed by the appellant at the Inquiry. This would be inconsistent with the use for the cultivation of drugs so that it is not clear when the use seen by the Council in November 2023 started. However, I have no reason to doubt the Council's evidence that the November 2023 photographs were taken at the date stated and that they indicate that the building had recently been used for the cultivation of drugs.
16. Witness statements from three neighbours were submitted with the appeal which state that since the Covid-19 pandemic they have not witnessed any drug cultivation at the property. As they did not visit the property until July 2024 they do not corroborate the appellant's assertion that the building was not being used for drug cultivation in November 2023.
17. I accept that the use for the cultivation of drugs took place without the appellant's knowledge, and that the appellant's intention was that it should be used for purposes ancillary to the use of 60 The Ridgeway, but that does not mean that the change of use did not occur. The appellant's claim that the use was short-lived and therefore was *de minimis* is not supported by the evidence. Such a use is not comparable to the use of the site as a residential garden, and there is no evidence that it was carried out by occupiers of No 60. Furthermore, while the Council was not able to confirm that the matter had been passed to the police, the onus is on the appellant to provide sufficiently precise and unambiguous evidence to make out their case.
18. On the balance of probability, I conclude that the building had been used for the cultivation of drugs for a period of time when the Council visited the site in November 2023 and this led to the notice being issued. The appellant's evidence falls short of discharging the burden of proof, and the appeal on ground (b) fails.

The appeal on ground (c)

19. The ground of appeal is that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. This ground of appeal relates to the outbuilding.

20. The appellant's case is that the outbuilding was permitted development by virtue of Class E, Part 1, Schedule 2 of the General Permitted Development (England) Order 2015 (as amended) (the GPDO). To succeed on this ground, it would need to be demonstrated that when the permission granted by the GPDO was 'crystallised', the outbuilding was provided for a purpose within Class E and complied with all the conditions and limitations of that class. The permission granted by the GPDO is implemented at the point in time when building operations are begun and cannot be applied retrospectively.

21. Class E.(a) gives permission for, amongst other things,

The provision within the curtilage of the dwellinghouse of—

(a) *any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure;*

22. In cases such as this, an 'incidental' purpose is one that is functionally related to the primary use of the dwellinghouse for residential purposes. The appellant asserts that the building was to be used for storage purposes ancillary to the residential use of 60 The Ridgeway.

23. In relation to the appeal on ground d), a range of dates have been put forward by the appellant as to when the building was completed, but no clear evidence has been provided as to when the building operation began. The appellant states that the outbuilding has been in existence 'for over 20 years' as set out in the Witness Statement from Rabbi Moshe Dadoun of Yam Management and B/RSM Ltd dated 4 June 2024. In their Proof of Evidence the appellant states that the building has existed in some form since 2006. However, it was established by the 2005 enforcement notice that the building was being used as a separate dwellinghouse and was not incidental to the use of No 60.

24. In their Inquiry Statement the appellant states that the building has existed in its current footprint and mass since 2012, with a temporary roof covering but fully constructed walls and floor. However, no evidence has been put forward to show when a building operation was begun. Nor has the appellant clarified the use to which any such building was put. The Google Streetview image of October 2012 does not show a building on the site. Only the remains of the demolished dwelling are indicated on the July 2013 Google Earth aerial image. The appellant's evidence falls well short of discharging the burden of proof in relation to the building operation having been begun in the period up to 2012.

25. It seems to me that it is more likely that, as set out by the appellant in their Witness Statement and confirmed at the Inquiry, building operations began in 2018 when the walls remaining from the partially demolished dwelling were strengthened. There is no dispute between the parties that the outbuilding as it currently stands complies with the conditions and limitations of Class E. It therefore needs to be established whether it was provided for a purpose incidental to the enjoyment of No 60 as a dwellinghouse.

26. I saw on site that the outbuilding is on land that is separated by a fence from the rest of the garden of 60 The Ridgeway with no gate or door allowing access between the garden and the outbuilding. The outbuilding is accessed from a separate pedestrian access from the public footway on Hay Lane, at the rear of

the site. I heard from the Council's witness that the outbuilding has always had a separate address on Hay Lane and he has known the building since 2005. This leads me to question whether it was used or intended to be used by occupiers of No 60, as they would have been unable to access from the garden and would instead have had to access it from Hay Lane, via the public footpath with steps which runs alongside the property.

27. Furthermore, the appellant has set out that the building was used for the production of drugs towards the end of 2019. It has not been asserted that this was by someone living at 60 The Ridgeway and this could not therefore be construed as a use incidental to the enjoyment of the dwellinghouse.
28. Three tenancy agreements have been provided. The first was with Mr Omer Cohen to rent the space for storage for six months from 1 January 2019. The appellant confirmed at the Inquiry that at this time the storage building did not have a roof and that Mr Omer Cohen did not in fact use it at all, although he had wanted to use it for storing building materials and had said it was perfect for his requirements. This casts doubt on the assertion that it was built for ancillary or incidental residential purposes.
29. The second tenancy agreement was with Mr Marek Narolski, to rent part of the storage at the rear of No 60 for a period of six months from 1 December 2019. Mr Narolski confirmed at the Inquiry that he has not lived at No 60 but had used the storage for his mixer and other items. I acknowledge that this may have been associated to some extent with building work taking place at the site or at No 60, but it seems unlikely that Mr Narolski would have needed to sign a tenancy agreement in order to store building equipment to carry out construction work on the building.
30. The third tenancy agreement was with Mrs Babaeva for the use of the storage to the rear of 60 The Ridgeway for the period of six months from 1 May 2020. The appellant explained that she did not live at No 60 at the time but was using the building to store her belongings.
31. None of the tenancy agreements therefore indicate that the outbuilding was for a purpose incidental to the enjoyment of the dwellinghouse as such. The appellant has not provided any clear evidence to corroborate his assertion that the building was for ancillary storage purposes when it was provided.
32. The appellant's own evidence indicates that the building was used by individuals who did not live at No 60. It may be that it has been used for storage by tenants of No 60 more recently, but it cannot benefit from a permitted development right retrospectively.
33. The appellant's evidence is imprecise and ambiguous and falls well short of discharging the burden of proof. It is not clear when the building operations in relation to the outbuilding began and the evidence does not indicate that it was provided for a purpose incidental to the enjoyment of the dwellinghouse as such. This leads me to conclude, on the balance of probabilities, that the building was not provided for a purpose incidental to the enjoyment of the dwellinghouse as such and therefore it was not permitted development under Class E. Planning permission was therefore required.
34. The Council has also questioned whether any building that uses the foundations and walls that have been retained on site in breach of the requirements of an

enforcement notice could be lawful. As I have already found that the outbuilding was not permitted development I have not considered this matter further.

35. For the reasons set out above, the appeal on ground (c) therefore fails.

The appeal on ground (d)

36. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control. This ground of appeal relates to the building and not the use.
37. The parties agree that the building was substantially completed prior to 25 April 2024, before the recent legislative changes to time limits, and therefore no enforcement action can be taken after a period of four years beginning with the date on which the operations were substantially completed. As the notice was issued on 29 April 2024, the appellant would need to demonstrate, on the balance of probabilities, that the building had been substantially completed on or before 29 April 2020.
38. It has been established by case law that substantial completion requires a fully detailed building. In this case, the building operation involved reinforcing and building up from the existing walls, and the addition of a new roof. Therefore, it was not until the roof was added to create the outbuilding in its current form that the building was substantially completed.
39. The appellant states in their Inquiry Statement that the building existed in its current footprint and mass since 2012, with a temporary roof covering, and that it was substantially complete at that time. It was built from the footings and walls that remained from the previous dwelling that was the subject of the 2005 enforcement notice.
40. An aerial extract from Google Earth dated January 2006 indicates a building on the site and in view of the planning history I take this to be the dwelling the subject of the 2005 enforcement notice. Photographs indicate the debris from the direct action on the site in 2008, with walls reduced in height and the roof demolished.
41. A Google Streetview image from October 2012 shows the rear boundary fence and an internal fence but does not indicate a building. The site has a tall boundary fence and there is evidence of a canopy attached to the main house, but there is no evidence of a temporary roof covering on the site of the outbuilding. An aerial image from Google Earth dated July 2013 indicates the remains of the dwelling, as debris is visible in areas that are not covered by tree canopies or deep shadow. A Google Earth aerial image dated April 2017 shows light coloured areas but it does not appear that there is a roof over a structure.
42. A photograph from the Council's site visit in March 2018 shows the remaining lower parts of the wall to the dwelling and no roof. None of the photographic evidence indicates that the building has existed in its current footprint and mass since 2012.
43. In giving evidence to the Inquiry, the appellant suggested that construction of the new outbuilding began at the end of 2018, when the walls were reinforced.

- A Google Streetview image from April 2018 does not indicate a building, only boundary fences and areas of internal wall without a roof.
44. The appellant stated that the roof was finished in April 2020 and the building was waterproof at that time. He stated that because of Covid-19 the work could not be completed earlier. Building Control visited and gave advice regarding the height of the building and facilities provided in it, with regard to the need for planning permission. Google Earth aerial images from March 2020, 5 April 2020 and 11 April 2020 all indicate the outline of the walls, with the floor slab visible and no roof covering. The building was not therefore substantially complete on 11 April 2020. The first date when a roof is shown is on a Bing Maps streetview image dated 25 October 2020, and an aerial Google Earth image dated March 2021. It follows that the roof was added sometime between 11 April 2020 and 25 October 2020.
45. It can be seen in the Google Earth image of March 2021 that a new extension with a glazed roof or canopy had been added to the rear of No 62. This canopy was not present on the image from 11 April 2020. Undated extracts from Bing Bird's Eye show the new canopy at No 62, and the appeal building is under construction, with the walls have been extended in height but there is no roof. Therefore, the new canopy at No 62 was built before the roof was added to the outbuilding.
46. It is unlikely that in the 18 days following 11 April 2020, the rear canopy to No 62 was added, followed by the roof to the outbuilding, and that it was all completed by 29 April 2020. It is all the more unlikely bearing in mind that the country was in lockdown due to the Covid-19 pandemic restrictions, with shops shut and travel to work restricted to key workers. The appellant explained that the necessary building materials were already on site, and therefore the works were not restricted by the lockdown restrictions.
47. The appellant has provided a letter from a builder, Avi Cohen of Design and Build, stating that they undertook and completed the construction of the rear building located at 60 The Ridgeway. Their work involved cleaning the area around the existing walls which were retained, constructing a flat roof, and covering it with felt. The construction was completed, putting the roof on around "13th 17th April 2020". The letter is entitled 'Statutory Declaration' but it has not been sworn as such and as Mr Avi Cohen was not at the Inquiry his evidence was not tested by cross examination. This reduces the weight I can give to it.
48. There is very limited corroborating evidence to show that the roof was added between 11 and 29 April 2020. For the reasons set out above, I conclude that the appellant's assertion that the building was substantially completed prior to 29 April 2020 is less than probable.
49. The evidence indicates that it is more likely that the building was substantially complete later in 2020 and was used for storage when Mrs Babaeva started to rent it to store her belongings. As the appellant stated that Mr Omer Cohen did not in fact use the storage in relation to his tenancy agreement from January 2019, and Mr Narolski used the storage for his mixer from December 2019, neither of these two tenancy agreements indicate that the building was substantially completed.

50. To conclude, the photographs indicate that the building was not substantially completed in 2012 and the evidence indicates that it is less than probable that it was substantially completed by 29 April 2020. Therefore, the appellant cannot demonstrate, on the balance of probabilities, that the building is immune from enforcement action due to the passage of time and the burden of proof has not been discharged. The appeal on ground (d) therefore fails.
51. The Council has argued that the building is in breach of the requirements of the enforcement notice and therefore cannot be lawful. As I have found that the building was not substantially complete more than four years before the notice was issued, I have not considered this matter further.

Conclusion

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

N Thomas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Danielle St Pierre MRTPI

Director of Hybrid Planning

She called:

Hannah Fawdon MRTPI

Associate Planner Hybrid Planning

Rabbi Moshe Dadoun

Director, RSM Property Investments Ltd

Mr Marek Narolski

YAM Property Management and Maintenance

FOR THE LOCAL PLANNING AUTHORITY:

Tim Wicks Chartered Town Planner

He called:

Nigel Wicks Chartered Town Planner

DOCUMENTS submitted to the inquiry:

1. Opening Statement on behalf of the LPA
2. Invoice from Brent Council to RSM Property Investments Ltd dated 15/07/2008
3. LPA's closing submissions
4. Appellant's closing submissions