
Appeal Decisions

Site visit made on 10 September 2024

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal A Ref: APP/T5150/C/23/3323329

24 Rose Glen, London NW9 0JS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Cai Yu Chen against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 24 April 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the premises to four dwellings (two of which are contained within outbuildings to the rear of the premises)("the unauthorised change of use") AND Without planning permission, the erection of two outbuildings (which are in use as dwellings as mentioned above) to the rear of the premises)("the unauthorised development") AND Without planning permission, the erection of a rear roof extension, single storey rear extension, and single storey rear canopy extension ("the unauthorised development").
 - The requirements of the notice are to:
 - Step 1 Cease the use of the premises as more than ONE dwelling.
 - Step 2 Demolish the two outbuildings to the rear of the premises.
 - Step 3 Demolish the rear roof extension, single storey rear extension, and single storey rear canopy extension.
 - Step 4 Remove all internal partitions, items, materials and debris associated with the unauthorised change of use from the main house, including the removal of all kitchens, except the ONE on the ground floor.
 - Step 5 Remove all items, debris and all materials, arising from the demolition of the two unauthorised outbuildings and extensions from the premises.
 - Step 6 Restore the internal figuration of the main house to the original layout before the unauthorised change of use and developments took place.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (f) of the Town and Country Planning Act 1990 (as amended).
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Appeal B Ref: APP/T5150/W/23/3328342

24 Rose Glen, London NW9 0JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mrs Cai Yu Chen against the Council of the London Borough of Brent.
 - The application Ref is 23/1840.
 - The development proposed is Hip-to-gable roof extensions with rear dormers, single-storey rear extension, rear outbuilding, alterations to roof of existing garage.
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Decision: Appeal A:

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

Decision: Appeal B:

2. The appeal is dismissed insofar as it related to the alterations to roof of existing garage and planning permission is refused for alterations to roof of existing garage. The appeal is allowed insofar as it related to the hip-to-gable roof extensions with rear dormers, single-storey rear extension and rear outbuilding and planning permission is granted for the hip-to-gable roof extensions with rear dormers, single-storey rear extension and rear outbuilding at 24 Rose Glen, London NW9 0JS in accordance with the terms of the application, Ref 23/1840, and the plans submitted with it, so far as relevant to that part of the development hereby permitted and subject to the following condition:

Condition 1: The development hereby permitted shall be carried out in accordance with the following approved plans: Proposed Outbuilding Floor Plan Proposed Outbuilding Elevations, Proposed Ground Floor Plan, Proposed Floor Plans and Proposed Elevations.

Preliminary Matters

3. The appellant suggests there is ambiguity as to what single storey rear extension the notice is targeting. The appellant states they constructed two separate ground floor extensions and when they were substantially complete [sic] they obtained planning permission for a further infill extension under 22/2575. It is suggested that there were therefore two separate acts of development and an overall total of three rear extensions construction. However, the appellant has provided no substantive evidence to show that the extensions were carried out as two separate acts of development, nor have they explained what they mean by the term substantially complete. Given the works required to carry out the extension, I consider it likely to have been a single act of development and in my view, the enforcement notice is sufficiently clear as to the works which it is attacking.
4. With respect to the section 78 appeal, the appellant has appealed against non-determination and so there is no decision notice. In response to the appeal, a number of interested parties have written in raising objection to the appeal scheme. Concerns raised include the retrospective nature of the application, the effect of the appeal scheme on the privacy of neighbouring occupants, the effect of the appeal scheme on the character and appearance of the area,

Ground (b)

5. An appeal under ground (b) is made on the basis that the matters stated in the notice as constituting a breach of planning control have not occurred. The main thrust of the appellant's case under ground (b) with respect to the material change of use, is that the garage was briefly occupied by friends of the family who used it as an annexe, making use of the main house for meals and that the loft room has never been occupied as a separate dwelling but has been used by the appellant's parents when they visit the UK.
6. While the garage and loft room both have the facilities required for day to day private existence¹, as held in *Uttlesford District Council v Secretary of State for*

¹ In *Gravesham BC v SSE & O'Brien* [1983] JPL 306 it was held that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.

the Environment & White [1992] JPL 171, even where accommodation provides facilities for independent day-to-day living, it can be within the same planning unit as a host dwelling. It is necessary to assess the physical and functional links between the use of the outbuilding and main dwelling and consider whether a separate planning unit (or units) has been created as a matter of fact and degree.

7. The appellant does not dispute that the outbuilding at the rear of the garden has been let to tenants and so I shall focus my consideration on the outbuilding in the middle of the garden and the loft room.
8. The Council carried out a site visit on 14 February 2023 and took photographs. The photographs provided by the Council show the outbuilding in the middle of the garden had a fully equipped kitchen, with hob and washing machine. The appellant suggests the 'garage' was briefly occupied by friends of the family, who used it as an annexe, making use of the main house for meals. However, this is directly contradicted by the Council's account of its site visit, where it is stated that the tenants were cooking and were about to have lunch.
9. Furthermore, if the building was not used for cooking, it is unclear why there would be a hob and a wok present, with some sort of wooden spatula, suggesting it has recently been used. The appellant does not explain what they mean by 'briefly', nor is there any first-hand account provided by the users of the building, to show how they occupied the building.
10. With regards to the loft room, the photograph provided by the Council shows that the kitchen was well equipped, with a fitted hob and white goods, including a washing machine. While the top floor unit can only be accessed through the house, this in itself is not determinative as to how it has been used or whether a material change of use has occurred.
11. I accept that locks are used throughout the property on habitable rooms. However, the appellant has provided no first-hand account from occupants of the top floor and the wording included in their statement of case is ambiguous. The appellant advises that both the loft room and garage are intended as guest rooms for use by their parents. However, what is important in a ground (b) is how it has actually been used. It is not clear from the statement that this is how they have actually been used.
12. With respect to the outbuildings, the appellant states that the garage is not newly built, but is an original feature of the property. In this regard, I have been provided with a photograph of a single storey building, constructed of, what appears to be concrete, with a garage door and what appears to be a flat roof. The appellant suggests that the roof of the garage was altered without increasing its overall height, and that the exterior walls were rendered.
13. I have been provided with a number of photographs of the rear by interested parties. One of the photographs shows what appears to be works to the buildings, with what looks like a wooden frame, supported by a series of wooden posts which extend well above the existing walls of the garage. The appellant suggests that the exterior walls were rendered.
14. However, in order to create a flat surface which can then be rendered, it would have been necessary to fill in the gaps between the existing walls and the roof and remove the wooden supports. I consider it more likely that panels were

applied to the wooden posts to create such a flat surface, which were then rendered. Indeed, another photograph provided by an interested party shows that the outbuilding was clad with what appear to be wooden or plywood boards. This, in my view, goes well beyond the application of some render and has resulted in, as a matter of fact and degree, the erection of a new building.

15. Thus, for the reasons given above, I find that the appellant's evidence is not sufficiently precise and unambiguous to show that the matters stated in the notice as constituting the alleged breach of planning control have not occurred as a matter of fact and the appeal under ground (b) must fail.

Ground (c)

16. An appeal under ground (c) is made on the basis that the matters alleged in the notice (if they occurred) do not constitute a breach of planning control. The main thrust of the appellant's case in respect of ground (c) is, with respect to the hip to gable roof extension and rear dormer extension, these were carried out under permitted development rights under Class B, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO).
17. However, as confirmed in *RSBS Developments Ltd v SSHCLG & Brent LBC* [2020] EWHC 3077 (Admin), Article 3(5) of the GPDO sets out that the permission granted by Schedule 2 does not apply if (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful.
18. A planning permission granted by the GPDO is crystallised when the development begins or, in the case of prior approval development, when the local planning authority has stated that prior approval is not required, or failed to make a determination within the specified period.
19. As set out above, I have found that the alleged breaches of planning control have occurred as a matter of fact. It seems likely the hip-to-gable roof extension and rear dormer extension was undertaken to facilitate the unauthorised material change of use and so, Schedule 2 does not apply. Consequently, the works are development for which planning permission is required and so the appeal under ground (c) must fail.

Ground (f)

20. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
21. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach. The Council states that the purpose of the notice is to remedy the breach of planning control.

22. With respect to the 'garage', the appellant suggests that, as this was a pre-existing structure, it is unreasonable that the Council should seek its complete demolition. However, as set out above, I have found, as a matter of fact and degree, that the works comprise the erection of a new building. Even if some of the original fabric of the building remains, the notice can require its demolition.
23. With respect to the outbuilding, the appellant suggests that the certificate of lawfulness under 22/1210 establishes that an outbuilding of similar dimensions, in use as a gym, would be permitted development. An interested party has provided me with a copy of the plan submitted in support of the application, which shows the building set out with a gym area and a storage area. No shower room is proposed. The overall size of the building is less than the outbuilding which has been erected, and would measure approximately 7.6m x 3.9m.
24. The outbuilding as constructed is more limited in width, with a greater depth and height. The internal layout is also different. The appellant has not requested that they be allowed to construct the building as certified under 22/1210, rather they have requested that they be allowed to keep it as an ancillary structure. The GPDO does not grant retrospective planning permission. Allowing the building to remain would not remedy the breach, which is the erection of an outbuilding.
25. With respect to the rear extension, the appellant points out that there is an extant planning permission, reference 22/2575 and requests that the requirements of the notice be varied to allow implementation of this consent as an alternative to complete demolition. However, planning permission 22/2575 was for a single storey rear infill extension, it did not grant planning permission for the whole of the rear extension.
26. While application 22/1602 has previously been submitted for a single storey rear extension, I have not been provided with substantive details of the prior approval application and so I do not know how an alternative requirement should be worded. Furthermore, given the requirement would need to refer to both the prior approval details and the planning permission referred to above, I am concerned about wording the requirement with sufficient clarity so that the appellant is clear as to what they had to do. Had there been no application for planning permission, I would have raised with the parties whether it is necessary to extend the period for compliance to enable an application for planning permission to be submitted. However, as an application is before me, under Appeal B, I consider this to be unnecessary in this instance.
27. The appellant suggests that steps 4 and 6 are not necessary because step 3 requires the demolition of the rear roof extension. Furthermore, the loft could be used as an annexe to the house and so it is not necessary to require the removal of the kitchenette. While the appellant would be required to remove the kitchen as part of the demolition of the rear roof extension, including its removal as a requirement does not make the notice more onerous to comply with but instead provides clarity as to what the appellant has to do.
28. Thus, for the reasons given above, I find that the appeal under ground (f) should fail.

Appeal A: Conclusion

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

Appeal B: The section 78 Appeal

30. The applicant submitted a householder application for planning permission for works or extension to a dwelling. The appellant states that they are seeking retrospective planning permission for the 'extensions that have been built'. In support of their application, the appellant has provided a number of plans. However, the details shown on the plans do not fully accord with the works which have been carried out. For the avoidance of doubt, I shall make my decision on the plans which have been submitted, since these have been subject to consultation.
31. The Council did not make a decision within the statutory period and so, there is no formal decision notice, and the Council has not provided a statement of case. The Council issued an enforcement notice in respect of development which has already been carried out and which is similar (though not identical) to the appeal scheme and set out its reasons for taking enforcement action.
32. Through the appeal, a number of interested parties have written in objecting to the appeal scheme. The concerns raised include the effect of the appeal scheme on the character and appearance of the area and the effect on the living conditions of neighbouring occupants. Since the appellant has addressed these matters in their application, I consider there would be no injustice in me dealing with it in this way.

Main Issues

33. The main issues are the effect of the appeal scheme on:
- The character and appearance of the area; and
 - The living conditions of neighbouring occupants, having regard to outlook and privacy.

Reasons

The outbuilding and garage: Character and appearance and living conditions

34. Notwithstanding my findings regarding the former garage in respect of Appeal A above, I shall refer to the outbuilding in the middle of the garden as 'garage' here to enable a distinction to be drawn between it and the outbuilding at the bottom of the garden.
35. The outbuilding is shown as measuring up to 2.75m above ground level at its highest point and would have a floor area of around 33sqm. The outbuilding would be laid out with a gym in one room, off which is a shower/wc and an office. While the outbuilding which is currently *in situ* is laid out with a bedroom, sitting room/kitchen and a shower room, this is not what is proposed under Appeal B.
36. The garage is shown as measuring up to 2.75m above ground level at its highest point and would be laid out with a kitchenette, bedroom and shower room. This is consistent with what I saw on site. Windows would be located

within the kitchenette and shower room, with no windows in the bedroom. The appellant has not applied for a material change of use of the building and so, were I to grant planning permission, it could only be used as part and parcel of the use of the main dwellinghouse.

37. Policy DMP1 of the Brent Local Plan 2019-2041 (adopted 2022)(the BLP) seeks development of a location, use, siting, layout and scale which complements the locality. The Council's Residential Extensions & Alterations SPD2 (January 2018)(the SPD) advises that where a garden is more than 100sqm, then normally an outbuilding of no more than 30sqm may be acceptable. It also advises that if any part of the outbuilding would lie within a distance of 2m of the boundary with the neighbours' garden then the maximum height permitted would be 2.5m.
38. While the proposed outbuilding would exceed 30sqm, the exceedance would be limited. The maximum height of the outbuilding would also be greater than 2.5m. However, the difference in height is shown to relate to the difference in natural ground level within the site and, taking the ground level as the highest part of the surface next to the building, it would not exceed 2.5m. I saw that the outbuilding is a similar height to an outbuilding in the neighbouring garden. While its bulk and massing would be greater than the neighbouring outbuilding, given its position towards the end of the garden, in isolation, it would not appear an incongruous feature, or out of character with the surrounding area.
39. Though users of the outbuilding would be able to look out of the window and see neighbouring buildings, there is already a degree of intervisibility between the appeal site and the neighbouring properties. This would not be exacerbated by the use of the outbuilding and there is no harm to the living conditions of neighbouring occupants in this respect.
40. However, both the outbuilding and 'the garage' abut the boundary with No. 26. Although the outbuilding and the garage are separate buildings, when viewed together, they occupy a significant part of the rear garden. Although outbuildings are a common feature of the area, the outbuildings together dominate the rear garden, which is uncharacteristic of the area and appear an incongruous feature as a result, contrary to policy DMP 1 of the BLP.
41. Furthermore, despite a modest gap between the two buildings, due to their height above the boundary fence, the outbuildings create a sense of enclosure which occupants of No 26 are likely to find harmful, contrary to policy DMP1 of the BLP, which seeks high levels of internal and external amenity.
42. Class E of Part 1 of the GPDO permits 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. The Permitted development rights for householders: technical guidance (2019) advises that a purpose incidental to a house would not cover normal residential uses, such as self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.
43. While a shower room could be considered primary accommodation, such provision is not unusual where a gym is proposed and can, in my view, be considered as part of a purpose incidental to the enjoyment of the

dwellinghouse and, as such, I consider that the appellant could construct something similar to the outbuilding under permitted development rights. I see no reason why the appellant would not choose to exercise their permitted development rights in this case and afford this matter significant weight.

44. However, the garage comprises primary living accommodation, including a kitchenette, bedroom and shower room. Although there was originally a garage in this location, the alterations to the building have resulted in the building extending up to 2.75m above ground level. Once the appellant has complied with the requirements of the notice, they would benefit from permitted development rights. However, this would enable them to construct an outbuilding up to 2.5m in height, not 2.75m. Furthermore, it would only grant permission for a building required for a purpose incidental to the enjoyment of the dwellinghouse and not for primary living accommodation. I therefore afford the fallback very limited weight in respect of the garage.
45. As set out in respect of Appeal A, in my view, the works to the garage, as a matter of fact and degree, constitute the erection of an outbuilding and not alterations to the roof of an existing garage. I have found that the enforcement notice can require demolition of the building and, since I have upheld the enforcement notice, the garage would need to be demolished within a period of 6 months.
46. While I consider the outbuilding and garage collectively cause harm to the character and appearance of the area and living conditions of neighbouring occupants, since they are distinct buildings, it would be possible to grant planning permission for the outbuilding and to refuse planning permission for the garage. Since compliance with the enforcement notice would require the removal of the garage in its entirety, the harm arising from the extent of built development would be addressed.
47. In my view, the outbuilding in isolation would not cause harm to the character and appearance of the area, or the living conditions of neighbouring occupants and so there would be no conflict with policy DMP1 of the BLP in this regard. Since the enforcement notice requires removal of the garage, I shall grant planning permission for the proposed outbuilding (not the outbuilding as constructed) and refuse to grant planning permission for the garage.

Rear extension: Character and appearance and living conditions

48. The rear extension which has been constructed includes parapet walls which extend up to around 3.17m about ground level and a roof light. These parapet walls are not shown on the proposed plans and do not, therefore, fall to be considered. A roof light has also been constructed in the rear extension, which extends above the flat roof. Although a roof light is shown on the proposed plans, it does not extend above the flat roof.
49. The SPD advises that an extension up to 6 metres in depth may be acceptable providing that for every additional metre beyond 3.0 metres in depth, the extension should be set in from the boundary by an additional metre to protect neighbouring residential amenity. The plans show that the extension would not step in and so the appeal scheme does not accord with the SPD in this regard.
50. The appellant advises that they have secured planning permission under reference 22/2575 for an extension to a depth of 5m. Although this only

granted planning permission for a single storey rear infill extension, it shows the rear extending around 5m from the rear of the dwellinghouse. The rear extension is shown on the proposed plans as extending approximately 5.2m from the rear of the dwelling.

51. The extension is set back from the boundary with No 26 and there is a single storey rear extension to No 22. In terms of the effect on the character and appearance of the extension on the area, I saw that single storey rear extensions are a common feature of the area and in my view, the proposed extension would not appear out of keeping with the area or harm the character and appearance of the area.
52. With respect to the living conditions of neighbouring occupants, the additional 0.2m length is, in my view, unlikely to have a significant effect on the living conditions of neighbouring occupants. Furthermore, even if I were to consider the original rear of the dwelling, the projection of the rear extension beyond the rear extension at No 22 is modest and so unlikely to harm the living conditions of its occupants.
53. I note an interested party has raised concern regarding the effect of the 'as built' development on light to an adjoining property. However, since the proposed plans do not include the parapet walls, were I to grant planning permission for the proposed extension, the effect on neighbouring occupants would be more limited by virtue of the lower overall height. As a consequence, I consider it would not significantly harm the living conditions of neighbouring occupants.
54. Thus, for the reasons given above, I find the rear extension would not harm the character and appearance of the area or the living conditions of neighbouring occupants and there would be no conflict with policy DMP1 of the BLP in this regard.

Rear dormers: Character and appearance and living conditions

55. During my visit, I saw that rear dormers are a common feature of the area. The dormer would enable the construction of a top floor, which would be laid out with a bedroom and en-suite. The SPD advises that dormers that project onto or over a rear projection (whether original or an extension to the house) will not normally be permitted. However, while I have found that the works which have been carried out would not have been permitted by the GPDO, I am mindful that the building would benefit from permitted development rights once the enforcement notice has been complied with and could construct a dormer of similar dimensions and with a similar layout.
56. Views of the dormer are limited from the public domain and whilst it can be clearly seen from a number of properties in the area, since dormers are not uncharacteristic of the area, I find there would be no harm to the character and appearance of the area and no conflict with policy DMP1 of the BLP in this regard. There is nothing in its design to lead me to conclude the dormer would harm the living conditions of neighbouring occupants and so there would be no conflict with policy DMP1 of the BLP in this regard.

Other Matters

57. Concern has been raised by an interested party regarding the effect of a fence. However, the appeal scheme does not include fencing.

58. While the appellant has carried out works without planning permission, this is not, of itself, a reason to withhold planning permission.

Conditions

59. While the appellant refers to development which has been carried out, the works shown on the plans differ to the works which have been carried out. Section 180 of the Act provides that, where after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. The effect of this is that those elements of the works which are not granted permission would still need to be removed, such as the parapet walls of the rear extension, the overhang of the outbuilding and the kitchen within the dormer. So that it is absolutely clear what is and isn't being granted by this planning permission, I shall include a plans condition setting out the approved plans and requiring the development is carried out in accordance with those approved plans.

Conclusion

60. For the reasons given above, I find that the outbuilding, rear extension and dormers do not harm the character and appearance of the area or the living conditions of neighbouring occupants. I have found that the alterations to the roof of the garage would harm the living conditions of neighbouring occupants and should be dismissed. Since the outbuilding, rear extension and dormers are severable from the garage, I consider that a split decision would be appropriate in this case.

M Savage

INSPECTOR