



Appeal Decisions

Site visit made on 5 December 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 8 January 2025

Appeal A Ref: APP/T5150/C/23/3317705

8 Grove Park, LONDON, NW9 0JY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr. Zaid Al-Ansari against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 23 January 2023.
- 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.*
- The requirements of the notice are to (1) demolish the building to the rear of the premises; (2) remove the fence separating the rear garden of the premises and the outbuilding; and (3) to remove all items and debris, arising from compliance with steps 1 and 2, 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 ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: the appeal is allowed and the notice is quashed.

Appeal B Ref: APP/T5150/W/23/3315603

8 Grove Park, LONDON, NW9 0JY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr. Zaid Al-Ansari against the decision of the Council of the London Borough of Brent.
- The application Ref is 22/3078.
- The development proposed is described by the Council's notice of refusal as a retrospective application for existing works for demolition of garage and erection of a single storey outbuilding in the rear garden to dwellinghouse to be used as a granny annexe/gym in conjunction with the main property.

Summary Decision: the appeal is allowed.

Preliminary Matters

1. The pre-existing garage building that was to be demolished under the terms of a lawful development certificate (ref 20/4032) appears to have been separated from the rear garden of the dwelling by a fence, and accessed separately from Grove Crescent. Nonetheless from the terms of the certificate that have been repeated to me, it appears that the Council accepted that the garage lay within the curtilage of the dwellinghouse and accordingly that permitted development rights applied. Accordingly a certificate was granted to allow the demolition of the garage and the construction of a new outbuilding, and those works were evidently begun by the demolition of the pre-existing garage building.

2. National planning policy was altered on 12 December 2024 by the re-issuing of the National Planning Policy Framework and other documents. I have found it unnecessary to refer back to the parties on this matter because I consider the main issues in the appeals to be unaffected by those national policy changes.

Main Issues

3. The main issues in both appeals concern the effects of the development as constructed on the living conditions of the occupiers of no. 2 Grove Crescent and on the character and appearance of the area.
4. In considering these matters the principal consideration is whether the development complies with the development plan for the area. If it does not, then other considerations will arise including the appellant's 'fallback' position, by which I mean the prospect of him constructing any other lawful building if the present one is to be demolished.

Reasons

Living conditions

5. No objections were received from any neighbouring occupiers to the application that is now the subject of Appeal B, and no third party comments have been received in relation to the enforcement appeal in Appeal A. The Council contend that the building adversely affects the living conditions of no. 2 Grove Crescent by creating an overbearing impact and harm to the visual amenity and impact on daylight/sunlight and outlook of this neighbouring property.
6. Policy DMP1 of Brent's Local Plan of 2022 requires development to provide high levels of amenity. The policy is supplemented by the Council's 'Residential Extensions & Alterations' SPD of January 2018 ('the SPD'). It advises that outbuildings will normally be restricted to a single storey so that they do not overbear the neighbouring gardens. Outbuildings within 2m of a neighbouring garden would normally be restricted to 2.5m in height.
7. The outbuilding is oriented to the north of the neighbouring property and thus, as demonstrated by the appellant's annotated sun diagrams, will not adversely affect the daylight or sunlight received by the neighbouring property. The outbuilding marginally exceeds the height advised in the SPD of 2.5m. The parties differ as to the exact height but on the Council's case the building is 2.85m. It directly adjoins the curtilage of no. 2 Grove Crescent, but lies adjacent to the front parking area rather than its garden proper, which lies to the rear.
8. I saw that there was evidently a habitable room at the front of no. 2 Grove Crescent, appearing to form part of a side extension, that would look out onto the outbuilding at fairly close quarters. The principal living room with its bay window is set further away, the other side of the main entrance door.
9. Although the aspect from no. 2 Grove Crescent has undoubtedly changed with the advent of the new outbuilding, replacing what was previously a greater separation distance from the former fence, because of the building's relatively restricted height, the orientation, and the distance from the outbuilding of no. 2's principal living room, I do not find that the impacts on the living conditions of no. 2 are sufficiently adverse as to say that the development is contrary to

the development plan in this regard. The SPD is advisory only, and the development plan itself requires that high levels of amenity are achieved. No. 2 is a spacious dwelling with a large open forecourt and private rear garden area. The addition of the outbuilding to the north, although slightly adverse, does not result in less than high levels of amenity for those neighbours.

10. Had I found differently, however, I would have compared the impacts of the existing outbuilding with the undoubted fallback position of the outbuilding for which a certificate of lawful development has been granted. At a height of only (on the Council's case) around 30cm taller than that building, I would find the additional effects of the existing outbuilding to be marginal, and insufficient to justify refusing planning permission for it.

Character and appearance

11. The outbuilding is constructed of a brick facing into the street and into the property's garden, with a rendered finish to the rear wall facing the side of the garden of no. 2 Grove Crescent. PVC is used in the fenestration and guttering. The materials used in the area are disparate, with some wooden fencing, brick walls, and dwellings a mix of brick, render and pebble dash. Although the outbuilding has not achieved an especially attractive appearance, I am unable to say that it is particularly out of character with the remainder of the area.
12. The building does present a rather abrupt end to the building line of Grove Crescent. This was previously provided by the property's rear garden fence which was somewhat less obtrusive than the present building, although I saw that somewhat similar developments have taken place on other corner plots in the area such as at St George's Avenue where a rear garage to no. 24 Grove Park abuts the boundary with no. 1 St George's Avenue. There is a similar development on the opposite side of that road, although set back from the footway. However, these examples mean that this type of outbuilding is not untypical of corner plots in the area.
13. Policy DMP1 requires development to consist of (inter alia) materials, detailing and design that complement the locality. The appearance and finish of the outbuilding are such that I do not find that it improves the locality, and to that extent it conflicts with the requirements of the development plan for the area. Nonetheless I must again be mindful of the appellant's fallback position. The appellant points out that the development could be demolished and re-erected as per the approved plans applicable to the existing lawful development certificate and it would look virtually identical. This is not disputed by the Council.
14. In these circumstances although I do not find that the development complies with the development plan for the area in as much as it requires complementary design and materials, I find that there are sufficient material considerations, in the form of 'fallback' permitted development rights already certified as lawful by the Council, to warrant a decision otherwise than in accordance with the development plan.

Other Matters

Conditions

15. The Council's officer's report notes that the building contains a gym, a sink, a washing machine and a storage room which officers consider to be incidental

in relation to the main dwellinghouse. The building itself is described in Appeal B as a gym/granny annexe. Although any material change of use of the building would itself require permission, the Council request the imposition of a planning condition prohibiting independent occupation of the building, and such conditions are not unusual. I shall therefore impose it in the terms sought.

Conclusions

Appeal A

16. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice subject to the condition set out below. The enforcement notice will be quashed.

Appeal B

17. For the reasons given above the appeal should be allowed.

Formal Decisions

18. The appeals are allowed, the enforcement notice is quashed and planning permission is granted on the (Appeal A) application deemed to have been made under section 177(5) of the 1990 Act and on the (Appeal B) appeal for the development already carried out, namely the erection of a single storey outbuilding in the rear garden of the dwellinghouse at 8 Grove Park, London NW9 0JY to be used as a granny annexe/gym in conjunction with the main property, subject to the condition that the outbuilding hereby approved shall not be used other than for purposes incidental to the enjoyment of the property at No. 8 Grove Park and shall not be used for any other purpose. It shall not contain any primary living accommodation such as kitchens, bedrooms or bathrooms; and nor shall it be used for commercial storage relating to other premises or for self-contained residential accommodation.

Laura Renaudon

INSPECTOR