



Appeal Decision

Site visit made on 4 February 2025

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 June 2025

Appeal Ref: APP/T5150/C/24/3341261

Land at 30 Eversley Avenue, Wembley HA9 9JZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Nidel Kefel against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 14 February 2024.
 - The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref 16/3017 granted on 20 September 2016.
 - The development to which the permission relates is: Demolition of side garage and two storey side extension and erection of a new two storey side extension, part single and part two storey rear extension, rear dormer window, 1 rooflight each on either side of roofslope, replacement of doors and windows with new upvc doors and windows, replacement rooftiles, external rendering and new front garden paving to dwellinghouse.
 - The conditions in question are nos 2 and 8 which state that:
 - Condition 2 - The development hereby permitted shall be carried out in accordance with the following approved drawing(s) and/or document(s):
 - 16/30EA/01
 - 16/30EA/02
 - Condition 8 - Details of the front garden layout shall be submitted to and approved in writing by the Local Planning Authority prior to occupation of the extensions. All detailed works shall be carried out as approved prior to occupation of the extensions hereby approved. Such details shall include:
 - (i) planting of at least 50% of the front garden area with grass, shrubs and/or trees;
 - (ii) the retention of existing grass, hedges and/or shrubs;
 - (iii) provision of front garden wall or walls or other form of boundary treatment including the reinstatement of the section of the existing front boundary dwarf wall which is missing;
 - (iv) car parking space for 1 or 2 cars (each space measuring 2.4m x 4.8m), the defined points of access and the surfacing materials to be used;
 - The notice alleges that the condition 2 has not been complied with in that: the development does not relate to the above plans in respect of the front elevation, (including the windows, the painting of the render, the canopy over the front door, and the detailing of the flat roof over the ground floor side extension)
 - The notice alleges that the condition 8 has not been complied with in that: no details have been submitted to and nor approved in writing by the Local Planning Authority.
 - The requirements of the notice are to:
 - STEP 1 Alter the development to ensure that it complies in full with plans 16/30EA/01 and 16/30EA/02 as set out in planning permission reference 16/3017.
 - STEP 2 Cease the occupation of the premises, until Condition 8 has been complied with and planning permission 16/3017 has been implemented in full.
 - The period for compliance with the requirements is 9 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 (as amended).
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Summary Decision: The appeal is allowed in part, but otherwise dismissed and the notice is upheld in the terms set out in the formal decision.

The Notice

1. Before considering the grounds of appeal on Appeal A, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
2. I have some concerns with regard to the notice as drafted. I set these out in a note to the parties. In reaching my decision, I have had regard to the parties' responses to the note.

Allegation of a Breach of Condition

3. I start by considering the point made by the appellant, that 'what has been built is a material alteration to the proposal granted planning permission' by reason of application reference 16/3017 and that 'the development carried out as a whole requires planning permission'. Whilst this element of the appellant's case has been made under the ground (d) appeal, it is fundamental to whether or not the notice is defective. The notice states that the breach of planning control falls within section 171A(1)(b)¹. The appellant's case as made under ground (d) is that the notice is defective as the breach of planning control falls within section 171A(1)(a)² of the 1990 Act.
4. Planning permission was granted for development described as the 'demolition of side garage and two storey side extension and erection of a new two storey side extension, part single and part two storey rear extension, rear dormer window, 1 rooflight each on either side of roofslope, replacement of doors and windows with new upvc doors and windows, replacement rooftiles, external rendering and new front garden paving to dwellinghouse'. In suggesting that the plans approved by reason of the 16/3017 permission have not been complied with, the Council only refer to differences between what was approved and what has been carried out on the front elevation of the property. In particular, the notice refers to 'the windows, the painting of the render, the canopy over the front door, and the detailing of the flat roof over the ground floor side extension'. There is no suggestion, and I have no reason to disagree, that the other elements of the development have not been carried out as approved, including the part single and part two storey rear extension; the rear dormer window; the rooflights on either side of the roof slope; the replacement of doors and windows in the rear and side elevations of the property; the replacement of the rooftiles; and external rendering of the rear and side elevations of the property.
5. As for the landscaping of the land to the front of the dwelling, I see no reason why the carrying out of these works would mean that the development as a whole has been carried out without planning permission, as opposed to development carried out in breach of the conditions of the planning permission granted.
6. With regard to the side extension, there is no suggestion that its dimensions or the vast majority of its materials do not accord with the approved scheme. It is only

¹ Section 171A(1)(b) of the 1990 Act: failing to comply with any condition or limitation subject to which planning permission has been granted.

² Section 171A(1)(a) of the 1990 Act: carrying out development without the required planning permission

the detailing of the single storey element at eaves level on the front elevation that does not appear to accord with the design of the approved scheme. Indeed, the appellant does not dispute this, and I am also in agreement with the Council on this. Whilst this element of the development does not accord with the approved scheme, the deviation from what was approved is contained to this element of the extension alone. Having regard to the nature and the scale of the development as a whole, I cannot regard it as a difference that is so significant as to render the whole scheme of works carried out at the property as development without the benefit of the planning permission granted. I say the same with regard to the render on the front elevation of the property, which the appellant does not dispute has not been carried out as approved.

7. Whether or not the windows accord with the approved scheme would be a matter for the ground (c) appeal. Even if I were to conclude that there were differences between the windows installed and those approved, I cannot see that the difference would be so great as to render the whole scheme of development unauthorised. My findings are the same with regard to the installation of the canopy.
8. Even considering all of the differences together, I am not persuaded that the development does not have the benefit of the planning permission granted by reason of the 16/3017 planning permission, as opposed to it having been carried out in breach of condition 2 of that planning permission. Accordingly, I do not find the notice to be defective in its allegation of a breach of planning control falling within section 171A(1)(b) of the 1990 Act.

Allegation of a Breach of Condition 2

9. Notwithstanding the above, I am concerned that the allegation of a breach of condition 2 is not sufficiently precise, such that the recipient of the notice would have reasonable certainty as to what the breach of planning control is (i.e. what they have done wrong) and what must be done to remedy it. I am also concerned that the allegation regarding the canopy is not correct.
10. The notice as drafted alleges that, amongst other matters, a canopy has been erected on the front elevation of the property in breach of condition 2 of the 16/3017 planning permission. Condition 2 relates to the development as described in the 16/3017 decision notice. This description and the drawings referred to in condition 2 specify the alterations to the dwellinghouse for which permission is sought, such as render and replacement windows. Neither the description nor the drawings include the installation of a canopy. Whilst a canopy has been erected, it does not automatically follow that its installation is a breach of the condition.
11. The description of the development in a decision notice is the development that is permitted. Failure to carry out that development in accordance with the approved drawings might well amount to a breach of condition. However, if some other development is carried out that is not included in the description of the development permitted, it would not be carried out in breach of a condition. Rather, if it is not otherwise permitted, it would simply be unauthorised development.
12. Whilst I make no judgement here as to whether the installation of the canopy is development, it is clear that the Council had intended the notice to target the canopy. I have had regard to the Council's comments on this point, submitted in response to my note. These do not, however, persuade me that the installation of

the canopy is a breach of condition 2 and that the allegation as put is correct in this regard.

13. Moving on, in the case of a breach of condition enforcement notice, in order for the recipient to be reasonably certain of what the breach of planning control is, the notice must set out with sufficient clarity and precision what has been done, or not done as the case may be, in breach of the relevant condition.
14. The notice states that condition 2 has not been complied with as the development does not 'relate' to the approved plans 'in respect of the front elevation'. It also lists certain elements of the works carried out. It does not, however, specify with sufficient clarity what has been done to the front elevation that does not accord with the approved drawings referred to in condition 2.
15. The notice does not say in what way the windows do not accord with the approved scheme. I acknowledge that the Council's evidence points to the presence of trickle vents. However, the presence of trickle vents is not mentioned in the notice. Neither does the notice mention the presence of internal glazing bars, which the Council now suggest should also be referred to in the notice. Accordingly, having regard to what is within the four corners of the notice, the recipient would not be reasonably certain that the only reason the windows installed in the front elevation do not accord with the approved scheme is because of the presence of trickle vents and internal glazing bars. Similarly, the reference to 'the painting of the render', does not provide sufficient clarity on how this element of the scheme does not comply with what has been approved.
16. The reference to the element of the side extension that is the target of the notice is more precise. However, this does not change my findings above, which leads me to conclude that the allegation as it relates to condition 2 is defective as a whole.
17. In considering whether I am able to correct the notice, I have suggested in my note a correction that would set out more precisely in what way the elements of the works referred to do not accord with the approved scheme and condition 2. The Council have added to this reference to internal glazing bars. The notice could also allege a breach falling within section 171A(1)(a) of the 1990 Act, in addition to section 171A(1)(b), and in doing so allege a separate operation comprising the erection of a canopy on the front elevation of the property.
18. However, I cannot be satisfied that the corrections outlined above would not cause injustice to the appellant. Were I to add a separate allegation of development comprising the erection of a canopy, I cannot find it unlikely that the appellant would make his appeal on other grounds, including that the canopy ought to be granted planning permission or that it does not comprise development. I conclude the same regarding the corrections necessary to make the allegation of a breach of condition 2 more precise. Indeed, the appellant points to these as significant alterations to the notice that, if made, would deprive him of a ground (a) appeal.
19. For the reasons given above, I find the notice defective in its allegation of a breach of condition 2 of the 16/3017 planning permission. It is not, however, so hopeless as to render it a nullity. Nevertheless, I am not able to correct this defect in the notice as to do so would cause injustice to the appellant.

Allegation of a Breach of Condition 3

20. Condition 3 of the 16/3017 planning permission clearly prohibits the occupation of the extensions permitted until such time as the necessary details of the front garden layout have been submitted to and approved by the local planning authority (i.e. the Council), and have been carried out in accordance with the approved details. There is no ground (b) appeal and, therefore, no suggestion that the necessary details have been submitted to the Council, approved and carried out on site. As such, the notice correctly identifies what has not been done in compliance with the condition. The notice does not, however, say why this constitutes a breach of condition 3 and, therefore, a breach of planning control. By this I mean that it does not say that the extension has been occupied without the necessary details required by the condition having been submitted to the Council.
21. The appellant has not made his ground (c) appeal with regard to the alleged breach of condition 3. Neither does he make the case that the extensions have not been occupied, such that a failure to submit the necessary details to the Council has not resulted in a breach of the condition. Accordingly, it would not, in my judgement, cause injustice to the appellant, were I to correct the notice to make it more clear why it is alleged that there has been a breach of condition 3. I see no reason why the appellant would have approached his appeal in a different way, had the notice specified this more precisely.
22. As for the corresponding requirements of the notice, my concerns relate to the requirement to cease the occupation of the premises until the 'planning permission 16/3017 has been implemented in full'. As the appellant has made a ground (f) appeal regarding this requirement, I will consider my concerns together with the ground (f) appeal.

Conclusions on the Notice

23. For the reason given above, I intend to correct the notice to remove the part of the allegation which relates to condition 2 of the 16/3017 permission, along with the corresponding requirement (i.e. step 1). In doing so I am mindful of the provisions of section 171B(4) of the 1990 Act, which allow the Council to issue a further enforcement notice in respect of this matter, should it be considered expedient to do so.

Ground (c)

24. In his appeal on ground (c) the appellant only refers to the allegation as it relates to the windows installed on the property. As I intend to remove the element of the allegation as it relates to the windows, there is no need for me to consider the ground (c) appeal.

Ground (d)

25. An appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by the matters alleged in the notice, corrected as I intend.
26. As I have noted above, in making his ground (d) appeal, the appellant suggests that the breach of planning control in this case is the carrying out of development without planning permission (falling within section 171A(1)(a) of the 1990 Act), as opposed to a failure to comply with any condition or limitation subject to which

planning permission has been granted (section 171A(b)). In doing so, the appellant points to the time limits set out in section 171B(1)³ of the 1990 Act and suggests that, as the development was substantially completed more than 4 years prior to the issue of the notice, the time for taking enforcement action has expired.

27. I have concluded that the allegation of a breach of planning control comprising a failure to comply with any condition or limitation subject to which planning permission has been granted is correct. Accordingly, the relevant time limit is that referred to in section 171B(3), which is ten years beginning with the date of the breach.
28. The condition that remains the subject of the enforcement notice, once corrected as I intend, requires the details of the front garden layout to be submitted to and approved in writing by the Council prior to the occupation of the extensions permitted. It also requires the carrying out of the detailed works as approved prior to the occupation of the extensions. The breach of planning control in this case has resulted from the occupation of the extensions without the submission to the Council of the necessary details. The date of the breach would, therefore, be the date the permitted extensions were first occupied.
29. The appellant's evidence on ground (d) concentrates on the date the development was substantially completed, which appears to be some time between March 2018 and December 2020. Even if I were to regard the date of substantial completion suggested by the appellant as the date the extensions were occupied, this would have only been, at most, close to 6 years prior to the issue of the enforcement notice. Accordingly, the appellant is unable to demonstrate that, on the balance of probability, a period of ten years has passed starting with the date of the breach.
30. For this reason, it has not been demonstrated that no enforcement action could be taken in respect of the breach of planning control alleged and the ground (d) appeal must fail.

Ground (f)

31. The Council confirm that the purpose of the notice is to remedy the breach of planning control. Accordingly, to succeed on ground (f), the appellant must demonstrate 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 the breach.
32. The second requirement is to cease the occupation of the premises until condition 8 has been complied with and planning permission 16/3017 has been implemented in full. I note that 'the premises' is defined in schedule 1 of the notice as the entirety of 30 Eversley Ave, including the garden areas serving the dwelling.
33. The appellant's case is that the requirement to cease the use of the premises exceeds what is necessary to remedy the breach, and that this 'breaches the human rights of the occupiers'.
34. As condition 3 only prohibits the occupation of the extensions permitted by the 16/3017 permission, I can agree that a requirement to cease the use of the entirety of the appeal site exceeds what is necessary to remedy the breach. Were I to vary the notice so that it is consistent with condition 3, a requirement to cease the

³ Having regard to section 171B(1) of the 1990 Act and section 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

occupation of the extensions permitted would, in my judgement, be the minimum necessary to remedy the breach. I see no reason why such a variation to the notice would cause injustice to the appellant. Whilst the appellant has referred to an interference with his rights under the Human Rights Act 1998, as an appeal has not been made on ground (a) such matters cannot be considered under the ground (f) appeal. Nevertheless, were I to vary the notice as indicated, it would allow for the occupation of the remainder of the dwelling while the appellant takes steps to comply with the condition. The notice would not, therefore, prevent him from occupying the kitchen, a reception room and most of its bedrooms and bathrooms.

35. Turning to the remainder of the second requirement, this requires the implementation of the 16/3017 planning permission in full. As I have set out in my note to the parties, I find this part of the requirement to be vague; it is not clear what is meant by the implementation of the planning permission.
36. As drafted, it would appear that the requirement is to carry out all elements of the development permitted. Whilst it is reasonable to require any development permitted to be carried out in accordance with the approved drawings, in most cases a requirement to carry out all of the development permitted would not be. It is often a matter of choice whether a developer would carry out all elements of a scheme that they have sought permission for.
37. For the reasons given above, this requirement of the notice goes beyond its purpose. In its response to my note, the Council do not suggest otherwise. Indeed, it has suggested that this part of the requirement be removed from the notice. I would agree that this is necessary and, in doing so, would not cause any injustice to the parties, particularly as the notice would be less onerous and require only that necessary to remedy the breach.
38. Having regard to the above, the appeal on ground (f) should succeed and the notice will be varied as indicated above.

Overall Conclusions

39. For the reasons given above, I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control insofar as it relates to condition 2 of planning permission 16/3017.
40. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will, therefore, be corrected to omit reference to a breach of condition 2 of the 16/3017 planning permission.
41. In these circumstances, the appeal on the grounds set out in section 174(2)(c), (d) and (f) of the 1990 Act do not fall to be considered insofar as they relate to the allegation of a breach of condition 2 of the 16/3017 planning permission.
42. Otherwise, for the reasons given above, the appeal on ground (d) is dismissed. I also conclude that the requirements of the notice are excessive to remedy the breach of planning control insofar as it relates to the breach of condition 8 of the 16/3017 planning permission. The appeal on ground (f) succeeds to that extent.
43. In view of the above, I shall correct and vary the enforcement notice prior to upholding it.

Formal Decision

44. It is directed that the enforcement notice is corrected and varied by:

- the deletion from schedule 2 of the words 'The breach of Conditions 2 and 8' and their substitution with the words 'The breach of condition 8';
- the deletion from schedule 2 of the words 'Condition 2 states: " The development hereby permitted shall be carried out in accordance with the following approved drawing(s) and/or document(s):

16/30EA/01

16/30EA/02"

Condition 2 has been breached as the development does not relate to the above plans in respect of the front elevation, (including the windows, the painting of the render, the canopy over the front door, and the detailing of the flat roof over the ground floor side extension),';

- the deletion from schedule 2 of the words 'Condition 8 has been breached as no details have been submitted to and nor approved in writing by the Local Planning Authority' and their substitution with the words 'A failure to comply with condition 8 has occurred as the extensions permitted by the planning permission reference 16/3017 have been occupied without the details of the front garden layout having been submitted to the Local Planning Authority in accordance with the requirements of the condition';
- The deletion from schedule 4 of the words 'STEP1 Alter the development to ensure that it complies in full with plans 16/30EA/01 and 16/30EA/02 as set out in planning permission reference 16/3017'; and
- The deletion from schedule 4 of the words 'STEP2 Cease the occupation of the premises, until Condition 8 has been complied with and planning permission 16/3017 has been implemented in full' and their substitution with the words 'Cease the occupation of the extensions permitted by the planning permission reference 16/3017 until the requirements of condition 8 of the planning permission have been complied with'.

45. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

J Moss

INSPECTOR