
Appeal Decisions

Hearing held on 23 September 2014

Site visit made on 23 September 2014

by Nigel Burrows BA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 October 2014

Appeal Refs: APP/T5150/C/14/2214693 & 2214694 15 Queenscourt, Wembley, HA9 7QX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr B Patel and Mrs Y Patel against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is _3/14/0003.
- The notice was issued on 24 January 2014.
- The breach of planning control as alleged in the notice is the erection of a detached building in the rear garden in order to create primary residential accommodation.
- The requirements of the notice are demolish the building in the rear garden and 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 3 months.
- **The appeal by Mr Patel (2214693)** is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
- **The appeal by Mrs Patel (2214694)** is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld

Background

1. The appeals relates to a semi-detached dwelling located upon the south side of Queenscourt, within a predominately residential area in Wembley. The building subject of the enforcement notice is sited at the end of the rear garden of the property. The building has brick elevations with a shallow pitched, tiled roof and extends across most of the width of the garden. A distinctive design feature of this building is the duality of its façade (which faces the rear elevation of the house). This façade incorporates two projecting wings which, in turn, frame two adjoining entrance doors to the building.
2. The planning history of the property includes a previous enforcement notice issued in April 2013 which alleged 'the unauthorised erection of a dwelling in the rear garden of the premises'. A subsequent appeal was upheld and the notice was quashed. The Inspector found that although unauthorised operational development had occurred, on the evidence before her, it was not the erection of a dwelling as alleged in the notice.

The ground (a) appeal and deemed application

3. There are two main issues in this appeal. The first is the effect of the building on the

character and appearance of the site and the surrounding area. The second is its effect on the living conditions of neighbours, with particular reference to privacy and outlook.

Issue 1: Character and appearance

4. The design of the building is reminiscent of a pair of small semi-detached bungalows. I observed that it has a dominating and intrusive presence in the rear garden. The visual impact of the building is accentuated by its size, bulk and close proximity to the adjoining boundaries. The structure impinges on the open character of this locality and does not blend in with the smaller-scale buildings which are typically to be found within the surrounding gardens (such as sheds and summerhouses). I saw there is a large outbuilding in one of the gardens nearby, but this appears smaller than the building before me and, moreover, it is uncharacteristic of other garden buildings in the locality.
5. I appreciate that the building is not readily noticeable from the public realm. Nevertheless, this does not in any way diminish the Council's legitimate concern to protect the character and appearance of this residential area from inappropriate forms of development. In any event, the intrusive presence of the building is readily apparent to the occupiers of a number of the properties within the vicinity of the appeal site.
6. I conclude this building significantly detracts from the character and appearance of the area. As such, it conflicts with the aims of the relevant development plan policies, including 'saved' UDP¹ policies BE2 and BE9, which seek to protect the local context and character of the townscape and require buildings to be appropriate to their setting.

Issue 2: Living Conditions

7. The appellant emphasises there have been no objections to the development from neighbours. Be that as it may, this does not obviate me from the need to consider the development on its planning merits, including its effect on the living conditions of residents.
8. The Council's stance is the day-to-day activities associated with the building, and the neighbours' perception of what is happening in the building, would intrude on the privacy of nearby residents. It is argued they would find the very presence of this building intrusive. The submissions for the appellant indicate that it was originally intended to be 'lightly used'.
9. With respect to the use of the appeal building, the Inspector's findings in the previous appeal are of some relevance. The Inspector concluded that it was not permitted development under the provisions of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995, for two main reasons.
10. First of all, its height exceeded that permitted by Class E. Secondly, as my colleague pointed out: "... Class E only allows buildings which are "required for a purpose incidental to the enjoyment of the dwellinghouse" and incidental uses and activities do not include uses for primary dwellinghouse purposes. In this case a television room with easy chairs and coffee table can be equated to a lounge or living room. It is not an incidental use. Similarly, whilst it might be argued that a shower room is part and parcel of the incidental use as a gym, the small kitchen area is a primary residential use rather than being required for any incidental purpose. As a matter of fact and degree, therefore, the whole of the outbuilding has not been shown as having been required for an incidental purpose and for this reason too, the building is not permitted by way of Class E." ²
11. The appellants have now provided a unilateral obligation under section 106 of the Act, undertaking to use the building only for the purposes shown upon an attached drawing. This indicates that it would be used as a gym, home office and for household storage.
12. However, I do not consider the obligation would make the development acceptable in planning terms. Firstly, it does not address (or overcome) the building's adverse visual

¹ Brent Unitary Development Plan (2004)

² Appeal decision: APP/T5150/C/13/2199202 - paragraph 11

impact. Secondly, on the balance of probability, this large building is likely to become the focus for various ancillary activities. However, its design and orientation affords intrusive views towards the rear elevations of the adjacent properties and their gardens, especially in the case of 17 Queenscourt despite the intervening boundary enclosures and planting.

13. I observed the presence of this building would significantly erode the privacy of the occupiers of 17 Queenscourt. I also share the Council's concern that its presence may contribute to a perception of overlooking that would further diminish their living conditions (even allowing for the scope to provide curtains or obscure glazing to its windows and glazed entrance doors). To my mind, it would significantly harm the living conditions of neighbours. In this respect, I find it conflicts with the relevant development plan policies insofar as they seek to protect residential amenity, including 'saved' policy BE9 of the UDP.

Other Considerations

14. In the context of the ground (f) appeals against the enforcement notice, it is suggested that substituting a flat roof for the pitched roof of the building would address the Council's concerns. The inference seems to be that this modification could also be carried out as permitted development. In effect, this appears to be the appellants' 'fall-back' position. I have therefore considered this proposition in relation to the ground (a) appeal.
15. The Council's stance is that by virtue of Article 3(5) of the GPDO³, the appellant is unable to rely on the permitted development rights granted under Schedule 2. The Council also points out that permitted development rights cannot be claimed retrospectively. I see no reason to disagree. As matters stand, there is no firm evidence to show the appellant can rely on permitted development rights to modify the building as suggested. I am unable to give any significant weight to the availability of a 'fall-back' position, as inferred by the appellant.
16. Whilst it might be possible to secure this alteration by means of a carefully worded planning condition, the introduction of a flat roof would be unacceptable because it would accentuate the adverse visual impact of the building. Similarly, whilst there might be scope to lower the eaves of the roof, this would not overcome the strong planning objections to the building.
17. The parties have cited various appeal decisions in support of their respective cases. All of these appeals are of some interest although the detailed planning circumstances vary in each case. In any event, a common theme throughout is that the proposals were considered on their individual planning merits. I have considered the scheme before me on this basis.

Summary

18. The Council's concern to protect the built environment of the Borough and the living conditions of residents is broadly consistent with the Government's objectives for the planning system. Paragraph 14 of the National Planning Policy Framework (NPPF) sets out the presumption in favour of sustainable development. The economic, social and environmental dimensions of sustainable development should be addressed. Paragraph 9 also makes it clear that pursuing sustainable development includes seeking positive improvements in the quality of the environment and improving people's quality of life. However, my overall conclusion is the development conflicts with these objectives.
19. I consider the objections to the development could not be overcome by any reasonable or appropriate planning conditions. In view of my findings on the two main issues, I have therefore concluded the ground (a) appeal and deemed application should not succeed.

The ground (f) appeals

20. The appellants' stance is the notice was issued in order to remedy any harm to

³ Article 3(5) indicates the permission granted by Schedule 2 of the GPDO shall not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful

amenity. However, the manner in which the Council has prepared the enforcement notice (including the formulation of its requirements) indicates its purpose is to remedy the breach of planning control in accordance with section 173(4)(a) of the Act.

21. The submissions for the appellants cite the *Ahmed* judgement⁴. The question before the Court of Appeal in that case was whether an Inspector had erred in law by failing to consider an 'obvious alternative' to the removal of development attacked by an enforcement notice, in accordance with the principles discussed in *Tapecrown*⁵. The latter decision advocated a flexible approach in the context of a ground (f) appeal, where there is a deemed application to be considered. The Court of Appeal held in *Ahmed* that if there is an obvious alternative to the requirements of the notice, the Inspector should consider it.
22. It is apparent from the planning history of this building that it was partly erected for purposes involving a primary residential use, rather than being required wholly for incidental purposes. I am unable to give any significant weight to the availability of a fall-back' position to modify the building, for the reasons given in the ground (a) appeal. In the circumstances, I conclude the requirements of the notice are not unduly onerous or excessive. It is not obvious to me that lesser steps would remedy the breach of planning control (or the injury to amenity that has occurred). The ground (f) appeals therefore fail.

Conclusions

23. I have taken into account all the other matters raised in the written representations and at the hearing, including the appellants' requirement for ancillary accommodation at 15 Queenscourt. However, I find they do not alter or outweigh the main considerations that have led to my decisions. For the reasons given above, I intend to uphold the notice and I refuse to grant permission on the deemed planning application.

Formal Decisions

APP/T5150/C/14/2214693

24. 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.

APP/T5150/C/14/2214694

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

Nigel Burrows

INSPECTOR

⁴ Mahfooz Ahmed v SSCLG [2014] EWCA Civ 566

⁵ Tapecrown Ltd v FSS [2006] EWCA Civ 1744

APPEARANCES

FOR THE APPELLANTS:

Mr P Kyte	ENABLING PROJECTS (Town Planners)
Mr B Patel	The appellant
Mrs Y Patel	The appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Wicks	Nigel Wicks Enforcement Services Ltd
Mr S Davies	London Borough of Brent