
Appeal Decision

Inquiry held on 5 October 2016

Site visit made on 5 October 2016

by Simon N Hand MA

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

Decision date: 11 October 2016

Appeal Ref: APP/T5150/C/15/3010433 43 Manor Park Road, London, NW10 4JY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Marie Hippolyte against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 19 December 2014.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a dwelling in the rear garden of the premises.
 - The requirements of the notice are to demolish the unauthorised development and remove all materials and debris arising from that demolition from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (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. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background to the Appeal

2. Mrs Hippolyte lives at 43 Manor Park Road. No 43 is one of a line of terraced houses most of which have large rear extensions and small back yards. In the backyard to No 43 is a structure which the Council allege is being used as a dwelling. No 41, the immediate neighbour to No 43, stands on the corner with Tavistock Road. Its rear yard has been turned into a separate dwelling (No 41A) which runs down Tavistock Road and takes its entrance from there. At the end of that dwelling is a narrow passage, only a few metres long, which ends in a door, marked 43A. This provides access to the structure at the back of No 43.

The Appeal on Ground (c)

3. This ground is that there has not been a breach of control, because in this case the structure is permitted by Class E of the General Permitted Development (England) Order 2015. Setting aside whether the structure has been used for purposes incidental to a dwellinghouse or not it needs to fulfil various size criteria. Firstly, the Council allege that contrary to E.1(e)(ii) it has a roof over 2.5m and sits on the boundary. There is no dispute the structure sits on all three boundaries of the rear yard as it fills it entirely. The Council say it is

2.75m tall, but Mrs Hippolyte states it is only 2.5m. A second criterion is E.1(b) which states the total area of ground covered by buildings and structures must not exceed 50% of the total curtilage of the property, excluding the original dwellinghouse. The structure in question occupies virtually all the rear yard, leaving only a narrow passage from the back door of the dwelling to the structure, and a small front garden. The structure clearly covers more than 50% of the curtilage of the dwelling and so regardless of the height of the roof is not permitted development. The appeal on ground (c) fails.

The Appeal on Ground (d)

4. In this case the argument is that the use alleged took place more than 4 years before the issue of the notice, that is before 19 December 2010. The allegation is that the structure has been used as a dwelling, which Mrs Hippolyte denies, but as there is no evidence it has been occupied as a dwelling before 2011, that element of ground (d) therefore fails.
5. Mrs Hippolyte claims the structure has always been as it is and has always been used as a shed for storage, for her children to use as a playroom and for her father and his friends as a games room and drinking den. It is also used as overflow accommodation for family members at Christmas and Easter. All these uses would be ancillary to the main dwelling. If the shed had been constructed prior to December 2010 and these uses begun before then, the shed could well be lawful. I shall look first at the history of construction.
6. Mrs Hippolyte had no evidence in the form of bills or invoices for any of the works that had taken place. She steadfastly maintained the shed I saw on my site visit was the same as it had always been. However, she also explained that a tree planted by her father had broken out of its pot and damaged the shed and wall with the neighbour at No 45. This tree was located between the shed and the house. There is no possible room now for a tree to be located between the shed and house so this must have been during one of the earlier phases of the shed.
7. A planning application was put in by Mrs Hippolyte for a much smaller shed in 2004. This was accompanied by photographs of the site which show a smaller shed occupying about half the rear yard and a tree between the shed and the house. There is no doubt therefore the shed as I saw it was not in place in 2004, whatever Mrs Hippolyte may argue. The Council provided aerial photographs which show in 2007 a small shed at the bottom of the yard, with a large gap between it and the house. In 2008 the shed is still there but not the tree. In 2010 two separate images show the shed has an 'L' shaped extension occupying some of the gap towards the back of the house. The 2011 photograph is very blurred, but does seem to show a similar situation. In 2012 the shed now seems to occupy the full width of the yard, but there is still a small space between it and the back of the house. The position is unchanged in 2013, but in 2015 the shed is shown occupying the whole of the back yard as it does today, with just a very narrow access corridor to the back door of the house. Consequently, the shed would clearly seem to have been constructed in a series of separate actions between 2008 and 2015 and in particular between 2010 and 2014. The structure as it appeared when the notice was issued was not the same as it was four years previously and so the appeal on ground (d) must fail.

8. The use as a separate dwelling is alleged to have begun with the occupation by a Ms Cooper in 2011. Mrs Hippolyte says in a sworn statement that Ms Cooper was a friend of hers who stayed in the main house at No 43 while Mrs Hippolyte was away in St Lucia in 2012. Mrs Hippolyte had no idea Ms Cooper was staying there, but on her return from St Lucia Mrs Hippolyte allowed her to continue staying in the shed as she would otherwise be homeless. She then found out that Ms Cooper was trying to get a Council flat and using the poor quality of the accommodation as a reason to be rehoused. Mrs Hippolyte said there was hot water provided to the shed, but she turned it off in order to encourage Ms Cooper to leave. Ms Cooper cooked both in the shed and in the main house.
9. This story roughly agrees with the Council's records which show a visit by a Council officer in September 2011 to the shed. The officer recorded that the shed was in the process of being converted. It took its access from Tavistock Road, but had no hot water, heating or insulation. It was rented at that time to Ms Cooper. Photographs dated from a second visit in February 2012 show a kitchen, shower and bedroom, but little furniture and Mrs Hippolyte explained this was because the "re-decoration" was still going on. It would seem Ms Cooper left shortly afterwards. Mrs Hippolyte explained the "re-decoration" was to enable family and friends to stay occasionally; she was particularly keen that her 17 year old daughter had somewhere to stay as it was dangerous to stay at random friends' houses. She did not explain why her daughter could not stay in the main house, which is a good sized double fronted dwelling.
10. There is no actual evidence of anyone staying in the shed since, although Mrs Hippolyte did say her brother had lived there for a while after he was kicked out by his wife. During the site visit she explained he was still in occupation. The site visit was very instructive as it revealed the inside of the shed to be decorated like a small house. There was kitchen, which was fully serviced with a sink, washing machine, tumble dryer, dishwasher, cooker, microwave, coffee machine, toaster etc. A shower room with a toilet and sink. Three other rooms were occupied as bedrooms, one with bunk beds, one a double and one a single. All were full of personal effects, several laptops, clothes and shoes, including at least one pair of high heels. The bathroom was full of toiletries and four toothbrushes. There was a large artificial flower arrangement and a bowl of fruit. None of this was consonant with a temporary arrangement for her brother in a building that was otherwise used for storage and occasional family overnights. The shed was clearly being intensively occupied by several people on what seemed to be a permanent basis.
11. There was no readily accessible link to the back of No 43 itself. A door from the back of the shed was hidden behind a curtain in front of which was a double bed. It could only be accessed if the bed were tipped onto its side as the bed virtually filled the room. Had the door opened it would open into a rear storage area which had a further pair of doors to the narrow access passage at the back of No 43. The storage area was crammed with objects, right up to the ceiling.
12. The most likely explanation of the history of the shed seems to me that a small shed, later enlarged into an 'L' shape was indeed used as a play room for children and drinking den for elderly men until 2011. It was then further enlarged and turned into a dwelling in 2011-12, as the Council witnessed during their two visits. This is the large shed shown in the aerial photographs

of 2012 and 2013. The storage extension was added more recently and shows up in the 2015 aerial photograph. It was occupied in 2011/12 as a dwelling, and is clearly occupied as one now. Neither of those occupations are or were ancillary to the main dwelling.

13. The fact that a separate unit of accommodation has been created is suggested by two further matters. The door that provides a private access to Tavistock Road is numbered 43B. Mrs Hippolyte explained the separate access was useful for her to push a trolley with large and heavy shopping into to get to the main house, which otherwise was up two steps. If this was ever the case it is impossible now due to the access door between the shed and the rear yard being blocked up. Mrs Hippolyte went to the post office to ask for a separate number, 43B, as she thought her house would be 43A, although she could not explain why she did this if the shed was not meant to be a separate dwelling.
14. The second issue is that Mrs Hippolyte pays council tax for the shed as a separate dwelling. This she explained was because another stray family member was staying in the shed on a temporary basis and in order to get housing benefit asked the Council to visit. They told Mrs Hippolyte, who knew nothing of this matter, that the shed was being used as a dwelling and so needed to be charged council tax. This has been paid since December 2013. Mrs Hippolyte is currently in dispute with the post office about the address and the Council over Council Tax. Nevertheless, she actively sought a separate address for the property and has been paying Council Tax on it, as if it were separate, since 2013. None of this suggests to me the shed was simply intended to be for occasional family overflow accommodation and more generally used as a day room and storage. In my view the most likely explanation is that the Council's allegation is correct and since late 2011 or early 2012 a separate dwelling has been created in the rear yard at No 43. For all these reasons the appeal on ground (d) fails.

The Appeal on Ground (a)

15. The Council argue the dwelling is seriously sub-standard and fails to meet the space standards of Table 3.3 of the London Plan. This was not contested by Mrs Hippolyte and I saw the accommodation was extremely cramped. The dwelling occupies the full width and virtually the entire depth of the rear yard. There are small windows above the neighbour's wall that look directly into the rear garden of No 41, otherwise there is little or no natural light to the dwelling and no amenity space, contrary to policies H15 and H18 of the Brent Unitary Development plan 2004. It is clear the site is completely unsuitable for a dwelling which harms the amenity of the occupiers of the shed itself, the occupiers of no 43 as it leaves virtually no amenity space for that dwelling and the neighbours through overlooking.
16. Mrs Hippolyte was insistent the shed should remain, not least because it blocked access to her yard and so was useful for security purposes. The Council accept a shed of some sort has been on the site for many years, but there is no need for one of such large dimensions that occupies so much of the amenity space for No 43. Despite Mrs Hippolyte's protestations to the contrary, it is clear to me the shed has been used as a dwelling and it is likely to be continue to be so used if it remains. No alternative scheme has been put before me nor have any suggestions as to what size of shed might be acceptable. Consequently, I consider that planning permission cannot be

granted for any alternative structure, the notice should be upheld and the shed demolished.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Mrs Hippolyte

FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Wicks MRTPI