The Planning Inspectorate

Appeal Decision

Inquiry held on 30 October 2018 and 9 April 2019
Site visit made on 9 April 2019

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

an Inspector appointed by the Secretary of State

Decision date: 2 May 2019

Appeal Ref: APP/T5150/C/17/3182731
57 Coles Green Road, London NW2 7JH

- 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 Mr R Wijesinghe against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice was issued on 17 July 2017.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the premises from residential to a mixed use as residential and for the storage of building materials, containers, broken vehicles and various scrap and waste and without planning permission, the erection of a canopy structure at the rear of the premises.
- The requirements of the notice are 1. Cease the use of the premises for the storage of building materials, containers, broken vehicles, and various scrap and waste; 2. Remove building materials, containers, broken vehicles, various scrap and waste and all other paraphernalia related to the unauthorised use from the premises and 3. Demolish the canopy structure at the rear of the premises and remove all materials and items associated with the demolition works from the premises.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c) and (d) of the Town and Country Planning Act 1990 as amended.

Procedural Matters

1. Evidence was taken under oath.

2. The appellant produced a medical certificate at the commencement of the second day of the inquiry. I asked what he would like me to do in relation to the certificate and his condition, including asking whether it was necessary to adjourn the inquiry. The appellant confirmed that he was able and wanted to continue, but that he might need breaks in the inquiry. Breaks were taken at appropriate times.

3. At the commencement of the inquiry the appellant withdrew his appeal on ground (a). During the adjournment a document was sent that indicated the ground (a) was scrapped by the inspector. When the inquiry resumed the inspector explained that was not what occurred, but that the appellant had indicated that he wished to withdraw the ground (a) appeal. It was again put to the appellant if he wished to withdraw the ground (a) appeal and withdrawal was confirmed. The grounds of appeal are therefore grounds (b), (c) and (d).

4. For the purposes of this decision I have referred to the rear container as container 1 and the front container as container 2. While the appellant calls the

canopy structure a semi-open shed, I have referred to it for the purposes of this decision as a canopy as that is what is referred to in the enforcement notice.

Application for costs

5. At the Inquiry an application for costs was made by the London Borough of Brent against Mr R Wijesinghe. This application is the subject of a separate decision.

Decision

6. It is directed that the enforcement notice be corrected by;

   - removing 'broken vehicles' from the allegation and requirements
   - removing unnecessary 'of' in step 1 (before 'for')
   - in steps 1 and 2, replacing 'containers' with 'container 2 (forward container)'

7. The appeal is allowed insofar as it relates to broken vehicles and container 1.

8. The appeal is dismissed and the enforcement notice is upheld as corrected, insofar as it relates to the material change of use of the premises from residential to a mixed use as residential and for the storage of building materials, container 2 (forward container) and various scrap and waste, and in terms of the operational development, insofar as it relates to the erection of a canopy structure at the rear of the premises.

Reasons

Ground (b)

9. This ground of appeal is that the breach of control as alleged in the enforcement notice has not occurred as a matter of fact.

10. In terms of the canopy it is clearly in place and therefore as a matter of fact the operational development alleged has occurred.

11. In terms of the stored materials, including the container, a vehicle and various scrap and waste again these are clearly identified in photographs and while there has been some change and tidying up since then, some clearly remain on site, so as a matter of fact what is alleged has occurred. There is an argument that these are not described correctly in terms of being storage of building materials etc. and I will consider these arguments under ground (c).

12. The appeal on ground (b) fails.

Ground (c)

13. The enforcement notice alleges broken vehicles, although it is apparent that there is only one on site. The Land Rover vehicle, at the time photographs were taken, was on a raised-up platform in the rear garden and was very prominent. However, there is no evidence to show that this was associated with a building company. A Land Rover is a vehicle that any home owner might have and would be considered incidental to the use of the dwelling house. While it is unusual to raise it up in such a prominent way, that does not mean that it is

not an incidental use, and I note from the site visit that it has now been moved. I conclude that the Land Rover is not part of the mixed use alleged and the reference to 'vehicles' will be removed from the allegation and requirements.

14. The materials stored on site are of a mixed nature. To my mind some are clearly those normally associated with a builder and not normally considered of a domestic nature, even acknowledging that there has been building work to the house. Some of the storage racks, one in the garden and the other in container 2, are more of an industrial than domestic nature, including materials such as the industrial type roofing sheets and industrial type shelving. The nature of the materials stored is not, to my mind, that of a purely domestic character and appearance and I conclude, on the balance of probability, that there is a mixed use that includes some storage of building materials and these have materially changed the character of the use as alleged.

15. I also note in the enforcement officer's delegated report of 5 July 2017, submitted by the appellant, that on 13 December 2016 a separate enforcement investigation was created as the owner of the premises confirmed that the building materials did not relate to the demolition of the outbuilding in the rear garden, but related to his building business. Aerial photographs such as in 2015 do not show the storage of materials in the garden area and I consider on the balance of probability that this use commenced within the last 10 years.

16. However, I accept that many of the items in the garden are those that could readily be associated with domestic use, such as old lawn mowers and domestic appliances etc. These domestic items are clearly those that can reasonably be considered as being incidental to a dwelling house use and the notice cannot enforce against these.

17. The two containers have different uses. Container 1 does not have building items stored within but is being used mainly in association with the appellant's religion. This is a use incidental to the dwelling house and not a use associated with the storage of building materials. The allegation associated with the containers is not for operational development, but a change of use. I conclude that container 1 is not being used in association with building material storage, but is part of the residential use of the land, so there is no change of use in relation to container 1. The enforcement notice will be corrected to remove container 1 from the requirement.

18. Container 2 has, amongst other things, industrial type shelving within it, and to my mind there is a mixed use occurring that mainly includes building material storage. Container 2 is part and parcel of the material change of use of the land and this requires planning permission. The appeal on ground (c) succeeds in relation to the vehicle on site and container 1 and I shall amend the notice accordingly.

19. If it were accepted that the canopy is used incidentally to the dwellinghouse, for it not to require planning permission, it would need to comply with the limitations of permitted development. One of those limitations is that it should not be more than 2.5m high as measured above ground level. The parties agreed the position and made measurements on site. There was considerable discussion and debate as to where the measurements should be taken, so various measurements were made. The appellant wanted to measure to a sleeper or block beneath the deck adjacent to the canopy. However, the

measurement has to be taken from ground level. Even to the top of the sleeper the height was about 2.7m. Other measurements were between 2.7 and 2.8m for the height. Even allowing for some differences in ground level, the height is clearly well above the 2.5m limit, so the canopy is not permitted development. The appeal fails on ground (c) for the canopy.

Ground (d)

20. The appeal made under ground (d) mainly revolves around containers 1 and 2 and when they were brought onto the appeal site. However, as I have found that container 1 is used incidentally to the use of the dwellinghouse, I do not need to consider when it came onto site as its current use accords with the lawful use. I shall therefore consider container 2 under ground (d).

21. The Council has provided various aerial photographs of different dates featuring the appeal site. I acknowledge that some of these are not of good quality, but have a blurred image and these have not been considered. I also accept that in some there is considerable vegetation, including the large hedge alongside part of the rear garden, and this has been taken into consideration when assessing the views.

22. The appellant noted that container 1 was on site when he arrived and container 2 was introduced by him to the site in 2005. A letter, recently written and not contemporaneous, was provided from the company that moved the container. A photograph was also presented, indicating clearance of vegetation in front of the container in 2006. February 2007 is outside of the 10 year period before the enforcement notice was served, and after the clearance of vegetation in 2006, so container 1 should be visible on site at that time. The oblique photograph confirmed to be taken in February 2007 has a clear view towards the site, with the large adjacent hedge, 'behind' the site in the photograph.

23. In this photograph a storage container in the rear garden of the property should be readily visible, but is not, so the 2005 introduction of container 2 seems improbable. The aerial photograph of 2010 shows its roof clearly visible, which is also the case in many of the subsequent later aerial photographs. I accept that this is after the side hedge was removed, but that would not affect the view in the 2007 photograph. Similarly, a downward photograph taken sometime in 2007 is almost vertically positioned over the site, so again the hedge would not significantly screen the building the same way as in a side view. While there is shadow to the site side of the hedge, there is no indication of container 1, which would be expected to have some effect in relation to the shadow and the edge of the roof.

24. There are a considerable number of representations put in by interested parties. However, in cross-examination of witnesses that appeared, the precise nature of the recollections in the representations was a concern, with some contradiction. The nearest neighbour noted the land was overgrown and that she had not seen the rear container and thought the forward one arrived 2/3 years ago and generally was vague about the timings. Another witness had not fully seen the container because of undergrowth, but remembered his son saying he had seen a metal container. Written representations included conclusions that the person concerned had seen the containers in 2011, but believed the containers had been there over 10 years. Others noticed the containers in 2010. Another is clearly mistaken as it notes he has known the appellant for 30 years and that the containers have been in place for the

duration that he has known the appellant. Others confirm the containers for 5, 6 or 7 years.

25. The Court has held that the appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".

26. There is some support for the appellant's case, which I attach moderate weight to, but on the balance of probability in this case I conclude that the Council's photographic evidence is sufficient to contradict and otherwise make the appellant's version of events less than probable.

27. The appeal in relation to container 2 fails on ground (d).

Graham Dudley

Planning Inspector

APPEARANCES

FOR THE APPELLANT:

Ms S Dahdouh	
She called	
Mr R Wijesinghe	Appellant
Mrs L Kelly	
Mr D Wijesinghe	
Mr K Anjana	

FOR THE LOCAL PLANNING AUTHORITY:

Mr T Wicks	Enforcement Services Ltd
He called	
Mr M Woods	London Borough of Brent
Mr N Wicks	Enforcement Services Ltd

DOCUMENTS SUBMITTED AT THE INQUIRY

Document	1	Bundle of documents from the appellant
	2	Enforcement notice
	3	Notification letter
	4	Letter from MAM Transport Services Ltd