



Appeal Decision

Site visit made on 27 September 2011

by Phil Grainger BA (Hons) MRTPI

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

Decision date: 6 October 2011

Appeal Ref: APP/T5150/C/11/2154669
land at 25 Sandhurst Road, London NW9 9LP

- 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 I Jaffrey against an enforcement notice issued by the Council of the London Borough of Brent.
- The Council's reference is E/10/0509.
- The notice was issued on 17 May 2011.
- The breach of planning control as alleged in the notice is: *the erection of a building to the rear of the premises.*
- The requirements of the notice are: *Demolish the rear building, 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 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Decision.

Inspector's Reasoning

The ground (c) appeal - is the building permitted development?

1. The main thrust of the arguments on this ground has been whether a building of this size and including the facilities provided can be regarded as being reasonably and necessarily required for purposes incidental to the enjoyment of the dwellinghouse. In this context, 'incidental' excludes provision for primary residential purposes, ie those that are essential, basic domestic requirements, such as a bedroom or kitchen. The erection of an outbuilding is only permitted under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 as amended ['the GPDO'] if it is for an incidental purpose.
2. The appeal building has a footprint of about 7.65m by 6m. This is a large area that the Council say exceeds that of the original house. However, no. 25 has been enlarged by a single storey rear extension and a loft conversion. In my view, all the floorspace that currently exists should be taken into account in assessing whether an outbuilding is of a scale that can be regarded as being reasonably and necessarily required. I also note that before the property had been extended (though the works mentioned above formed part of the same application) the Council issued a Certificate of Lawful Development (LDC) that included provision of an outbuilding measuring 6m by 6m on the basis, apparently, that it would comply with Class E. Taking all this into account I conclude that the size of the appeal building is not in itself decisive.
3. Turning then to its use, the appellant says that it is intended to be a gym, with a bathroom facility associated with that use, and a storage area. However, the

gym is a future intention and the initial use of most of the building, as I saw during my visit, has been for storage purposes.

4. I also saw that although the footprint of the building seems the same as that shown on another LDC application, which was refused in November 2009, and a planning application, refused in March 2010, the internal layout differs. The LDC application (and the earlier successful one) showed a small shower room in one corner of the building (the left rear corner as seen on entering) whilst the planning application managed to squeeze a bath into much the same space. However, what has been created is a generous sized bathroom complete with bath. Across the rest of the rear wall there is a modest storage area whilst the remainder of the space is undivided. Within this main area a work surface with cupboards below has been installed against the left side wall.
5. Although by the appellant's own submissions there are 3 bathrooms in the house proper, and the outbuilding is only about 9m away, I can see some benefit in having a shower (and toilet) next to the gym. However, in my experience it would be most unusual for a bath to be provided. It is even less clear that there is any genuine need for such provision in connection with a domestic store. That is how the building is currently being used and no clear indication has been given as to when that might be replaced by a gym use, only that there is a 'future intention' to do so. Indeed, in support of his ground (g) appeal the appellant says that he has no other available storage space and would need time to find alternative premises for his personal effects.
6. In addition, the gym itself, though capable of being an incidental use, seems large for the needs of a single dwelling, especially as no details have been provided of the actual number of occupiers or their recreational needs. Similar comments apply in respect of actual storage needs. Moreover, whilst I saw that the building is well used for storage purposes, my experience is that space not put to another use tends to become used in this way. In any event, the thrust of the appellant's arguments has related to gym, not storage, use.
7. Taking all this into account, including the way that the layout and use of the building has varied on the plans and in reality, it is far from clear that it has been designed and built for purposes that are genuinely and reasonably required for the incidental enjoyment of the dwellinghouse. A building cannot necessarily be taken to be reasonably required just because the householder says it is. Some degree of objective assessment is needed and, in appeals of this sort, the onus is on appellants to submit sufficient evidence to support, on a balance of probabilities basis, reaching such a conclusion. In this particular case, the appellant has failed to show that on the balance of probabilities a building of the size and form of that built is genuinely and reasonably required for purposes that are incidental to the enjoyment of the dwelling. Accordingly it is not permitted by Class E and the ground (c) appeal must fail.
8. For the avoidance of doubt, although I have had regard to the other appeal decisions referred to by both the Council and the appellant, my decision has been based, as it must be, primarily on the specific circumstances of the case before me. I am, however, satisfied that my conclusion is not inconsistent with those other decisions.
9. In these circumstances I can deal relatively briefly with matters relating to the height of the building. This matter is complicated by the fact that the natural ground levels appear to be sloping gently in two directions and that the whole of the appellant's rear garden has been levelled and paved (apparently along

with the building works) so that natural ground levels before the building was erected are unclear. However, from the measurements that the Council took during my visit I consider that, on the balance of probabilities, the height above the highest part of the pre-existing ground immediately adjoining the building is no more than about 2.5m. It may be a little higher at other points, but that is of little if any significance. In any event, given my earlier comments, this matter is not essential to my conclusions on ground (c).

Ground (a) and the deemed planning application

10. The thrust of the Council's representations on this point seem to relate to the visual impact of the building. For this part of the appeal I have therefore taken the main issues to be its effect on the character and appearance of the area, together with its effect on the living conditions of neighbouring residents, having particular regard to any impact on outlook and light.
11. The appeal building differs in shape and appearance from a typical garage or garden shed. However, many of the houses in the area have large outbuildings of some sort in their rear or side gardens and some of these have a domestic appearance not dissimilar to the appeal structure. Moreover, some of these outbuildings are much more prominent than the appeal one, including one at the southern end of Sandhurst Road and others near the bridge on Princes Avenue.
12. In contrast, the appeal building is in a rear garden and can only be glimpsed briefly from Sandhurst Road between the houses. Furthermore, the rear access that it adjoins is gated. Use of it is limited to adjoining residents and any other keyholders and in practice it seems little used. This in itself limits any impact that the appeal building might have from this viewpoint, but in any event there are many other outbuildings of various sizes and forms along the accessway. These include large structures at the end of the rear gardens of the next 4 houses going north along Sandhurst Road. Three of these have flat roofs like the appeal one (though without the large overhang/fascia) and two of them seem to be broadly similar to it in height.
13. I conclude that viewed from Sandhurst Road, the rear access or the backs of adjoining houses, the appeal building does not look particularly out of place or unsightly. It may be a little larger than most of the more overtly domestic outbuildings in the area but, with its flat roof and few windows, I do not consider that its appearance is akin to a bungalow, despite the various details referred to by the Council. Nor given the length of the gardens does it appear seriously out of scale. Moreover it is very inconspicuous from public viewpoints. I conclude that it is not harmful to the overall character of the area, where similar buildings appear to be a well established feature, and does not conflict in this respect with relevant development plan policies, including Policies BE2 and BE9 of the Brent Unitary Development Plan [the UDP].
14. As for any impact on neighbouring residents, the front of the building (ie that closest to the rear of the house) lines up with the 4 outbuildings to the north, two of which have roofs of a broadly similar form and height. Although it has a larger footprint than those other buildings that is because it projects further to the rear. This is not readily apparent from many of the adjoining houses (and I have already dealt with the impact on the accessway). Taking into account also that it is a single-storey, flat-roofed building and is set at a slightly lower level than no. 25 itself I do not consider that it is overbearing or seriously harmful to the outlook from the adjoining houses.

15. In addition, although the building extends close to both side boundaries, that part of the neighbouring garden that is immediately to the north has a large garage on it. This further reduces any possible effect on the occupiers of that property. On the other side the adjoining garden area is hardsurfaced. It is a good distance from the house and did not appear particularly sensitive. At the time of my visit, some plants were being grown in pots in that area, but any effect on light received will be very limited as the appeal building is located to the north. Moreover, given that its height does not seem to materially exceed 'permitted development' limits and having regard to the overall size of the adjoining garden, I consider that the appeal building does not have a serious effect on the outlook from that garden or appear harmfully overbearing. As for the houses to the rear, they are too distant to be seriously affected especially as many of them have outbuildings of their own in between.
16. I conclude therefore that the building does not, in respect of any of these matters, cause material harm to the living conditions of the occupiers of nearby dwellings. As for its use, provided this remains ancillary that of no. 25 as a single dwellinghouse (even if it is not strictly 'incidental' in Class E terms), I see no reason why it should harm the neighbours' living conditions, or indeed the character of the area. There is therefore no conflict with those UDP policies that deal with these matters either.
17. My conclusions on the ground (a) appeal are reinforced as it is accepted that a building 1.6m shorter, but not necessarily any further from the houses on Sandhurst Road, could be built as permitted development. Accordingly this represents a realistic fallback position. I shall therefore grant permission for the appeal structure. However, as my assessment of its effects depends in part on the limited number of openings in it, a condition is required precluding the insertion of additional ones. In addition, as the description does not specify the use of the building, a condition is also needed to prevent its use for non-residential purposes or as a separate dwelling, both of which, potentially at least, could be seriously harmful to neighbouring residents.
18. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Decision

19. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a building to the rear of 25 Sandhurst Road, London NW9 referred to in the notice, subject to the following conditions:
 - (i) The building hereby permitted shall be used only for ancillary residential purposes in connection with the use of 25 Sandhurst Road as a single dwellinghouse.
 - (ii) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no additional windows shall be inserted in the building hereby permitted.

P Grainger

INSPECTOR



Appeal Decisions

Site visit made on 11 October 2011

by R E Watson BA (Hons)

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

Decision date: 19 October 2011

**Appeal Ref: APP/T5150/C/11/2151355/2151358
98 & 100 Dorchester Way, Harrow, HA3 9RB**

- 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 D R Patel and Mr C S Thaker against enforcement notices issued by the Council of the London Borough of Brent.
 - The Council's references are E/10/0900/0901.
 - The notices were issued on 9th March 2011.
 - The breach of planning control as alleged in the notices is the erection of a conservatory at the rear of the existing extension of the premises.
 - The requirements of the notices are to demolish the rear conservatory, remove all items and debris arising from that demolition and remove all materials associated with the development.
 - The period for compliance with the requirements is 6 months after the notices take effect
 - The appeals are proceeding on the ground set out in section 174(2)[a] of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeals are allowed, the enforcement notices are quashed and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a rear conservatory on land at 98 & 100 Dorchester Way, Harrow, HA3 9RB referred to in the notice.

Main Issues

2. The main issues in both cases are the effect of the development on the character and appearance of the existing properties, together with the surrounding area, and on the amenities of neighbouring occupiers

Reasons

3. The depth of this conservatory which comprises one composite structure extending across part of the rear elevation of both semi-detached dwellings is given as 3.5m. This is in excess of the guidance set out in the Council's Supplementary Planning Guidance 5 (SPG), adopted in 2002, where a permitted depth of 3.0m is laid down in the context of semi-detached houses. The structure is also an extension to an older single-storey rear projection on both properties.
4. I accept that the conservatory provides further internal space for both dwellings which have both been the subject of previous extensions to other parts of the properties. However, both are set in plots of generous space with

a relatively commodious rear garden area. I note that the remaining private amenity space is well in excess of the guidance set out in the Council's SPG 17 – Design Guide for New Development, adopted in 2001. In my judgement, the development is a relatively modest extension in the wider context of this suburban area where, as I saw, the spacious rear gardens contain a great variety of extensions, conservatories and detached ancillary domestic buildings. The combined conservatory is constructed with traditional low brick walls, with clear glazing to the sides and roof comprising white uPVC frames. The materials are of high quality and are compatible in terms of colour and texture to the materials used in both the existing dwellings, other surrounding properties and domestic extensions in the surrounding area.

5. I am satisfied that the development has been built with careful regard to its local context, as required by Policy BE2 of the Brent Unitary Development Plan (2004). Moreover, the scale of the extension, to my mind, is appropriate to the setting of the host dwellings and their immediate surroundings, as required in Policy BE9 of the Plan.
6. The two adjoining dwellings at nos. 96 and 102 Dorchester Way also benefit from existing single-storey rear extensions. The new conservatory has been constructed with a significant gap (1.5m) between the respective side elevations and the two common boundaries. Having studied the relationship between the conservatory and the neighbouring houses most carefully, my clear impression is that the development is not overbearing in terms of its neighbours and that it has a limited impact on the outlook from the adjoining dwellings or, indeed, from the external garden areas on either side. I conclude that the development does not compromise the amenities of the adjoining residents in any way.

R E Watson

Inspector