

Appeal Decision

Site visit made on 25 July 2015

by **A U Ghafoor BSc (Hons) MA MRTPI**

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

Decision date: 22 September 2016

Appeal Ref: APP/N5090/C/16/3142942 294 Watford Way, London, NW4 4UR

- 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 P Tanna against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/01104/15, was issued on 16 December 2015.
 - The breach of planning control as alleged in the notice is without planning permission, the use of the rear garage as a self-contained residential unit.
 - The requirements of the notice are to:
 - (1) Cease the use of the garage as a self-contained residence.
 - (2) Remove all bathroom facilities from the garage including toilet, basin, bath and shower.
 - (3) Remove all kitchen facilities from the garage including kitchen units, sinks, cookers and food preparation areas.
 - The period for compliance with the requirements is four months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed the enforcement notice be corrected by:

- (i) The deletion of all of the text in section 3, the matters which appear to constitute the breach of planning control, and the substitution therefor by the following text:

Without planning permission, the material change of use of rear garage into a self-contained residential unit.

And

- (ii) Deletion of the text in section 5, what you are required to do, subparagraph (1) and the substitution therefor by the following:

(1) Cease the use of the garage as a self-contained residential unit.

2. Subject to the above corrections, 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.

Procedural matters

3. After the site visit, the appellant informed The Planning Inspectorate that a close-boarded fence has been erected between the appeal site and Clarendon Gardens. With the agreement of the parties, I carried out an unaccompanied

site visit to see the fence for myself. I have taken into account the additional comments submitted.

Matters concerning the notice

4. The description of the allegation, at section 3, is incorrect because it does not reflect s. 55(1) of the Act. The notice should allege: *Material change of use of the rear garage as a self-contained residential unit*. The requirements have been corrected to ensure consistency with the allegation. I am satisfied that no injustice to any party arises from any of the corrections above.

Ground (a) - Reasons

5. The terms of the deemed application are directly derived from the corrected breach of planning control. Planning permission is sought for the use of the rear garage as a self-contained residential unit.
6. The **main issue** to consider is the effect of the development upon: (1) the character and appearance of the host property and that of the locality and (2) occupiers' living conditions having regard to internal floor space.
7. Policy 3.5 of The London Plan¹ sets strategic objectives for the quality and design of housing. The purpose of policy DM01 of the Development Management Policies 2012 (DPD) is to protect character and amenity. Amongst other things it states that all development should represent high quality design, which demonstrates high levels of environmental awareness. Development should be based on an understanding of local characteristics. DPD Policy DM02 states that development will be expected to demonstrate compliance with national and London wide standards. Further guidance is found in supplementary planning document (SPD) *Residential Design Guidance and Sustainable Design and Construction* (2013).

Character and appearance

8. No. 294 is situated on the corner of Watford Way and Clarendon Gardens. It is in use as self-contained flats. The detached garage is situated to the rear of the appeal property and has the benefit of a planning permission, subject to a condition that it shall be used for parking of vehicles. The surrounding area mainly comprises semi-detached properties where private gardens are an important aspect of the local character.
9. The unit includes a living, kitchen and bedroom, a toilet and shower facility. The aim is to provide affordable accommodation for one person. The conversion has involved no external alterations to the fabric of the garage. The problem however is that the rearward positioning and siting of the residential unit and separate curtilage appears out of keeping with the layout of the appeal plot. Tandem development of this type and kind represents an intensified residential use of the plot.
10. The new close-boarded fence obstructs direct views of the residential unit because of its overall height and boundary location. However, the pitched roof projects above the top of the fence and is noticeable. The backland location of the residential unit is inconsistent with the established settlement pattern. I

¹ Housing Standards Minor Alterations to The London Plan (2016) The Spatial Development Strategy for Greater London Consolidated with Alterations since 2011

concur with the council's assessment that the development is perceived as opportunistic and in my opinion represents ad hoc form of urban planning.

11. The appellant claims planning permission has been granted for conversion of detached garages but there is no evidence to show that tandem residential development of this kind is characteristic of the long established settlement pattern. In any event, every application should be considered upon its individual merits and I have found harm to the character and appearance of the host property and locality. The existence of other development is not a strong enough reason to grant planning permission for harmful development.
12. I therefore conclude that the development has a materially harmful effect upon the character and appearance of the host property and that of the locality. Accordingly, the development conflicts with DPD policy DM01, and fails to meet with the aims and objectives of the council's SPDs.

Living conditions

13. Policy 3.5 of The London Plan indicates that developments should be of the highest quality internally, externally and in relation to their context and to the wider environment. Table 3.3 sets out minimum space standards for new dwellings, including conversions and change of use. The supporting text states that standards are based on the minimum gross internal floor area (GIA) required for new homes relative to the number of occupants, taking into account commonly required furniture and the spaces needed for different activities and moving around. These are minimum standards which developers are encouraged to exceed. The GIA for new dwellings (one-storey) should be as follows: 39 m² for one bed one person and 50 m² for two people, and 61 and 70 m² for two bed three or four people respectively.
14. I appreciate the residential unit is likely to be occupied by a single person. Nonetheless, to me the accommodation appeared cramped because domestic furniture further reduces the amount of space available for circulation. In particular, it felt claustrophobic and unacceptably deficient in terms of internal floorspace. I consider that the development does not, in terms of numerical and available space standards, meet minimum requirements which aim to provide occupiers adequate internal floor area.
15. The location of the dwelling is likely to attract significant level of activity generated by comings and goings associated with residential living. The nature and scale of this activity is likely to be over and above levels usually associated with a more typical and subservient domestic garage. In this suburban garden environment, neighbours using their back gardens are likely to experience additional noise and disturbance as a result of the dwelling's positioning, thus have an adverse effect on the area's amenities.
16. I therefore conclude that the development has a materially detrimental effect upon the living conditions of existing and future occupiers, contrary to the purposes of DPD policy DM02 and policy 3.5 of The London Plan, and the SPDs.

Other considerations

17. I acknowledge that the site is located close to services and facilities. It is accessible to public transport given its urban location. Occupiers have access to alternative means of transportation. There is adequate parking available and

space for the storage of waste containers. The dwelling would provide affordable accommodation.

18. There is a fall-back position in that planning permission has been granted for the garage's use in connection with residential use of no. 294. That type of activity is materially different to its use as a self-contained residential unit.
19. The appellant contemplates use of the garage for parking of vehicles retaining the kitchen units. I am however faced with the use of the rear garage as a self-contained residential unit. The contemplated scheme cannot reasonably be regarded as being substantively the same thing as those matters alleged in the corrected notice. Evaluating the planning merits on the basis that the garage includes kitchen units for an ancillary use alters the nature of the development originally enforced against as a totally different development would be described. The planning merits of this amended scheme would not have been subject to any proper consultation.
20. I am of the firm opinion that the contemplated alternative firmly falls outside the scope of the deemed application, because planning permission would be sought for the change of use of the garage for parking of vehicles and storage of domestic paraphernalia without any certainty as to the nature or scale of such a use. Therefore, strictly speaking such a change to the allegation cannot be regarded as matters either wholly or partly stated in the allegation as constituting the breach of planning control. I therefore do not consider planning permission can be granted in respect of the promulgated alternative pursuant to s.177(1) (a) of the Act.

Conclusion on ground (a)

21. I attach significant weight to my findings on the main issue above. On the other side of the scales, factors such as the sustainable location of the appeal site, and the availability of a private garden with storage space for bicycle and waste containers, as well as the provision of affordable housing, carry some weight in favour. On balance, however, in my planning judgement, the other material considerations advanced in support; taken individually or collectively, do not outweigh my findings on the main issue above.

Ground (f)

22. From the issued notice as a whole, it seems to me that the purpose is to remedy the breach of planning control. It is necessary to consider whether the steps in the corrected notice exceed what is necessary to remedy the breach of planning control.
23. The appellant considers that the notice over-enforces as cessation of the garage's use for self-contained residential purposes is sufficient to remedy the breach. It is contended that the removal of the bathroom and cooking facility is reasonable, but that the kitchen units could remain. There is, however, no suggestion that the latter has been installed in connection with a lawful use of the building.
24. There are very clear and precise planning objections to the development, which I have assessed above and found the proposed use for parking vehicles and storing domestic paraphernalia as not being wholly or partly matters alleged in the corrected notice.

25. A notice directed at a breach of planning control by the making of a material change of use may lawfully require the land or building in question to be restored to its condition before that change of use took place. It can require the removal of associated works as well as the cessation of the use itself – provided that the works concerned are integral to or part and parcel of the unauthorised use. Clearly, the conversion works involved the installation of a fully functioning toilet/shower room and kitchen which facilitate the residential use. The nature of this work is integral to the garage's change of use.
26. The self-contained residential use of the garage gives rise to strong planning objections, but retention of the kitchen units for use in connection with parking vehicles or domestic paraphernalia would not restore the building to its condition before the breach occurred. The lesser step advanced would plainly fail to remedy the breach of planning control and, contrary to the appellant's claims, it would also fail to remedy the injury to amenity which has been caused in terms of land use and planning policy.
27. In any event, there is no explanation as to how the terms of the notice can be varied. Leaving the kitchen units in place would involve some building work given the layout of the residential unit. It is unclear to me how the requirements can be phrased with sufficient degree of precision to carry out these works, because of the number of cupboards and their location. I consider such a variation would potentially introduce uncertainty and create future interpretational problems. Due to the potential liability for failing to comply with the notice, I find that to be unacceptable.
28. There is an added complexity. If the notice is so varied, once it is fully compiled with s.173(11) would be engaged and potentially grant an unconditional planning permission for the matters stated in the corrected notice. Such an outcome would be incompatible with the reasons for issuing the notice, and has not been fully appreciated by the appeal parties.
29. I find that nothing short of full compliance with the corrected requirements would remedy the breach of planning control, which the notice seeks to achieve. I am varying the requirements to flow from the corrected allegation, but the corrected steps do not exceed what is necessary to remedy the breach of planning control.
30. Therefore, ground (f) must fail.

Overall conclusions

31. Having regard to all other matters, I conclude that the appeal should not succeed on ground (a) and (f). I have therefore upheld the enforcement notice with corrections and refused to grant planning permission on the deemed application.

A U Ghafoor

Inspector