
Appeal Decisions

Site visit made on 23 August 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 31 October 2016

Appeal A Ref: APP/F5540/X/16/3152558
46 Corporation Avenue, Hounslow TW4 6AZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr & Mrs Balwinder Singh Pannu against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00308/46/LAW1, dated 2 November 2015, was refused by notice dated 18 December 2015.
 - The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is described as an outbuilding for use of physical fitness and storage for existing householder. Location is at rear garden.
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Appeal B Ref: APP/F5540/W/16/3149619
46 Corporation Avenue, Hounslow TW4 6AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs Balwinder Singh Pannu against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 00308/46/P2, dated 17 August 2015, was refused by notice dated 20 November 2015.
 - The development proposed is a detached single-storey outbuilding for a physical fitness studio with shower room at the rear garden of the house.
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Summary Decisions: The appeals are dismissed.

Applications for costs

1. An application for costs was made by Council of the London Borough of Hounslow against Mr & Mrs Balwinder Singh Pannu. An application for costs was then also made by Mr & Mrs Balwinder Singh Pannu against the Council of the London Borough of Hounslow. These applications are the subject of separate Decisions.

Preliminary matters

2. At the beginning of my site inspection, I raised a procedural question regarding the description of development for the section 78 appeal. The appeal form states the application in question as being given Council reference 00308/46/P2, the description of development being stated as:
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Alterations to change roof of existing outbuilding from pitched to flat roof at a height of height of 2.5 metres from the ground.

3. The drawings provided with the appeal, numbered as Sheets No 01 and Sheet No 02, show a development matching that description, with a pitched roofed building as existing and a flat roof building as proposed.
4. However, the Council's appeal statement referred to planning application 00308/46/P2 as proposing a development described as:

Detached single storey outbuilding for a physical fitness studio with shower room at the rear garden of the house.

5. The development proposed under that application is the partial retention of the pitched roof structure that currently stands on the site, but reduced in scale by setting the building in 1.1 metres from the northern boundary of the site. The Council representative at the site inspection showed me a set of drawings, also numbered as Sheets No 01 and Sheet No 02, but which showed a pitched roof building inset from the boundary. The Council representative confirmed to me that these were drawings on which the Council determined the application.
6. The appellant has subsequently confirmed in writing that the description of development on the appeal form was made in error, and that the appeal is against the refusal of planning permission 00308/46/P2 for the building with a pitched roof. The appellant also confirms that the drawings showing the building with a flat roof, which in fact relate to later application for planning permission under reference 00308/46/P3, were sent in error.
7. I have been provided with a set of the correct drawings for application 00308/46/P2, and will proceed to determine the section 78 appeal on the basis of those drawings and of the description of development for a pitched roof building cited above. The Council had prepared its response to this appeal on the basis of that description of development and I am therefore satisfied that no party would be prejudiced by me doing so. Having been alerted to the possibility that I had not been provided with the correct set of drawings, I conducted my site inspection having regard to both descriptions of development, such that there was no requirement for me to re-visit the site with the correct drawings to hand.

Background

8. The appeal property is a two-storey end-of-terrace property located towards the western end of Corporation Avenue. At this point, the rear gardens of the houses in Corporation Avenue adjoin those of the houses in Laurel Avenue, the boundary being at an angle to each other and comprising of a brick wall.
9. In September 2014, planning permission was refused for the retention of a single-storey detached outbuilding for use as a physical fitness studio with shower room and a single-storey detached outbuilding for gardening purposes (Council Ref: 00308/46/P1). An appeal against the Council's refusal of planning permission was determined on 9 January 2015 (APP/F5540/D/14/2229540). The Inspector issued a split decision, granting planning permission for the single storey utility block but dismissing the appeal insofar as it related to the single-storey detached outbuilding for use as a physical fitness studio.

10. In the interim, on 4 December 2014 the Council issued an enforcement notice alleging a breach of planning control in relation to both the single storey utility block and the single-storey detached outbuilding for use as a physical fitness studio. Appeals against that enforcement notice (APP/F5540/C/14/3001462 & 3141464) were determined after planning permission had been granted for the single storey utility block under the previous appeal, and the Inspector therefore focused on the single-storey detached outbuilding for use as a physical fitness studio. Both appeals were dismissed in a decision dated 11 August 2015.

Appeal A – the application for a LDC

11. Section 191(2) states that for the purposes of the Act uses and operations are lawful at any time if:
- (a) no enforcement action may be taken in respect of them and
 - (b) they do not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

Section 191(4) indicates that the relevant time for determining lawfulness is the time of the application which, in this case, is 2 November 2015.

12. The appellant contends that the Council should have determined the application under the provisions of Section 192 of the Act relating to proposed use or development. However, the development for which a certificate of lawful use or development is sought is described on the application form as an outbuilding for use of physical fitness and storage for existing householder. I recognise that the application drawings show the outbuilding with a flat roof and I understand that the intention is to replace the existing pitched roof with the flat roof shown on the application drawings. Nevertheless, this alteration would be to an existing outbuilding, a substantial portion of which would be retained with no alteration to the existing footprint. Therefore, given how the development was described on the application form, I consider that the Council was correct to determine the application under Section 191 as the retention of an existing building.
13. The salient point, however, is that Section 191(2) (b) states that for the purposes of the Act uses and operations are lawful at any time if they do not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force. It is significant that Section 191(2) specifically refers to the purposes of the Act and not just the provisions Section 191. It follows that, even if the application had been determined by the Council under the provisions of Section 192, it would still have been subject to the limitation expressed at Section 191(2) (b).
14. In this case, the single-storey detached outbuilding for use as a physical fitness studio was, at the date the application for the LDC was made, in contravention of the requirements of the enforcement notice upheld on appeal in August 2015 (APP/F5540/C/14/3001462 & 3141464). Consequently, in accordance Section 191(2) (b), the development for which the LDC was sought is not lawful.
15. In support of this appeal, the appellant has referred to a number of appeal decisions relating to buildings in rear gardens, both in relation to applications or lawful development certificates and enforcement cases. However, in this case, the provisions of Section 191(2) (b) take primacy and the findings of the

Inspectors in these other cases can have no bearing on that. Similarly, the appellant refers to use of the building as a boxing studio for his son, a fully registered amateur boxer. The planning merits of the use are not a matter to which I can have regard in the context of an application for an LDC, but this is a matter to which I return below in the context of the Section 78 appeal.

16. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an outbuilding for use of physical fitness and storage for existing householder at 46 Corporation Avenue, Hounslow TW4 6AZ was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Appeal B – the application for planning permission

Main Issues

17. Application 00308/46/P2 was refused for two reasons, from which I consider the main issues are the effect of the proposed development on:
- the living conditions of the occupiers of neighbouring residential properties, specifically in relation to outlook and light, and
 - the character and appearance of the area.

Living conditions

18. The proposed development seeks, in effect, a modification of the existing outbuilding on site by setting the building in 1.1 metre from the eastern boundary of the site. The building insofar as it relates to the western boundary would remain unchanged.
19. The existing building features a dual pitched roof with a maximum height of some 4 metres, falling to some 2.5 metres at the eaves. The building is hard against the boundary with the property to the north, No 44 Corporation Avenue, and has depth of some 8.29 metres. This building has, on two occasions, been found by an Inspector to have an unacceptable effect the living conditions of the occupiers of No 44. In dismissing the appeal in January 2015 (APP/F5540/D/14/2229540), the Inspector described the building as being imposing and intruding on the outlook from No 44. Similarly, in dismissing the appeals against the enforcement notice in August 2015, the Inspector concluded that the unrelieved brick elevation of the building would appear overbearing in the outlook of the occupiers of No 44 when using their garden and would cause some overshadowing at particular times of the day.
20. Setting the building in 1.1 metres from the boundary with No 44 would not negate these harms. Consequently, by reason of its overall size and position towards the centre of the garden, and notwithstanding the reduction in width now proposed, the building would continue to dominate the outlook from No 44 itself and be visually intrusive when viewed from that dwelling. For the same reasons, the building as proposed to be reduced in width would continue to dominate the outlook from the rear garden of No 44 and would significantly detract from the amenity value of that garden space. The orientation and position of the building to the south of No 44 would also still cause some overshadowing of the garden. In my view, these impacts would unacceptably detract from the living conditions of the occupiers of this property.

21. I conclude that the outbuilding as proposed to be altered would unacceptably harm the living conditions of the occupiers of neighbouring residential properties in relation to outlook and light. I therefore conclude that the proposed development is contrary to Policy SC7 of the London Borough of Hounslow Local Plan which, amongst other things, expects development proposals to minimise harm to neighbouring residents by avoiding an unacceptable loss of light or outlook.
22. The Council's Residential Extension Guidelines Supplementary Planning Guidance (SPG) specifically indicates that outbuildings should be set in from the boundaries by at least 1 metre, and the outbuilding as proposed to be modified would now comply with the guidance in that respect. However, the Council's SPG also makes it clear that the acceptability of extensions and outbuildings depends upon the size, design and position. In these respects the outbuilding, by reason of its size, height and position within the site, would fail to accord with the general objective of the Council's SPG in terms of ensuring that extensions and outbuildings do not have a negative impact on neighbouring properties.

Character and appearance

23. The appeal property is located on the south side of Corporation Avenue, close to the junction of that road with Barrack Road. The dwellings in this part of Corporation Avenue are a mixture of short terraces and pairs of semi-detached houses. The appeal property forms the end unit of one such terrace. The rear gardens to these houses vary in length but, collectively, they provide a largely open area between the properties in Corporation Avenue, Dukes Avenue and Laurel Gardens. This open area of garden land makes an important contribution to the character and appearance of the area.
24. Notwithstanding the reduction in width that is proposed, the outbuilding would remain as a substantial structure, with a depth of 8.29 metres, a width of some 5.1 metres and maximum height of 4 metres. There are no other outbuildings of a similar scale in the immediate area. The outbuilding would, even as proposed to be modified, by reason of its height and scale be both unduly prominent and uncharacteristic within the largely open area to the rear of these houses.
25. Moreover, the outbuilding is sited at a point approximately one third along the length of the garden to this property and this siting exacerbates the prominence of the building. I understand that the building was sited in this location to avoid any adverse impact on the properties in Laurel Avenue, which have relatively short rear gardens. However, seeking to mitigate harmful effects on one group of residents does not justify causing harm in other respects.
26. I conclude that the outbuilding as proposed to be altered would unacceptably harm the character and appearance of the area. I therefore conclude that the proposed development would be contrary to Policies CC1 and SC7 of the London Borough of Hounslow Local Plan which, amongst other things, expects outbuildings to have regard to the character and scale of the principle building and not to overdevelop the site. The proposed development would also fail to accord with Council's Residential Extension Guidelines Supplementary Planning Guidance which specifically indicates that outbuildings should be positioned as far away from the house as possible.

Other Matters

27. The appellants explain that the outbuilding is intended primarily as a gymnasium for a member of their family, Mr Manpreet Pannu, who is a fully registered amateur boxer and who has to train regularly in order to participate in his sport at that level. The appellants explain that the nearest local boxing club is some 8 miles away and that, whilst there are closer facilities, these are not suitable for his needs given the level of boxing at which he competes. It is considered impractical for Mr Manpreet Pannu to travel to that facility using public transport and carrying his personal boxing equipment. I also understand that the joint appellant, Mr Balwinder Singh Pannu, is a serving Police Officer and himself requires convenient access to a gym as part of his profession.
28. I noted during my site visit that the outbuilding contained items of gym equipment and that there was evidence of Mr Manpreet Pannu's achievements in the sport of amateur boxing in the form of photographs, press cuttings and trophies. However, I must balance the benefits derived by both Mr Manpreet Pannu and Mr Balwinder Singh Pannu from the use of the outbuilding as a gym against the harm caused by the outbuilding as proposed to be modified to the living conditions of the occupiers of neighbouring residential properties and the harm the character and appearance of the area. In my view, the harm caused to the latter is of such significance as to outweigh the personal circumstances of the former. Moreover, I noted that the gym equipment occupied only part of the outbuilding and that some rooms in the outbuilding have no clear function in terms of use as a gym. I also have no evidence to show that a building of the footprint proposed is required to accommodate gym equipment for the personal use of Mr Manpreet Pannu and Mr Balwinder Singh Pannu. Consequently, I do not consider that the intended purpose of the outbuilding justifies planning permission being granted for it in the form now proposed.
29. In this respect, the current appeal proposal differs from other examples where planning permission has been granted on appeal, notwithstanding that a local planning authority has issued an enforcement notice in respect of it. The appellants give one example of an appeal where that was the outcome. In that case, as in some others, the appeal was allowed on the basis that the planning merits indicated that permission ought to be granted for it. However, in respect of the current appeal, the outbuilding as originally constructed was found by Inspectors on two occasions to be unacceptable on its planning merits, leading to those appeals being dismissed. In my judgment, the outbuilding as now proposed to be modified does not overcome the harm identified by those previous Inspectors such that, on balance, planning permission should not be granted for it on its own merits.
30. The appellants have outlined a number of alternative proposals for modifying the existing outbuilding and have invited me to consider these under the *Wheatcroft* principle. However, one of the main issues that I have identified in relation to this proposal is the effect of the development on the living conditions of the occupiers of neighbouring residential properties. In such situations, the views of the occupiers of the properties that may be potentially affected are important material considerations. In my view, if I were to determine this appeal on the basis of the alternative proposals put forward by the appellants, the interests of the occupiers of the neighbouring properties could be prejudiced. It would therefore not be appropriate for me to formally consider these alternative proposals.

31. The appellants indicate that, from pre-application advice that they received from the Council, they believed that the outbuilding would be acceptable. However, pre-application advice is not binding on the Council. In any event, I understand that this pre-application advice related to the outbuilding as originally proposed rather than to the outbuilding as now proposed to be modified. The Council have also indicated that the outbuilding has not been constructed in accordance with that initial pre-application advice. It therefore appears to me that the pre-application advice referred to the appellants has little or no bearing on the planning issues that are now before me. I have therefore determined this appeal against the formal decision of the Council and the planning merits of the proposed development.

Conclusion on Appeal B

32. I have concluded that the outbuilding as proposed to be altered would unacceptably harm the living conditions of the occupiers of neighbouring residential properties as well as the character and appearance of the area. I have had regard to all other material considerations, including the intended purpose of the outbuilding, but none of these outweigh the harm that I have identified in relation to the main issues.
33. I therefore conclude that the appeal should be dismissed.

Formal Decisions

Appeal A Ref: APP/F5540/X/16/3152558

The appeal is dismissed.

Appeal B Ref: APP/F5540/W/16/3149619

The appeal is dismissed.

Paul Freer

INSPECTOR