
Appeal Decision

Site visit made on 21 October 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

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

Decision date: 3 November 2016

Appeal Ref : APP/F5540/C/16/3146050
Land at 3 Barnlea Close, Feltham, TW13 5LQ.

- 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 Mrs Cherry Deol against an enforcement notice issued by the Council of the London Borough of Hounslow.
- The notice was issued on 9 February 2016.
- The breach of planning control as alleged in the notice is without planning permission, the use of an outbuilding as a self-contained residential unit.
- The requirements of the notice are i. the cessation of the outbuilding's use as a non-incidental and self-contained residential unit, ii. the removal of all internal and external works that enable such use (ie all kitchen and bathroom facilities to include the following items: - kitchen wall and base units, kitchen sink, kitchen worktop surfaces, cooking facilities and cooker hood, kitchen wall tiles, bathroom cupboards, shower/bathing facilities, w/c, wash basin and pedestal, and bathroom tiles. In addition to the above items, all water and gas supply piping and all waste connections); iii. the removal of all resultant debris from the land.
- The period for compliance with the requirements is three 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.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

1. The Appellant has provided a revised scheme which she says addresses the Council's concerns (the Revised Scheme). When determining the deemed application the subject of this appeal I must consider the matters stated in the enforcement notice as constituting a breach of planning control. In this case the alleged breach is a material change of use to a self-contained residential unit and this allegation covers the Revised Scheme. I will therefore determine this appeal based on the development as existed at the time of issue of the notice and as proposed in the Revised Scheme.
2. The Appellant argues that the breach of planning control is minor. But I find the breach to be material and determine the appeal accordingly.
3. I am advised that a certificate of lawful use has been granted for erection and use of the outbuilding as a gym/playroom. The Appellant says that she thought this included use as a flat. This is not a ground of appeal and not a matter I have taken into account. I have however considered the lawful use of the outbuilding as a fallback position.

Ground (a) appeal and deemed application

Main Issue

4. The main issues in the determination of this appeal are (i) whether the development provides adequate living conditions for occupiers of the outbuilding and neighbours with particular regard to internal living space, external amenity space and noise and disturbance and (ii) the effect of the development on highway safety.

Living conditions

5. The development plan (including the London Plan and the Hounslow Local Plan (the Local Plan)) mirrors the National Planning Policy Framework (the Framework) in seeking adequate living conditions for occupiers of development and preventing adverse impact on neighbours. Policy SC5 of the Local Plan requires that development respect the principles of good neighbourliness. Local Plan policy EQ5 requires that consideration be given to ensure that new development does not create undue noise and protects external amenity areas. I have also taken into account as a material consideration the Residential Extension Guidelines Supplementary Planning Guidance (the SPG) which states that use of a detached outbuilding in a garden as a separate residential unit will be refused planning permission.
6. The appeal site is a semi-detached residential dwelling in a residential area. The outbuilding the subject of the notice is located in the rear garden and is accessed via a gate at the side of the main dwelling. The outbuilding contains a kitchen with dining area, two bedrooms and a wc shower room. It has a hot water supply and electric heaters. There is no dedicated car parking or cycle space and occupiers dispose of waste using a wheelie bin located to the side of the main dwelling and shared with its occupiers.
7. I saw at my site visit that the outbuilding is cramped and provides limited space for day to day domestic living and sleeping purposes. There appears to be inadequate provision for domestic storage which further compromises its habitability. The Appellant says that it has been occupied by one person but this is not supported by the Council's evidence at the time of issue of the notice and the layout provides for two bedrooms. I am satisfied on the evidence before me that it should be assessed against the minimum standards for occupation by two persons. There is no dispute between the parties that the floorspace fails to meet minimum standards for a two bedroom unit as set out in Local Plan policy SC5 and the London Plan and the Revised Scheme makes no modifications to floorspace.
8. The inadequacy of the size of internal living space both as carried out and proposed in the Revised Scheme causes harm to the living conditions of its occupiers and fails to accord with relevant policies of the development plan, including local plan policy SC5.
9. At the time of issue of the notice no private amenity space was provided for occupiers of the outbuilding. The outbuilding shared the garden area with the main dwelling. The sharing of such an area is likely to have an adverse impact on the ability of occupiers of the outbuilding and the main dwelling to use that space for quiet recreational enjoyment. This lack of privacy does not respect the principles of good neighbourliness. Harm is caused to the living conditions

of the occupiers of the outbuilding and the main dwelling with regard to lack of dedicated outdoor amenity space and it does not accord with development plan policies including policy SC5.

10. The Revised Scheme partitions the overall garden area to provide a demarcation of areas for use by the main dwelling and outbuilding. But it does not change the harmful impact of two areas in such close proximity to each other. I find that the development carried out and the Revised Scheme cause harm to the living conditions of occupiers of the outbuilding and the main dwelling with regard to lack of adequate outdoor amenity space and fails to accord with relevant policies in the development plan including policy EQ5 of the Local Plan.
11. Policy EQ5 of the Local Plan requires development to take account of the impact of noise. I consider that the unauthorised use is likely to increase the number of comings and goings to this garden area by occupiers and their visitors. The number of people arriving and leaving the outbuilding is likely to be more than would be the case by incidental use as a gym. I consider that the noise is likely to be more frequent and of a different nature to the noise likely to be associated with the lawful use of the outbuilding as a gym/ playroom. The close proximity to the main dwelling and neighbouring properties means that this noise is likely to cause undue harm and disturbance to this residential garden setting. The Revised Scheme proposes no modifications that would have any material effect on noise and disturbance.
12. I find that the unauthorised use as carried out and as proposed in the Revised Scheme causes undue harm to the living conditions of current and future occupiers of the outbuilding, main dwelling and nearby properties with regard to noise and disturbance and is contrary to policy EQ5 of the Local Plan.

Highway Safety

13. Local plan policy EC2 provides that development must provide parking facilities in accordance with minimum standards.
14. The front driveway is relatively small. There is limited on street parking. No provision exists for separate dedicated parking for occupants of the outbuilding. The addition of a further residential unit could potentially increase the demand for parking causing harm to highway safety.
15. The Revised scheme proposes that the front driveway area be used for the parking of three cars and that one would be dedicated to occupiers of the outbuilding. But this is not practical. The driveway is not large enough to adequately accommodate three cars and storage for recycling bins without blocking the front door of the main dwelling or the side gate to the outbuilding. It would create a very tight area for parking and add harm to the living conditions of occupiers. I do not consider that the Revised Scheme provides a satisfactory solution.
16. I find that the increase in demand for parking causes harm to highway safety. This fails to accord with the Framework and development plan policies (including policy EC2 of the Local Plan).

Other matters

17. The Council objects to the lack of waste and recycling facilities for the outbuilding. I note that the Revised Scheme includes additional waste and recycling storage. If appropriate I consider that this issue could be controlled by condition.
18. The submissions before me refer to overlooking by neighbours and loss of privacy. But this appeal concerns the use of the outbuilding and I am not persuaded that these issues are materially affected and therefore do not address them as main issues in this appeal.
19. The Appellant complains that the Council has not entered into positive dialogue or invited an application for planning permission for the development carried out. But as these matters are not within the remit of the appeal I shall not comment on them.
20. The Appellant says that she registered the outbuilding as a separate dwelling with the Council's council tax department. She complains that she was not told of the need for planning permission. But this is not a ground of appeal and not a matter for me to comment upon.

Conclusion

21. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. The Appellant suggests a condition requiring the outbuilding to be used as a studio flat for one person but even if enforceable this would not address all aspects of the identified harm. I do not consider that conditions could overcome the identified harm.
22. For the reasons given above, I conclude that the appeal on ground (a) should not succeed. Planning permission should not be granted on the deemed application.

Ground (f) appeal

23. The main issue is whether having regard to the purpose for which the notice was issued, the steps exceed what is necessary to meet that purpose.
24. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy any breach of planning control that has occurred. The second is to remedy any injury to amenity which has been caused by the breach.
25. The requirements of the notice include cessation of use. It seems clear to me that the purpose of the notice is to remedy the breach of planning control.
26. The breach of planning control is a material change of use to a self-contained residential unit. Internal works that do not affect the exterior of a building do not constitute development requiring planning permission. But it is established law that a notice attacking a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use even if those works on their own do not require planning permission.

27. The Appellant argues that lesser steps would overcome the Council's objections. She says that the removal of the bathroom and w/c facilities is excessive and permitted by the certificate of lawful use.
28. But the works cited in the notice facilitate the unauthorised use. They are associated with the unauthorised use and their removal is not excessive but necessary to remedy the breach of planning control and restore the land to its condition before the breach took place.
29. The certificate of lawful use concerns use as a gym. It does not provide justification for bathroom or other facilities in relation to an alternative unauthorised use. The notice does not prevent lawful use of the outbuilding.
30. For the reasons given above, I conclude that the appeal on ground (f) should not succeed.

Formal Decision

31. 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.

S. Prail

Inspector