
Appeal Decision

Site visit made on 11 October 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 7 November 2016

Appeal Ref: APP/A5270/C/16/3151349

19 Twyford Abbey Road, Park Royal, Ealing, London NW10 7HH

- 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 Robert Owsiany against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 4 May 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a separate self-contained dwelling at the rear of the premises.
 - The requirements of the notice are 1. Cease the use of the separate self-contained dwelling at the rear of the property. 2. Demolish the separate self-contained dwelling at the rear of the property. 3. Remove from the land all fixtures and fittings, debris and general detritus resulting from the works.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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.

Preliminary Matter

2. The appellant's grounds of appeal refer to the development as an outbuilding the use of which is to provide a home office space with kitchenette, bathroom and meeting space. Throughout the written submissions the appellant repeatedly refers to the home office as a proposed use. The Council though, allege the erection of a separate self-contained dwelling. This is because at their site visit they saw the building had a bath/shower/basin/toilet, a room with a bed in it and a living room area with sink/hob/oven/fridge freezer/washing machine/sofa/TV. As a result it is their view that all those facilities enable a day to day private domestic existence.
 3. At the site visit I saw that the bedroom had been converted into an office, complete with desk and bookcases and there was a large piece of office furniture in the living room area. Everything else resembled the layout and furniture as shown in the Council's photographs. The appellant though, does not claim in his written submissions that the building is currently used as a home office and has not lodged an appeal on ground b). Such an appeal would be that the alleged breach of planning control, which is the erection of a dwelling, has not occurred as a matter of fact.
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4. Furthermore, the appellant explains that he allowed his brother to live in the building until his return to Poland and that he could remove the bathroom which would prevent the building from being lived in again. I find that this demonstrates that the appellant accepts, albeit indirectly, that the layout and use of the building, at the time when the notice was served, was as a dwelling. Providing services from the main house such as hot water and electricity does not change this. With blocks of flats it can be the case that such services are communal and residents pay their share as a proportion of their rent whilst continuing to occupy a self-contained unit.
5. The appellant though, does query the description of the alleged breach of planning control in relation to the deemed planning application and the ground (a) appeal. He complains that the Council did not give him the opportunity to submit a retrospective application for the erection of a home office and appears to believe that the ground (a) appeal can be determined in relation to the proposed home office. However, under section 177 of the 1990 Act there is no power to grant planning permission for something completely different from that enforced against. Consequently I have determined this appeal as being in relation to the erection of a self-contained dwelling.

The appeal on ground (a) and the deemed planning application

Main Issues

6. The main issues are the effect of the development on i) the character and appearance of the host dwelling and the surrounding area; ii) the living conditions of neighbouring occupiers, having regard to noise and disturbance; and iii) the living conditions of occupiers of the dwelling, having regard to the standard of accommodation provided.

Reasons

Character and appearance

7. The appeal site lies within a residential area. Twyford Abbey Road is a long road and the stretch wherein the appeal site lies has broad grass verges on either side of it. These are flanked by evenly spaced pairs, and a small terrace, of attractive inter-war houses with small front gardens. There is vehicular access for the appeal site and neighbouring houses from a rear communal service road that is reached from St Annes Gardens. As a result some residents have, over time, erected small garages at the end of their gardens. In addition to the greenery at the front of the appeal site there are also allotments at the rear. These together with the grass verges, mature gardens and pleasing design of the houses contribute towards the agreeable appearance of the area.
8. The appellant has erected a detached, brick building with a flat roof that occupies the full width of the plot and a significant proportion of the depth of the rear garden. It has two entrances, one from the garden, accessed from the side of the house, and one from the service road. There are windows adjacent to both doors. There is also an air conditioning unit mounted on a bracket outside the bathroom window overlooking the garden which provides heat in the colder weather.
9. I find the siting of the appellant's development causes harm as it is at odds with the surrounding residential layout. This is because there is a clear

distinction between main elevations overlooking the public realm and secondary elevations enclosing a private realm. As well as intruding into the private realm, the building also occupies a significant proportion of the rear garden, due to its size. This results in a loss of openness along the rear of this particular row of properties. Whilst some neighbouring properties also have outbuildings, they generally do not occupy the full width of the garden and are of a much smaller scale. The appellant refers to outbuildings to the rear of properties in St Annes Gardens but this area has a different character from Twyford Abbey Road. Here rear gardens appear to be longer and there are a significant number of outbuildings that have been built here.

10. The development also results in an over intensive use of the site which is out of scale and character with the prevailing pattern of development along Twyford Abbey Road. This is because outbuildings, where they exist, seem to be used for purposes incidental to the enjoyment of the dwelling house. The appellant refers to the scale and use of a brick outbuilding at No 17, a neighbouring property. He claims it is used as a social area but the Council allege that this is also an unauthorised development for residential use which is the subject of a separate enforcement notice appeal. I am therefore unable to give much weight to this submission.
11. For these reasons I conclude that the development has an adverse effect on the character and appearance of the host dwelling and the surrounding area. The development therefore does not accord with Policies 7.1, 7.4 and 7.6 of the London Plan¹ (TLP) or Policies 7.4 and 7B of Ealing's Development Management Development Plan Document² (DPD). These policies, which are all concerned with different aspects of design, require, amongst other matters, that new development should have regard to the pattern of existing spaces and reinforce the character of the neighbourhood. I have not had regard to Policy 1.2(f) of the Council's Core Strategy as this appears to be concerned with reducing energy usage.

Living conditions, noise and disturbance

12. The Council are concerned that, having regard to the siting of the building, the residential use causes unacceptable noise and disturbance which has an adverse effect on the living conditions of the occupiers of the main dwelling and neighbouring properties. I find, given the proximity of the building to the rear of the main dwelling, that a separate self-contained residential use causes harm due to the increased comings and goings from an additional household. Residents pass either through the front garden and thence across the rear garden or they access the building from the service road, passing along the rear of a number of properties. There is a difference in the character of the occupation of the building when it is used on a permanent residential basis, which is far more intense, from that when used for incidental purposes. This has not gone unnoticed as objections were made by a third party who lives nearby and complains about 'disturbing noises' emanating from the building.
13. For these reason I conclude that the development has an adverse effect on the living conditions of neighbouring occupiers, having regard to noise and disturbance. The development therefore does not accord with Policies 7.1 and 7.6 of TLP and Policies 7A and 7B of the DPD. These policies require amongst

¹ The London Plan: Spatial Development Strategy for Greater London March 2015

² Adopted 10 December 2013

other matters that new development should not cause harm to the amenity of surrounding land and buildings.

Living conditions, standard of accommodation

14. I consider the main limitation on the suitability of the building for residential use is its size, layout and access to any private outdoor space. The Council state that the new dwelling is rented out to two people though it is not clear on what basis they make this statement. The appellant explains that he allowed his brother to live in the building for a short period. On the basis that two people occupy the building the Council state that the minimum gross internal area (GIA) should be at least 50 sq m for a one bedroom self-contained unit. They estimate that the actual GIA is only 28 sq m. The appellant makes no comment on this other than referring to the building being a suitable office space.
15. At the site visit I saw that the area occupied as a bedroom in the Council's photographs appears to be only large enough to accommodate a single bed and a wardrobe/chest of drawers. As such I consider the building is a one bedroom/person/storey unit. TLP has now changed³ and the relevant required living space standard is 39 sq m. The supporting text to Policy 3.5 of TLP sets out that this is a minimum standard which developers are encouraged to exceed. In this case I find that there is a significant shortfall between what is provided and the relevant minimum standard which is aimed at ensuring that new residential development is designed and built to provide a suitable environment that will promote healthy living.
16. In particular, the kitchen area is extremely cramped and the bedroom window is directly overlooked by the occupiers of the main dwelling due to the shallow depth of the remaining garden. The outlook from the living area is also poor being directly onto the service road where there is little privacy due to there being no set back from the boundary of the property. The appellant submits that this enables passive surveillance and contributes towards a reduction in crime. However, I saw at the site visit that access to the lane is via a locked gate and that this measure ensures only those with the relevant keys are able to pass through thus providing a degree of security.
17. The poor level of internal accommodation in the building is compounded by the seemingly total lack of private outdoor space for activities such as drying washing, storage of refuse and relaxing outside in good weather. In considering these matters I note that the Council values the provision of open space (Policy 7D of the DPD) and expects good levels of privacy in new developments (Policy 7B of the DPD).
18. My conclusion on this issue is that the standard of accommodation provided is severely inadequate and thereby harmful for occupiers of the building. The use therefore conflicts with the provisions of the relevant development plan policies.
19. The Council also submit that the appellant sought to conceal his development by not seeking building control approval, planning permission or paying council tax. However, in order to succeed in this respect they would need to demonstrate that the appellant had acted in such a way as to positively deceive

³ Housing Standards Minor Alterations to the London Plan March 2016, these reflect the adoption of the Technical Housing Standards: National described space standard, introduced by DCLG in 2015

the Council. Based on the evidence I consider he did not as, for example, he did not attempt to hide the building from public view and it seems he spoke to his neighbours before he built it.

20. It follows from my conclusions on the main issues that the appeal on ground (a) fails and that planning permission will not be granted.

Conclusion

21. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

D Fleming

INSPECTOR