
Appeal Decision

Site visit made on 14 November 2016

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

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

Decision date: 23 November 2016

Appeal Ref: APP/U5360/C/16/3146053 & 3146054

26 Lea Bridge Road, London, E5 9QD

- 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 1990 Act").
- The appeal is made by Mohammed Nizami (Ref. 3146053) and Yasmin Baig (Ref. 3146054) ("the Appellants") against an Enforcement Notice issued by the Council of the London Borough of Hackney ("the Council") on 2 February 2016.
- The Enforcement Notice is numbered 2015/0318/ENF.
- The breach of planning control as alleged in the Enforcement Notice is without planning permission the erection of a rear outbuilding.
- The requirements of the Enforcement Notice are: 1. Remove the unauthorised outbuilding at the rear of the property. 2. Make good all damage to the property resulting from compliance with the other requirements of the Enforcement Notice. 3. Remove all waste, materials, equipment, and debris from the property resulting from compliance with the requirements of the Enforcement Notice.
- The period for compliance with the requirements is three months.
- The appeal (Ref. 3146053) is proceeding on the grounds set out in Section 174(2)(a), (d) and (f) of the 1990 Act.
- The appeal (Ref. 3146054) is proceeding on the grounds set out in Section 174(2)(d) and (f) of the 1990 Act.

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 Formal Decision.

Procedural Matters

1. 26 Lea Bridge Road has been subdivided into two flats. The Appellants live in Flat A at No. 26.
2. The amenity space to the rear of the main building at No. 26 forms part of the property occupied by the Appellants.
3. I will refer to the building to which the Enforcement Notice relates as "the Outbuilding".

Reasons - Ground (d) that at the date when the Enforcement Notice was issued, no enforcement action could be taken in respect of any breach of planning control

4. The 1990 Act explains that where there has been a breach of planning control consisting in the carrying out on land of building operations without the benefit of planning permission no enforcement action may be taken after the end of the period of four years beginning with the date on which the building operations were substantially completed.
5. The onus of proving that no enforcement action could be taken in respect of the Outbuilding rests with the Appellants. The Enforcement Notice was issued

- on 2 February 2016. The Appellants have to show on the balance of probabilities that the Outbuilding was substantially completed on or before the 2 February 2012 ("the Relevant Date").
6. The Appellants claim that the Outbuilding was substantially completed by late summer 2009 and that it was then used as a store for tools and spare domestic appliances.
 7. In support of this claim the Appellants have provided various statutory declarations. The statutory declarations confirm:
 - a) That the Outbuilding was substantially completed in the late summer of 2009.
 - b) That the Outbuilding was built by sub-contractors appointed by Mr M. A. Nizami.
 - c) That the Outbuilding was initially used to store garden tools, household equipment and unspecified large home electronic appliances.
 - d) That the Outbuilding is now used to store books, as a library and a place where the Appellants' children can be home educated. There is no suggestion from the Council that the Outbuilding is being used for anything other than uses ancillary to the main dwelling.
 - e) That Mr K. Z. Abdullah undertook some of the initial construction works of the Outbuilding in 2009.
 - f) That during the period 6 April 2012 to 6 April 2016 Mr K. Z. Abdullah and Mr M. A. Nizami have undertaken maintenance works to the Outbuilding including:
 - i) Damp proofing/treatment.
 - ii) Internal re-rendering/re-plastering.
 - iii) Replacement of windows, doors and a few ceiling beams.
 - iv) Re-felting of the roof.
 - v) Rendering of the front elevation of the Outbuilding.
 - vi) The application of a brick-face to the front elevation of the Outbuilding.
 - g) The purpose of the maintenance works was to make the Outbuilding watertight, heating efficient and to improve its appearance.
 8. The Council have produced aerial photographs for 2011, 2012 and 2013. These all show that there was a building in the garden to the rear of No. 26 ("the Garden Building"). However, the Garden Building extended into the rear garden of No. 26 (from the rear boundary of No. 26) to a similar depth as a garden building in the adjacent garden ("the Adjacent Garden Shed").
 9. The Outbuilding (as it now stands) extends a considerable way further forward than the front elevation of the Adjacent Garden Shed.
 10. The Appellants suggest that the Adjacent Garden Shed has been reduced in size. I was shown a line in the ground within the adjacent garden where the

Adjacent Garden Shed had, at one time, supposedly extended to. There is no evidence from the owners/occupiers of the Adjacent Garden Shed confirming that they have reduced the size of the Adjacent Garden Shed. In any event the 2011 photograph of the Adjacent Garden Shed appears to me to reflect what the Adjacent Garden Shed looked like as at the date of my site visit. Had it been reduced in size in the last five years I would have expected the front elevation to look newer and possibly have a different configuration of doors and windows to that shown in the 2011 photograph.

11. The Outbuilding is significantly larger and protrudes much further into the rear garden of No. 26 than the garden building at No. 26 shown in the Council's aerial photographs.
12. Council Officers inspected the site on 1 July 2015. They consider that the Outbuilding was not substantially complete as at that date. I do not agree with their assessment. The Outbuilding had been fitted out with furniture and a substantial number of books had been moved into it. I am aware that there were building materials in the garden at that time together with a substantial amount of bricks. However, it appears to me that those materials were used for the construction of a brick wall which now provides boundary with the adjoining property.
13. However, it seems likely to me that the Outbuilding had not been substantially completed for any significant period of time prior to the 1 July 2015 as the Council's photographs show that the existing guttering and down pipe had not been fitted to it.

Conclusion on Ground (d)

14. I have explained that the onus of proof rests with the Appellants. In this case I am not satisfied that they have discharged that burden of proof in as much as they have not shown, on the balance of probabilities, that the Outbuilding was substantially complete on or before the Relevant Date. The appeal on Ground (d) therefore fails.

Reasons - Ground (a) and the deemed planning application – that in respect of the breach of planning control which may be constituted by the matters stated in the Enforcement Notice, planning permission ought to be granted

15. The Council's concerns as stated in the Enforcement Notice are that the Outbuilding by reason of its bulk, design, massing and location results in an incompatible and incongruous form of development, which adversely affects the character, appearance and architectural integrity of the local area.
16. The Council confirmed that the Outbuilding cannot be seen from any public vantage point.
17. I am not aware of any objections made by local residents who can see the Outbuilding from their properties.

Policy

18. The Development Plan for the area includes Policies 7.4 and 7.6 of The London Plan 2015, Policy 24 of the Hackney Local Development Framework Core

Strategy 2010 and Policy DM1 of the Hackney Development Management Local Plan 2015.

19. I have also been referred to the Supplementary Planning Document entitled "Residential Extensions and Alterations" approved in April 2009. However, this predates the relevant parts of the Development Plan that I have been referred to.
20. Further, I have been referred to various policies in the National Planning Policy Framework¹.
21. The Development Plan explains that all development should:
 - a) Provide high quality design.
 - b) Have regard to the pattern and grain of the existing spaces in scale and mass.
 - c) Be of a height and massing which responds to and is compatible with the town scape, urban setting and adjacent buildings.
 - d) Be of the highest architectural quality.
 - e) Comprise details and materials that complement but not necessarily replicate the local architectural character.
 - f) Enrich and enhance the built environment.
 - g) Reinforce and complement local distinctiveness and create a positive sense of place.
 - h) Respect the architectural character of the surrounding environment.

Does the Outbuilding harm the character or appearance of the site or the surrounding area?

22. The character of the area is dominated by the three storey residential buildings (with the third level being within the roof space) which front onto Lea Bridge Road.
23. The rear of the main buildings have been extended by a varied mixture of designs including flat roofed and mono-pitched roofed single-storey extensions extending to various depths into the rear gardens of the respective properties within which they have been built. Some of these extensions are built off the main rear wall of the buildings whereas others are built off outriggers or earlier single-storey extensions.
24. There are also other very large buildings which can be seen from the garden of No. 26 including a large multi-storey modern block of flats and a mosque which add to the variety of the local built environment.
25. No. 26 has a large single-storey rear extension.
26. There are a variety of domestic freestanding buildings in the gardens of other nearby properties. Many of these, like the Outbuilding, fill the full width of the plots within which they stand. From what I was able to see from the garden of No. 26 the Outbuilding is larger than the majority of other garden buildings

¹ Paragraphs 14, 15, 58, 69, 61, 65 & 72

although I note that there is at least one other large garden building of a similar size to the Outbuilding which is relatively close to No. 26.

27. Due to the variety of styles, shapes and sizes of garden buildings and rear extensions within the private areas to the rear of the main buildings I do not consider that the size or bulk of the Outbuilding is so significant that it appears to be out of character in this area.
28. I consider that the Outbuilding has a pleasing modern appearance. It creates a sense of quality which could not be seen in many of the others ancillary garden buildings in the area.
29. The Council suggest that the Outbuilding contributes to the incremental urbanisation of the area. I do not share those concerns. The development of the rear gardens in this area, including that at No. 26, is typical of many urban and suburban areas in this part of London and throughout the country. It reflects the desire of occupiers of dwellings to find additional floor space which can be used in ways ancillary to the rest of their dwelling and thus enhance their enjoyment of their private homes.
30. I do not consider that:
 - a) The Outbuilding is too large or has involved the overdevelopment of the plot of land between the rear extension at No. 26 and the rear boundary. In my assessment the Outbuilding remains subservient to No. 26.
 - b) The Outbuilding fails to have regard to its location or the local distinctiveness of the surrounding area.
 - c) The materials used in the construction of the Outbuilding fail to match the appearance of No. 26 or its extension or the surrounding area.

Conditions

31. The Council have suggested that the Outbuilding should be conditioned so that it can only be used ancillary to the enjoyment of the main residence and not as a separate planning unit. I will impose a condition that it is only used for purposes ancillary to the residential use of the dwelling known as Flat A at 26 Lea Bridge Road. This allows the Council to control any future uses which may have a detrimental impact on the surrounding environment.

Conclusion of Ground (a)

32. I therefore conclude, for the reasons explained above, that the Outbuilding does not harm the character or appearance of the site or the surrounding area and there is no conflict with the relevant policies of the Development Plan.

Other Matters

33. I do not consider that the size of the Outbuilding has harmed the quality or usability of the in the remaining garden space at No. 26. I was not informed of any quantitative standard of private amenity space required by the Council for flats in this area. From what I saw at my site visit there is sufficient space left available in the rear garden at No. 26 for the occupiers of the Flat to be able to enjoy and use as an outdoor living area.

Overall Conclusion

34. For the reasons given above I conclude that the appeal should succeed on Ground (a) and planning permission will be granted. The appeal on Ground (f) does not therefore need to be considered.

Formal Decision

35. 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 for the development already carried out, namely the erection of a rear outbuilding on land at 26 Lea Bridge Road, London, E5 9QD subject to the following condition:

- (1) The outbuilding hereby permitted shall not be used other than for purposes ancillary to the residential use of the dwelling known as Flat A, 26 Lea Bridge Road, London, E5 9QD.

Tim Belcher

Inspector