

Appeal Decision

Site visit made on 25 October 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 30 November 2016

Appeal Ref: APP/T5150/C/16/3155485

Land at 41 Bamford Avenue, Wembley, HA10 1NA

- 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 Jane Mansah against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 21 June 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a building in the rear garden of the premises.
- The requirements of the notice are:

STEP 1 Demolish the building in the rear garden of the premises.

STEP 2 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.

- The period for compliance with the requirements is 3 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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Summary Decision: The appeal is allowed and the enforcement notice quashed

Reasons

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

1. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated two substantive reasons for issuing the enforcement notice, from which the following main issues are raised:
 - the effect of the use of the building on the character and appearance of the area
 - the effect of the building on the living conditions of the occupiers of surrounding residential properties, specifically in relation to outlook, privacy and noise disturbance, and
 - the effect of the building on the living conditions of the occupiers of the main dwelling, specifically in relation to the provision of outdoor amenity space.
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Character and appearance of the area

2. The breach of planning control alleged in the notice is simply stated as, without planning permission, the erection of a building in the rear garden of the premises. However, the Council allege in the reasons for issuing the enforcement notice that the building in the rear garden of the premises contains primary accommodation facilities, and was not designed or built for purposes incidental to the enjoyment of the dwellinghouse. The Council contend that the use of the building is therefore out of keeping with the area for that reason, as well as the size and location of the building itself.
3. At the time of my site visit, the building appeared to be vacant with no furniture in place or personal effects in evidence. The space was divided into two main rooms, with a separate smaller room containing a toilet and a hand wash basin but no shower or bath. There was no kitchen in situ, and no evidence that a previously fitted kitchen had been removed. Heating was provided in one of the main rooms in the form of a wall-mounted radiator and the building was decorated to a standard that might be associated with a dwellinghouse, including details such as skirting boards. There was also an internal porch leading to a gated door that opens onto the narrow passageway that runs to the rear of the house, albeit the passageway itself was largely blocked by overgrown vegetation and clearly has not recently been used to provide access to the building.
4. Although the layout, provision of heating and standard of decoration are all consistent with use other than incidental to the main dwelling, there was no physical evidence within the building itself to indicate that it has been so used. Moreover, the Council has produced no evidence that the building has been used for purposes other than those incidental to the main dwelling: for example, photographs taken during previous visits by Council officers or complaints from neighbouring occupiers.
5. It became obvious at the site visit that the current occupiers of the main house do not have access to the building at the rear, but this is not in itself evidence that the latter has been used as primary residential accommodation: it merely indicates that the building is not currently being used incidental to the main dwelling. Consequently, I have no evidence to substantiate the contention in the reasons for issuing the enforcement notice that the building in the rear garden of the premises contains or contained primary accommodation facilities, and was not designed or built for purposes incidental to the enjoyment of the dwellinghouse.
6. I noted on my site visit that a number of the properties in Bamford Avenue feature outbuildings, albeit the rear gardens of the properties in Norwood Avenue are largely devoid of such structures. The building in the rear garden of the appeal property is larger than other outbuildings in the immediate vicinity but not disproportionately so. The presence of the other outbuildings also means that these structures are part of the existing character of the area. I am satisfied that, in this particular location, the physical form of the building in the rear garden of the appeal property is acceptable in terms of its effect on the character and appearance of an area in which outbuildings associated with the main dwelling already form part of that character.
7. It follows that, on the evidence before me, I have no reason to believe that the use of the building has affected the character of the area through the

introduction of primary residential accommodation at the rear of the main dwelling. I am also satisfied that the building is acceptable in terms of its effect on the appearance of the area. I therefore conclude that the use the building has not been shown to be contrary to Policy CP17 of the London Borough of Brent Core Strategy or Policies BE2, BE9 or H15 of the London Borough of Brent Unitary Development Plan, in terms of protecting the distinctive suburban character of Brent from inappropriate development.

Living conditions of the occupiers of surrounding residential properties

8. The building in the rear garden of the premises has a flat roof with a maximum roof of some 2.75 metres. The building is adjoined to its north by a building of similar height albeit of a lesser depth. To the south, the building adjoins the rear of garden of No 43 Bamford Avenue which, at this point, contains a semi-mature tree. When viewed from adjoining properties in Bamford Avenue, the building in the rear garden of the premises is therefore experienced in the context of these features and not in isolation. Given the presence of this tree and the building in the rear garden of the neighbouring property, I am satisfied that the building in the rear garden of the appeal property does not appear unduly intrusive or overbearing when viewed the properties in Bamford Avenue.
9. The rear gardens of the properties in Bamford Avenue back onto those of the properties that front onto Norwood Avenue. The occupier of the house in Norwood Avenue directly to the rear of the appeal property objects to the building in the rear garden of the appeal premises on the grounds that it is close the boundary with her property. The rear gardens of the houses on both Bamford Avenue and Norwood Avenue are of reasonable length, and are separated by the narrow passageway that runs between them. Consequently, whilst the building has unquestionably changed the outlook from the objector's property, given the separation distance I do not consider that the building is unduly intrusive.
10. The occupier of the property to the rear also objects to the building on the grounds that it overlooks the garden and kitchen to that house. However, there are no windows in the elevation of the building facing onto Norwood Avenue and, whilst the door does open onto the passageway between the properties, this is enclosed within an internal porch and does not appear to be regularly used. I am therefore satisfied that the use of the building does not give rise to an unacceptable degree of overlooking to the properties in Norwood Avenue.
11. As outlined above, I have no evidence to indicate that the building in the rear garden of the appeal premises has been used to provide primary accommodation facilities. It follows that I have no reason to believe that the use of the building has resulted in levels of noise disturbance other than those normally associated with uses incidental to the main dwelling. Moreover, the Council has provided no evidence to show otherwise.
12. I conclude that the building in the rear garden of the appeal premises does not have an unacceptable effect on the living conditions of the occupiers of surrounding residential properties in relation to outlook, privacy or noise disturbance. I therefore conclude that the building does not conflict with Policies BE2, BE9 or H15 of the London Borough of Brent Unitary Development Plan, or to Policy CP17 of the London Borough of Brent Core Strategy. These

policies require, amongst other things, that new buildings should be laid out such that they provide a satisfactory level of privacy and outlook for existing residents. I am also satisfied that the building accords with the core principle in the National Planning Policy Framework that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Living conditions of the occupiers of the main dwelling

13. The Council's concerns in this respect relate to the loss of amenity space for the main dwelling. However, in the absence of any evidence to show that the building in the rear garden of the premises is used for purposes other than those incidental to the main dwelling, the building contributes to the amenities of the main dwelling. I am therefore not convinced that the issue of loss of outdoor amenity space arises in this case.
14. The main dwelling is a two-storey mid-terraced house with a rear garden of a reasonable length commensurate with its size and character. The erection of the building in the rear garden does not fundamentally alter that relationship. Moreover, the Council has not demonstrated that the residual garden area that remains following the construction of the building fails to accord with any standards adopted by the Council in that regard.
15. I conclude that the building in the rear garden of the appeal premises does not have an unacceptable effect on the living conditions of the occupiers of the main dwelling in relation to the provision of outdoor amenity space. I therefore conclude that the building does not conflict with the requirement in Policy H15 of the London Borough of Brent Unitary Development Plan that, in relation backland development, sufficient garden depth is retained by existing buildings commensurate with their size and character.

Other matters

16. The occupier of the house immediately to the rear of the appeal premises questions how water and sewerage will be disposed of, and raises associated concerns in relation to infestation by vermin and smells. However, given that there is no evidence to suggest that the building has been used to provide primary accommodation facilities as alleged in the enforcement notice, I have no reason to believe that these matters cannot be addressed under the appropriate areas of legislation relating to the occupation of the main dwelling.
17. The appellant has, in connection with the appeal on ground (f), put forward an amended scheme that would amend the internal layout of the building and remove the door onto the passageway at the rear of the property. I have considered whether this amended scheme would address concerns expressed in relation to the existing structure but have concluded that the building is acceptable in its present form, subject to the condition that I refer to below. I therefore consider that the amendments proposed by the appellant are not necessary.

Conditions

18. The Council has not proposed any conditions should I be minded to allow the appeal on ground (a). However, my conclusion that the building is acceptable on its own merits is predicated on the understanding, based on the evidence available to me, that the building is not used to provide primary

accommodation facilities as alleged in the enforcement notice. I nevertheless accept that, should the building be used for purposes other than those solely incidental to the enjoyment of the main dwelling, some of the harms alleged in the notice in terms of the character of the area and the living conditions of existing residents could arise. I therefore sought the views of the main parties as to whether a condition limiting the use of the building to purpose ancillary to the residential use of the main dwelling would be appropriate.

19. The appellant has no objection to the imposition of such a condition. The Council, however, considers that the wording of the condition does not address its concerns in relation to the use alleged in the notice and is flawed, specifically in relation to the use of the words "occupation" and "ancillary". The Council considers that the use of these words implies that the building can be used for primary accommodation and considers that, if the aim of the condition is to prevent primary residential accommodation, then it should say that in terms. The Council therefore considers that the condition is imprecise and unenforceable.
20. The wording of the condition on which I sought the views of the parties adopts that used in a model condition set out in the now superseded Circular 11/95: Use of Conditions in planning permissions. I am therefore satisfied that the condition meets all the relevant tests for the imposition of conditions now set out in the Planning Policy Guidance, including those relating to tests of "precise" and "enforceable".
21. I have also given careful consideration to the point made by the Council in relation to specifying that no primary residential accommodation should be provided. However, I am drawn back to the breach of planning control alleged in the notice itself. This is stated simply as the erection of a building in the rear garden of the premises. There is no reference in this allegation to use of the building as primary residential accommodation: that forms part of the reasons for issuing the notice and which, for the reasons set out above, have not been substantiated. In these circumstances, I am satisfied that the condition is sufficiently clear to convey that the building can only be used for purposes ancillary to the main dwelling and not as a separate dwelling. I shall impose such a condition.

Conclusion on the ground (a) appeal

22. Having regard to the above, I conclude that planning permission ought to be granted. The appeal on ground (a) succeeds and planning permission will be granted, subject to the condition that I set out in the Formal Decision below.

The appeal on ground (f)

23. Given that the enforcement notice will be quashed as a consequence of my decision to allow the appeal on ground (a), the appeal on this ground does not fall to be considered.

Formal Decision

24. The appeal is allowed and the enforcement notice is quashed.
25. Planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely the erection of a building in the rear garden of the

premises at 41 Bamford Avenue, Wembley, HA10 1NA , as shown on the plan attached to the notice, subject to the following condition:

1. The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 41 Bamford Avenue, Wembley, HA10 1NA.

Paul Freer

INSPECTOR