
Appeal Decision

Inquiry held on 31 October 2016

Site visit made on 31 October 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 15 December 2016

Appeal Ref: APP/A5270/C/16/3150612

Land at 35 Montague Road, Southall, Ealing, UB2 5PD

- 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 Inder Bains against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 13 April 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, a material change of use of land to the rear of the premises for use as 2 self-contained residential dwellings.
 - The requirements of the notice are:
 - a. Cease the use of the land at the rear of the premises as 2 self-contained residential dwellings.
 - b. Remove the kitchen and drainage connections which facilitate the use of the outbuilding at the land as 2 self-contained residential dwellings.
 - c. Remove the bathroom and drainage connections which facilitate the use of the outbuilding at the land as 2 self-contained residential dwellings.
 - d. Remove all the resultant debris from the Land.
 - 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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Summary Decision: The appeal is dismissed and the enforcement notice is upheld as corrected.

Application for costs

1. At the Inquiry an application for costs was made by the Council of the London Borough of Ealing against Mr Inder Bains. This application is the subject of a separate Decision.

Procedural Matters

2. The breach of planning control alleged in the notice is, without planning permission, a material change of use of land to the rear of the premises for use as 2 self-contained residential dwellings. However, the requirements at paragraphs 5(b) and 5(c) of the notice both refer to the removal of connections that "facilitate the use of the outbuilding at the land as 2 self-contained dwellings". There is, therefore, what I consider to be a mis-match between the allegation in the notice and the requirements to comply with it. I have a duty to ensure that the enforcement notice is in order and consequently at the Inquiry I sought the views of the appellant and the Council as to whether the notice should be corrected or varied.
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3. The Council maintains that there is no mis-match between the allegation and the requirements but accepted that, should I consider it necessary, the requirements of the notice could be corrected by deleting reference to the "outbuilding" in paragraphs 5b and 5c, such that the requirements would simply refer to the removal of the connections that facilitate the use as 2 self-contained dwellings at the land. This would in my view overcome any ambiguity in the requirements and would better relate to the allegation in the notice. The appellant raised no objection to this alteration, and I am satisfied that no party would be caused injustice by it. I shall therefore correct the notice accordingly.
4. An appeal was initially made on ground (d) namely that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. However, this ground of appeal was withdrawn at the Inquiry.

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

5. 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 three substantive reasons for issuing the enforcement notice, from which the following main issues are raised:
 - the effect on the change of use on the character of the area
 - the effect, if any, on the living conditions of the current and future occupiers of both the appeal premises and neighbouring residential properties, specifically in terms of privacy, noise and artificial light
 - whether the residential dwellings provide adequate living conditions for current and future occupiers in terms of indoor living space
 - whether the residential dwellings provide adequate living conditions for current and future occupiers in terms of outdoor amenity space.
6. In addition to these main issues, the Council has invited me to consider whether the breach of planning control constitutes intentional unauthorised development. I shall consider that issue after consideration of the main issues identified above.

Character of the area

7. The character of the area is predominantly residential. The pattern of development comprises a mixture of mostly terraced houses fronting onto Montague Road. The rear gardens of the houses on the east side of Montague Road, which include the appeal property, back onto the rear gardens of a line of closely-spaced semi-detached houses that front onto Regina Road. The space between the frontage development defined by the houses on Montague Road and Regina Road forms a secluded area of garden land that makes an important contribution to the character of the area.
8. The Council confirmed at the Inquiry that its objection to the self-contained residential dwellings subject to the enforcement notice is not the physical form of the building, but rather to the introduction of a residential use in the area of secluded garden space to the rear of the host property. In this context, the

introduction of two self-contained residential dwellings generates activity, in the form of movements to and from the dwellings as well as activity associated with the occupation of them, within an area in which activity is otherwise largely confined to that associated with the houses on the frontage. In an area largely characterised by frontage residential development, the self-contained residential dwellings therefore constitute an inappropriate form of backland development that is out of character with the surrounding area.

9. I conclude that the change of use of land to the rear of the premises for use as 2 self-contained residential dwellings unacceptably harms the character of the area. I therefore concluded that the breach of planning control is contrary to Policies 3.5, 7.1 and 7.6 of The London Plan as well as Policy 7.4 of the London Borough of Ealing Development Management Development Plan Document (DPD). These policies require, amongst other things, that development in the existing built areas of the Borough should complement their building pattern.

Living conditions

10. The self-contained dwellings face onto a paved amenity space that is shared with the occupiers of the host property, the latter in use as five flats. The windows in the self-contained dwellings are fitted with clear glazing and, without the presence of curtains, clear views into the habitable rooms of these dwellings would be possible from the shared amenity space. The accommodation within the two self-contained dwellings therefore does not provide an acceptable level of privacy for the occupiers of those properties.
11. Similarly, clear views are afforded from the shared amenity space into the windows in the rear elevation of the host property. The introduction of the self-contained dwellings therefore results in the clear overlooking of the host property, resulting in an unacceptable loss of privacy to the occupiers of that dwelling.
12. The paved amenity space is shared between the occupiers of the two self-contained dwellings and the occupiers of the five flats in the host property. These occupiers come from a combined total of seven separate households, such that this arrangement fails to provide adequate privacy for any of these occupiers.
13. The introduction of the two self-contained dwellings results in day-to-day activities taking place to the rear of the host property, and therefore in an area in which the occupiers of those flats are entitled to expect a degree of quiet seclusion. The introduction of the two self-contained dwellings is disruptive to the occupiers of the five flats by reason of noise disturbance and light intrusion. For the same reasons, the introduction of the two self-contained dwellings detracts from living conditions of the occupiers of the neighbouring residential properties.
14. I conclude that the change of use of land to the rear of the premises for use as 2 self-contained residential dwellings unacceptably detracts from the living conditions of the current occupiers of both the appeal premises and neighbouring residential properties, specifically in terms of privacy, noise and artificial light. I therefore concluded that the breach of planning control is contrary to Policy 7B of the DPD which, amongst other things, requires that new development must achieve a high standard of amenity for users and adjacent users in terms of privacy.

Indoor living space

15. Policy 3.5 of The London Plan indicates that housing developments should be of the highest quality internally, and that all new dwellings should have adequately sized rooms that accord with the minimum internal space standards set out in Table 3.3 of the London Plan. The latter has been updated through the Minor Alterations to the London Plan 2016 to incorporate the Technical Housing Standards – Nationally Described Space Standards.
16. The outbuilding at the appeal premises comprises two one-bedroom dwellings, each currently occupied by three people. There is no minimum internal space standard for a one bedroom, three-person dwelling in The London Plan, the nearest equivalent being a minimum standard of 50m² for a one bedroom, two-person dwelling. The 2 self-contained residential dwellings at the appeal premises each have an internal floor area of some 35 m², significantly below the minimum standard in The London Plan for a one bedroom, two-person dwelling and by extrapolation even further deficient in relation to a space occupied by three people. In my view, this represents a significant shortfall against the minimum standard set out in The London Plan, and fails to provide adequate room sizes for the occupiers of the dwellings.
17. I conclude that the change of use of land to the rear of the premises for use as 2 self-contained residential dwellings fails to provide adequate living conditions for current and future occupiers in terms of indoor living space. I therefore concluded that the breach of planning control is contrary to Policy 3.5 of The London Plan, as well as failing to accord with London Housing Design Guidance and the London Housing Supplementary Planning Guidance. The latter re-states the importance set out in The London Plan to achieving minimum gross internal floor areas in new dwellings.

Outdoor amenity space

18. Policy 7D of the DPD requires development that triggers a need for open space to meet certain baselines, as set out in Table 7D.2 in the DPD. The key to Table 7D.2 indicates that this requirement would typically equate to 50 m² of private garden space per house and must be fit for purpose, including being genuinely private.
19. The two self-contained dwellings do not provide any private garden space, and therefore immediately fail to meet the requirement as set out in Table 7D.2 in the DPD. Moreover, whilst the occupiers share the paved amenity space with the occupiers of the five flats in the main house, the space available is not exclusive to the occupiers of these dwellings and is not private, such that it does not meet with the requirement in the DPD that the amenity space must be fit for purpose. I therefore consider that this shared amenity space does not qualify as private outdoor amenity space for the purposes of Policy 7D and Table 7D.2 of the DPD.
20. I conclude that the residential dwellings do not provide adequate living conditions for current and future occupiers in terms of outdoor amenity space. I therefore concluded that the breach of planning control is contrary to Policy 7D of the DPD which, amongst other things, requires that all development that increase demand for open space will be expected make appropriate provision or contribution towards meeting that demand.

Other Matters

21. The Council explain that the appellant is a known landlord within the London Borough of Ealing, and has carried out a number of unauthorised developments within the Southall area. In support of that, the Council has provided two examples of enforcement notices issued against properties owned by the appellant. One of these relates to the use of a detached outbuilding as a separate residential unit at a property in Featherstone Road. The Council take the view that the appellant is well aware of the planning system and contend that the breach of planning control subject to the enforcement notice constitutes intentional unauthorised development. In accordance with the statement made by the Government's Chief Planner on 31 August 2015, the Council invite me to treat the appellant's action in this respect as a material consideration that weighs against the grant of planning permission in this case.
22. In response to questions put to him at the Inquiry on this point, Mr Bains explained that he sought advice from the Council in a telephone call made in or around 2006. There is no written record of that telephone conversation and there is no follow-up in writing but, according to Mr Bains, the advice he received was to the effect that "planning permission would be granted after four years". It was on the basis of that advice that Mr Bains elected to carry out the development.
23. I find it less than credible that a Council planning officer, in response to a question properly phrased, would offer that advice. That said, I am mindful that English is not Mr Bains' first language. I therefore consider, and the Council's witness conceded, that it is possible that Mr Bains may not have asked the right question(s) in seeking advice from the Council and/or may not have correctly understood the advice given to him. Consequently, on this occasion, I am prepared to give Mr Bains the benefit of the doubt and to accept that he genuinely believed that planning permission was not required for the development now subject to the enforcement notice. Accordingly, I am satisfied that this is not an instance of intentional unauthorised development. However, in response to one of my questions on this point, Mr Bains volunteered as a matter of public record that he is now fully aware that planning permission is required for the development that he carried out.
24. The appellant has provided a copy of a letter dated 6 May 2016 from Ms Angela Williams, a Regulatory Services Officer with the Council. This letter informs the appellant of works required to make the two self-contained dwellings suitable for occupation under the Housing Act 2004, and relates to matters such as Gas and Electric Safety Certificates, the fitting of smoke detectors and means of escape in the event of a fire.
25. However, the letter from Ms Williams relates solely to matters arising under the Housing Act 2004. This is an entirely separate piece of legislation from the Town and Country Planning Act 1990, under which the enforcement notices were issued. It is necessary to comply fully with all legislation relating to the construction and occupation of houses, including the Building Regulations, the Housing Acts and the Planning Acts. Consequently, a letter such as that from Ms Williams indicating that the accommodation could with the carrying out of certain works be made compliant with the Housing Act 2004, does not in any way indicate that the two self-contained dwellings are acceptable under the Town and Country Planning Act 1990.

26. The letter from Ms Williams is the only documentary evidence submitted by the appellant in relation to the ground (a) appeal. The appellant did call two witnesses, a Mr Rafiq and a Mr Silva. The former simply indicated that he knew the occupiers of the 2 self-contained dwellings and had visited the premises since 2008. Mr Silva confirmed that he resided at one of the 2 self-contained dwellings and that he found it comfortable, and was content living there. I do not dismiss this evidence lightly which does, at least, demonstrate that the 2 self-contained dwellings provide accommodation that is valued by its occupiers and to that extent meets a housing need. This is a consideration that weighs in favour of the development. Nevertheless, the evidence of Mr Rafiq and Mr Silva does not directly address the main issues that I have identified. It follows that the appellant has not challenged or disputed the evidence put forward by the Council on these main issues.

Conclusion on the ground (a) appeal

27. Having regard to the above, I find that the change of use of land to the rear of the premises for use as 2 self-contained residential dwellings is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted. Accordingly, the appeal on ground (a) fails.

Conclusion

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

Formal Decision

29. It is directed that the notice is corrected by deleting reference to the "outbuilding" in paragraphs 5b and 5c. Subject to that correction, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Paul Freer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Amrik Singh

He called

Mr Inder Bains	Appellant
Mr Rafiq	Resident, 31 Montague Road
Mr Silva	Resident, 35 Montague Road

FOR THE LOCAL PLANNING AUTHORITY:

Mr Roderick Morton	Ivy Legal, instructed by Head of Legal Services, London Borough of Ealing
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He called

Mr Neill Whittaker BSc MA MRTPI	Enforcement Officer, London Borough of Ealing
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DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ Statement of Common Ground
- 2/ Opening statement on behalf of the London Borough of Ealing.
- 3/ Copy of full judgment in *Secretary of State for Communities and Local Government and another v Welwyn Hatfield Borough Council* [2011] UKSC 15.
- 4/ Copy of full judgment in *Pope v Secretary of State for Environment and Teignbridge District Council* [1992] 63 P. & C.R. 442.

- 5/ Closing statement on behalf of the London Borough of Ealing.
- 6/ Application for costs on behalf of the London Borough of Ealing.
- 7/ Update from Ivy Legal on the status of Table 3.3 in The London Plan (submitted electronically).