

Appeal Decision

Site visit made on 2 December 2016

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 30 December 2016

Appeal Ref: APP/A5270/C/16/3149685

51 Runnymede Gardens, Greenford, Ealing UB6 8SU

- 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 Mahdi Majeed against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 20 April 2016 under ref. EN160215ODOB(1).
 - 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 set out as follows:
 - "1. Cease the use of the separate self-contained rear dwelling;
 - 2. Demolish the separate self-contained dwelling at the rear of the premises;
 - 3. Remove the fencing which separates the rear dwelling from the garden of the main dwelling; and
 - 4. Remove from the land all fixtures and fittings, debris and general detritus resulting from the works."
 - 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. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the last sentence in paragraph 5 in its entirety and substituting therefor the following sentence:

"The time for compliance with these requirements shall be three months after this notice takes effect."
2. Subject to that correction, the appeal is dismissed, 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.

The enforcement notice

3. The period for compliance with the notice is three months. Specifying an exact date in addition to a period is incorrect practice because if an appeal is lodged the effective date of the notice is suspended until the appeal has been
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determined. The date of 25 August 2016 (in the last sentence of paragraph 5 of the notice) is now left as an incorrect date. I shall delete it from the notice by rewriting that last sentence in paragraph 5. Such a correction would not result in any injustice to the parties.

Background

4. No. 51 Runnymede Gardens is a two-storey, semi-detached residential property. It has been extended and divided into flats. Planning permission was granted in April 2015 under ref. PP/2015/0978 for the conversion of a single dwelling into two flats incorporating a single-storey rear extension, rear roof extension, hip to gable roof alteration and associated parking and refuse storage. The Council is separately investigating the implementation of that planning permission.
5. The enforcement notice attacks the erection of a separate self-contained dwelling at the rear of the premises. The Council noted at a site inspection on 5 April 2016 that it had been separated from the main dwelling by a fence and was being occupied by two adults and three young children based on a monthly rent of £1300.
6. My site visit revealed that the self-contained dwelling at the rear is a flat-roofed, single-storey building. It is over 2.5 m high and has an internal floor area of about 45 sq. m. Although it did not appear to be occupied, it contains four distinct rooms – a living room with a well-equipped kitchen and boiler, a bathroom and two potential double bedrooms. The dividing fence had been removed but the support posts have been left in situ. The rear garden that remains available amounts to about 79 sq. m in area. The appellant does not dispute that the breach of planning control alleged in the notice has occurred as a matter of fact.

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

7. The appellant has approached the ground (a) appeal on the basis of seeking planning permission for the retention of the rear building as a games and hobby room for the use of the occupiers of the ground floor flat at no. 51 Runnymede Gardens.
8. Unfortunately for the appellant, the appeal on ground (a) and the deemed application for planning permission under section 177(5) of the 1990 Act as amended are tied to the breach of planning control alleged in the enforcement notice. This is mirrored by the power to grant planning permission under section 177(1) of the 1990 Act as amended which is limited to a power to grant planning permission in relation to the whole or any part of the matters stated in the notice as constituting the breach. It is clear that something other than the grant of planning permission for all or part of the matters alleged in this enforcement notice to constitute the breach of planning control would be required to achieve the different scheme now envisaged by the appellant. I have no power to consider a grant of planning permission for that scheme under ground (a) or the deemed planning application.
9. The appellant, in focussing on a scheme for the building to be used for games and hobbies, has made no attempt to justify why planning permission ought to

- be granted for the erection of a separate self-contained dwelling at the rear of the premises.
10. The enforcement notice, correctly in my view, identifies the key adverse planning consequences of this unauthorised development:
- i) The addition of a new dwelling in this back garden location conflicts with the general pattern of residential development in the locality;
 - ii) It has introduced noise and disturbance which detracts from the living conditions of the occupants of neighbouring properties, including those residing in no. 51; and
 - iii) As the dwelling is inadequate in internal size to support independent residential occupation as a two-bedroom unit, has only a limited amount of external amenity space associated with it, has a poor outlook and lacks privacy, occupiers of the dwelling would have unsatisfactory living conditions.
11. As such, the single-storey dwelling located at the rear of the premises is an unsuitable addition to the host residential environment and conflicts with the relevant development plan policies set out in the enforcement notice.
12. There are other rear buildings of a similar or larger size in the neighbourhood including those at the rear of nos 49 and 50 Runnymede Gardens. However, the specific circumstances of these buildings and their uses are not clear. In any event, it is a well-established planning principle that a development proposal must be determined on its individual merits.
13. The appellant also says that the Council has granted planning permission for similar-sized outbuildings in the recent past at nos 31 and 75 Daryngton Drive and no. 24 Runnymede Gardens. However, there is nothing to suggest from the details he has provided that those planning permissions authorised the construction of self-contained dwellings.
14. I find no material considerations of sufficient weight to justify a grant of planning permission for what is alleged in the notice. The objections to the unauthorised development could not be satisfactorily overcome by the imposition of planning conditions. The appeal on ground (a) and the deemed planning application do not therefore succeed.

The appeal on ground (f)

15. The purpose of the enforcement notice is aimed at remedying the breach of planning control. It is not simply seeking to remedy the injury to amenity caused by the breach.
16. The gist of the appellant's case is that steps 2 and 4 of the notice are considered to be excessive. The argument is put that the rear building, upon cessation of its use as a separate self-contained dwelling (step 1) and the removal of the dividing fence (step 3), should be considered as an outbuilding that would be ancillary to the existing ground floor flat at no. 51 Runnymede Gardens and in keeping with neighbouring outbuildings.

17. The enforcement regime is not meant to be punitive. Where there is a valid fallback, for example, by way of permitted development rights, it is proper to consider whether the complete removal of an unlawful building would ultimately achieve anything. However, as the Council points out there is no lawful fallback in this case. The Council explains that no part of the dwelling has permission or has been built under permitted development. There are no permitted development rights for the erection of dwellings and permitted development rights for the erection of outbuildings cannot apply where those outbuildings would fall within the grounds of a flat or flats as here. There is no real possibility that permitted development rights could be appropriately exercised in the future by way of a fallback.
18. The appellant would, of course, have open to him the possibility of submitting a planning application should he desire additional accommodation to meet the domestic needs of the ground floor flat. The prospect of the retention of any part or parts of the unauthorised development to achieve such a purpose is a matter that might be explored through further discussions with the Council. It would not be appropriate to achieve this by way of a variation to the requirements of the notice.
19. On the facts and circumstances of this case, I find that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control. No lesser steps would give effect to the notice. In the light of the conflict with development plan policies, it would not be disproportionate to require the appellant to carry out the steps required by the notice. Accordingly, the appeal on ground (f) fails.

Andrew Dale

INSPECTOR