
Appeal Decision

Site visit made on 13 February 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 14 March 2017

Appeal Ref: APP/A5270/C/16/3161899

91 Pleasant Way, Wembley HA0 1DQ

- 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 Act’].
 - The appeal is made by Ms Sasikala Selvarajah against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, ref EN160645CUOB(1), was issued on 21 September 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a single-storey rear dwelling and Perspex canopy to the rear of the main dwelling.
 - The requirements of the notice are to:
 - (1) Cease the use of the outbuilding to the rear of the premises as a self-contained dwelling.
 - (2) Demolish the outbuilding in its entirety.
 - (3) Demolish the canopy in its entirety, and
 - (4) Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) of the Town and Country Planning Act 1990 as amended¹.
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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.

Ground (b) and (c)²

2. In appealing against the operational development notice on these grounds of appeal, commonly known as the ‘legal’ grounds, the onus of proof is firmly on Ms Selvarajah to show that some or all of the alleged matters had not in fact occurred by the time it was issued, or that the matters do not constitute a breach of planning controls, on the balance of probabilities. If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the appellant’s version of events less than probable, there is no good reason to dismiss an appeal on any legal ground provided her evidence alone is sufficiently precise and unambiguous³.
3. The canopy is 5 m x 7.5 m⁴ and comprises a timber frame with horizontal and vertical beams. At the bottom end of the rear garden, there is a pitched roof outbuilding. Each being a permanent structure firmly fixed to the ground and

¹ There is an implied ground (b) appeal addressed by the appeal parties. I will assess this ground of appeal.

² Given the significant overlap between these grounds, I shall evaluate them together.

³ See the case of *Gabbitts v SSE & Newham LBC* [1985] JPL 630.

⁴ Measurements agreed at my site visit with the appeal parties.

fall within the meaning of a 'building' for planning controls. I consider that the nature and scale of the operations involved in the construction of each building fall within the meaning of subsections 55(1) and (1A) of the Act.

4. Ms Selvarajah advances no positive case regarding the Perspex canopy. She readily accepts it existed when the notice was issued and requires express planning permission. The latter does not fall within the scope of Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ['the GPDO'].
5. Essentially, the nub of the main argument is that the Council misdirected itself by describing, in part, the alleged breach as *construction of a single-storey dwelling*. Ms Selvarajah forcefully submits that a dwelling has not, in fact, been constructed. She argues that an outbuilding containing a gym/play area had been constructed before the notice was issued. While the operations do not fall within the ambit of Class E of Part 1 of Schedule 2 to the GPDO, she relies upon the terms of a planning permission granted on 4 May 2012⁵ subject to conditions ['the 2012 permission']. The latter relates to the construction of a single-storey gym and play area. For the following reasons, I disagree with those submissions.
6. The evidence presented does not show precisely when the gym/play room was substantially completed. Exhibited is a 2013 certificate of completion by the building control service but this is inconclusive evidence, because it certifies that the outbuilding complied with certain aspects of building regulations. This document does not clearly show the outbuilding was actually built in accordance with the 2012 permission at that time.
7. In terms of its dimensions, the 'as built' outbuilding is broadly consistent with the approved plans stipulated in condition 2) of the 2012 permission. But its external appearance and internal layout is significantly different. The major disparities can be summarised as follows: the plans show an open-plan room labelled 'play area'; in contrast the outbuilding, as built, is physically subdivided into three separate rooms and these are not illustrated on the floor plans. A separate toilet and shower is shown within the play area but this is a small room in one corner of the outbuilding, whereas a large bathroom has been constructed in a different location. The external fenestration detail has altered to facilitate a reconfigured internal layout.
8. As a matter of fact and degree, in my assessment, the as built building is substantially dissimilar to the scheme previously approved, because a very different building has been constructed not in accordance with the approved plans. I therefore find that the 2012 permission has not been implemented and building operations targeted by the notice are not authorised by it. So what exactly has Ms Selvarajah built? In reply to that question, it is necessary to examine the nature of the building operations and, linked to that, evidence about its subsequent use.
9. Planning enforcement officers visited the appeal property on 18 July 2016 and found the outbuilding in residential use. The record of the site visit, including photographs, is particularly instructive. These have not been challenged and the appellant provides no explanation of her own to discredit this evidence. To my mind, the record verifies that the outbuilding contained a fully fitted kitchen

⁵ Council ref: PP/2012/0961 – detail taken from the written submissions.

with white goods, wall and base and sink unit. There is a microwave and numerous cooking utensils including bottled gas connected to a worktop cooker on display in the kitchen. There is a separate bedroom and bathroom.

10. It appears that the cooking equipment and appliances have been removed, although some wall and base units remain in place. Nevertheless, the photographic evidence confirms building operations had been carried out resulting in the construction of a new building comprising cooking, sleeping and washing facilities. It contained items or equipment enabling food to be prepared and heated within the outbuilding. In my opinion, this equipment afforded users a facility to prepare meals without them having to eat elsewhere, thus affording self-containment given the available wherewithal for independent living. It afforded occupants facilities for day-to-day private domestic existence during the period leading up to the issuing of the notice⁶.
11. The Council's unchallenged statement is that it was informed fee-paying tenants occupied the outbuilding in July 2016. The images appear to illustrate use of the outbuilding by people forming a single household, because of the type and nature of domestic paraphernalia on display. Ms Selvarajah provides no cogent evidence about the claimed ancillary or incidental use. There is nothing to indicate that the outbuilding was initially built for ancillary use subsequently changed into a dwelling house by internal alterations⁷.
12. In my planning judgement, building operations probably resulted in the construction of a dwelling thus creating a self-contained residential planning unit because of the significant degree of physical and functional separation. As I have already observed elsewhere, this building work does not fall within the purview of the 2012 permission, as it does not permit the construction of a single-storey dwelling. I therefore find that the disputed part of the alleged breach reflects the reality of the unlawful building operations.
13. Pulling all of the above threads together, the quantum of evidence presented shows that the nature and scale of the building operations resulted in the construction of an unlawful dwelling and Perspex canopy during the period leading up to the issuing of the notice. By the time it was issued, the subject buildings actually existed. The alleged breach of planning control therefore occurred as a matter of fact. Clearly, deemed planning permission does not exist for the alleged matters and express planning permission has not been obtained. The matters constitute a breach of planning controls. My inescapable conclusion is therefore that the appeals on grounds (b) and (c) must fail.

Ground (a)

14. The terms of the deemed application are directly derived from the allegation. Planning permission is sought for the construction of a single-storey rear dwelling and Perspex canopy.
15. The **main issue** is the effect of the development upon: (1) character and appearance of the host dwelling and that of the locality and (2) living conditions of occupants and neighbours with particular regard to standard of accommodation, amenity, noise and general disturbance.

⁶ *Gravesham BC v SSE and O'Brien*, [1983] JPL 306 applied.

⁷ Section 55(2) subsection (a)(i)(ii) considered.

Character and appearance

16. No. 91 is a hipped roof semi-detached property located in a mainly residential area. The suburban settlement pattern is defined by dwellings with front and rear gardens. The canopy is constructed from horizontal and vertical timber posts. It has a plastic roof covering and provides a covered area. The material utilised in its construction is inappropriate because it does not resemble the simple architectural style of the host dwelling. The canopy is a large projection and its rudimentary design and layout is visually harmful to the external appearance of the property.
17. While domestic scale outbuildings of varying size and shapes can be found in the locality, dwellings in back gardens is not a particular feature of the settlement pattern. The Council granted planning permission for a rear outbuilding for incidental use but the back-land location of the dwelling represents ad hoc planning and goes against the area's urban grain. I acknowledge that the build is sympathetic to the external appearance of the main dwelling, but the rearward position of the dwelling is uncharacteristic of local settlement pattern, which is contrary to the aims and objectives of supplementary planning document (SPD) 4, *Residential Extensions*.
18. I conclude that, individually and cumulatively, the development is materially harmful to the visual appearance of the host building and is out of keeping with the suburban character of the locality. Accordingly, there is conflict with policies 7.1, 7.4 and 7.6 of The London Plan (2016), 3.5, 7A, 7B and 7.4 of Ealing's Development Management Development Plan Document 2013 (DPD).

Living conditions⁸

19. Policy 7.1 of The London Plan relates to lifetime neighbourhoods and aims to achieve good quality environments. Policy 7.6B (d) states that buildings and structures should not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings. DPD policy 7A and 7B state new development must achieve a high standard of amenity for users and adjacent uses by ensuring high quality architecture and appropriate levels of development on site. One of the core land-use principles set out in paragraph 17 of the National Planning Policy Framework is that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
20. The location of the dwelling is likely to attract significant level of activity generated by comings and goings associated with residential living. The nature and scale of this activity is likely to be over and above levels usually associated with a more typical and subservient domestic shed or gym/play area. In this relatively quiet garden environment, neighbours using their back gardens are likely to experience additional noise and disturbance as a result of the dwelling's positioning.
21. The single-storey design and layout of the dwelling suggests outlook from the neighbouring properties is unlikely to be compromised. That said however current and future occupiers have unimpeded views of adjoining gardens. In addition, the dwelling is likely to be noticeable from rear elevations of adjoining

⁸ This issue relates to the rear dwelling.

properties. I consider that the location of the dwelling is likely to increase neighbours' sense of being overlooked.

22. The development is likely to bring with it all of the trappings associated with residential living, including the need for some outdoor amenity space. Given the limited size of the dwelling, outdoor amenity space is probably a valuable source of space for relaxation and domestic activity. DPD policy 7D and table 7D.2 requires development that triggers a need for open space to meet certain baselines. The area requirement for a private garden space for a flat is 5 m² per one to two persons unit, plus 1 m² for each additional occupant. The development has some 69 square metres of garden space. While marginally below what might be required, I have strong reservations about usability. This is because the space is shared and it is not private. To my mind, such a layout compromises the amenity value of the rear garden.
23. Taking all of the above points together, I find that the development has the potential to materially harm the living conditions of existing and future occupiers. Accordingly, the development conflicts with policy 3.5 of The London Plan as well as DPD policies 7A, 7B and 7D. The design fails to meet national policy found in paragraph 17 and 56 to the NPPF.

Other considerations

24. Ms Selvarajah seeks planning permission for the retention of the outbuilding and its use as a gym or play area, similar to what is permitted by the 2012 permission. The deemed application for planning permission under s177(5) of the Act is linked to the breach of planning control alleged in the notice. This is mirrored by the power to grant planning permission under s177(1) of the Act, 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 the notice to constitute the breach of planning control would be required to achieve the scheme for an outbuilding to use as a gym, store or play area. I am afraid there is no power to consider a grant planning permission for construction of the single-storey gym, play area or store room on ground (a) or the deemed planning application.

Overall conclusions

25. Having regard to all other matters, I conclude that the appeal should not succeed on ground (b), (c) and (a). Consequently, the enforcement notice is upheld and I have refused to grant planning permission on the deemed application, as set out in paragraph (1) above.

A U Ghafoor

Inspector