
Appeal Decision

Site visit made on 8 May 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 23 May 2017

Appeal Ref: APP/P3610/C/17/3166452

Land at 1 Oakwood Avenue, Epsom

- 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 J K Ingham against an enforcement notice issued by Epsom & Ewell Borough Council.
 - The enforcement notice was issued on 28 November 2016.
 - The breach of planning control as alleged in the notice is the use of the garage block within the curtilage of a dwelling on the Land as a separate dwelling.
 - The requirements of the notice are to cease the use of the garage block as a separate dwelling and remove all bedroom furniture, all kitchen fixtures, fittings and equipment.
 - The period for compliance with the requirements is 8 weeks.
 - 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 dismissed and the enforcement upheld as corrected.

Procedural Matter

1. The land to which the enforcement notice relates is stated in the notice itself as being 'land at 1 Oakland Avenue, Epsom'. However, as the appellant points out, the address is actually land at 1 Oakwood Avenue, Epsom. It is clear that the citation of the incorrect address in the notice is a typographical error. It is equally clear that the appellant has not been prejudiced by that error and recognises that the enforcement notice relates to his property. I am therefore satisfied that I can correct the notice in this respect without causing injustice to the appellant or the Council. I shall correct the notice accordingly.

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

2. 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 main issues raised are:
 - whether the development would provide an acceptable standard of habitable accommodation, specifically in relation to the provision of external amenity space, and
 - the effect of the development on the living conditions of the occupiers of surrounding residential properties, specifically in relation to noise and disturbance.
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Provision of external amenity space

3. Policy DM12 of the Epsom & Ewell Borough Council Development Management Policies Document (DMPD) requires all new housing developments, including conversions, to comply with external and internal space standards. The policy requires that amenity space for all new dwellings should be, amongst other things, private, functional, easily accessible from living areas and of a sufficient size to meet the needs of the likely number of occupants.
4. The separate dwelling alleged in the notice has one bedroom. Although the supporting text to Policy DM12 of the DMPD stipulates minimum requirements for external amenity space for houses providing two or more bedrooms, there is no equivalent for one bedroom houses. The nearest equivalent is the minimum requirement for external amenity space for flats, which is specified in the supporting text to Policy DM12 of the DMPD as being 5m² for 1-2 person dwellings.
5. However, in this case, the absence of a specific standard against which to measure the provision of amenity space in the development is somewhat academic, insofar as the development provides no separate amenity space whatsoever. On that basis, I conclude that the development does not provide an acceptable standard of habitable accommodation, specifically in relation to the provision of external amenity space. The breach of planning control alleged in the notice is therefore immediately in conflict with Policy DM12 of the DMPD.
6. In relation to this main issue, the Council also cites Policy CS5 of the Epsom & Ewell Borough Council Local Development Framework Core Strategy (Core Strategy) in the reasons for issuing the notice. However, on my reading, Policy CS5 of the Core Strategy relates primarily to the protection and enhancement of heritage assets. The appeal property is not itself a heritage asset and is not located within a conservation area, such that Policy CS5 of the Core Strategy is of only limited relevance to this main issue.

Living conditions

7. Although forming one of the reasons for issuing the notice, the Council has not expanded on this matter in its evidence and relies upon the wording of the notice as originally drafted. However, whilst specifically referring to noise and disturbance, the reason stated in the notice does not provide any detail in terms of how that noise and disturbance is considered to arise. Neither does it identify the properties that might be affected by that noise and disturbance.
8. I noted on my site visit that the separate dwelling is above a garage to the side of No 1 Oakwood Avenue, where it is adjacent to a neighbouring property, No 3 Oakwood Avenue. Access to the separate dwelling can only be achieved from a door at ground floor level in the front elevation next to the garage door. Both are accessed from the driveway, which I understand is in the ownership of the appellant. It is evident that access to the separate dwelling, either on foot or by vehicle, would generate activity in close proximity to the neighbouring dwelling at No 3 Oakwood Avenue. I recognise that this activity could take place early in the morning or at night, when ambient noise levels would be relatively low. I also note that the occupiers of No 3 Oakwood Avenue have objected to the use alleged in the notice on the grounds of noise and disturbance, specifically in relation to one of bedrooms in their house.

9. The separate dwelling provides only one bedroom and, commensurate with that accommodation, the number of movements generated would accordingly be limited. Nevertheless, it is evident from the representation by the occupiers of No 3 Oakwood Avenue that the use of the space above the garage as a separate dwelling does result in noise disturbance over and above that which might reasonably be expected to be generated by the occupiers of the existing house at No 1 Oakwood Avenue in the normal course of events.
10. I conclude that the development unacceptably harms the living conditions of the occupiers of surrounding residential properties, specifically in relation to noise and disturbance. I therefore conclude that the development conflicts with Policies DM10 and DM16 of the DMPD. These policies require, amongst other things, that development has regard to the amenities of occupants and neighbours, including in relation to noise and disturbance.

Other matters

11. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the use of the garage block within the curtilage of the dwelling on the Land as a separate dwelling fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.
12. The appellant describes the accommodation above the garage as '1 bed granny flat' but accepts that a separate residential unit has been created. In that respect, the appellant explains that he is in declining health and that it is only a matter of time before maintaining his independence is no longer possible. The appellant has therefore adopted a proactive approach to meeting his future accommodation needs, in which the accommodation above the garage will allow him to maintain a degree of independence but with the knowledge that his family would be close by in the main dwelling to provide assistance or in the event of an emergency. In that context, the appellant has purchased, but not yet installed, a stair lift to assist with his anticipated mobility issues and indicates that this chair lift will be installed when necessary.
13. The appellant refers me to the National Planning Policy Framework (Framework) and the Planning Practice Guidance, both of which make it clear that health and wellbeing are to be considered in decision making. The appellant also specifically refers me to the statement made to Parliament by Brandon Lewis MP as Planning Minister in March 2015, in which he confirmed that the Government is working to help older people to plan ahead and help people to live independently for longer, thereby reducing costs for health and social care services. As the appellant points out, the latter is consistent with the Care Act 2014.
14. The above are all material considerations to which I would attach the appropriate weight if the accommodation above the garage was genuinely required and used by the appellant at this time to meet his health and mobility issues. However, that is not the case.

15. As part of my site visit, I was able to view inside the accommodation above the garage. I noted that there were no concessions in the furniture, fixtures and facilities within the accommodation to health or mobility issues. For example, the shower in the bathroom was of the walk-in type and all of the cooking/work surfaces were at standard height above floor level. There were no emergency chords or other systems available that would enable an occupant to call for help in the event of difficulty, and there are no handrails to assist with moving around the space. The latter are all features that I would expect to see, or at least some of them, if the accommodation was being occupied by or being prepared for occupation by a person with health and/or mobility issues.
16. I was shown the stair lift stored in the garage ready for installation at a later date, but I have been provided with no drawings or technical description to illustrate how the stair lift would be installed. This is significant because, as I observed, the only means of access to the accommodation above the garage is via the main staircase. That staircase features a 90 degree turn at its foot, part of which would require the rails for the stair lift to span the window next to the main door. I acknowledge that the rail system could potentially be floor mounted but in the absence of technical drawings or information I am not convinced that a stair lift is a workable solution given the width and configuration of the staircase.
17. However, the most significant consideration is that the appellant consistently and only refers to his occupation of the accommodation above the garage only in the future tense. Indeed, the appellant is candid in stating that his intention is to make provision in anticipation of his declining health. It is quite clear from his comments that he does not occupy the accommodation at present.
18. It was equally clear from my site visit that the accommodation above the garage is currently being occupied for residential purposes: there were clothes on rails in the bedroom, cosmetic products in the bathroom and bedroom, food in the kitchen and personal artifacts in the living room. Moreover, the accommodation is clearly capable of being occupied independently of the main dwelling. The only means of access is from the main driveway. Whilst I was shown through the main house and rear garden to enter the accommodation above the garage, it is clearly not necessary to do so and the garden gate can be locked shut from the inside, thereby preventing access by the occupier of the accommodation above the garage. The accommodation above the garage is numbered 1A Oakwood Avenue, has its own letter box and refuse bin.
19. I am therefore satisfied that the accommodation above the garage is currently being used as a separate dwelling, completely independent of the main house and is not being used by the appellant himself. This is supported by the comments made by several local residents in their representations. On that basis, the comments made by the appellant in terms of his anticipated future need for accommodation to provide independent living carry only limited weight at this time.

Conclusion on the ground (a) appeal

20. I recognise that, at some point in the future, the appellant may have a genuine requirement for the accommodation above the garage to meet his own accommodation needs. It will then be a matter for the Council to determine if and when the personal circumstances of the appellant justify that use of the accommodation for that purpose. But, on the evidence before me, that point

has not yet been reached. In any event, the accommodation is currently being used as a separate dwelling. I therefore consider that the considerations advanced by the appellant are not of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan at this time. Consequently, I conclude that planning permission ought not to be granted for the use alleged in the enforcement notice.

21. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

22. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. In this case, the requirements of notice are to cease the use of the garage block as a separate dwelling and remove all bedroom furniture, all kitchen fixtures, fittings and equipment. The purpose of the notice must therefore be to remedy the breach of planning control.

23. The appellant's case on this ground of appeal is that the removal of the bedroom furniture and associated fittings is excessive, since the space could legitimately be an additional bedroom for the main house. I agree. Provided that the kitchen and associated fixtures and fittings were completely removed in accordance with the notice, an occupier of that space would be dependent upon the main dwelling for cooked meals and the accommodation above the garage could not be used as separate dwelling. The purpose of the notice, to remedy the breach of planning control, would still be achieved.

24. Accordingly, the appeal on ground (f) succeeds to that limited extent.

Conclusion

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

Formal Decision

26. It is directed that the notice be corrected by deleting the words 'land at 1 Oakland Avenue, Epsom' at paragraph 2. of the notice and replacing these words with 'land at 1 Oakwood Avenue, Epsom'. It is also directed that the notice be varied by deleting the words 'bedroom furniture' at paragraph 5. of the notice.

27. Subject to that correction and variation, 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