
Appeal Decision

Inquiry Held on 10 August 2017

Site visit made on 10 August 2017

by Mr K L Williams BA, MA, MRTPI

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

Decision date: 24 August 2017

Appeal: APP/A5270/C/16/3158501

177 Norwood Road, Southall, Middlesex, UB2 4JD

- 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 M Taleb against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 19 August 2016.
- The breach of planning control as alleged in the notice is the erection of a separate self-contained dwelling at the rear of the premises.
- The requirements of the notice are to:
 - a) Cease the use of the separate self-contained dwelling at the rear of the premises.
 - b) Demolish the separate self-contained dwelling at the rear of the premises.
 - c) Remove from the premises all fixtures and fittings, debris and general detritus resulting from the works.
- The period for compliance with the requirements is set out in notice as by 23 December 2016 (i.e. 3 months from the date the notice becomes effective).
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) 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 Act as amended also falls to be determined.

Summary of Decision: The appeal is dismissed. The enforcement notice is corrected and upheld. Planning permission is not granted.

Preliminary Matters

1. Oral evidence was given at the Inquiry with solemn affirmation. The application for an award of costs made by the Council against the appellant is the subject of a separate decision. During the Inquiry Mr Taleb introduced an additional ground of appeal, ground (f). I have considered that ground in addition to the initial grounds of appeal as set out above.

The Enforcement Notice

2. A notice must specify the date on which it is to take effect. Paragraph 5 of the notice specifies both a specific date, which has now passed, and a 3 month period for compliance. To ensure precision the notice will be corrected without injustice to the main parties to refer simply to the 3 month period.

The Appeal on Ground (d)

3. To succeed on this ground it is for the appellant to show, on the balance of probabilities, that the erection of the building as alleged is immune from

enforcement action. The relevant period in respect of the erection of a building is 4 years from the date of substantial completion of the building. A period of 4 years prior to the issue of the enforcement notice began on 19 August 2012. It is consistent with *Planning Practice Guidance* that an appellant's case should be accepted if there is no evidence to contradict or otherwise make his version of events less than probable, provided that his evidence is sufficiently precise and unambiguous.

4. In a letter of 5 September 2016, submitted with the appeal form on behalf of the appellant, it was said that "the extension has been here for in excess of 6 years." An undated aerial photograph was attached. It was said to have been taken in 2011 and to show the development. On the other hand, at the Inquiry Mr Taleb said that the building was completed in about June of 2012. He also cited several different start dates for the work and acknowledged he had only a rough idea. Reference was made to a Google Earth image said to be from 2012 and to a Google Street View image, also said to be from 2012. Mr Taleb says that the building was occupied by a tenant soon after completion. She is said to have stayed until about a year ago, since when the building has been vacant.
5. A number of receipts are submitted and are said to be related to works to erect the appeal dwelling. Receipts dated 02 and 07 July 2012 are for building and decorating materials and two receipts dated 19 July 2012 are from a plumbing merchant. An invoice dated 5 June 2016 is from Mr N A Mughal. It is entitled "Ref: Electrical Works at Rear Annexe". It refers to lighting and other electrical works and bears the appeal site address. There is also a photograph of a skip covered with a tarpaulin outside no.177.

Assessment of ground (d)

6. At the Inquiry Mr Taleb appeared very uncertain about the dates when the appeal building was started and completed. He did not recognise the letter of 5 September 2016 which accompanied his appeal form and which set out the basis of his appeal. He supposed it had been prepared by his builder. These matters, together with his inconsistent evidence on the date of completion of building work, reduce the weight I can give to Mr Taleb's evidence on this ground of appeal. His supporting evidence is very sparse. Other than Mr Mughal's receipt, none of the submitted receipts specify that they are related to no.177 Norwood Road. It has not been shown that these receipts or the skip are directly related to the erection of the appeal building. Mr Mughal's receipt lends a degree of support to the appellant's position. However, I also take into account that Mr Mughal did not attend the Inquiry so that this evidence could not be tested by cross-examination. Moreover, although his letter heading asserts that he is an approved contractor, the Council reported that the relevant professional bodies had no record of him. No other documentary evidence of construction or occupation of the dwelling is submitted, such as tenancy agreements, building regulations documents, bills, other correspondence or witness evidence from those who built or have lived in the building.
7. There is also some evidence to contradict the appellant's case. Investigation by the Council of the Google Earth photograph, said by Mr Taleb to be from 2012, suggests that it was not in fact taken until June 2015. It seems to me that this also casts doubt on the precise date of the Google Street View image, said by Mr Taleb to be from August 2012. The Council has also provided aerial

photographs dated 2 May 2007, 25 May 2012 and 19 July 2013. A witness statement from Mr Bestley, the Council's Geographic Information Systems Manager, verifies the dates of photography. The 25 May 2012 photograph was taken on a date very close to June 2012, when Mr Taleb says the building was completed. However, the aerial photograph does not appear to show the completed building. While there appears to be some walls in the photograph, it does not appear to show a roof. The Council's position is further supported by Council Tax records showing the first rating of the property on 1 November 2014. A record of information gathered in respect of housing defects also gives details of the tenant from June 2014. There is no record of any earlier tenant. Mr Taleb refers to earlier occupancy of the premises as part of a House in Multiple Occupation but no supporting documentary evidence of this is provided.

8. The appellant's evidence is not sufficiently precise and unambiguous. There is also substantive evidence to contradict his version of events. I conclude that it has not been shown on the balance of probabilities that the appeal development is immune from enforcement action. The appeal should not succeed on ground (d).

The Appeal on Ground (a) and the Deemed Planning Application

The Main Issues

9. The deemed planning application concerns the erection of the separate self-contained dwelling as alleged in the notice. The first main issue is whether the character or appearance of the Norwood Green Conservation Area would be maintained or enhanced. The second main issue is the effect on the occupiers of neighbouring properties with regard to noise and disturbance. The last main issue is whether the building provides adequate accommodation with regard to floorspace for living and the provision of private amenity space.

The Effect on the Conservation Area

10. The site is within the Norwood Green Conservation Area, a designated heritage asset. The rear of the plot of no.177 forms part of the Conservation Area boundary. The Conservation Area is centred on Norwood Green and the site is in the Frogmore Green sub-area, to the north of Norwood Green. The Council's Conservation Area Appraisal (2007) refers to the diversity of building types. Among the detracting features in the Frogmore Green sub-area is the harmful effect of some recent development and poorly designed or neglected buildings.
11. The appeal building is a small, flat roofed structure occupying most of the space between the rear elevation of no.177 and the rear plot boundary. It is not seen in views from Norwood Road. There are limited views of part of the structure's flat roof from part of Harewood Terrace, from outside the Conservation Area. The building does not meet the requirement for a high standard of design set out in policy 7B of the Council's Development Management Development Plan Document, 2013 (DMDPD). As a result of its small scale and limited prominence from public viewpoints it is not materially harmful to the appearance of the Conservation Area, which is maintained. However, by taking up most of the land to the rear of no.177 it results in a cramped character. This, together with its poor design, results in its failure to maintain the character of the Conservation Area. The development conflicts with DMDPD policy 7C, which requires the avoidance of harm to heritage

assets, including Conservation Areas. In reaching this conclusion I appreciate that, as the appellant observes, there are other similar structures nearby. However, nothing is submitted on their planning status.

Noise and Disturbance

12. Pedestrian access to the building is along a narrow passageway alongside the flank wall of no.177. A rear window serving a ground floor flat faces the building at close quarters. A ground floor window facing the passageway serves business premises. A house on Harewood Terrace is to the north of the site. Occupation of the building and the related comings and goings is likely to generate a degree of noise. However, the building is of a small scale and the surroundings are of a mixed residential and commercial character. In this context I find that occupation of the building would not result in material harm to the occupiers of nearby dwellings with regard to noise and disturbance. It would not conflict with DMDPD policy 7B in that respect.

The Adequacy of the Accommodation

13. The internal layout of the building is as a single room which functions as sitting room, bedroom and kitchen. There is a small shower room. The building provides very cramped living accommodation. Based on measurements taken from its aerial photographs the Council estimates an external measurement of about 20 m². Internally, the floorspace is about 16 m². This is substantially less than the 37 m² minimum floorspace for a one-bedroom, one-person dwelling with a shower room as specified in the Housing Standards Minor Alterations to the London Plan, 2016. The same standard is found in the Technical Housing Standards – Nationally Described Space Standard, DCLG, 2015.
14. DMDPD policy 7D requires appropriate provision of open space. The Council's Supplementary Planning Document: Planning New Garden Space, 2015 specifies a minimum of 5 m² of private outdoor space for 1-2 bedroom units. The appeal building provides no outdoor amenity space. The accommodation is single aspect and there is a narrow gap between the building and the rear elevation of no.177. I appreciate that Wolf Park is a local park within a short walking distance. Nevertheless, in the context of the very limited internal accommodation and the building's cramped situation, the absence of private amenity space weighs against the appellant. I conclude that the building fails to provide adequate accommodation and external amenity space. It conflicts with DMDPD policies 3.5 and 7D.

Other matters

15. The appellant contends that the building provides much needed affordable accommodation. No evidence is submitted with regard to rental levels. However, even if they were low, that is likely to reflect the inadequacies of the living accommodation to which I refer above. Nor is any mechanism proposed to secure the provision of genuine affordable housing in this development.

Conclusion on Ground (a) and the Deemed Planning Application

16. Where, as in this case, there is less than substantial harm to a designated heritage asset it is necessary to have regard to any public benefit of the development. In this case there is no such benefit which would outweigh the harm. My conclusions on the effect on the Conservation Area and the adequacy

of the living accommodation outweigh that on noise and disturbance. The appeal should not succeed on ground (a). Planning permission should not be granted.

The Appeal on Ground (f)

17. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
18. Mr Taleb contends that if he is unable to use the building as a dwelling he should be allowed to retain it to help meet the storage needs of his hairdressing business. It operates from the ground floor of no.177 and Mr Taleb refers to plans for its expansion. No precise lesser steps are put forward. Nevertheless, it is clear that if this ground of appeal was to succeed the notice would be varied to remove requirements (b) and (c). The remaining requirement would be to cease the use of the building as a dwelling.
19. Paragraph 4 of the enforcement notice confirms that its purpose is to remedy the breach of planning control. Its purpose is not confined to remedying any injury to amenity. The requirements of the notice go no further than what is needed to remedy the breach of planning control by ceasing the unauthorised use and removing the unauthorised building. In that respect they are not excessive. In addition, while simply ceasing the use of the dwelling would address the inadequacy of the living accommodation, it would not address the harm to the character of the Conservation Area which I have found to be caused by the development. I conclude that the appeal should not succeed on ground (f).

Overall Conclusion

20. Having regard to the above and to all other matters raised the appeal should not succeed. The notice should be corrected and upheld. Planning permission should not be granted.

Formal Decision

21. I direct that the enforcement notice be corrected at paragraph 5 by the replacement of the words "You are required to complete these actions by 23 December 2016 (i.e. 3 months from the date the notice becomes effective)." with the words "Time for compliance: 3 months after this notice takes effect."
22. I dismiss the appeal and uphold the enforcement notice as corrected. I refuse to grant permission on the application for planning permission deemed to have been made under section 177(5) of the Act as amended.

K Williams

INSPECTOR

APPEARANCES

FOR THE APPELLANT: The appellant, Mr Taleb, was advocate and witness. He called no other witnesses.

FOR THE LOCAL PLANNING AUTHORITY: Mr R Morton, Solicitor, Ivy Legal Ltd.
He called:

Mr A O'Neill Planning Enforcement Officer, London Borough of Ealing.

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Council's opening statement.
2. Email of 3 August 2017 with 4 invoices.
3. Email of 9 August 2017 with one invoice and one photograph.
4. Enlarged version of street view photograph dated August 2012.
5. London Borough of Ealing, Housing Act 2004, Prohibition Order, 16 September 2016.
6. London Borough of Ealing, Housing Act 2004, Revocation of a Prohibition Order, 4 November 2016.
7. Norwood Green Conservation Area Appraisal, March 2007.
8. Council's Closing Statement.
9. Council's costs application.