
Appeal Decision

Site visit made on 18 April 2018

by Roy Merrett BSc(Hons) DipTP MRTPI

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

Decision date: 03 May 2018

Appeal Ref: APP/Y5420/C/17/3181466
68 Sherringham Avenue, London N17 9RN

- 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 E Weiser, Dearwell Properties Ltd, against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 3 July 2017.
- The breach of planning control as alleged in the notice is without planning permission the material change of the outbuilding to the rear to a single storey residential dwellinghouse.
- The requirements of the notice are 1. Cease the use of the outbuilding as a dwellinghouse; 2. Demolish the single storey residential dwelling; 3. Remove from the land any material resulting from carrying out step 2 above.
- The period for compliance with the requirements is five months after this notice takes effect.
- The appeal is made on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Preliminary Matter

1. The Council has set out the alleged breach of planning control in the enforcement notice as the material change of use of the outbuilding to the rear to a single storey residential dwellinghouse. The allegation does not refer to the construction of the outbuilding. However the requirements of the notice include the demolition of the single storey residential dwelling and removal of related material. Because the notice is not alleging the unauthorised erection of the building it is only necessary to cease the use in order to remedy the breach. The requirements of the notice go beyond what is necessary to remedy the breach as described. Accordingly the notice needs to be corrected. The main parties agreed that this can be done without resulting in injustice. The corrected notice would obviate the appellant's point about the possibility of rebuilding an outbuilding without the need for planning permission as a 'fallback position'.

The ground (a) appeal

Main Issues

2. The ground (a) appeal is that planning permission should be granted. The main issues are the effect of the development on i) the living conditions of occupiers of the appeal dwelling with particular regard to floorspace, outlook,

daylight, privacy and ventilation; ii) the living conditions of neighbouring residents with particular regard to daylight, outlook, privacy and noise disturbance and iii) the character and appearance of the area.

Reasons

Living Conditions – Occupiers

3. It is undisputed between the main parties that the floorspace available within the dwelling constitutes an area of some 12 – 13 square metres. This falls considerably short of the minimum 37 square metres for single storey, one bedroom dwellings as set out in Policy 3.5 of the London Plan 2016 (LP). I am mindful that securing a good standard of amenity for all existing and future occupants of land and buildings is a core principle of national planning policy set out in the National Planning Policy Framework (the Framework). Although some very limited external amenity space is available which would allow for drying of laundry and sitting outside during finer weather, from my visit to the site I am firmly of the view that the overall space available to occupiers, taking into account the interior of the property, is very restricted.
4. Furthermore despite the presence of a window in one of the elevations, which I have no reason to doubt would provide sufficient ventilation, it was apparent that the interior of the property did not benefit from significant natural lighting. In addition, the outlook from the window in question is directly onto a screen boundary fence at very close range, separating the appeal dwelling from the donor property. Although this would help to safeguard the privacy of residents, in combination I am in no doubt that the aforementioned factors would result in an excessive sense of enclosure for residents and cramped and oppressive living conditions. The fact that sub-standard accommodation may be acceptable to a current occupier does not justify its retention, given that the suitability of accommodation over its lifetime must be considered.
5. Accordingly I am not persuaded that the development would secure acceptable living conditions for occupiers of the dwelling. There would therefore be conflict with the Framework; Policy 3.5 of the LP; Policy SP2 of Haringey's Local Plan 2013 (HLP) and Policies DM1, DM7 and DM12 of Haringey's Development Management Development Plan Document 2017 (DPD) insofar as they seek to secure acceptable living conditions for residents.

Living Conditions – Neighbouring Residents

6. The appeal dwelling was a former outbuilding serving No 68 Sherringham Avenue and is situated relatively close to the rear elevation of that property. The associated boundary fence is closer still. However despite close proximity between the buildings and structures, the net additional impact on outlook from and daylight to the rear of No 68 and the availability of external garden space there, is very limited. In addition the screen boundary fence and a polycarbonate canopy covering the external space to the appeal dwelling serve to prevent any significant mutual overlooking between the two properties.
7. On the opposite side, the appeal dwelling is adjacent to the rear boundary of No 65 Seymour Avenue. However there is an existing rear outbuilding which forms a buffer between it and the house and rear garden associated with that property. Accordingly there would be no net impact on the occupiers of No 65 resulting from the development.

8. The proposal involves the retention of a dwelling within an established residential area. The inherent compatibility of the uses would lead me to conclude that noise disturbance to local residents would not be expected.
9. I conclude that the proposal would not result in harm to the living conditions of adjoining residents. There would not therefore be conflict with Policies DM1, DM7 and DM12 of the DPD in this regard.

Character and Appearance

10. The area is characterised by high density residential development comprising streets of two storey terraces. However the appeal dwelling has a pedestrian access onto Hollington Road, which runs perpendicular to the streets incorporating the main terrace frontages and which is essentially characterised by the gable elevations of end terrace dwellings. The dwelling has retained a mock garage door to its side elevation. In visual terms, viewed externally from the adjacent street, because of its disguise, the dwelling maintains the appearance of a domestic outbuilding serving an end terrace property. Although its appearance does not represent what it actually is in practice, the design and form of the structure does not appear obtrusive or out of place within this domestic setting.
11. I conclude that the development does not result in harm to the character and appearance of the area. Accordingly it would not conflict with Policies 3.5, 7.4 and 7.6 of the LP; Policy SP11 of the HLP and Policies DM1, DM7 and DM12 of the DPD.

Other Matters

12. The appellant states that the Council has not provided evidence that its annual housing target is being met. However, if it had concerns about the Council's performance in this area and the ability of the current occupier to secure alternative accommodation, the appellant would be expected to provide evidence of unmet housing targets and housing supply shortage.
13. In any event the addition of a single unit of accommodation to the housing stock would have only a very minor impact on supply, the benefit of which would be significantly and demonstrably outweighed by the adverse impact of providing a poor standard of accommodation, as set out above. The dwelling would not therefore be the sustainable form of development sought by the Framework and, in these circumstances, would not attract any significant weight in favour of its retention.

Conclusion

14. I have not found harm in terms of the living conditions of neighbouring residents or the character and appearance of the area. However this does not overcome my negative findings in relation to the living conditions of occupiers. The appeal on ground (a) fails.

The ground (f) appeal

15. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. I have already identified that the requirements of the notice exceed what is described in the breach and that the notice should be corrected accordingly. Aside from this the appellant

has not set out what lesser steps might be undertaken to remedy the breach or remedy any injury to amenity.

16. Reference has been made to an appeal decision relating to a property in a different Council area¹ where an enforcement notice was found to be invalid. The reasons for invalidity included the alleged breach of planning control not being specified with sufficient clarity and the requirements not being precise. That case is therefore distinct from the circumstances of the current appeal where, as set out previously, I have been able to correct the notice without causing injustice. The appeal example does not therefore assist the appellant's case. The ground (f) appeal therefore fails.

Overall Conclusion

17. 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. There has not been an appeal under ground (g), that the time to comply with the requirements is too short. However I acknowledge that the enforcement notice, which will be upheld with corrections, will interfere with the occupiers' rights under Article 8 of the Human Rights Act 1998, which states that everyone has a right to respect for private and family life, their home and correspondence. This is a qualified right, whereby interference may be justified in the public interest, but the concept of proportionality is crucial. I conclude, taking into account the Council's reasons for issuing the notice, that the time available for occupiers to seek alternative accommodation would be reasonable and would not result in a disproportionate burden.

Formal Decision

18. It is directed that the enforcement notice be corrected by deleting the following wording in Paragraph 5 of the notice:

2. Demolish the single storey residential dwelling.

3. Remove from the land any material resulting from carrying out step 2 above.

19. Subject to these corrections 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.

Roy Merrett

INSPECTOR

¹ Ref: APP/U5360/C/16/3158387