
Appeal Decisions

Site visit made on 3 July 2018

by Diane Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2018

Appeal A, Ref: APP/A5840/C/17/3181844

11 Dylways, London SE5 0HN

- 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 Dr Sangeeta Sardiwal against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 10 July 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised operational development at the Property comprising rear dormer roof extension, first floor rear extension, single storey rear extension, rear outbuilding and hard standing to front garden.
 - The requirements of the notice are
 - (a) Demolish the rear dormer window, first floor rear extension, ground floor rear extension, garden building and front garden hard standing.
 - (b) Make good the Property returning the building to its original condition.
 - (c) Remove all debris from the Property.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
-

Appeal B, Ref: APP/A5840/C/17/3181845

11 Dylways, London SE5 0HN

- 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 Dr Sangeeta Sardiwal against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The enforcement notice was issued on 10 July 2017.
 - The breach of planning control as alleged in the notice is without planning permission, the use of the property as a House of Multiple Occupation ('HMO'), Sui Generis use, housing 15 persons.
 - The requirements of the notice are
 - (a) Cease the use of the Property as a HMO (Sui Generis);
 - (b) Remove all locks from internal bedroom doors;
 - (c) Remove one of the kitchens from the Property.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (f) of the Town and Country Planning Act 1990 as amended.
-

Decisions

Appeal A

1. The appeal is allowed insofar as it relates to the alterations to the building and the laying of a hard standing and planning permission is granted on the

application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a single storey rear extension, the extension of the loft with a rear dormer, the erection of a first floor rear extension and the laying of a hard standing on the front garden.

2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the outbuilding and planning permission is refused in respect of the erection of the outbuilding in the rear garden, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is allowed and the enforcement notice is quashed.

Appeal B

The ground (b) appeal

4. The appeal relates to an end of terrace property. The Council allege that there has been a material change of use of the property to a House of Multiple Occupation (HMO), which is a sui generis use also known as a large HMO. This is to distinguish it from a small HMO which falls within Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 and is for occupation by up to six unrelated individuals.
5. In an appeal on ground (b) the burden of proof is firmly on the appellant. She must therefore put forward enough relevant, clear and unambiguous evidence to demonstrate, on the balance of probabilities that the alleged breach of planning control has not occurred, as a matter of fact.
6. The appellant states that the large HMO use had ceased by the time the notice was issued. She states she was granted a licence for a small HMO on 7 February 2017 and on 7 March 2017 she employed a letting agent to find tenants for the property. During May 2017 she was alerted by the Council's Enforcement Officer that the number of occupants exceeded the permitted use. Consequently in June 2017 she contacted the letting agent and started to take back control of the property. She submits a letter dated 13 September 2017 from her builders who confirm that the property was vacant on 10 July 2017, when the notice was issued, and that they were re-decorating it at the time. She also submits a letter from her letting agent dated 13 October 2017 confirming that the tenants were evicted before the 10 July 2017.
7. The Council provide evidence of an unannounced site visit which took place on 8 March 2017 during which the Environmental Health Officer met five people. They explained which rooms they occupied, how much rent they paid and provided details of other people sharing their rooms and neighbouring rooms. In total there were 15 people occupying the property. On one day in June 2017, the neighbouring occupier at No 9 Dylways, the adjoining property, saw 21 individuals entering and leaving the property with keys.
8. At the site visit I saw that there is a double bed in use in part of the single storey rear extension. The remaining ground floor rooms are in use as two kitchens, a lounge and two bathrooms, with one of the kitchens being sited

in the remaining part of the single storey extension. At first floor level there are four rooms, all in use as bedrooms, and each with a double bed. There is also a bathroom at this level which has been enlarged by the addition of a small first floor extension. Within the extended loft there are two rooms. One is used as a bedroom with a double bed and an en-suite bathroom and the other is a small store room containing suitcases.

9. The outbuilding comprises a blockwork construction with no windows that is divided into three rooms, each accessed by a single door from the garden. All rooms are filled with household goods, furniture and leftover decorating materials. As far as I could see, there is no electricity or water supply; the internal walls are unplastered and there are no ceilings.
10. Although there are double beds in the bedrooms, from the belongings in each room it appears each room is currently occupied by a single person. As such, it is likely that the appellant, as she now states, is using the property as a small HMO. The presence of leftover decorating materials and furnishing items in the outbuilding would also support the appellant's submissions that she had taken control of the property and re-decorated it. The neighbour's observations in June would also support the appellant's case in that it is likely this may have been when the tenants were arranging to move out.
11. Whilst the Council accept the evidence that the property had been vacated by the relevant date, they nevertheless seek to cast doubt on the letter from the builders. This is on the basis that they were in a contractual relationship with the appellant. However, I give little weight to their comments as some documentary evidence regarding the use of the property might not have been available to the appellant. It was therefore reasonable for her to approach those parties who were in the most obvious position to give evidence on the use of the property when the notice was issued, namely her builder and letting agent. Statutory declarations and sworn affidavits are not always necessary provided the evidence submitted is sufficient, clear and unambiguous. Furthermore, a notice cannot require the revival of a former use.
12. The Council have not provided any other evidence to contradict the appellant's version of events such as details of any site visits made just before the notice was served. The burden of proof is on her to demonstrate, on the balance of probabilities that the use had ceased by 10 July 2017. It is my overall conclusion that sufficient, clear and unambiguous evidence has been produced to show that the alleged breach of planning control was not occurring as a matter of fact when the notice was issued. The appeal on ground (b) therefore succeeds and the appeal on ground (f) does not fall to be considered.

Appeal A

The ground (c) appeal

13. The allegation lists a number of alterations that have been carried out to the property without planning permission. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without planning permission.

14. The meaning of development is set out in section 55(1) of the Town and Country Planning Act 1990 and includes the carrying out of building and engineering operations on land. Section 55(1A) confirms that such operations include additions to buildings and other such operations normally undertaken by a person carrying on business as a builder.
15. The appellant accepts that operational development has taken place and relies on various classes in the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO) which permit development to a single dwelling house, subject to a number of criteria. She states that the works were completed in February 2016, tenants viewed the building on the 3 March 2016 and a tenancy agreement was signed on the 10 March 2016.
16. The Council are of the view that the building was a single dwelling house but the works were carried out initially to form two self-contained units of accommodation. One made use of the rear addition and the other encompassed the remaining part of the extended dwelling and was used as a large HMO. Thereafter the whole building was used as a large HMO. As such, the operational development does not benefit from permitted development (PD).
17. The starting point, in order to benefit from PD, is whether the appellant can show that the building was laid out and used as a single dwelling house or was last used as a single dwelling house when the works started on site. She does not expressly deal with this point but she does state that the work to implement 'both permissions'¹ and to construct the first floor rear extension, outbuilding and front paving began on the 13 July 2015.
18. I note the prior approval decision for the single storey extension was made on the 8 June 2015; an application for building regulation approval for the extension and the loft works was submitted on 24 June 2015; and a lawful development certificate for a loft extension was granted on the 7 July 2015. The closeness of all these dates before works began on site on 13 July 2015 leads me to conclude, on the balance of probabilities, that the property was still a single dwelling house and that it is unlikely that any other use took place between the June/July dates and the start of the works. This is because it is more than likely that the house was too small to accommodate for example, a large HMO.
19. I now turn to consider whether the operational development meets the GPDO criteria. Any claim of PD must be measured against each and every one of the sub-clauses of the relevant part of Schedule 2 of the GPDO. If any of the limitations, exemptions or provisos are exceeded, then it has been held that the whole development is unlawful, not just that element in excess of PD rights. The appellant has only claimed that the roof extension and the outbuilding are PD. She does not state whether this is because they are severable from each other and she makes no comments on the other aspects of the operational development listed in the notice.
20. PD rights may be claimed for one element or another if either on its own meets the provisions of the GPDO. However, this is on the basis that they

¹ Council reference 15/AP/1670 prior approval not required for single storey rear extension 8 June 2015 and 15/AP/1691 LDC granted for loft extension 7 July 2015

were not carried out as one development, as a matter of fact and degree. I have already noted that the appellant states the 'work' began on the 13 July. The appendices attached to her statement also support this description that the operational development set out in the notice was carried out as one development. The email from the builder, dated the 3 January 2016, refers to 'Completion work' for 'Signing off job' and 'Electric works, Included Shed; Carpentry, Included shed' which all imply that the alterations were all dealt with as one operation. The estate agent's letter dated 13 October 2017 refers to 'the building work' being complete by the time the tenants came to view the building, which also implies the development was carried out as one operation. Finally, the building control Completion Certificate certifies that the works of construction for a 'single storey rear extension and loft conversion' were inspected as one development. Although this does not refer to the first floor rear extension, outbuilding and paving, it adds weight to my finding that on the balance of probabilities all the work carried out to the property was done as one development.

21. For these reasons I conclude the operational development listed in the notice is not PD as set out in the GPDO. The development as constructed therefore constitutes a breach of planning control and the appeal on ground (c) fails.

The ground (a) appeal and the deemed planning application

Main issue

22. As the appeal on ground (b) in Appeal B succeeds there is now only one main issue which is the effect of the development on the character and appearance of the host property and the surrounding area.

Reasons

23. The appeal site is situated in a residential area. Dylways contains a mixture of purpose-built flats and houses, arranged in small groups or terraces, which are surrounded by well-maintained lawns, front and rear gardens. Front boundary treatments tend to be predominantly privet hedges though there are also some low walls. The buildings are simple in appearance with uniform window openings and steeply-pitched, hipped roofs. No 11 is positioned near the top of the road from where there is a view southwards of trees on the horizon. The attractive character and appearance of the area is due in part to the largely consistent line of privet hedges and the distant trees which gives the area a 'garden city' ambience.

The outbuilding

24. The outbuilding is a substantial structure with a rendered finish that extends across the full width of the plot and is situated about 7m from the rear extension. Although the appellant advises it is less than 2.5m in height, nevertheless it is visible above the boundary fencing and has a significant depth. The three rooms within it are accessed from three uPVC doors and are each capable of storing a large amount of items. Whilst there is a large outbuilding at No 9, I consider the structure at the appeal site is out of place as other gardens in the area contain smaller outbuildings which are more akin to garden sheds. The appellant's structure, due to its

size is a harmful and dominant addition to the garden and the surrounding area.

25. For the reasons given I therefore conclude that the erection of the outbuilding results in harm to the character and appearance of the host property and the surrounding area. As such, it does not accord with Strategic Policy 12 of the Southwark Core Strategy (CS)² and Policies 3.12 and 3.13 of the Southwark Plan (SP)³. These require, amongst other matters, that development enhances the built environment. I give significant weight to the SP policies as they are consistent with the National Planning Policy Framework's requirement for good design.

The extensions to the property and the hard standing

26. The single storey rear addition extends across more or less the full width of the property with a depth of approximately 4m. It has a shallow pitch roof with a large roof light and is constructed from materials that are similar in appearance to the host property. Within the main elevation there are two windows and a door that are largely aligned with the upper floor windows, all of which are uPVC, with the same design of opening casements and fanlights. Overall I find it is a sympathetic addition to the property that is not unduly large such that it dominates the rear appearance of the host property and does not look out of place in the wider area where there are like additions.
27. The Council are concerned that the roof light is the only window providing light and outlook to the kitchen within the original part of the dwelling. Notwithstanding that this is a living conditions issue raised in relation to the use of the property as a large HMO; it is my view that the size of the roof light means that this non-habitable room is well-lit.
28. The alterations to the upper floor of the building are more substantial, however they are not readily visible from the street; the principle change from this viewpoint being the creation of a gable end. There is a noticeable gap between the appeal site and the adjacent property at No 13 and I therefore consider that the change in the shape of the roof is not overly prominent.
29. The rear dormer has a flat roof and extends more or less across the full width of the property with a marginal setting in from the side boundaries. However, it is set down from the ridge and set back from the eaves. Even so, it is a prominent and harmful addition to the host property due to its width. I find though that the harm is moderate as a third of the bulk of the dormer is significantly set back from the eaves. This is a reflection of the former staggered hipped roof and together with the expanse of tiled roof over the modest first floor extension to the bathroom; the semblance of a pitched roof is preserved.
30. As with the single storey extension, the alterations make use of matching materials and fenestration which assists with the integration of the extension into the host property. Although there are few dormer extensions in the wider area, the adjacent property at No 13 has an

² Southwark Core Strategy 2011, adopted 6 April 2011

³ Southwark Plan 2007 (saved)

extension at roof level. I therefore consider that the loft extension at the appeal site does not look out of place in this context.

31. I turn now to consider the hard standing in the front garden. The Council submit it is incongruous and that engineering works have taken place to raise the ground without dealing with surface water run-off. Neither party has described the appearance of the garden before the hard standing was laid; in particular, describing the form of the boundary treatment, which is now a low wall.
32. The terrace of which the appeal site forms part is set above the level of the pavement. Consequently garden levels are already raised and at some properties there are steps up to the garden as well as the front door. The gardens at Nos 9 and 13 have both been hard surfaced and are visible from the street over low fences and walls. The works that have taken place at the appeal site are no more visible than these. There are also other hard surfaced front gardens in the area but unlike Nos 9-13, these are largely hidden by tall privet hedges. Overall I consider it is not the creation of a hard standing that harms the character and appearance of the area in this instance, rather it is the general loss of original privet hedges, the removal of which does not amount to development. Whether there was a hedge at the appeal site is not known, however the formation of the hard standing preserves the appearance of the area.
33. For these reasons I therefore conclude that the extensions to the property and the laying of the hard standing are in accordance with Strategic Policy 12 of the CS and Policies 3.12 and 3.13 of the SP.

Conditions

34. The Council have suggested a number of conditions and responded to the appellant's suggestions but not all of them are relevant to the operational development that has taken place, which is now complete. Furthermore, a landscaping condition is not necessary to control the appearance of the hard standing.

Conclusion

35. I have found that the outbuilding causes harm therefore the appeal on ground (a) in respect of this aspect of the operational development fails. I have found no harm in respect of the remaining aspects of the operational development. The ground (a) appeal in respect of these matters therefore succeeds.
36. Given my findings on the ground (a) appeal, the appeals on ground (f) and (g) only relate to the outbuilding.

The appeal on ground (f)

37. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require the demolition of the outbuilding and the removal of the debris from the property. The purpose of the notice is therefore to remedy the breach of planning control.

38. In a ground (f) appeal the onus is on the appellant to submit details of lesser requirements to remedy the breach of control. However, in this case she has not explicitly stated how she thinks the requirements should be varied in respect of the outbuilding. The appeal on ground (f) therefore fails.

The appeal on ground (g)

39. This ground of appeal is that the six month period given to comply with the requirements of the notice is too short and that this should be extended to 12 months. The basis of this appeal is that the extensions to the host building have been integrated with it and un-doing these works would require significant organisation. However, I consider that six months would be a reasonable period of time to carry out the physical works associated with the removal of just the outbuilding. The appeal on ground (g) therefore fails.

Conclusions

Appeal A

40. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Appeal B

41. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended does not need to be considered.

D Fleming

INSPECTOR