The Planning Inspectorate

Appeal Decision

Site visit made on 13 June 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Appeal Ref: APP/M5450/C/18/3204616
166 Kings Road, Harrow HA2 9JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Jonathan Butterworth against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 9 May 2018 under ref. ENF/0031/17/P.
- The breach of planning control as alleged in the notice is "Without planning permission: the construction of a single storey rear outbuilding ("Unauthorised Outbuilding")."
- The requirements of the notice are to:
  "1. Demolish the Unauthorised Outbuilding.
  2. Remove from the Land all debris resulting from compliance with step (1) above."
- The period for compliance with these requirements is 3 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended for the development already carried out, namely the construction of a single storey rear outbuilding on land at 166 Kings Road, Harrow HA2 9JH referred to in the notice, subject to the condition that the rear outbuilding hereby permitted shall not be used at any time other than for purposes ancillary to the residential use of the dwelling known as 166 Kings Road, Harrow HA2 9JH.

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

2. Reading the reasons given in the enforcement notice for its issue, I consider the main issue in deciding whether planning permission ought to be granted for the single storey rear outbuilding is its effect upon the character and appearance of the surrounding area and the visual amenities of the occupiers of neighbouring properties.

3. The planning system is plan-led. The most relevant development plan policies are referred to in the notice, Policy 7.6B: *Architecture* of the London Plan (LP) and Policy DM 1: *Achieving a High Standard of Development* of the Harrow

Council Development Management Policies (DMP). These policies are consistent with the broad thrust of the National Planning Policy Framework on achieving well-designed places. The policies are supported by the Council's adopted Supplementary Planning Document: *Residential Design Guide* (SPD). Paragraphs 6.19 (dealing with gardens) and 6.78 (dealing with outbuildings) of the SPD both have some relevance to the case.

4. The appeal property is a mid-terraced house that has been extended to the rear. The subject outbuilding has been erected at the bottom end of the rear garden. A retrospective planning application (ref. P/2765/17) for the outbuilding for use ancillary to the main dwelling was refused on 12 September 2017 for the same reasons as those included at paragraph 4(2) of the enforcement notice. I have no reason to believe that drawing no. BBD/1726/01 submitted with that application is inaccurate, so I have had regard to it.

5. I saw that the outbuilding seems to be used for the purposes shown on that drawing. The 2 main rooms are set out as a leisure room and a store. A WC and utility area occupy the 2 smaller rooms. The Council has raised no concerns about the use of the outbuilding and does not set out to establish that, in terms of general land use planning principles, the outbuilding represents an inappropriate development of a residential garden.

6. The surrounding area is residential in character. The opposing rear gardens in Kings Road and Ravenswood Crescent hereabouts are fairly deep. They are separated by an unmade alleyway or service lane. This alleyway has locked gates at the access points from the public roads such as the locked gates between 156 and 158 Kings Road. The outbuilding is not noticeable from any public vantage points, even when looking down any part of the alleyway from any public road. In private views from housing in the locality I am in no doubt that the outbuilding would be primarily regarded as another one at the bottom end of a garden in the vast assortment of outbuildings in the surrounding area which vary in terms of size, roof style, height and building materials.

7. The Council has not alleged that the cumulative footprint of the outbuilding and the rear extension exceeds 50% of the rear garden, a relevant restriction in paragraph 6.19 of the SPD. This does not point to a building with excessive scale or site coverage. The garden space that remains is more than sufficient for practical use and to reflect the established character of the locality of terraced houses, back gardens and outbuildings. With a footprint of about 33.5 sq. m and being single storey in form, the outbuilding is not out of proportion with the size of the original dwelling or excessive in size in itself.

8. The appellant has gone to some length to create a building that, in my view, looks attractive. The roof tiles, fenestration and bricks (in the elevation facing the garden) match those used in the ground floor rear extension to the house. The roof follows the original pitched roof design for this terraced house.

9. The inclusion of a tiled pitched roof inevitably results in the building projecting above the boundary features and above 2.5 m, the maximum height recommended in paragraph 6.78 of the SPD for where outbuildings are within 2 m of the site boundaries, as is the case here. Such guidance should not, however, be applied prescriptively to the exclusion of all other considerations.

10. Here, the roof ridge reaches about 3.75 m high, whilst the eaves, below which is found the bulk of the outbuilding, reach only about 2.45 m high. The overall appearance is more pleasing than if the appellant had left a wide expanse of flat roof 2.5 m high, just above the height of the existing eaves, to comply with the SPD or permitted development rights. Looked at another way, the appellant could only have pursued a building with a pitched roof to accord with the SPD if he had kept the building about 1.35 m wide (i.e. 2 m away from the side boundaries) which would have been a pointless task. Moreover, the Council does not appear to have attached any weight to the pre-existing outbuilding in this rear garden which had a very similar footprint and siting and a pitched roof that was aligned front to back, rather than across the width of the plot. From the aerial photographs provided by the appellant, what has been provided should be fairly judged as a replacement outbuilding of similar dimensions.

11. Whilst the outbuilding is taller than most of the domestic outbuildings in the immediate vicinity of the site, that is a product of its superior design and I did not find it to be so seriously out of keeping with its setting as to warrant refusal of planning permission. Given its location adjacent to the rear alleyway, the depth of the back gardens in Kings Road and Ravenswood Crescent, the limited bulk of the building on account of its eaves height and roof design and the presence of boundary structures and other outbuildings, the subject outbuilding does not appear unduly dominant, overbearing or obtrusive in views from the rear-facing windows and back gardens of the neighbouring properties.

12. There have been third party representations of support in response to this appeal from occupiers of the 2 properties (164 and 168 Kings Road) most directly affected by the development. This confirms my view that the outbuilding does not have an adverse impact upon the visual amenities of the occupiers of neighbouring properties.

13. The appellant has referred to the outbuildings at the rear of 125 Kings Road and 1 Lulworth Close (not Crescent), both of which are clearly visible in public views from Clovelly Way, the former outbuilding being approved by the Council in December 2016. I have also noted the appeal decision dated 13 July 2015 at Document 10 of the appellant's appeal statement relating to a site in Pinner. I can understand how the appellant might be somewhat perplexed about the outcome at 125 Kings Road when compared to his own experience. That said, it is an established planning principle that each application and appeal ought to be assessed on their own merits and these other cases have played very little part in the decision I have reached.

14. Drawing these threads together, whilst the outbuilding does not comply with all the technical guidelines for outbuildings as set out in paragraph 6.78 of the SPD, it does not disrespect its overall aims as I conclude on the main issue that the single storey rear outbuilding does not have any harmful effects upon the character and appearance of the surrounding area or upon the visual amenities of the occupiers of neighbouring properties. In this regard I find no conflict with LP Policy 7.6B or DMP Policy DM 1 insofar as they seek to ensure that developments exhibit a high standard of design and layout that is not detrimental to local character and appearance and a high standard of privacy and amenity for neighbouring occupiers, having regard to, amongst other things, the visual impact of development when viewed from within buildings and outdoor spaces.

15. Used for ancillary purposes, there is no reason to believe the outbuilding would result in a loss of privacy or in undue noise and disturbance for neighbouring occupiers. Both the Council (in the delegated application report on the planning application) and the appellant (in the appeal statement) recognised the need for a condition to control the use of the outbuilding accordingly. I find that it is necessary and reasonable for a condition restricting the outbuilding to ancillary usage in order to reflect the purposes stated by the appellant and because the use of the outbuilding for other purposes, such as separate self-contained residential accommodation, would raise wholly different planning considerations.

16. I have had regard to all other matters raised in the written representations but my finding on the main issue is decisive. I find nothing to outweigh the conclusion I have reached that the appeal on ground (a) and the deemed planning application should succeed. Conditional planning permission has been granted.

Grounds (f) and (g)

17. The enforcement notice has been quashed as a result of the success of the appeal on ground (a). Grounds (f) and (g) no longer fall to be considered.

Andrew Dale

INSPECTOR