



Appeal Decisions

Site visit made on 30 July 2019

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 21 August 2019

**Appeals Ref: APP/A5270/C/18/3207704, 05 & 06
2, 4 & 6 Sunningdale Avenue, Acton, London W3 7NS**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Sofiane Belbegra, Djamila Belbegra & Widad Belbegra against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 22 June 2018.
 - The breach of planning control as alleged in the notice is the erection of an outbuilding containing 3 accommodation units ancillary to the main dwelling.
 - The requirements of the notice are to demolish the outbuilding and remove all resulting debris and materials from the site.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Ground (b)

2. This ground is that matters in the enforcement notice have not occurred, i.e. the erection of an outbuilding containing 3 accommodation units ancillary to the main building. The building is there, so it is the purpose of the building that is questioned by the appellant. The appellant contends that the use of the outbuilding to provide ancillary accommodation has not commenced. The building has been used for storage of domestic material, which was the case at the time of the site inspection.
3. The enforcement notice is not alleging use, but erection of the building containing 3 accommodation units. The way the buildings have been plastered and finished, the layout of electrical fittings, smoke alarm and a floor to ceiling tiled shower room all with a shower fitting and one with wc and basin and some floor finishes all lead to a conclusion that construction is for residential accommodation. While the units are not finished, it is self-evident from their physical arrangement that their purpose is to provide accommodation. The fact that use has not yet commenced, and the building is currently used for storage, does not nullify the purpose of the building that has been constructed. This is all reinforced by the retrospective application made for the building,

which attached drawing DP/6273/JC/03 that showed a bed area and bathroom on the plan and referred to ancillary accommodation.

4. I conclude that the building is clearly to provide ancillary primary residential accommodation in association with the main dwellings.
5. The appeal on ground (b) fails.

Ground (a)

6. The development plan includes the London Borough of Ealing Development Management, Development Management Document [MD] and The London Plan [LP]. MD Policy 7.4 notes that development in Ealing's existing built areas should complement their street sequence, building pattern and scale. MD Policy 7B indicates that new development must achieve a high standard of amenity for users and or adjacent users by ensuring high quality architecture and good levels of privacy. MD Policy 7D sets out space standards and LP Policy 7.4 notes development should have regard to the form, function and structure of the area, place or street and the scale, mass and orientation of the surrounding buildings. LP Policy 7.6 notes buildings should be of the highest architectural quality, be of a proportion, composition, scale, and orientation that enhances, activates and appropriately defines the public realm.
7. The ground (a) appeal and deemed planning application relate to the allegation. The current building was constructed some time in 2017 and a retrospective application was made for its retention as a building for ancillary use with the associated main dwellings. The application was refused as was a subsequent appeal. Therefore, the planning merits of the development have been very recently considered and I have no reason to disagree with that decision (APP/A5270/W/17/3188011).

Character and Appearance

8. The road in which the appeal buildings are located is mainly residential, but there are commercial properties across a service road that runs to the side and rear of the properties. There is no evidence that primary residential accommodation at the rear of amenity spaces is a common occurrence in the area. Rear areas of the houses can be seen from the upper floors of surrounding buildings.
9. The provision of primary accommodation in the outbuildings at the rear of the main dwellings is at odds with the surrounding area. It is out of keeping with the street sequencing and building pattern and is not an acceptable position for further primary living accommodation and is harmful to the character and appearance of the area.
10. The building provides a blank high wall around the perimeter of the site which is not an attractive feature or representative of good design and is about 300mm higher than that previously permitted for outbuildings. I appreciate that there are some other tall walls at the backs of other buildings, but in this instance the tall blank wall spans across the backs of three curtilages and is poor design.
11. The development does not accord with LP Policy 7.4 & 7.6 and MD Policy 7.4.

Living Conditions

12. If gyms/storage had been provided, it would reduce the outside amenity space for the occupants. However, the gym/storage area would have provided internal amenity space for the occupants in lieu of the outside area. The proposal takes up outside amenity space while adding more primary accommodation.
13. Housing Supplementary Planning Guidance and the Ealing Development Management Development Plan sets out various types of space provision, including gardens. This is a fairly complicated policy with some off-setting allowed in relation to other open space. There is a minimum requirement of 5sqm for a one/two bed property with 1 additional sqm for each additional occupant. The parties have not set out the requirement for these dwellings against the area provided, so I am unable to state whether it complies with the policy or not in quantitative terms.
14. However, because the space is relatively small and narrow, the privacy of those occupying the rooms would be severely compromised when others in the house were using the amenity space, which would inevitably be directly outside of the windows, and this is an unacceptable arrangement.
15. I conclude that the development would cause unacceptable harm to the living conditions of occupiers of the premises and conflicts with MD Policy 7B.

Ground (f)

16. The appellant is arguing that the development reasonably accords with the planning permissions already received for individual outbuildings for the 3 properties to provide storage and gym. The Council says that was for single buildings associated with the individual dwellings and not a single building spanning the 3 properties. While I acknowledge that is the case, it is not dissimilar to the way a terrace is constructed with cross division at the boundary positions. In this case a solid wall is provided between the 3 units at the approximate position of the boundaries and I have considered this as three individual 'terraced' units.
17. However, the building is also considerably different from the approved gym being about 300mm higher, which is considerable, particularly when seen from the adjacent road where there is a large blank wall facing the road. I accept that the neighbouring property also has a tall wall, but the extent of this wall has a considerable impact that would be very different from that proposed for the gym and store, because of the height difference.
18. It is also clear from the previous building that was on the site and had to be removed through enforcement action, from the previous planning application for retention of ancillary accommodation and the way the building has been constructed with en-suite shower rooms in each unit, that the purpose of the building is for further primary accommodation and not a gym and store.
19. While I accept the previous permission would allow construction of something similar, the situation has changed in that the use is no longer single dwelling houses, but large houses in multiple occupation. It is my view that on the balance of probability the intention from the start has been to provide primary residential accommodation. The building as built was not for a gym, but constructed from the beginning as primary residential accommodation. I

therefore do not accept that there is a genuine fall back position for the gym/store as proposed in the previous planning permissions, even allowing for the existing building to be reduced in height to accord with the planning permission. There is also no permitted development right for similar outbuildings associated with large houses in multiple occupation. I therefore consider that it is reasonable and necessary to require removal of the outbuildings.

20. The appeal under ground (f) fails.

Graham Dudley

Planning Inspector