



Appeal Decisions

Site visit made on 12 August 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2019

Appeal A: APP/A5270/C/18/3213407

Land at 177 Tentelow Lane, Norwood Green, Southall UB2 4LP

- 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 Suppiah Rajakulendran against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 29 August 2018.
 - The breach of planning control as alleged in the notice is: without planning permission, the erection of a separate self-contained residential dwelling at the rear of the premises.
 - The requirements of the notice are:
 1. Cease the use of the outbuilding as a separate self-contained residential dwelling
 2. Demolish the outbuilding
 3. Remove all resultant debris.
 - The period for compliance with the requirements is three 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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Appeal B: APP/A5270/C/18/3213408

Land at 177 Tentelow Lane, Norwood Green, Southall UB2 4LP

- 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 Mrs Yogamany Rajakulendran against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 29 August 2018.
 - The breach of planning control as alleged in the notice is: without planning permission, the erection of a separate self-contained residential dwelling at the rear of the premises.
 - The requirements of the notice are:
 1. Cease the use of the outbuilding as a separate self-contained residential dwelling
 2. Demolish the outbuilding
 3. Remove all resultant debris.
 - The period for compliance with the requirements is three 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. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

Appeal A

1. It is directed that:

- The enforcement notice be corrected in the first requirement of paragraph 5 by deleting “outbuilding as a” and corrected in the second requirement by deleting “outbuilding” and substituting it with “separate self-contained residential dwelling at the rear of the premises.”
2. Subject to the correction above, 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.

Appeal B

3. It is directed that:
- The enforcement notice be corrected in the first requirement of paragraph 5 by deleting “outbuilding as a” and corrected in the second requirement by deleting “outbuilding” and substituting it with “separate self-contained residential dwelling at the rear of the premises.”
4. Subject to the correction above, the appeal is dismissed, and the enforcement notice is upheld.

The Enforcement Notice and Grounds of Appeal

5. The requirements set out in paragraph 5 of the enforcement notice refer to the building the subject of the alleged breach as “the outbuilding.” However, the alleged breach on planning control is the erection of a separate self-contained residential dwelling at the rear of the premises. In the interests of consistency I will therefore correct the first requirement of paragraph 5 by deleting “outbuilding as a” and corrected in the second requirement by deleting “outbuilding” and substituting it with “separate self-contained residential dwelling at the rear of the premises.” Such a correction would not result in any injustice as it has been made solely in the interests of consistency.
6. I have noted that appellants’ confirmation that they do not wish to pursue a case on ground (c) and so I have dealt with the appeal on that basis.

Reasons

Appeals A and B: ground (b)

7. The issue is whether as a matter of fact a separate self-contained residential dwelling has been erected on land at the rear of 177 Tentelow Lane.
8. The appellants contend that the building which was completed in late January 2018 has never been used as a residential dwelling. It has been granted building regulation approval for a detached outbuilding and the intended purpose is for use as a summer/garden house and gym, and a place for the family to enjoy and have social gatherings/barbecues. There has never been any intention to use the building as a residential dwelling. There is a treadmill in the building and it is the use of this equipment that is the primary use within the building. The furniture and other domestic items are being stored and are incidental to the enjoyment of the main dwelling.
9. Appendix 2 of the Council’s Statement includes photographs taken during their visit and inspection of the building in August 2018. The photographs show that the building has been constructed and equipped with a full fitted kitchen, including oven, hob with extractor hood, washing machine, fridge freezer and a

separate bathroom. The building also has full central heating with radiators and its own boiler. Whilst there is a treadmill in the building, the photographs also show a large wardrobe, double bed, chair and side tables with books and a computer. Consequently, at the time of the Council's inspection the building was laid out as and could function as a dwelling, having all the facilities required for day-to day private domestic existence¹. Furthermore, at the time of my site visit I noted that although the bed had been removed and was being stored in an adjacent building, the building retained a functioning kitchen and bathroom as well as many other domestic items. The dwelling was constructed as a single buildings project and the evidence does not suggest that the kitchen and bathroom were added after a passage of time or an initial incidental use.

10. In addition, although clearly situated within the rear garden of No 177, it is possible to access the building without entering the main dwelling, via an external door and covered link which has been constructed to the side of this property. Therefore, despite the appellant gaining building regulations for a building described on the submitted plans as a detached outbuilding², the building that has been erected clearly has the characteristics of, and on the balance of probability, is a dwelling.
11. In conclusion, a separate self-contained residential dwelling has been erected on land at the rear of 177 Tentelow Lane and the appeals on ground (b) do not succeed.

Appeal on ground (a), deemed planning permission (Appeal A only)

Main Issues

12. The main issues in this case are:

- The effect on the character and appearance of the area;
- Whether or not the dwelling would provide adequate living conditions for future occupiers; and
- The effect on the living conditions of neighbouring residents.

Character and appearance

13. Tentelow Lane is situated in a residential area which is predominantly characterised by semi-detached and detached properties with driveways fronting onto the street and deep and verdant back gardens. In the vicinity of the appeal site many of the gardens have detached outbuildings within them, of varying shapes and sizes.
14. Policies 7.4 and 7B of Ealing Development Management Development Plan Documents, adopted 2013 (DMDPD), together with Policies 7.1, 7.4 and 7.6 of the London Plan (MALP), 2016 (LP) seek to ensure, amongst other criteria, that new development is of a high standard of design, and complements the existing building pattern, street sequence and local character, and has a positive visual impact on the residential environment.
15. I appreciate that an outbuilding used for purposes incidental to the residential use of the main dwelling would not be uncharacteristic within the rear garden

¹ *Gravesham BC v SSE and O'Brian*, [1983] JPL 307

² Drawing No: A-101, dated October 2017, submitted by Appellant in support of the appeal.

of the main dwelling. However, a self-contained dwelling has very different characteristics. Where a new dwelling is to be formed it should conform to the design standards for new residential units and be appropriately located. In this case the dwelling is situated in a backland location which conflicts sharply with the pattern and layout of existing dwellings in this residential neighbourhood. The dwelling has no street frontage, no private amenity space and its overall form, siting and appearance at the end of a private rear garden and in close proximity to boundary fences, has resulted in a form of development which is poorly related to the existing character of the area. It does not therefore have a positive visual impact on the residential environment.

16. Although there may be other buildings of a similar type and in similar locations at the rear of houses nearby, there is no demonstrable evidence before me that any of those other structures have been permitted by the Council to be used as separate self-contained units. I therefore give this consideration limited weight.
17. I conclude that the erection of the separate self-contained residential dwelling has a harmful effect on the character and appearance of the area. It conflicts with the development plan and in particular with Policy 7.4 and 7B of the DMDPD and Policies 7.1, 7.4 and 7.6 of the LP, the aims of which are set out above.

Living conditions of future occupiers

18. The dwelling is situated within the rear garden of No 177 and there is no delineation between No 177's garden space and the new dwelling. Consequently, there would be an infringement of privacy for future occupiers of the dwelling at times when the existing garden area is utilised by the occupants of No 177. Furthermore, the new dwelling does not have any private garden space available to it. The LP and the Mayor of London's Supplementary Planning Guidance, 2016 (HSPG) and Policy 7D of the DMDPD seek to ensure that new housing provides a minimum of 5m² private outdoor space for a 1-bedroom unit. In addition, that garden space must be fit for purpose, genuinely private, and the amount and provision should respond to its physical context, respecting established local character. In the absence of any private external amenity space available to this property, where occupiers could sit out, play or dry clothes, the dwelling would not provide for acceptable living conditions for future occupiers. The presence of areas of public open space close by would not be appropriate mitigation for this deficiency, which relates to private external amenity space.
19. In addition, the dwelling only has a total floorspace of approximately 28.5m² (GIA). The LP states that the design of all new housing development should enhance the quality of local places and Policy 3.5 of the LP and Policy 3.5 of the DMDPD requires minimum space standards³ as set out in Table 3.3 of the LP to be adhered to. Policy 7B of the DMDPD seeks to ensure that new development achieves a high standard of amenity for users and adjacent users.
20. The floorspace available in this dwelling is significantly less than the required space standards set out in the development plan for a one-bedroom dwelling for either one or two persons. The limited size of this unit to accommodate a reasonable amount of furniture, space for circulation and storage, and an

³ Technical housing standards – nationally described space standards. DCLG 2015.

absence of any clearly defined private external amenity space available to it, results in a dwelling which cannot, to my mind, provide for satisfactory living conditions for future occupiers.

21. I conclude that the dwelling would not provide for acceptable living conditions for future occupiers, with particular regard to internal and external space. It would conflict with the development plan, including the strategic aims of Policies 1.1 and 1.2 of Ealing's Development (Core) Strategy, 2012 which seek to establish healthy and safe places to live. I also find conflict with the Policies 7B and 3.5 of the DMDPD and Policy 3.5 of the LP, the aims of which are set out above.

Living conditions of neighbouring residents

22. The dwelling does not have a street frontage and access to it is through the rear garden and via a link building which adjoins the side of No 177. The proximity of this access and position of the dwelling at the end of No 177's rear garden means that the coming and goings of any occupiers of the dwelling would be intrusive both in terms of privacy, as well as noise and disturbance to the occupiers of No 177 and their neighbours.
23. Furthermore, the use and activities associated with the dwelling, including lighting, cooking smells and visitors/deliveries would not be sympathetic to, nor would they be expected to take place in a private rear garden where it is not unreasonable for residents to be able to enjoy some peace and tranquillity. The harm would be exacerbated by the position of the dwelling which is close to the boundaries of neighbouring gardens and clearly visible from their rear windows.
24. I conclude that the dwelling would have a harmful effect on the living conditions of neighbouring dwellings. The dwelling conflicts with the development plan and in particular with Policy 7A and 7B of the DMDPD and Policy 3.5 of the LP which seek to ensure, amongst other things, a high standard of amenity for existing and future users of land and buildings.

Other Matters

25. I have taken into consideration that appellant's suggestion that a condition could be imposed to restrict the use of the building to non-residential purposes ancillary to the main dwelling. However, the deemed planning application is for the operational development which has been carried out, and in this case, it is the erection of a separate self-contained residential dwelling. Consequently, it would not be reasonable to impose the suggested condition which would have the effect of taking away the benefit of the deemed application. Furthermore, there would be conflict with paragraph 55 of the National Planning Policy Framework which sets out the tests which need to be met if a planning condition is to be imposed.
26. I appreciate that the appellant is frustrated that he has not been able to effectively engage or communicate with the Council. However, this is not a matter for my consideration in this appeal.

Conclusion

27. There is conflict with the development plan, and I find no material considerations of sufficient weight to justify a grant of planning permission for

what is alleged in the notice. The objections to the unauthorised development could not be satisfactorily overcome by the imposition of planning conditions. I conclude that the appeal on ground (a) and the deemed planning application should not succeed.

Appeals A and B: ground (f)

28. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
29. Section 173 of the Town and Country Planning Act, 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
30. The appellants consider that the requirements are excessive and that instead they would consider, for example, removing some of the kitchen units if that would remove any concern that the place could be used as a residential dwelling. The destruction of the outbuilding and removal of debris would be irrational and excessive.
31. However, the alleged breach is the erection of a self-contained residential dwelling and not just the use of the building. The breach can therefore only be remedied by the cessation of the use and the removal of that building. There are no lesser steps that would achieve the statutory purpose behind the notice.
32. The appeals on ground (f) must fail.

Human Rights

33. I have taken into consideration the Human Rights Act, 1998, which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights, and I recognise that dismissal of the appeal would interfere with the appellant's rights under Article 1 of the First Protocol. However, given the harm identified, the action is in accordance with the law and pursues legitimate aims of protecting the environment in the public interest and is necessary and proportionate to the situation.

Conclusion

34. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the application deemed to have been made under section 177 (5) of the 1990 Act, as amended.

Elizabeth Pleasant

INSPECTOR