



Appeal Decision

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 Ref: APP/A5270/C/18/3210553

Land at 49 Burns Avenue, Southall UB1 2LR

- 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 K.M. Pankhania against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 23 July 2018.
 - The breach of planning control as alleged in the notice is: without planning permission, the material change of use of outbuilding to two separate self-contained residential units one of which (marked with an 'X' and described in this notice as the Rear Outbuilding) is in separate self-contained residential use.
 - The requirements of the notice are:
 - Cease the separate self-contained residential use of the Rear Outbuilding;
 - Remove the kitchen from the Rear Outbuilding and its associated drainage facilities, each of which facilitates the separate residential use of the Rear Outbuilding;
 - Remove the bathroom from the Rear Outbuilding and its associated drainage facilities, each of which facilitates the separate residential use of the Rear Outbuilding;
 - Remove any internal walls which facilitate the use of the Rear Outbuilding as a separate self-contained residential unit;
 - Remove the external door to the Rear Outbuilding;
 - Remove any resulting debris from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that:

- The enforcement notice be corrected in paragraph 3 by the deletion of the wording of the alleged breach of planning control and the substitution of "The material change of use of the Land from use as a single dwelling house to use as two separate dwelling houses by the formation of a new separate self-contained residential unit in the outbuilding (marked with an X and described in this notice as Rear Outbuilding)."

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.

Preliminary Matters

3. An enforcement notice alleging the material change of use of this outbuilding to use as a self-contained dwelling was issued by the Council on 16 May 2016, and subsequently upheld on appeal with a minor variation on 2 February 2017. The notice required the cessation of the use of the outbuilding as an independent self-contained residential dwelling and the removal of its kitchen, bathroom, internal partitions, fencing and access gate. The compliance date was the 2 May 2017.
4. The Council has advised that when they carried out a compliance inspection of the outbuilding in June 2018 it was revealed that a self-contained residential unit had also been formed with the rear part of the outbuilding. The building had been split into two units, each with its own external door, kitchen, shower room/toilet. Whilst the Council accept that the front unit is now in occupation as part of the primary residential use of main dwelling No 49, it is alleged that the Rear Outbuilding is in use as a separate self-contained residential unit. It is the alleged separate self-contained residential unit which has been created in the Rear Outbuilding which is the subject of this appeal.

The Enforcement Notice

5. The alleged breach of planning control at paragraph 3 of the enforcement notice is, without planning permission, the material change of use of outbuilding to two separate self-contained residential units one of which (marked with an 'X' and described in this notice as the Rear Outbuilding) is in separate self-contained residential use. However, as set out in the preliminary matters above, the Council accept that the front part of the outbuilding is now in occupation as part of the primary residential use of the dwelling at No 49. Consequently, the outbuilding is not, as alleged in the breach of planning control, in use as two separate self-contained residential units but it is the use of the Land at No 49 which has changed to two separate dwelling houses.
6. Therefore, whilst the notice is clearly directed at the new dwelling in the Rear Outbuilding, the description of the allegation needs to be corrected to read: "The material change of use of outbuilding to two separate self-contained residential units one of which (marked with an 'X' and described in this notice as the Rear Outbuilding) is in separate self-contained residential use." Both parties have had an opportunity to comment on this correction and no objection was raised. I am satisfied that the correction will not cause injustice to the appellant or the local planning authority.

Appeal on ground (a), deemed planning application

Main Issues

7. The main issues in this case are:
 - Whether or not the new self-contained residential unit provides adequate living conditions for existing and future occupiers, with particular regard to space, outlook, privacy and private amenity space;
 - The effect of the new self-contained residential unit on the living conditions of neighbouring residents, with particular regard to noise and disturbance; and

- The effect of the new self-contained residential unit on the character and appearance of the area.

Reasons

Living conditions of future occupiers

8. The self-contained residential unit forms part of a larger outbuilding which is situated within the rear garden of an end of terraced property, No 49 Burns Avenue. Its immediate surroundings are characterised by residential gardens and their associated domestic paraphernalia, including outbuildings/sheds. The Rear Outbuilding the subject of this appeal takes access from a narrow alleyway and pedestrian gate which lead onto the adjoining footpath that links Burns Avenue to Masefield Avenue and North Road.
9. The unit has a total floorspace of approximately 18m² (GIA). With the exception of a small shower/toilet within one corner of the room, it is laid out as a single space with kitchen units, a bed and wardrobe. The space is lit by a rooflight and there is a single window adjacent to the entrance door which looks towards the narrow alley and an outbuilding associated with a neighbouring property. There is no external amenity space.
10. Policy 7B of Ealing's Development Management Development Plan Document (adopted 2013) (DMDPD) seeks to ensure that new development achieves a high standard of amenity for users and adjacent users. Policy 3.5 of the DMDPD relates specifically to the quality and design of housing development, and requires all new housing to meet or exceed the minimum space standards set out in the London Plan and the Mayor of London's Housing Supplementary Planning Guidance, 2016 (HSPG).
11. The London Plan, 2016 (LP) states that the design of all new housing development should enhance the quality of local places. Policy 3.5 of the LP requires minimum space standards¹ as set out in Table 3.3 of the LP to be adhered to and states that development proposals which compromise the delivery of elements of this policy, may be permitted if they are demonstrably of exemplary design and contribute to the achievement of other objectives of this Plan.
12. The floorspace available for the residential unit in this appeal case is significantly less than the required space standards set out in the development plan for a one-bedroom dwelling with a shower room (37m² GIA). Whilst the rooflight and window provide adequate natural daylight, the accommodation has no meaningful outlook, with only a single window providing views onto a narrow alley. In addition, the outlook from the window is towards, and in close proximity to, a neighbouring building which presents privacy issues. I noted on my site visit that the window had a blind on it which remained closed. Consequently, the space within the unit feels oppressive and closed in.
13. The LP, HSPG and Policy 7D of Ealing's DMDPD, together with Ealing's Adopted Supplementary Planning Document, Planning New Garden Space, 2015 (SPD) seek to ensure that new housing provides a minimum of 5m²

¹ Technical housing standards – nationally described space standard. DCLG 2015.

private outdoor space for a 1-bedroom unit. Furthermore, that garden space must be fit for purpose, genuinely private, screened from roads and not permanently overshadowed. In this case the unit does not have any external amenity space. The appellant has suggested that a portion of the existing garden to No 49 could be enclosed and utilised for that purpose. However, that garden area would be divorced from the Rear Outbuilding and would not to my mind provide a functional amenity space for the occupiers of Rear Outbuilding. In addition, its use in that location would undoubtedly result in noise and disturbance to the existing occupiers of No 49. I also appreciate that there are public open spaces and parks close by. However, whilst those areas are suitable for recreation, they do not provide a private space for sitting out, drying clothes or for external storage of domestic items which are necessary for everyday occupation of a dwelling, and would not justify a total absence of private amenity area for the dwelling.

14. The residential unit in this case is demonstrably inadequate both in terms of size and outlook, even for a single person. Whilst the unit may be providing a place to sleep, wash and prepare food, the space is constrained and oppressive and is not to my mind a decent place to live, nor of sufficient size and quality to provide acceptable living conditions for all future occupiers.
15. I conclude that the self-contained residential unit does not provide for acceptable living conditions for existing and future occupiers, with particular regard to space, outlook, privacy and private amenity space. It conflicts 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, and in particular with Policies 3.5, 7B and 7D of the DMDPD, Policy 3.5 of the LP, the HSPG and SPD, the aims of which are set out above.

Living conditions of neighbouring residents

16. The Rear Outbuilding is situated within the rear garden of No 49 and forms part of a larger outbuilding which is in use as accommodation ancillary to No 49. In addition, it adjoins a public footway and the back gardens and outbuildings belonging to neighbouring residential properties. The use of the self-contained residential unit would be apparent from activity within and around the building, lighting and comings and goings at all times of the day. In addition, the noise and disturbance generated would be far greater than if the outbuilding were only used for the enjoyment of the occupants of the main dwelling, No 49.
17. The appellant has suggested that any loss of outlook or privacy could be minimised by the introduction of boundary treatment. However, given the proximity of the Rear Outbuilding to its boundary with neighbouring properties, the introduction of high boundary fences would only serve to further limit the outlook for the occupiers of the building and would have a harmful effect on their living conditions. The installation of boundary treatment would not therefore be a reasonable form of mitigation.
18. I conclude that the new self-contained residential unit has a harmful effect on the living conditions of neighbouring residents, with particular regard to noise and disturbance. The proposal would conflict with the development plan, and

in particular with Policy 7A and 7B of the DMDPD, Policy 3.5 of the LP and the National Planning Policy Framework all of which seek to provide a high standard of amenity for existing and future users of land and buildings.

Character and appearance

19. The character of the area is predominantly residential with properties on Burns Avenue and North Road/ Masefield Avenue having deep back gardens, many of which have large outbuildings within them. However, there is a significant difference between a building that is used as an outbuilding incidental to the enjoyment of a main residence and use as a self-contained new dwelling unit. Where a new residential unit is to be formed it should conform to appropriate design standards for new residential units and should be appropriately located. Placing a residence in a tight space at the rear of another building's garden, close to high boundary walls/fences is extremely poor urban design and unacceptable. The residence does not have a proper frontage, has poor access along the side of the main house via a narrow alleyway and is poorly related to the existing pattern of residential development.
20. I appreciate that there are other rear garden structures of a similar type and in a similar location at the rear of a number of other houses in the road. However, the specific circumstance of these other outbuildings and their uses are not entirely clear. There is no demonstrable proof before me that any of those other outbuildings have been permitted by the Council to be used as separate, self-contained residential units. In any event, the existence of other unsatisfactory units of accommodation would not justify the harm that I have found in this appeal case and each case must be considered on its own merits. It is on this basis that I have made my decision.
21. I conclude that the self-contained unit in this location has a harmful effect on the character and appearance of the area. It conflicts with the development plan, and in particular with Policies 7.4 and 7B of the DMDPD which seek to ensure, amongst other criteria, that new development in Ealing's existing built up areas complement the existing building pattern and street sequence and has a positive visual impact. I also find conflict with Policies 7.4 and 7.6 of the LP which requires new development to be of a high standard of design, have regard to the pattern and grain of the existing spaces and streets and to protect and enhance London's residential environments and attractiveness as a place to live. There is however no conflict with Policy 7.8 of the LP which has been referred to by the Council. Policy 7.8 relates specifically to heritage assets and archaeology which are not matters for consideration in this appeal.

Other Matters

22. I have taken into consideration the Human Rights Act 1998 and the European Convention on Human Rights and I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and 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. Refusal of planning permission is necessary and proportionate to the situation.

Conclusion

23. 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 therefore that the appeal on ground (a) and the deemed planning application should not succeed.

Appeal on ground (f)

24. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
25. Section 173 of the Town and Country Planning Act, 1990 (as amended) (1990 Act) indicates that there are two purposes which the requirement 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.
26. The appellant considers that the requirements are excessive and in particular, that the removal of the bathroom, internal walls and external door are not necessary. The appellant contends that it would not be unreasonable to retain the internal walls, external door and bathroom as he may wish to use the building for storage of household items and a separate home gym area. If the kitchen units were to be removed, the bathroom alone would not result in a separate self-contained unit.
27. Section 173 (5) of the 1990 Act gives the power to require the alteration of buildings for the purposes of remedying the breach. A notice directed at a material change of use may require the removal of works integral to and solely for the purposes of facilitating the unauthorised use, even if such works on their own right might not constitute development, so that the land is restored to its condition before the change of use took place.
28. The bathroom and external door within the Rear Outbuilding, together with the internal walls that facilitated the new self-contained unit were all integral to, and part and parcel of the material change of use. There is no evidence that these were installed for a different purpose. Consequently, I am satisfied their removal does not exceed what is necessary to remedy the breach and so that the land is restored to its condition before the change of use took place. The carrying out of those works would not prevent the building from being used in conjunction with the front half of the building as an outbuilding which is incidental to or part of the primary residential use of the main dwelling.
29. I have taken into consideration the appellant's claim that the bathroom and kitchen have been in place for more than four years. However, I have not been provided with any substantive evidence that would support that claim. I agree with the Council that even if these items were immune or not development, their removal can still be required if they facilitate the unlawful use, except to the extent that they had a part of a previous lawful use and could play a part in a return to that use. As set out in the paragraph above I

have no evidence that these works were installed for a different purpose. The breach can only be achieved by the cessation of the unauthorised use and removal of the works that facilitated that use. There are no lesser steps that would achieve the statutory purpose behind the notice.

30. Therefore, the appeal on ground (f) must fail.

Conclusion

31. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with correction 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