



Appeal Decision

Site visit made on 3 October 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2019

Appeal Ref: APP/A5270/C/18/3208087

94 Twyford Avenue, Acton, London W3 9QF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Deepak Kainth against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 22 June 2018 under ref. EN1707800DOB(1).
- 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 set out as follows:
 - "1. Cease the use of the outbuilding as a separate self-contained dwelling
 - 2. Demolish the outbuilding
 - 3. Remove all resultant debris."
- The period for compliance with these requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) 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 1990 Act as amended.

Decision

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

Background and matters of clarification

2. No. 94 Twyford Avenue stands in the centre of a terrace of 3 residential properties near the junction between Twyford Avenue and Lynton Road. It is a 2-storey property which has been extended at the rear, including at roof level. The property is divided into 4 flats pursuant to a planning permission (ref. 170185FUL) granted in May 2017. Flat 2 is a one-bedroom ground floor flat.
3. Located at the rear, Flat 2 has access to the back garden. The enforcement notice attacks the erection of a separate self-contained residential dwelling in that rear garden. I saw that within that detached, flat-roofed, single-storey building, which varies in height from 2.7 m on the garden side to 2.9 m at the rear, there is a separate self-contained dwelling. This dwelling unit has one habitable room with kitchen facilities, an en suite room with shower facilities

and an overall internal floor area of about 20.7 sq. m. The rear garden space that remains available amounts to about 49.25 sq. m in area. The dwelling in the rear building has a separate entrance via an alleyway off Lynton Road.

4. The appellant has not appealed on ground (b) or otherwise argued that the breach of planning control alleged in the notice has not occurred.

The appeal on ground (c)

5. In appealing on ground (c), the onus is on the appellant to demonstrate on the balance of probability that the matter stated in the enforcement notice, when it occurred, did not amount to a breach of planning control.
6. The appellant, who is not represented, may have misunderstood this ground of appeal because I cannot identify anything in the appellant's submissions that expressly supports the appeal on ground (c) with reference to planning law.
7. He indicates that the rear studio residence was all purpose-built before he purchased it as part of Flat 2 at No. 94 Twyford Avenue in September 2017. The Council first became aware of its construction during May 2017. It has been let out to a tenant and occupied as a self-contained dwelling since 28 September 2017 according to the submitted tenancy agreement.
8. I have studied all the documents (numbered i-ix) enclosed with the ground (c) appeal but I am afraid that I agree with the Council that they have little relevance to the planning control position. I should point out for the avoidance of doubt that compliance with the terms of an assured shorthold tenancy agreement and a memorandum of agreed sale, the payment of Council Tax and the advice of the seller, solicitor and estate agent do not supersede or exempt the appellant from the planning regulations which are quite separate.
9. Whilst I do not doubt that the appellant purchased Flat 2 and the accompanying studio building in good faith, followed the normal procedures involved in purchasing a property and did not attempt to conceal the rear studio dwelling from the Council, the simple fact is that the construction of the rear outbuilding as a dwelling amounted to development for which planning permission was required. Such development was neither authorised by the planning permission referred to in paragraph 2 above nor covered under the lawful development certificate (ref. 165201CPL) issued on 6 December 2016 in relation to the overall property at No. 94 when it was still a single dwelling.
10. No planning permission has been applied for or obtained for the erection of a separate self-contained residential dwelling at the rear of the premises. I therefore conclude on the balance of probability that the operational development alleged in the notice constitutes a breach of planning control. Accordingly, the appeal on ground (c) must fail.

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

11. The written representations and the reasons for issuing the enforcement notice cover various matters, but I consider that they all relate in some way or other to the main issue of whether this single-storey dwelling located at the rear of the premises is a suitable addition to the host residential environment.

12. My decision is based on the most relevant policies of the development plan (as set out in the enforcement notice), which are to be found in the London Plan (LP) and the Council's Development Management Development Plan Document (DMDPD), and takes into account all other material considerations including the National Planning Policy Framework and Planning Practice Guidance. I have not been supplied with a copy of the Council's Planning New Garden Space Supplementary Planning Document (June 2015) so I have been unable to take it into account.
13. The surroundings are residential in character. Some nearby houses have outbuildings, garages or other structures in their rear gardens, No. 92 Twyford Avenue being one example. However, the appellant has not pointed to any specific cases where planning permission has been granted by the Council for the erection of a new dwelling in a back garden hereabouts. The appellant has noticed a new studio flat on "Oakley Road" but no address or planning history for it is reported and he may have meant to refer to Oakley Avenue. The established pattern of development is of 2-storey residential properties fronting the local roads. It is not of separate single-storey dwellings in the rear gardens of the frontage properties. The presence of this dwelling of this design in this backland location conflicts with the general pattern of residential development and is at odds with and harmful to the established character of the area. This can be observed in public views from Lynton Road, as well as in private views from neighbouring properties. The development cannot be justified by reference to the poorly maintained property at No. 96 Twyford Avenue.
14. The rear dwelling is served by an alleyway which passes adjacent to No. 167 Lynton Road. It is also very close to the adjoining properties at nos 96 and 92 Twyford Avenue and the 4 authorised flats in No. 94. The self-contained residential use within this rear garden location would be apparent from activity within the building, from lighting and from comings and goings at all times of the day. This is likely to unsettle and impinge on the privacy of neighbours. In addition, the noise and disturbance generated would be greater than if the rear garden were only used for the enjoyment of the occupants of Flat 2 in the main building and would detract from the living conditions of neighbouring occupiers, including those residing in the rear portion of No. 94.
15. The subject dwelling's interior has fitments, facilities and decoration of high quality and the tenant has written to say he is happy with the living arrangements. However, the internal quality of the living accommodation is substandard in a number of respects. The floor space of about 20.7 sq. m falls far short of the minimum standard of 37 sq. m for single person units as set out in LP Policy 3.5 and provides for cramped and claustrophobic living conditions for any occupiers. The outlook and natural lighting are poor as there is only a single (westerly) aspect towards the host property a short distance away. Given the limited separation distance (about 7 m at the closest point) between the opposing elevations of Flat 2 and the subject rear dwelling, the existing and future occupiers of both residential units are likely to experience a lack of privacy due to the mutual direct overlooking. The fitting of privacy blinds is not a permanent or acceptable solution; rather it is an indication of development that has not been well planned.
16. DMDPD Policy 7D concerns the amount of open space provision for different developments. To my mind, a total usable private garden space of

approximately 49.25 sq. m, at a site containing 4 flats and a detached, one person studio dwelling, would be insufficient. Moreover, the appellant has not demonstrated that the garden areas for each ground floor dwelling unit at the rear are genuinely private in accordance with the Council's standards. This would be to the detriment of the living conditions of those occupiers.

17. Whilst I am satisfied that adequate refuse facilities could be secured through the imposition of a planning condition, there is no on-site parking. The local streets fall within a controlled parking zone where permits are required for on-street parking at certain hours. For planning permission ref. 170185FUL, the Council says that there was a section 106 legal agreement restricting the rights of the future occupiers of the flats to apply for parking permits. There is no mechanism before me to ensure that future residents of the subject rear dwelling would not apply for permits. I cannot be confident that the development would not exacerbate on-street parking pressures, as drivers search for parking places along the roads, to the detriment of highway safety.
18. Drawing these threads together, I find on the main issue that this single-storey dwelling located at the rear of the premises is an unsuitable addition to the host residential environment. The development conflicts with the relevant policies of the LP and DMDPD mentioned in the enforcement notice. The dwelling may contribute towards meeting a local need for affordable housing for rent, but this does not justify the unacceptable shortcomings of this particular residential development. I find no material considerations of sufficient weight to justify a grant of planning permission. The objections to the unauthorised development could not be satisfactorily overcome by the imposition of planning conditions. Taking into account all other matters raised in the written representations, I conclude that the appeal on ground (a) should fail and that planning permission should be refused on the deemed planning application.

The appeal on ground (f)

19. On ground (f), it is clear from considering paragraphs 3, 4 and 5 of the notice, read as a whole, that the remedial requirements follow from paragraph (a) of section 173(4) of the 1990 Act as amended. The notice is directed at remedying the breach of planning control and the key consideration is whether the requirements exceed what is necessary to achieve that objective.
20. The gist of the appellant's case is that the income gained from renting the studio dwelling helps him to pay the mortgage for Flat 2 and that demolishing the building would be costly and detrimental to not only him but also to the tenant and the bank and would not be supported by neighbours. It is said that lesser steps would involve working in partnership with the Council to bring the development into line with a standard the Council is happy with. The builder is prepared to make any adjustments accordingly.
21. However, the carrying out of an unauthorised development can often have adverse financial implications when it has to be put right, so the financial circumstances of the parties mentioned cannot be an overriding consideration. No neighbours have lodged written representations in support of this appeal. The appellant has not submitted a fully worked out alternative scheme for a rear dwelling for formal consideration.

22. The enforcement regime is not meant to be punitive. Where there is a valid fallback, for example, by way of permitted development rights, it is proper to consider whether the complete removal of an unlawful building would ultimately achieve anything. There is no lawful fallback for a dwelling here in this case and the appellant has not suggested one. No part of the rear dwelling has permission or has been built under permitted development. There are no permitted development rights for the erection of dwellings and permitted development rights for the erection of outbuildings cannot apply where those outbuildings would fall within the grounds of a flat or flats as here. There is no real possibility that permitted development rights could be appropriately exercised in the future by way of a fallback.
23. Whilst it is not an argument that the appellant has directly advanced, the Council draws my attention to the fact that a shed was marked on the plans for planning permission ref. 170185FUL in roughly the same place as the rear studio dwelling. The Council indicates that should I consider that there is planning permission for a shed, this may present an alternative to demolition and the Council has suggested appropriate amendments to the steps of the notice in such a scenario. These steps have not found favour with the appellant, as he seeks to resist the removal of the back door, sink and shower.
24. However, I do not consider this to be the correct way forward. The Council has clear doubts as to whether the shed came within the terms of that planning permission and those doubts seem to be well placed, if the shed was not mentioned in the application, the delegated report or the decision notice or described in detail on the plans. Whilst an approved sections plan provided by the Council shows a proposed shed at a height of 2.5 m, it is clear that the building containing the studio dwelling comfortably exceeds that height. So, even if I had been able to conclude that a shed had been authorised by the planning permission, it did not authorise the building as built.
25. The appellant would, of course, have open to him the possibility of submitting a planning application to the Council should he desire additional accommodation to meet the domestic needs of the approved rear ground floor flat. The prospect of the retention of any part or parts of the unauthorised development to achieve such a purpose is a matter that might be explored through further discussions with the Council. It would not be appropriate to achieve this by way of a variation to the requirements of the notice.
26. On the facts and circumstances of this case, I find that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control. No lesser steps would give full effect to the notice. Accordingly, the appeal on ground (f) fails.

Andrew Dale

INSPECTOR