
Appeal Decision

Site visit made on 6 November 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 3rd December 2019

Appeal A Ref : APP/N5660/C/18/3216886

Appeal B Ref : APP/N5660/C/18/3216887

Land at 39 Meadow Road, London, SW8 1QD

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Nicholas Garwolinski and appeal B is made by Veronica Tugendraich Garwolinski against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The notice was issued on 12 October 2018.
- The breach of planning control as alleged in the notice is without planning permission the construction of an outbuilding in the rear garden of the premises and its use for temporary sleeping accommodation.
- The requirements of the notice are a. cease the use of the outbuilding for temporary sleeping accommodation, b. remove the unauthorised outbuilding from the premises, c. reinstate the rear garden as existed prior to the breach of planning control, and d. remove all associated waste and debris resulting from compliance with the above steps from the premises.
- The period for compliance with the requirements is three months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- Appeal B is proceeding on the grounds set out in section 174(2) (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld

Application for costs

1. The Appellants have made an application for costs against the Council. This is the subject of a separate decision.

Preliminary matter

2. The Appellants have lodged an appeal under ground (c). A ground (c) appeal is that the matters alleged do not constitute a breach of planning control. But their argument is not that temporary sleeping accommodation is not a breach of planning control but that as a matter of fact it has not occurred because the accommodation has been used for a purpose incidental to the enjoyment of the main house. This is more pertinent to a ground (b) appeal and I shall determine it accordingly.

Appeals A and B

Ground (b) appeal

3. This ground of appeal is that the matters alleged in the notice have not taken place as a matter of fact. The onus of proof in this appeal rests upon the Appellants and the test of evidence is the balance of probabilities.
4. Class E of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO) grants permitted development rights within the curtilage of a house for any building required for a purpose incidental to the enjoyment of the dwellinghouse as such subject to specified conditions and limitations.
5. The outbuilding is located in the rear garden of a small two storey mid-terraced dwellinghouse. It backs on to a parking area and has an access from the garden and the rear. It comprises one main room with a shower room/wc and mezzanine storage space. Within the outbuilding is a piece of furniture that opens into a sink with microwave and refrigerator and a wall storage unit that converts into a fold down double bed. There was no cooker or hob at the time of my site visit.
6. The evidence before me is that the use of the outbuilding for domestic storage and exercise commenced in January 2018 and that a fold-away bed was installed in April/May 2018. The toilet and shower were installed during the construction of the building. From late July 2018 it was intermittently used for sleeping accommodation by visiting relatives and friends and intermittently as sleeping accommodation for paying guests and family from late July – October 2018 to the date of issue of the notice. The Appellants say that its use as sleeping accommodation occurred on a small number of occasions and that storage has continued throughout. The outbuilding has been advertised as a 'garden suite.'
7. The point at issue between the parties is whether the outbuilding is required for a purpose incidental to the main house. There is no dispute that in all other respects the outbuilding satisfies Class E and I have no reason to conclude otherwise.
8. The Department for Communities and Local Government Permitted Development for Householders Technical Guidance (the Technical Guidance), whilst not determinative, provides useful guidance on the interpretation of the GPDO. It states that a purpose incidental to a dwellinghouse would not cover normal residential uses such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.
9. The outbuilding contains sleeping, cooking and toilet facilities and I see no reason not to apply the Technical Guidance in this case. Such activities are core to a single family dwellinghouse and cannot be provided in a building said to be used for a purpose incidental to the enjoyment of a dwellinghouse as such. It follows that the use of the outbuilding for sleeping accommodation is not a purpose incidental to a dwellinghouse and does not fall within Class E. The features drawn to my attention including smart lock, folding stairs and handles do not alter this conclusion nor does the Appellants' claim that the intention has been for an incidental use.

10. The outbuilding has been advertised and rented out as a garden guest suite. Whilst I note the full text of the booking advert produced by the Council included a note that the property was not taking reservations it has nevertheless been occupied by paying guests and advertised as an apartment with one bedroom, bathroom and kitchenette. I do not find the period of occupation to be so short as to be de minimus. My attention is drawn to the definition of temporary sleeping accommodation set out in the Deregulation Act 2015 but I do not consider this to be the appropriate test to be applied in this case. I have considered whether the use as sleeping accommodation in the context of the planning unit remains incidental or subordinate to the main use of the property as a dwellinghouse. On the evidence before me I conclude that such use is not so infrequent as to be incidental. The fact that an incidental domestic storage use has continued alongside its use as sleeping accommodation does not alter this conclusion.
11. On the evidence before me and applying the test of balance of probabilities I conclude that the alleged breach has occurred as a matter of fact.
12. The Appellants draw to my attention other decisions and the outbuilding nextdoor but I do not know the circumstances of these sites and have determined this appeal on its own particular facts. I do not consider this appeal to be on all fours with any of the appeal decisions before me.
13. For the reasons given above this ground of appeal does not succeed.

Appeal A

Ground (a) appeal and deemed application

Main Issue

14. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the surrounding area.
15. The development plan (including the London Plan and the Lambeth Local Plan) mirrors the National Planning Policy Framework (the Framework) in seeking to ensure that development respects its setting. Policy Q14 of the Local Plan states that the Council does not consider gardens to be potential development sites and will resist proposals unless certain specified criteria are met. These criteria include a significant proportion of the existing garden being retained with the host building, it being single storey and subordinate in form, it being set back at least 1m from side boundaries and well designed with visually attractive materials. I have also taken into account as a material consideration the Building Alterations and Extensions Supplementary Planning Document (the SPD).
16. The outbuilding is located in the rear garden of the main dwellinghouse. It has a black/dark grey rendered finish and has a green roof planted with wildflowers, grass and sedum. It has a flat roof, large roof lights, a glass panel door facing the main dwelling and small windows facing the garden.
17. The development occupies a significant proportion of the modestly sized garden of the host dwelling. It covers the full width of the plot and is not set back from neighbouring boundaries. By virtue of the changes in ground level it is visible from neighbouring properties and the car parking area at the rear. It dominated its domestic setting and is not subordinate to the main dwelling and

fails to respect the domestic garden appearance of the locality. The development does not satisfy the criteria set out in policy Q14 of the Local Plan.

18. I have taken into account the green roof and the location of public open spaces in the locality but the modest biodiversity benefits do not outweigh my concerns. Whilst I recognise that the surrounding area is characterised by a mix of designs and that there is an outbuilding at the neighbouring property outbuildings similar to the appeal are not so widespread as to be characteristic. I have taken account of the representations from neighbours in favour of the development but I share the Council's concerns about the harm to the surrounding area.
19. The Appellants complain that the requirements of the development plan are excessive when compared to the conditions and limitations of Class E. But planning applications shall be determined in accordance with the development plan unless material considerations indicate otherwise and there is nothing before me to justify not applying the development plan in this case.
20. For the reasons given above the development causes undue harm to the character and appearance of the area contrary to relevant policies in the development plan (including policy Q14 of the Local Plan), the Framework and the SPD.
21. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance but no conditions could overcome the harm. I do not consider that the imposition of a condition preventing use of the outbuilding as separate accommodation would overcome the identified harm by virtue of its effect on the character and appearance of the area.
22. I have taken into account the fallback position but I consider that the harm in this case is greater than would be the case for any permitted or lawful development.
23. For the reasons given this ground of appeal does not succeed and planning permission should be refused on the deemed application.

Appeals A and B

Ground (f) appeal

24. This ground of appeal is that the steps required by the notice are excessive.
25. There are two purposes that an enforcement notice can seek to achieve – to remedy the breach of planning control or remedy the injury to amenity caused by the breach. In this case the notice requires the cessation of the unauthorised use, removal of the unauthorised building and reinstatement of the garden to its condition before the breach of planning control took place. Its purpose is therefore to remedy the breach of planning control.
26. The Appellants argue that the dimensions of the outbuilding satisfy Class E and that therefore demolition is excessive and that the notice should be varied to require its use for lawful incidental use and/or removal of the shower/toilet facilities.

27. Demolition is required only of the unauthorised building which does not have the benefit of permitted development rights by virtue of its use falling outside Class E. An enforcement notice cannot prevent lawful development of the planning unit and the exercise of Class E permitted development rights. I do not consider it necessary to vary the notice to give effect to this principle.

28. For the reasons given above the ground (f) appeal does not succeed.

Appeals A and B

Ground (g) appeal

29. This ground of appeal is that the period for compliance is unreasonably short. The notice provides for a compliance period of three months.

30. The Appellants argue that 6 months would be a more realistic timescale to relocate the domestic items currently stored in the outbuilding and to dismantle the building. But the works are not complex or specialist and three months seems to me to be a reasonable period to satisfy the requirements of the notice.

31. I consider that three months strikes an appropriate balance between competing private and public interests and brings the harm to an end without unnecessary delay.

32. For the reasons given this ground of appeal does not succeed.

Formal Decisions

Appeal A

33. 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

34. The appeal is dismissed and the enforcement notice is upheld.

S. Prail

Inspector