



Appeal Decisions

Site visit made on 19 November 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2019

Appeal A Ref: APP/M5450/C/19/3223199

Land at 13 Hillview Gardens, Pinner, Middlesex HA2 6HJ

- 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 Nitin Govinidji Shah against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 4 February 2019.
- The breach of planning control as alleged in the notice is without planning permission the construction of a detached outbuilding in the rear garden land ("unauthorised development").
- The requirements of the notice are: 1. Demolish the unauthorised development or build in accordance with approved plans of P/3938/15; 2. Remove from the land all materials and debris arising from compliance with the aforementioned requirements of the notice.
- The period for compliance with the requirements is three calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The enforcement notice is quashed.

Appeal B Ref: APP/M5450/W/19/3223210

13 Hillview Gardens, Pinner, Middlesex HA2 6HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Nitin Govinidji Shah against the decision of the Council of the London Borough of Harrow.
- The application Ref P/4411/18, dated 3 October 2018, was refused by notice dated 10 December 2018.
- The development proposed is an incidental outbuilding.

Summary of Decision: The appeal is allowed and planning permission is granted as set out below in the Formal Decision.

Appeal A

The enforcement notice

1. The appeal property contains an extended semi-detached dwelling. In October 2015, the Council granted planning permission for a single storey outbuilding towards the end of the property's rear garden. Conditions attached to the permission included a condition restricting use of the outbuilding to purposes incidental to the enjoyment of the dwelling and a condition restricting installation of windows and doors in the side and rear elevations¹.

¹ Council Ref: P/3938/15.

2. The enforcement notice alleges a breach of planning control by the carrying out of operational development consisting of the construction of a detached outbuilding without planning permission. The notice requires either demolition of the outbuilding or building it in accordance with the approved drawings.
3. In formulating the steps required to remedy the breach by reference to the approved drawings, the Council was clearly mindful of the above permission. Nevertheless, where a building differs materially from an approved scheme, the notice alleges development without planning permission and the purpose of the notice is to remedy the breach, the steps should refer to making the development comply with the terms (including conditions and limitations) of the relevant planning permission. This is in order to satisfy s173(4)(a) of the Act. Otherwise, if the notice is subsequently fully complied with by modifying the outbuilding, that structure would then benefit from a new deemed grant of unconditional planning permission, having regard to the effect of s173(11) of the Act.
4. At s176(1)(a), the Act provides for correcting any defect, error or misdescription in the notice, or varying its terms, provided there is no injustice caused. The requirements of the notice could be corrected to refer to making the outbuilding comply with the terms, including conditions, of the above permission. If the notice were corrected in this manner and the outbuilding was then modified to accord with the approved drawings, it would comply with the above permission and the conditions restricting the use and future alterations to the side and rear elevations would apply in future. Otherwise, the notice could be corrected by deleting the alternative of modifying the outbuilding to accord with the approved drawings, in which case the requirement would simply be to demolish the structure. I sought the views of both main parties on whether the notice should be corrected as set out above and have taken the representations received into account.
5. Correcting the notice as set out above would mean that the outbuilding would either be restricted by conditions or it would be demolished. However, if instead of appealing the appellant had at the outset complied with the notice as issued, by undertaking the necessary modifications to accord with the approved drawings, use of the outbuilding would not be restricted to purposes incidental to the enjoyment of the dwelling, as the deemed grant of planning permission would be unconditional. For a similar reason, the appellant would also have had less restriction in terms of future alterations to the side and rear walls of the outbuilding. Therefore, if I were to correct the notice as set out above it would become more restrictive and onerous than if an appeal had never been made. This would clearly cause injustice to the appellant. Accordingly, I find the notice to be incapable of correction.
6. For the reasons given above I conclude that the enforcement notice does not specify with sufficient clarity the steps required for compliance. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (a), (c), (f) and (g) as set out in section 174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not fall to be considered.

Appeal B

Main Issue

7. The main issue in this appeal is the effect of the outbuilding on the character and appearance of the area.

Reasons

Character and appearance

8. The property is in an established residential area, made up of dwellings of similar age and architectural style with generous maturing rear gardens. The above factors give the property and the environs a pleasant suburban character and appearance. Outbuildings of varying size, design and materials in adjacent gardens have not undermined the established character and appearance of the surroundings.
9. The outbuilding has a flat roof and a roughly rectangular footprint. The elevations are constructed in a red/orange brick, the principal opening being bi-folding doors in the elevation facing towards the dwelling. The main parties agreed that as erected, the outbuilding is substantially similar in terms of the siting, footprint, size and materials to the approved drawings and I found no reason to conclude otherwise. At around 2.9 m, the outbuilding slightly exceeds the height recommended in the Council's Residential Design Guide Supplementary Planning Document, but this is also in common with the approved drawings.
10. Externally, the principal differences between the outbuilding as erected and the approved drawings is the pedestrian door, which has been moved from the elevation facing towards the dwelling to a side elevation, together with the insertion of a high level window in the other side. These alterations have not had any significant effect on the character and appearance of the area when assessed against the approved drawings.
11. Internally, the approved drawings show the outbuilding subdivided into two rooms, the larger of which was annotated 'play room' with the smaller a 'store room'. I am given to understand that the larger room is used by the appellant and his family as a home bar. During the site visit, I observed that the larger room contained a table and several chairs, a chilled drinks cabinet, a display cabinet containing various spirits and glasses and a fridge freezer stocked with snack foods. There was also a work surface with cabinets above and below, together with an oven, hob and dishwasher. Some of the cabinets contained disposable plates and cups. There were other items including stored packs of drinks. A toilet with a sink and vanity unit were in a partitioned area at the back of the room. The smaller room at the rear of the outbuilding was used for storing garden equipment and other household items.
12. The Government's Technical Guidance² explains that a purpose incidental to a dwelling can include a range of buildings such as garden sheds and garages but would not cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. However, that is in the context of assessing whether a building is permitted by Article 3, Schedule 2, Part 1, Class

² Permitted development rights for householders; Technical Guidance MHCLG September 2019.

E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as is the case law referred to by the Council³. As express planning permission is required, this appeal is concerned with the planning merits of the outbuilding as erected. The Council did not explain what harm had been caused to the character and appearance of the surroundings by the appellant's use of the outbuilding as set out above. To my mind, the use has had little harmful effect in this respect.

13. In any event, use as a home bar for entertaining family and friends is within the range of day-to-day domestic leisure and recreational activities that it might be reasonable for occupiers of the dwelling to engage in. It is a subordinate activity connected with the running of the dwelling and the domestic or leisure activities of the persons living in it. To my mind, it is not unreasonable for a home bar to have a work surface on which to prepare and serve drinks, with facilities to warm up food and to wash crockery and glasses and to have cabinets for storing glasses, crockery and drinks. Such facilities do not equate to a kitchen. It is also not unreasonable to provide a toilet in connection with a home bar, particularly given the significant distance between the outbuilding and the dwelling. The small sink and vanity unit within the toilet is likely to only be suitable for washing hands. The above facilities could therefore reasonably be described as ancillary to the incidental use of the larger room within the outbuilding as a home bar.
14. Even if the above were not the case, no firm evidence was provided to indicate that the use of the outbuilding was for purposes other than what might otherwise be regarded as ancillary to the residential occupation of the dwelling by the appellant and his family. There was no firm evidence to indicate that the outbuilding provided a separate unit of living accommodation. The range of personal washing facilities that would be required for day-to-day living, such as a shower or bath, were absent from the outbuilding.
15. Therefore, the outbuilding has not caused harm to the character and appearance of the area. The high quality design provided having regard to the pattern of existing development accords with Policy 7.4 of the London Plan (LP). As the outbuilding is of high architectural quality complementing the local character, it also accords with LP Policy 7.6. As there has been no harm to the character of the area, the outbuilding accords with Policy CS1.B of the Harrow Core Strategy. Furthermore, as a high standard of design has been achieved the outbuilding accords with Policy DM 1 of the Council's Development Management Policies Local Plan. Additionally, the outbuilding is consistent with chapter 12 of the National Planning Policy Framework (the Framework), as a well-designed place is achieved.
16. Conflict with Policies D1 and D2 of the emerging new London Plan was also alleged. However, I found no such conflict and, in any event, the suggested changes following the Examination in Public make it unlikely that the draft policies will reflect the adopted text. Therefore, having regard to the Framework paragraph 48 these policies can only carry limited weight.

Other matters

17. Any proposal for similar development in the locality would fall to be considered on its individual planning merits. Therefore, permitting the outbuilding would

³ *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

not create a precedent for unacceptable development in the surrounding area. Any unauthorised use of the outbuilding as a separate unit of living accommodation in future would be liable to enforcement action. There was no firm evidence to suggest that the outbuilding did not accord with the Building Regulations and in any event, that is not a planning matter.

Conditions

18. I have not imposed any conditions. As the development has already been carried out, conditions regarding the standard time limit and requiring compliance with the approved drawings are unnecessary. Use of the outbuilding for purposes ancillary to the residential use of the dwelling would not have an unacceptable adverse effect on the character and appearance of the area or the living conditions of occupiers of adjoining residential properties. As a result, it is not necessary or reasonable to restrict the use of the building to purposes incidental to the enjoyment of the dwelling. Also, restricting permitted development rights for the insertion of windows or doors in the side and rear elevations is unnecessary, as there would be no unacceptable adverse effect on the living conditions of occupiers of adjoining residential properties. Therefore, such conditions do not pass the tests in the Framework paragraph 55.

Conclusion

19. For the reasons given above I conclude that the appeal should be allowed.

Formal Decisions

20. Appeal A-the enforcement notice is quashed.
21. Appeal B-the appeal is allowed and planning permission is granted for an incidental outbuilding in accordance with the terms of the application, Ref P/4418/18, dated 3 October 2018.

Stephen Hawkins

INSPECTOR