



Appeal Decision

Site visit made on 2 December 2019

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2019

Appeal Ref: APP/T5150/C/19/3224096
45 Chipstead Road, London NW2 6EL

- 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 Sylwia Jastrzebska against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/18/0488, was issued on 28 January 2019.
 - The breach of planning control as alleged in the notice is the erection of a dwelling in the rear garden of the premises.
 - The requirements of the notice are:
 1. Demolish the dwelling in the rear garden of the premises.
 2. remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) 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 Act.
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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.

Procedural matters

2. Following the issue of the enforcement notice additional plans have been provided by the appellant. These show the removal of the kitchen and indicate that the building is to be used for a gym and therapy room. Whilst I have had regard to these in my decision, the allegation in the notice relates to the erection of a dwelling. The appeal, under ground (a), can only consider the planning merits of the alleged development that has already taken place. In this case the allegation is for the erection of a dwellinghouse, rather than an incidental outbuilding required for a gym or therapy room. I have accordingly considered the appeal on this basis.
3. I also note that some of the appellant's arguments are best placed to be considered under the context of an appeal made on ground (f) so I will deal with them accordingly.

Main Issues

4. I have had regard to the Council's reasons for issuing the notice and consider that the main issues are:
- The effect of the development on the character and appearance of the area;
 - The effect of the development on the living conditions of adjoining residents; and
 - Provision of cycle and waste storage.

Reasons

Character and appearance

5. The appeal site is located at the end of a small terrace, within a residential cul de sac. To the rear of the site there is a mix of residential and commercial development. At the time of my site visit there were considerable building works taking place on the main dwelling.
6. The outbuilding subject of this appeal is of substantial flat roof construction and is sited along the rear boundary of the garden. Access to the building is from the rear garden through a side gate, although there is no formal footpath. The internal layout divides the building into four rooms. At my visit two of these had a small amount of gym equipment, another appeared to be used for the storage of timber doors, with the fourth being a well equipped bathroom. There was no formal kitchen. All of the rooms benefitted from a window, radiators and power sockets. Even without the kitchen equipment the layout of the building had the appearance of a self-contained residential unit.
7. I acknowledge that since the issue of the notice, the appellant has indicated that the building will be used as a gym and therapy room with the bathroom providing convenience for those using the facilities. However, from the evidence before me, I am satisfied that the building was being residentially occupied following its completion. It is accepted by the parties that the building could not be constructed by way of a fallback, under The Town and Country Planning (General Permitted Development) (England) Order 2015, as it fails to meet some of the limitations and conditions.
8. The building spans almost the width of the garden, being approximately 2.9 metres in height, 7.1 metres long and 4.5 metres wide. The design of the dwelling with its flat roof construction, utilitarian design and lack of architectural detail, is significantly at odds with other residential properties in the area. Whilst buildings in rear gardens are not uncommon, the development has introduced a substantial building, for use as a separate dwelling, into the rear garden of the appeal property. This back garden type of development is not a common feature of the area where most of the dwellings are arranged in terraces and front the road. Moreover, the domestic paraphernalia and activity that would normally be associated with an additional residential unit further harms the character and appearance of the area.
9. For the above reasons I find that the dwelling in this rear garden location, appears unplanned and incongruous in the context of the area, causing significant harm to the character and appearance of the area. The development

is therefore contrary to Policy DMP18 of the London Borough of Brent Local Plan (2016) (the LP), and CP17 and DMP1 of the London Borough of Brent Local Development Framework Core Strategy (2010) (the CS). These policies seek to ensure that new development including the development of garden space, respects the setting of existing buildings and complements the locality.

Living conditions

10. The Council are concerned that the new dwelling is harmful to the amenity of the surrounding rear gardens. This is expanded in their statement to concerns about noise and disturbance and the effect of the building on the outlook for the adjoining residents.
11. I recognise that the siting of the dwelling in the rear garden will undoubtedly result in additional noise and activity in this area of the garden and in particular with resident's comings and goings along the length of the garden. The access through the side gate and through the rear garden results in both noise and disturbance, that is outside the control of existing residents. There is little opportunity to mitigate any nuisance, due to the limited size of the garden. In my opinion this would cause unacceptable harm to the living conditions of existing residents.
12. In terms of the neighbouring property, whilst I recognise that the adjacent garden is reasonably long, the area of garden nearest to the dwelling is most likely to be used recreationally. I noted that there was a smaller outbuilding close to its rear boundary and located next to the appeal building and this already has an impact on the outlook of this part of the garden. Given the length of the rear of the garden, the appeal building does not in my judgement, create an unduly strong sense of enclosure, or be unacceptably overbearing for the adjacent residents.
13. For the above reasons, I do not find that the building would be unacceptable in terms of the outlook for adjoining residents. However, I do find that the activity associated with a dwelling in this location, results in unacceptable harm to the living conditions of residents of the host dwelling. The development is therefore in conflict with policies DMP1 of the CS which seeks to ensure that new development does not unacceptably increase exposure to noise and general disturbance.

Cycle and waste storage

14. I have not been provided with any evidence to demonstrate where the required cycle and waste storage is to be located. As outlined above, I have already found unacceptable harm to the character and appearance of the area and harm to the living conditions of residents of the host dwelling. Nonetheless, in the absence of this information, had I been minded to allow this appeal and grant planning permission for the deemed application, I am satisfied that details for both of these could have been secured though a suitably worded condition.

Other matters

15. My attention has been drawn to properties that have similar development in their rear gardens. It is acknowledged that buildings are not uncommon in the gardens of residential properties. However, as outlined above the development

subject of this appeal is that of a new dwelling and I have considered it in this context.

16. I also recognise that there may be some personal benefits of retaining the building to the appellant. Nonetheless, these are limited and do not lead me to come to a different conclusion.

The implied ground (f) appeal.

17. When appealing on ground (f), the appellant must show that the steps specified in the enforcement notice exceed what is necessary to remedy the breach of planning control. The appellant's concern in this regard, is the fact that the requirement at step 1. requires the demolition of the building.
18. The nature of the requirements of the notice indicate that it seeks to remedy the breach of planning control, by requiring the demolition of the dwelling and removal of the resultant materials.
19. A relaxation of the requirement is therefore sought, such that it specifies only the removal of the kitchen facilities from the building. This would mean that, the building with the bathroom fixtures and fittings would remain. Indeed, by the time of my visit removal of the kitchen had already been carried out.
20. I accept that, in some cases, a WC and shower room have been found to be an acceptable element of a building that has been considered to be 'incidental' to the dwelling', although this will depend on the circumstances of the case. In this case, on the balance of the evidence before me, it is clear that the building was built with the intention that it would be used as a self-contained unit of residential accommodation and was indeed brought into use for this purpose.
21. In the above circumstances, any steps that fall short of demolition of the dwelling would not remedy the breach of planning control. I have had regard to the suggested condition, to restrict the use of the building to ancillary purposes only. However, for the above reasons I do not consider that this would be sufficient to remedy the breach. Accordingly, it would be inappropriate to allow the building to remain. I therefore find that the requirements of the Notice are not excessive. Any appeal made on ground (f) would therefore have failed.

Conclusion

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

Hilary Orr

INSPECTOR