



Appeal Decisions

Site visit made on 19 November 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Appeal A Ref: APP/M5450/C/18/3215956

Land at 36 Kenneth Gardens, Stanmore HA7 3SD

- 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 Ms Cinamon Lolita Charles Jones against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 8 October 2018.
- The breach of planning control as alleged in the notice is without planning permission the erection of a single storey outbuilding at the extreme rear of the garden, for the use as a self-contained flat ("unauthorised outbuilding").
- The requirements of the notice are: 1. Demolish the unauthorised outbuilding;
2. Remove from the land all material and debris arising from compliance with the above steps.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (d), (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 with correction.

Appeal B Ref: APP/M5450/C/18/3215957

Land at 38 Kenneth Gardens, Stanmore HA7 3SD

- 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 Ms Cinamon Lolita Charles Jones against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 8 October 2018.
- The breach of planning control as alleged in the notice is without planning permission the erection of a single storey outbuilding at the extreme rear of the garden, for the use as a self-contained flat ("unauthorised outbuilding").
- The requirements of the notice are: 1. Demolish the unauthorised outbuilding;
2. Remove from the land all material and debris arising from compliance with the above steps.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed and the enforcement notice as corrected is quashed.

Preliminary Matter

1. The allegation in both enforcement notices refers to the erection of an 'outbuilding'. However, that term is commonly understood as applying to a smaller separate building which is subordinate to a dwelling, rather than something which is a dwelling in its own right. As both notices go on to allege

that the structures are self-contained flats, they cannot also be outbuildings. Therefore, I shall correct both notices to replace 'outbuilding' by 'building' in the allegation and requirements. In doing so, I am satisfied that no injustice would be caused.

Appeal A

Ground (b) appeal

2. The ground of appeal is that the matter alleged in the enforcement notice has not, in fact, occurred. The onus of proof in this respect rests with the appellant, the relevant test of the evidence being on the balance of probability.
3. The appeal site contains a semi-detached bungalow. A substantial single storey flat roof building has been erected in the rear garden. During my site visit, I observed that the interior of the building contained gym equipment including exercise bikes, cross-trainers, a bench and weights. There was also a bathroom containing a toilet, sink and shower, together with a fitted kitchen including a sink and drainer, worksurfaces and cupboards, a washing machine and fridge/freezer.
4. In photographs supplied by the Council, on 30 August 2018 in addition to the bathroom and fitted kitchen, there was an oven, hob and extractor in the building. Therefore, it is more likely than not that at the time the notice was issued, the building contained the facilities necessary for independent day-to-day living, this being the distinctive characteristic of a dwelling set out in relevant case law¹.
5. According to the appellant, the building had been used for purposes ancillary to the bungalow since its erection. There was little evidence to suggest that the building had been occupied as a self-contained flat. However, those factors are not conclusive; this is because a building does not necessarily lose the characteristics of a dwelling simply because it is not occupied as such. The appellant did not explain why the building had been erected or describe the purpose behind providing a bathroom and kitchen. There was no evidence to indicate that the building was not suitable and available for occupation independently from the bungalow. Consequently, there is no firm evidence to indicate that at the time the notice was issued, the use of the building was other than as a self-contained flat.
6. The appellant suggested that the oven and other kitchen items, including white goods, had been stored in the building temporarily whilst the bungalow was refurbished and the oven had not been connected to services. However, if the oven had simply been stored, it is unlikely to have been neatly installed in the fitted kitchen, as shown in the Council's photograph. As a result, I find the appellant's explanation unconvincing. In any event, whether the oven was connected to services is not determinative in terms of the use as a self-contained flat. The building was not rated separately from the bungalow for Council Tax purposes. However, what amounts to a dwelling for planning purposes is not dependent on the payment of Council Tax.
7. Accordingly, based on the available evidence and on the balance of probability, the appellant has failed to show that the building was not a self-contained flat at the date the notice was served and the ground (b) appeal fails.

¹ *Gravesham v SSE & O'Brien* [1982] 47 P&CR 142.

Ground (d) appeal

8. The ground of appeal is that at the date the notice was issued, it was too late to take enforcement action. In order to succeed on this ground, the appellant must show that the building was substantially completed more than four years before the date of the notice, the relevant test of the evidence being on the balance of probability.
9. The appellant supplied an Affidavit, in which it was explained that she had engaged a builder to construct the building together with the one in the garden of 38 Kenneth Gardens next door, in February 2014. The appellant stated that the foundations were completed on 7 March 2014 and the building was completed internally and externally on 17 August 2014. The appellant's builder largely reiterated the events and dates set out above. A retailer's receipt for bathroom fittings dated 30 June 2014, addressed to the occupier of the bungalow, was also submitted.
10. The appellant supplied aerial photographs of the site sourced from Google Earth, purportedly taken on dates between February 2014 and May 2018. The photographs dated February 2014 and October 2015 were of limited evidential value, being of low resolution with the site features indistinct. However, in the photograph supplied dated June 2015, the building is clearly an incomplete shell with no roof. The building is shown in a similar incomplete condition in a birds' eye aerial photograph dated 2016, also sourced from Google Earth, supplied by the Council. Moreover, in an aerial photograph supplied by the Council taken some time between April and June 2015, no works had commenced on the building. The earliest photograph where the building clearly had a roof is dated October 2016.
11. The photograph dated April to June 2015 showing no building in situ together with the photographs of an incomplete building during 2015/2016, cast significant doubt on the appellant's version of events. These photographs make it unlikely that the building was substantially completed by 17 August 2014, as the appellant claimed. I was given no reason to doubt that the photographs were taken within the date ranges stated. Whilst bathroom fittings were purchased in June 2014, that does not necessarily mean that they were installed in the building by August that year. Consequently, I give greater evidential weight to the photographs.
12. Based on the photographic evidence, substantial completion of the building is likely to have occurred at some stage during 2016, i.e. less than four years before the date of the notice. Therefore, the building cannot be immune from enforcement action and the ground (d) appeal also fails.

Ground (a) appeal

Main Issues

13. The deemed planning application derives its terms directly from the allegation in the notice. The main issues in this ground of appeal are therefore:
 - The effect of the building used as a self-contained flat on the character and appearance of the area.
 - Whether the building provides a suitable living environment for future occupiers, having regard to the internal floor area and outlook.

- The effect on the living conditions of occupiers of the bungalow and other adjoining residential property, having regard to outlook.

Reasons

Character and appearance

14. In addition to the building, the modest bungalow occupying the site has a detached outbuilding in the rear garden originally erected as a garage, probably around the same time as the bungalow. The surrounding area generally consists of dwellings similar to the bungalow in terms of their scale and architectural style, with comparably sized rear gardens also containing detached garages. Enlargements to the dwellings and outbuildings erected in the rear gardens have for the most part respected and reflected the prevailing architectural style and layout. These factors give the surroundings a pleasant and largely cohesive suburban character and appearance.
15. The building covers a relatively limited amount of the overall site area. However, it occupies a substantial portion of the bungalow's rear garden. The building has significantly reduced the space available in the rear garden, compared to the more spacious gardens of neighbouring residential properties. Also, the size and bulk of the building is adjacent to the rear boundary and both side boundaries. Consequently, the building gives the impression of being cramped and restricted on the site and it has created a significantly more built-up and enclosed feel in the environs. Additionally, the siting of the building set back from the street frontage, adjacent to the rear gardens of neighbouring properties and accessed between dwellings, does not relate well to the layout of surrounding development.
16. Although there are limited views of the building in the street scene, it is readily apparent to the occupiers of neighbouring properties. Due to the local topography, the building is situated at an appreciably higher ground level than the bungalow and some neighbouring properties, thereby emphasising its visual impact. The views from neighbouring properties are generally in conjunction with suburban development more typical of the surrounding area. As a result, whilst there are limited public views of the building, that does not appreciably offset the significant visual harm caused.
17. For the above reasons, the building is entirely at odds with the pattern of development in the vicinity and it appears as an alien and urbanising feature in its surroundings, thereby causing unacceptable harm to the character and appearance of the area. That harm and the corresponding failure to achieve a high standard of design and layout does not accord with Policy DM1 of the Council's Development Management Policies Local Plan (DMP).
18. As the building is not a high quality design response that has regard to the pattern and grain of the existing spaces and streets, there is also failure to accord with Policy 7.4 of the London Plan (LP). Furthermore, there is failure to accord with LP Policy 7.6, as the building does not compliment the local architectural character. Additionally, the building does not accord with criterion in Policy CS1 of the Harrow Core Strategy, as it does not respond positively to the local context in terms of design, siting, density and spacing or reinforce the positive attributes of local distinctiveness. Moreover, for the above reasons the building is inconsistent with the design and layout guidance for new residential development in the Council's Residential Design Guide Supplementary Planning

Document (SPD). The failure to achieve a well-designed place is inconsistent with the National Planning Policy Framework (the Framework). Although not specified in the notice, conflict with the above policies and inconsistency with the SPD and Framework are set out in the Council's delegated report.

Living conditions-future occupiers

19. During my visit, I observed that the building had a modest internal floor area. The Council assessed the internal floor area as being around 30 m²; I have been given no reason to doubt the accuracy of that figure. My impression was that the building provided a rather restricted living space. By the time a bed, chairs and other everyday household items were accommodated, little space would be left over for circulation. Also, as there was no indication of recycling and waste arrangements, accommodating those facilities in the building is likely to further reduce the available living space. Moreover, the internal floor area is well below the minimum of 37m² for a one bedroom, one person dwelling with a shower room set out in Table 3.3 accompanying LP Policy 3.5. This reinforces my findings regarding the restrictive size of the building.
20. The building has a single aspect, with two windows and a French door in the elevation facing over the rear garden of the bungalow. These openings therefore provide the sole source of any outlook for occupiers of the building. However, the presence of the bungalow and the garage a limited distance away means that the outlook is somewhat restricted. Therefore, occupiers of the building are likely to experience a significant sense of enclosure in their living area. Moreover, as the above openings look directly over the bungalow's rear garden it is likely that occupiers of the building would keep curtains or blinds drawn at most times of day for reasons of privacy, thus further restricting their outlook.
21. Consequently, the building provides unsuitable living conditions for the future occupiers. This failure, having regard to the inadequate internal layout and outlook provided, does not accord with DMP Policy DM1. Furthermore, the building does not accord with LP Policy 3.5, as it does not reflect the minimum space standards for a one bedroom, one person new dwelling and it does not have a convenient, efficient and functional room layout. The failure to provide a high standard of amenity for the existing and future users is inconsistent with the Framework. As DMP Policy DM26 concerns conversion of buildings to multiple occupancy, it is not relevant to this appeal.

Living conditions-the bungalow & adjoining residential property

22. The building is located a limited distance from the rear facing windows of the bungalow, compared with the typical distances between the rear elevations of dwellings in the vicinity. As noted above, the building extends across all the bungalow's rear garden. Also, the higher ground level gives further emphasis to the substantial size and overall bulk of the building in relation to the bungalow's remaining rear garden. Due to these factors, the building is a substantial and obvious feature in outward views at the rear of the bungalow. Although the bungalow has retained a rear garden of reasonable size and usability, the above has created an appreciably more built-up and enclosed feel, significantly and unacceptably eroding the level of outlook occupiers of the bungalow enjoy. Whilst the current occupiers might not object to this situation, I afford that limited weight, as occupiers and their circumstances can change quickly whilst the harm caused by the building is more permanent.

23. The building has had a limited effect on the level of outlook enjoyed by occupiers of other neighbouring residential properties. This is due to its location adjacent to the ends of rear gardens of those properties, the overall height being only slightly greater than adjacent boundary fences, together with the softening provided by maturing garden planting. Even so, the absence of harm in this respect does not weigh in favour of granting permission.
24. Therefore, the building does not accord with DMP Policy DM1, as it is detrimental to the amenity of neighbouring occupiers, having regard to the inadequate outlook. Furthermore, the failure to provide an adequate outlook is inconsistent with guidance in the SPD. The failure to provide a high standard of amenity for existing users is also inconsistent with the Framework.

Other matters

25. I am given to understand that an occupier of the bungalow is disabled and has acute poor health which requires ongoing round the clock care. According to his Doctor's letter, it is intended to use the building for art therapy alongside the exercise equipment I saw at the site visit, in order to assist in the management of his health conditions. I can understand and sympathise with the occupier's medical circumstances. However, the harm caused by the building will remain long after the current circumstances cease to be relevant. In any event, such a use is materially different to that in the deemed application. Therefore, I can only give the occupier's circumstances limited weight.
26. The appellant suggested on ground (f) that as an alternative to demolition, permission could be granted to retain the building for purposes incidental to the bungalow. Given the powers under s177 (1) (a) of the Act, it is appropriate to deal with this point as if it were made in relation to ground (a). However, s177 (1) (a) does not provide for the grant of planning permission other than in circumstances where it would be for the whole or part of the matters alleged in the notice. What has been erected is a self-contained flat, not an incidental outbuilding. Consequently, the latter does not comprise part of the breach described in the notice and so cannot form part of the deemed planning application arising from the ground (a) appeal.
27. The appellant's alternative solution set out above was largely based on a claim of being able to erect a building of similar size under permitted development rights. Even so, a residential outbuilding permitted by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) would have to be required for a purpose incidental to the enjoyment of the bungalow, not a self-contained flat. Moreover, the Government's Technical Guidance advises that in Class E such a purpose would not cover primary living accommodation such as a bathroom or kitchen². The appellant did not offer a detailed explanation as to why a structure similar in terms of floor area and location would be so required, or how a bathroom and kitchen might be ancillary to any incidental uses in that building. Therefore, the exercise of permitted development rights is not a realistic 'fallback' position in any event. Accordingly, whilst I am mindful that enforcement action is intended to be remedial, the above does not represent an obvious alternative to the notice requirements.

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

28. I was also referred to two recent appeal decisions in the Council's area, one of which was a neighbouring property³. Nevertheless, as both of those cases concerned householder development, they are not comparable with this appeal.

Conclusion on ground (a)

29. The building does not accord with the Development Plan and it is inconsistent with the SPD and the Framework. Therefore, the ground (a) appeal also fails.

Ground (f) appeal

30. This ground of appeal is that the requirements of the notice are excessive for their purpose. According to s173 of the Act, there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173 (4) (a)) is to remedy the breach of planning control that has occurred, including by restoring the land to its condition before the breach took place. The second (s173 (4) (b)) is to remedy any injury to amenity caused by the breach.
31. Whilst the Council did not specify which of the above purposes it had sought to achieve, the notice requires demolition of the building as opposed to its partial retention or some other modification, for example removal of the bathroom. Therefore, the purpose of the notice must be to remedy the breach of planning control by restoring the site to its condition before the breach took place.
32. The appellant's suggested alternative of retaining the building for a purpose incidental to the enjoyment of the dwelling has been dealt with under ground (a). Reducing the requirements to stop short of demolition, such as by reducing the overall height of the building to 2.5 m and removing the bathroom, would not remedy the breach described in the notice. Therefore, any requirement other than demolition would not fulfil the purpose of restoring the site to its condition before the breach took place.
33. Consequently, the requirements of the notice do not exceed what is necessary to remedy the breach and the appeal on ground (f) also fails.

Ground (g) appeal

34. The ground of appeal is that the time allowed for compliance with the notice is unreasonably short.
35. The appellant argued that a minimum of six months would be required for compliance. Nevertheless, given its relatively modest size, demolition of the building together with removal of the resulting materials is likely to be a relatively small-scale and straightforward job for an experienced building contractor and is unlikely to take more than a few weeks. In the context of the three month compliance period specified, this allows the appellant a reasonable amount of time for organising finance for the works and appointing a suitable, available contractor to carry them out.
36. Therefore, whilst I appreciate that the appellant has made a significant financial investment in the building, the specified period for compliance with the notice requirements is not unreasonably short and the ground (g) appeal also fails.

³ Appeal Refs: APP/M5450/D/17/3186796 & APP/M5450/C/18/3204616.

Conclusion

37. 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 deemed application.

Appeal B

Ground (b) appeal

38. The appeal site contains a semi-detached bungalow which mirrors that in Appeal A. A substantial single storey flat roof building has been erected in the rear garden. According to the appellant, the building has been used for purposes associated with the bungalow since its erection. In this respect, a planning application for the building was made in 2016 but was subsequently refused⁴. On the application form, the use of the building was described as a 'storage room' with the intended use described as a 'hobby room or gym'. In the Council's delegated report, the building was described as in use 'primarily for storage' and in 'an acceptable ancillary use' when the site was visited.
39. In the photographs supplied by the Council, on 30 August 2018 the building interior contained office furniture including a desk, table and chairs, filing cabinets and shelving with business records, together with a printer as well as a wardrobe, sports equipment and some boxes. There was also a bathroom containing a toilet, sink and shower, together with a fitted kitchen including an oven, hob and extractor, a sink, drainer, worksurfaces and cupboards. The interior was arranged similarly when I visited, apart from the oven, hob and extractor, which had all been removed.
40. For reasons set out in Appeal A, the presence of bathroom and kitchen facilities means that the building could not have been in use for a purpose incidental to the enjoyment of the dwelling at the date the notice was served. Even so, the existence of those facilities is not conclusive in terms of whether the building was in use as a self-contained flat. The 2016 planning application together with the visits to that site in that year and in 2018, provided extensive evidence regarding the use of the building following its erection. This evidence is all suggestive of the building having been used for purposes ancillary to the dwelling. The Council's photographs suggest it is likely that the building was being used as a home office in August 2018 and it was in a similar use when I visited. This evidence provides significantly greater clarity regarding the use of the building in this appeal, compared with that in Appeal A. There was little evidence to indicate that the building was suitable and available for occupation independently from the bungalow. As a result, there is little to indicate that the building was in use as a self-contained flat at the date the notice was issued.
41. Accordingly, as a matter of fact and degree and on the balance of probability, I find that the available evidence shows the building was not used as a self-contained flat and the allegation in the notice has not occurred. Whilst a building has been erected, I cannot correct the notice without causing injustice. This is because deleting the reference to a self-contained flat in the allegation would result in a breach which is materially different to that specified in the notice.

⁴ Council Ref: P/0394/16.

Conclusion

42. For the reasons given above I conclude that the appeal should succeed on ground (b) and the enforcement notice will be quashed. In these circumstances, the appeal under grounds (a), (d), (f) and (g) does not need to be considered.

Formal Decisions

43. Appeals A & B-It is directed that the enforcement notices be corrected by replacing 'outbuilding' where it appears in the alleged breach of planning control at paragraph 3 and in the requirements at paragraph 5 with 'building'.
44. Subject to the above correction, Appeal A is dismissed and 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.
45. Subject to the above correction, Appeal B is allowed and the enforcement notice is quashed.

Stephen Hawkins

INSPECTOR