



Appeal Decision

Site visit made on 5 November 2019

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/U5930/C/19/3222506

16a Woodville Road and 16b Woodville Road, Leytonstone, London E11 3BH

- 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 Dale Oseman against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The enforcement notice, numbered 080527, was issued on 21 January 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a single storey outbuilding in the rear garden.
 - The requirements of the notice are:
 1. Demolish the outbuilding in the rear garden in its entirety, and
 2. Remove from the land all resulting building materials and rubble arising from compliance with requirement 1 above.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in sections 174(2) (a), (f) and (g) 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 allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single storey outbuilding in the rear garden on land at 16a and 16b Woodville Road, Leytonstone, London E11 3BH, subject to the following conditions:
 - 1) The outbuilding hereby permitted shall be used for purposes incidental to the enjoyment of the residential upper floor flat as a dwelling and for no other purpose, and shall not be used for any form of living or sleeping accommodation.
 - 2) The roof of the outbuilding shall not be used as a balcony, roof garden or sitting out area at any time.

The appeal on Ground (a) and the deemed application

Main Issues

2. The main issues are:
 - The effect of the development on the character and appearance of the surrounding area; and

- The effect of the development on the living conditions of the occupier of No 16a with regard to external amenity space.

Reasons

Character and appearance

3. The appeal site is a mid-terrace building divided into two flats. The rear garden is also subdivided so that the rear portion is associated with the upper floor flat and is accessed from it by an external staircase that crosses the garden to the ground floor flat. It is within a tight knit urban area characterised by two storey terraced buildings fronting the road, with narrow rear gardens.
4. The outbuilding has a flat roof and fills the width of the garden. It is a similar height to the top of the fence with trellis on the side boundaries of the garden. I did not see any similar outbuildings in the immediate vicinity, although I note that there are garages and sheds in the wider area, some of which are visible from viewpoints on neighbouring roads. It is a large and bulky outbuilding that fills the rear part of the garden associated with the upper floor flat. However, due to its relatively low height and flat roof, it has little visual impact beyond the boundaries of the site. Moreover, the pattern of development is defined by the frontage buildings, and due to its relatively modest appearance and scale the outbuilding is not inconsistent with this.
5. I therefore do not find that it is harmful to the character and appearance of the surrounding area. Accordingly, it is not in conflict with CS15 of the Waltham Forest Local Plan Core Strategy 2012 (CS), Policies DM4 or DM29 of the Waltham Forest Local Plan Development Management Policies 2013 (DMP) which seek, amongst other things, to ensure that new development is of high quality that responds positively to the local context and character. It would not be contrary to the guidance in the Residential Extensions and Alterations Supplementary Planning Document 2010 (SPD).

External amenity space

6. The minimum standards for external amenity space in residential development are set out in DMP Policy DM7, which also requires that the space is well-designed and usable. According to this policy, a minimum of 20 square metres of outdoor space should be provided in this case. The SPD advises that extensions to dwellings should not reduce external amenity space to less than 15 square metres of garden space per habitable room.
7. The parties disagree as to the footprint of the outbuilding and the size of the remaining garden. The appellant states that the garden is 35.25 square metres, and the footprint of the shed has reduced the useable space by 13.5 square metres, while the Council calculate it has a footprint of 15.8 square metres. Both figures result in a remaining usable garden of around 20 square metres. However, the Council identifies that due to other existing structures, including the external staircase, only 15 square metres of garden remains, and is too narrow to be able to function as a garden.
8. I saw on my site visit that the remaining garden is of a sufficient size to comfortably provide a sitting out area, as well as some additional storage and circulation space. It is not overly narrow or small, taking into account the size of the flat it serves. I do not therefore agree that the garden is so small as to be insufficient as an external amenity space, nor that it is so narrow as to be

unable to function as a garden. I do not therefore find that the development has resulted in a harmful effect on the living conditions of the occupiers of No 16a, with regard to external amenity space.

9. Accordingly, it is not in conflict with DMP Policy DM7, CS Policies CS2 and CS15, or London Plan 2016 Policies 7.1, 7.4 and 7.6, insofar as they seek to ensure that development enables people to live healthy, active lives, and provides high quality outdoor spaces. As I have found that the garden is still a practical outdoor amenity space, the failure to provide 15 square metres per habitable room as required by the SPD does not indicate a reason to withhold planning permission in this case.

Other Matters

10. The occupier of the ground floor flat is concerned that the outbuilding restricts light to the bedroom window at the rear of the flat. However, between the outbuilding and the window is a timber fence as well as the open part of the garden to the upper floor flat. As a result, I do not agree that the outbuilding has a significant effect on the daylight or sunlight reaching the ground floor bedroom window.
11. The enforcement notice is concerned with the erection of the outbuilding as operational development rather than a material change of use of the land, and I have dealt with the appeal on this basis. The concern that the outbuilding is used for a construction business run by the appellant is not a matter that is before me. The neighbouring occupier has also raised concern at the effect on the value of their property, but it is a well-established principle that the planning system does not exist to protect private interests such as the value of land or property.

Conditions

12. I have considered the conditions suggested by the Council in the light of the tests set out in the Planning Practice Guidance (PPG). A condition specifying the use of the outbuilding for purposes incidental to the enjoyment of the upper floor flat is required in the interests of clarity and to reflect the stated use of the building set out by the appellant. It is necessary to prevent the use of the flat roof of the outbuilding for a balcony, roof garden or sitting out area in the interests of the living conditions of neighbouring occupiers.

Conclusion

13. For the reasons given above, I conclude that the appeal should succeed on ground (a). Accordingly, the enforcement notice will be quashed. In these circumstances, the appeals under the grounds (f) and (g) of section 174(2) of the 1990 Act as amended do not need to be considered.

N Thomas

INSPECTOR