



Appeal Decision

Site visit made on 15 October 2019

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 January 2020

Appeal Ref: APP/T5150/C/19/3220072

32 Hillfield Avenue, Wembley HA0 4JR

- 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 Samgi Parsotam Maugi against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 11 December 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a dwelling in the garden of the premises.
 - The requirements of the notice are to:
 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 after this notice takes effect.
 - 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 the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Formal Decision

1. 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.

Background

2. No 32 Hillfield Avenue is a maisonette, or a building containing one or more flats. It, therefore, does not benefit from Schedule 2, Part 1 householder permitted development entitlement under the Town and Country Planning (General Permitted Development (England) Order 2015.
3. In 2015 planning permission (ref 15/1474) was granted for the erection of a single-storey outbuilding in the property's rear garden. The approved plan ref 106 rev P3 showed that the building would be used as a garden shed/gym, and that it would be set in from the property's side boundaries.
4. Following the building's completion, it would appear from the Council's representations that, when inspecting the building in response to its alleged use as an independent dwelling, it became clear that it had been built larger than that permitted, and also that it was being used as a self-contained unit of residential accommodation.

5. In light of this the Council saw fit to issue an enforcement notice requiring, in the circumstances, for the dwelling's removal.

Procedural Matters

6. At my site visit it was clear that the residential use, as alleged by the Council, had ceased as the building appeared to now be in use for general storage purposes. Although the appellant acknowledges that the building had been previously equipped with a bathroom and cooking facilities the Council comments that, at an inspection carried out in August 2018, a WC was also evident, along with beds which had been slept in, clothes and personal items. Photographs have been provided by the Council which clearly show the sleeping facilities mentioned.
7. Whilst the appellant does not endorse the Council's conclusions as to the outbuilding's use as a separate dwelling, instead indicating that it has been used more for storage purposes, the only ground of appeal made is under ground A. This ground, also known as a deemed planning application, requests that planning permission should be granted for the breach specified in the enforcement notice, namely the erection of a dwelling in the garden of the premises. No appeal has been made claiming that the alleged breach has not occurred as a matter of fact (ground B). Accordingly, it must follow that the appellant accepts that a breach of planning control has occurred and seeks planning permission in response.
8. The outbuilding was granted planning permission in June 2015 and there is no indication from either main party that the application was retrospective. It is not, though, clear when construction commenced nor when the building would have been considered as substantially complete. Given my site visit observations I can confirm that this building covers a larger footprint than that shown on the approved plans. Further, as the enforcement notice requiring for its demolition was issued in December 2018, it cannot, as a structure, satisfy the minimum four year immunity period. As such, irrespective of the outbuilding's identified use as a dwelling, I must conclude that the structure itself is unauthorised and is therefore vulnerable to enforcement action.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

9. These are:
 - 1) whether the use of the outbuilding as a dwelling is capable of providing a satisfactory standard of living accommodation for its future occupiers; and
 - 2) the effect of the proposal on the character of the area.

Standard of accommodation

10. For a 1-storey, 1-bed dwelling policy 3.5 of the London Plan (LP) gives a minimum floorspace standard of 37sqm gross internal area (GIA). The Council comments that the appeal building has a GIA of less than 30 sqm, and the appellant has not disputed this. This requirement transposes to policy DMP18 of the Council's Development Management Policies document (DMP) which, in adopting the London Plan's standards, also requires the provision of private amenity space for new dwellings. In this particular instance none is provided.

Moreover, as the outbuilding has been built within the rear garden of No 32, the host property has itself lost a significant area of garden space.

11. The dwelling is accessed through a locked door in the wall, and then via No 32's rear garden. Whilst, therefore, with its internal facilities, the outbuilding might have been occupied independently, if used as a dwelling it is incapable of being severed from No 32's curtilage and accessed independently. Nonetheless, although the Council's Supplementary Planning Document No 2 'Residential Extensions and Alterations' (SPD) says that outbuildings should be incidental to the main dwelling it also stresses that they should not include any primary accommodation such as a bedroom, bathroom, toilet or kitchen. Clearly, the development is contrary to the SPD's advice.
12. On this main issue I conclude that the development fails to provide for a satisfactory standard of living accommodation, and is in material conflict with LP policy 3.5, DMP policies DMP18 and DMP19, policy CP17 of the Council's Core Strategy (CP) and relevant advice within the Council's SPD.

Character

13. CP policy CP17's general objective is to protect Brent borough's suburban character, whilst DMP policy DMP1 says that development should be satisfactory in terms of location, layout and access. Given my findings on the first main issue I have not witnessed anything to suggest other than the development is fundamentally at odds with the prevailing pattern of development, and is unacceptable in the circumstances.
14. On this main issue I find the development is harmful to the character of the area, and materially conflicts with the objectives of CP policy CP17 and DMP policy DMP1.

Overall Conclusion

15. The form of development clearly fails to accord with the development plan's objectives, and the shortfall in minimum space standards is so significant as to warrant a refusal of planning permission.
16. For the reasons given, and having had regard to all matters raised, I conclude that the appeal on Ground (a) should fail and the deemed planning permission be refused. The enforcement notice is therefore upheld.

Timothy C King

INSPECTOR