
Appeal Decision

Site visit made on 16 December 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 27 January 2020

Appeal Ref: APP/A5270/C/19/3230366

4 Rushdene Close, Northolt, Middlesex UB5 6NR

- 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 Sukhi Madahar against an enforcement notice issued by Ealing Council.
 - The enforcement notice was issued on 24 April 2019.
 - The breach of planning control alleged in the notice is without planning permission, the material change of use of the rear outbuilding to a separate self-contained residential dwelling.
 - The requirements of the notice are:
 1. Cease the use of the outbuilding as a separate self-contained residential dwelling
 2. Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling.
 3. Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling; and
 4. Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in sections 174(2)(a)(b)(f)(g) of the Town and Country Planning Act 1990 as amended.
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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.

Ground (b)

2. An appeal under ground (b) is that the matter stated in the notice as constituting the alleged breach of planning control has not occurred. The relevant date for determination on this ground is the date the notice was issued which is the 24 April 2019. It is for the appellant to make out the case on this ground on the balance of probability. The notice states that there has been a material change of use of the outbuilding to a separate self-contained residential dwelling.
3. The appellant states under this ground that she believes that the outbuilding was built over 6 years ago as a gym. However, the notice does not allege that the construction of the building was unlawful, it alleges that the use of the outbuilding has materially changed from being incidental to the existing dwelling at No 4 to a separate self-contained dwelling. The appellant became the owner of 4 Rushdene Close with the outbuilding in 2017 and states that the

outbuilding was used initially by the family. However, the outbuilding is now rented out to a couple and has been registered as a separate dwelling for council tax since March 2019. The appellant has supplied a copy of the council tax bill dated the 24 April 2019. There is, therefore, no dispute that the building is now used as a self-contained separate dwelling having been originally used in association with the main dwelling.

4. To conclude on this ground, the use of the outbuilding as a separate self-contained residential dwelling has occurred as a matter of fact. The ground (b) appeal accordingly fails.

The appeal under ground (a)

Planning Policy

5. I have been referred to a number of planning policies. I consider policies 3.5 and 7B of the Ealing Development Management DPD(2013) (the Ealing DPD) to be most relevant together with Policy 7.4 of the London Plan(MALP 2016) and the National Planning Policy Framework. These policies collectively seek to protect amenities of existing occupiers including those of neighbouring properties, to ensure that new housing is appropriately located to enhance or maintain the surrounding area and to provide minimum standards for living space and amenity space.

Main Issues

6. The main issues are (i) the effect of the development on the character of the area and living conditions of neighbouring occupiers including noise and (ii) the effect of the use upon the living conditions of occupiers of the outbuilding with regard to living space, outside amenity space, privacy and outlook.

Character of the area and living conditions of neighbouring occupiers

7. The area is of a suburban residential character with Rushdene Close being a cul de sac with dwellings fronting onto the road. No 4 is a terraced dwelling at the end of a row of four dwellings with a drive to the front and a garden to the rear with neighbouring dwellings having a similar arrangement.
8. The outbuilding is at the rear of No 4 with access across the front drive. The outbuilding is side on to the existing dwelling with its rear elevation along the boundary with No 6. Whilst there are garages and outbuildings nearby, the Council indicates that they are not in separate residential use.
9. The appellant has indicated that noise is not an issue for occupiers of the original dwelling or for the tenants and has supplied a short letter from the tenants of the outbuilding confirming that. There is, however, also the wider issue of noise for adjoining neighbours particularly as the outbuilding sits on the boundary with No 6. Noise is also likely to increase in the summer months when windows would be open.
10. Whilst the outbuilding has been sound proofed, there is inevitably some noise particularly with comings and goings from the outbuilding with the access to it being beyond the front drive along an extended patio area of the existing dwelling which then forms a path to the front door of the outbuilding.
11. Taking into account the constrained area around the outbuilding and the cul de sac location, there is likely to be extra noise and disturbance which would be

harmful to neighbouring properties. The use of the outbuilding as a self-contained residential dwelling in a rear garden is out of keeping to the character of the surrounding area given the prevailing pattern of the dwellings that front onto the road and would appear as overdevelopment.

12. I do find that the development has a harmful effect upon the character of the area and the living conditions of neighbouring properties.

Living conditions of occupiers of the outbuilding

Living space

13. The outbuilding consists of one open plan room which had kitchen facilities, a shower room and a double bed at the time of my visit. The appellant has confirmed that the outbuilding is being rented out to a couple and for a 2 person, 1 bedroom building the internal space requirement set out in the London Plan is at least 50 square metres without an allowance for storage space. Measurements taken at the site visit indicate that the outbuilding is around 4 metres by 7 metres resulting in 28 square metres of space which is the figure referred to by the appellant in his statement. The Energy Performance Certificate produced by the appellant refers to 24 square metres. In any event, the development falls short of the minimum internal floor space standard for a dwelling of this type of at least 50 square metres as set out in the London Plan. The amount of living space is insufficient and fails to provide suitable living conditions for the occupiers of the outbuilding.

Outdoor amenity space and privacy and outlook

14. The outbuilding is on the edge of the existing garden space for No 4 and the Council indicates that the garden is around 40 square metres. The garden remains as one single garden and there is no indication if the occupiers of the outbuilding are able to share the use of it.
15. Whilst the Council's requirements refer to various size standards for private garden space, in the absence of a designated private garden space, a satisfactory standard of amenity space has not been provided. The position of the outbuilding in relation to the garden area does also impact upon the privacy of the occupiers of the outbuilding as the main windows and front door are adjacent to the garden area. The absence of private outdoor amenity space does harm the living conditions of the occupiers of the outbuilding and also harms their privacy and outlook due to the proximity of No 4.

Conclusions on ground (a) and the deemed application

16. I do find that the development does harm the character of the area and living conditions of neighbouring occupiers. I also find that the development does harm the living conditions of occupiers of the outbuilding with regard to living space, outside amenity space, privacy and outlook. The development is therefore contrary to Policy 3.5 of the Ealing Development Management DPD(2013) (the Ealing DPD) which provides minimum requirements for space standards. It would also be contrary to Policy 7.B of the Ealing DPD which, amongst other things, refers to good levels of privacy and coherent development. Policy 7.4 of the London Plan refers to ensuring buildings create a positive relationship with street level activity and people feel comfortable with their surroundings. The development is also contrary to the principles of the

National Planning Policy Framework which seeks to protect the living conditions of existing occupiers with regard to issues such as overlooking.

17. There are no other considerations which indicate a decision other than in accordance with the development plan. The appeal on ground (a) fails.

The appeal under ground (f)

18. This ground relates to whether the steps required by the notice exceed what is necessary to remedy the breach of planning control. The appellant has not under this ground of appeal suggested any lesser steps.
19. An enforcement notice is required to set out the steps required by the local planning authority in order to achieve wholly or partly the purposes set out in Section 173(4) of the 1990 Act. The notice alleges a material change of use to a self-contained dwelling. The steps required are to cease the use of the outbuilding as a separate self-contained residential dwelling, to remove the kitchen and the bathroom and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling and remove all resultant debris.
20. Where internal fixtures and fittings have been provided as part of and integral to an unauthorised material change of use of a building and have thereby facilitated that change of use then those fixtures and fittings can also properly be required by an enforcement notice to be removed in remedying the breach of planning control.
21. The appellant asserts that the outbuilding always included the bathroom, sink and "worktop stated as a kitchen". At the time of my visit, the corner kitchen area consisted of a washing machine, a tabletop oven with a hob on top and fitted kitchen units both at ground level and attached to the wall. She refers to the outbuilding being built under previous ownership and replacing two garages and whilst originally a gym, it was then converted into a games room that the previous owner's son frequently slept in. However, all of these matters occurred prior to the purchase of No 4 and the outbuilding by the appellant. The appellant also stated that when she bought the dwelling and outbuilding, the outbuilding was used by family. I therefore have no substantive evidence that the shower room and kitchen did not facilitate the change of use that has occurred.
22. Consequently, the steps required by the notice do not exceed what is necessary to remedy the breach of planning control. The ground (f) appeal must therefore fail.

The appeal under ground (g)

23. This ground relates to the time allowed for compliance. The period for compliance is 3 months. The appellant has stated that the period for compliance is too short but not stated why. Whilst there are tenants in the building, there is no indication that the notice period required under the agreement would cause any issues with compliance with the notice. A period of 3 months does not appear unreasonable to allow for the kitchen and other items to be removed. The Council has referred to its powers under Section 173A of the Act which would allow the Council to extend the compliance period should it be satisfied that there were justifiable reasons to do so. There is,

however, no evidence before me to indicate why 3 months is too short. The appeal under ground (g) therefore fails.

Conclusion

24. For the reasons given, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed planning application.

E. Griffin

INSPECTOR