
Appeal Decision

Site visit made on 17 December 2019

by Rajeevan Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 January 2020

Appeal Ref: APP/T5150/C/19/3232793

2 Ecclestone Place, Wembley HA9 8AB

- 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 Mr Savio Fernandes against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 30 May 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding in the rear of the premises.
 - The requirements of the notice are:
Step 1: Demolish the unauthorised development
Step 2: Remove all items and materials arising from the demolition of the unauthorised development from the premises.
 - The period for compliance with the requirements is one month.
 - The appeal is proceeding on the grounds set out in section 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. It is directed that the enforcement notice be:
 - varied by deleting the words "1 month" within schedule 5 (Time for Compliance) and its replacement with "3 months".
2. Subject to this variation, the appeal 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.

Ground (a) appeal and the Deemed Planning Application

Main Issues

3. The main issues are the effect of the development on:
 - the character and appearance of the host building and the surrounding area;
 - the living conditions for current/future occupiers of the appeal site, with regard to private amenity space; and
 - the living conditions for the occupiers of Nos 1 and 3 Ecclestone Place, with particular regard to daylight, sunlight, overshadowing and outlook.

Character and appearance

4. The site is a mid-terrace dwellinghouse situated on the western side of Ecclestone Place. The dwellinghouse and subject terrace comprise modest size two storey terraced houses finished in brick and render with modest sized front and rear gardens. There is a large commercial garage, to the rear of the property.
5. The Council has previously granted a certificate of lawfulness proposed for a single storey rear extension, a rear dormer, and three roof-lights, to the dwellinghouse¹. This has now been implemented together with the erection of the outbuilding in the rear garden (the subject of this appeal).
6. The outbuilding when combined with the existing rear extension occupies a disproportionate amount of the rear garden. Although not visually prominent, the unauthorised development has substantially eroded the extent of undeveloped space associated with this terrace property, which has created a cramped and an uncomfortable relationship with the host building and the adjoining properties. I note that the outbuilding is not widely visible within the wider public realm, however, its presence is clearly apparent and in close proximity of several surrounding residential properties and the commercial garage.
7. Therefore, despite the use of matching materials, and its position away from any public views, the effect of the development diminishes unacceptably the character and appearance of the host building and the surrounding area.
8. I note that the evidence indicates that there was a previous rear extension, canopy and shed in the rear garden. However, there is limited information before me regarding the lawfulness of these pre-existing structure, and since these have long since been demolished, they do not form part of the development that I am currently considering. Therefore, I can only attach limited weight to these earlier structures.
9. The development is therefore contrary to Policy DMP 1 of the London Borough of Brent Local Plan Development Management Policies, 2016 (LP), which amongst other things, states that development will be acceptable provided it complements the locality.

The living conditions for current/future occupiers of the appeal site - private amenity space

10. Given the relatively modest sizes of the rear gardens in the subject terrace, the development in combination with the single storey rear extension has resulted in a very small rear garden remaining, smaller than most neighbouring gardens. Furthermore, the quality of this rear garden is poor in terms of light and outlook in so far as it is situated between the walls of the single storey rear extension and the outbuilding itself.
11. LP Policy DMP 19 highlights that all new dwellings will be required to have external private amenity space of a sufficient size and type to satisfy its proposed residents' needs, and that this is normally expected to be 50sqm for family houses. Although this development is not for a new dwelling, nevertheless, this policy provides a useful benchmark to assess the quality of

¹ Planning ref: 18/2298, granted on 9 August 2018.

amenity for this existing dwellinghouse. I note that the original rear garden was already below this figure, but the outbuilding significantly reduces the remaining garden area further. When combined with the difference in levels between the rear extension, outbuilding and rear garden, the remaining relatively small rear garden is insufficient in size and quality for the occupiers of the site.

12. Therefore, I consider that the development fails to provide acceptable living conditions for future occupiers of the appeal site, with regards to private amenity space. In this respect the development is in conflict with LP Policies DMP 1 and DMP 19, which amongst other things, seeks to ensure that new development provides high levels of external amenity, and provide external private amenity space of a sufficient size and type to satisfy its residents' needs.
13. Furthermore, the development is contrary to paragraph 127 of the National Planning Policy Framework (2019) which states that development should ensure high standards of amenity are created for future as well as existing users.

The living conditions for the occupiers of Nos 1 and 3 Ecclestone Place – daylight, sunlight, overshadowing and outlook

14. Both main parties, and a neighbouring occupier have submitted their views on the effects of the development on daylight, sunlight, overshadowing and outlook of neighbouring occupiers. Owing to the single storey height of the outbuilding, with a flat roof only marginally above the existing the existing boundary treatments, I agree with the appellant that the outbuilding does not have a harmful effect in relation daylight, sunlight, overshadowing and outlook of occupiers 1 and 3 Ecclestone Place.
15. As such I find no conflict against Council's adopted Policy DMP 1 of the LP, which amongst other things, seeks to ensure that new development provides high levels of internal and external amenity. However, this is just one matter in the overall assessment of the proposal and does not alter my judgement set out earlier.

Other Matters

16. I note that there is a commercial garage directly behind the outbuilding, and that the appellant considers that the outbuilding screens this from view within the garden and provides a buffer against noise, pollution and disturbance. I also acknowledge that the evidence submitted indicates that the unauthorised development was not intentional, since the appellant had contacted the Local Planning Authority prior to the construction of the development and believed that the outbuilding constituted permitted development. However, these factors do not outweigh the harm I have identified above.
17. The appellant also states that permitted development would allow a similar sized outbuilding. Be that as it may, in my view, such an outbuilding would not be as substantial as the scheme before me. Therefore, I give the permitted development fall-back argument little weight.

Conclusion on Ground (a) and the Deemed Planning Application

18. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

19. The appeal on this ground is that the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections. The enforcement notice requires the demolition of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
20. The appellant considers the outbuilding could be modified and reduced in size to comply with permitted development rights. I have been specifically referred to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). However, the retention of a modified outbuilding would not remedy the breach of planning control alleged. It has been held that the prescribed tolerances in the GPDO should not be regarded as limitations but as part of the definition of the permitted development. A building which exceeds the tolerances under this Part is entirely outside permitted development rights. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice. Therefore, the appeal on ground (f) fails.

The appeal on Ground (g)

21. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant asks that the time for compliance is extended from one to six months, in order to provide the appellant with additional time to raise the funds for the necessary works and to complete them to the necessary standard. It is also contended that as the outbuilding is a well-built structure of blockwork, render, uPVC fenestration and roofing, it would require careful demolition in this restricted residential location, and at a time which is convenient to the adjacent garage business.
22. I have identified under ground (a) that the development results in harm to both the character and appearance of the host building and the surrounding area, and to the living conditions for current/future occupiers of the appeal site, with regard to private amenity space. However, given the constrained residential nature of the site, and its proximity to the neighbouring garage business it seems reasonable to allow for some further time for the works to be carried out. In light of the above, a 3 month period for compliance would strike a more reasonable and proportionate balance to comply with the notice. The appeal on ground (g) therefore succeeds.

Conclusion

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

R Satheesan INSPECTOR