



Appeal Decision

Site visit made on 30 October 2019

by Timothy C King BA (Hons) MRTPI

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

Decision date: 22 February 2020

Appeal Ref: APP/M5450/C/18/3209759

7 Holland Close, Stanmore HA7 3AN

- 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 Axel Christian Nares against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 27 July 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission the construction of the detached outbuilding in the rear garden of the Land **(Unauthorised Development”)**
 - The requirements of the notice are:
 1. Demolish the Unauthorised Development shown hatched red on the attached plan.
 2. Remove from the Land all materials and debris arising from compliance with the aforementioned requirement of the notice.
 - The period for compliance with the requirements is Three (3) calendar months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) 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 as amended, and falls to be considered.
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The Enforcement Notice

1. The enforcement notice is corrected, and Requirement 1, as set out in the notice's point 5, is deleted and is substituted with the following wording:

Either: Demolish the detached outbuilding shown red on the attached plan;
Or: Carry out remedial works and complete the development in accordance with the terms and conditions of planning permission ref P/5260/18, dated 1 February 2019, and amended by way of the appeal decision dated 29 November 2019 (ref APP/M5450/W/19/3227043).

Preliminary Matter

2. The outbuilding in situ has previously been the subject of a retrospective planning application which was later refused planning permission in 2016. The Council's decision was then upheld following an unsuccessful appeal in 2017 (APP/M5450/D/17/3169431). The enforcement notice was subsequently issued in July 2018 following which the Council granted planning permission (ref P/5260/18) for proposed alterations to the outbuilding, involving the following modifications:
 - 1) The building's maximum height being reduced from 3.3m to 2.5m;

- 2) The building's height, adjacent to the shared boundary with No 9 Holland Close, being reduced to 1.7m;
 - 3) Changing the roof profile from dual pitch with a gable end to a part flat, part pitched roof adjacent to the shared boundary with No 9;
 - 4) Repositioning of the entrance door to the outbuilding; and
 - 5) The walls of the outbuilding would be white rendered, the windows would be of the UPVC type, and the roof would comprise grey slate and grey mineral felt.
3. This recent planning permission, along with the subsequent appeal decision (APP/M5450/W/19/3227043) which extended the development's implementation period to six months, and also the earlier appeal decision relating to the outbuilding in situ, all represent material considerations in my assessment of the current appeal.

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

Main Issues

4. The deemed planning application (dpa) seeks planning permission for the retention of the outbuilding in situ. Although the enforcement notice's stated reasons for issue do not refer specifically to the development's effect on the living conditions on the neighbouring residents at No 9 Holland Close, the accompanying case report indicates the considered outbuilding's adverse impact, and this is consistent with the findings of the Inspector who determined the 2017 appeal. In the circumstances the main issues are:
- 1) the development's effect on the living conditions at No 9; and
 - 2) the development's effect on the character and appearance of the area.

Reasons

Living conditions

5. The evidence indicates that the outbuilding is the same structure that was previously assessed on appeal, as mentioned, in 2017. Here, the Inspector concluded that the building harmed the living conditions of the residents at No 9 by reason of adverse visual impact caused by its bulkiness, dominating nature and proximity to the common boundary. Accordingly, he identified conflict with policy 7.6 of the London Plan (LP) and also policy DM1 of the Harrow Development Management Local Plan Policies (LPP). In the circumstances, and from my site visit observations, I see no reason to disagree with the previous Inspector's findings.
6. I therefore conclude that the development is harmful to the living conditions at No 9, and is in material conflict with the aims and requirements of LP policy 7.6 and LPP policy DM1.

Character and appearance

7. The previous Inspector did not find against the outbuilding on this issue. He considered that its visual appearance was not inconsistent with local character. My site visit observations, similarly, did not find otherwise and, accordingly, I do not disagree with his earlier assessment.

8. Accordingly, I conclude that the development is not harmful to the character and appearance of the area and, to this end, there is no conflict with either LP policy 7.6 and LPP policy DM1.

Other considerations

9. I have had regard to the appellant's representations but, save for the subsequent planning permission which would involve the outbuilding's modification there has been no material change in circumstances. I will deal with this point under the Ground (f) appeal.

Conclusion on Ground (a)

10. In terms of the dpa, although I have found that the development would not be harmful to the character and appearance of the area this is outweighed by the effect on the living conditions at No 9. For the reasons given above, and having had regard to all matters raised, the appeal fails and planning permission is refused for the development's retention.

The Appeal on Ground (f)

11. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f) it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the wording of the enforcement notice that its primary purpose, given the requirement that the outbuilding be demolished, is to remedy the breach. However, since the notice's issue planning permission has been granted for the building's modification which, in the Council's view, would represent an appropriate reduction in height, amongst other things, to make the development acceptable. Given, therefore, that there is an extant planning permission in place, and is capable of implementation, I am satisfied that the notice can be corrected to allow for the potential carrying out of this alternative, articulated scheme.
12. The appellant has not appealed the notice on ground (g) whereby representations might have been made that its stated compliance period of three months falls short of what is reasonable. However, I am mindful of the 2019 appeal decision, whereby the Inspector extended the implementation period for the approved modifications to be carried out to six months. I note also that the wording of the condition as originally imposed by the Council was varied by the Inspector to delete the unequivocal wording "*Failure to comply with this timeframe will result in further enforcement action.*"
13. Given that the above decision pre-dates the current appeal for which, in view of the change in the planning position, the appellant was entitled to consider there was a chance of success on ground (f), it remains open to the appellant, if choosing to implement the permitted alternative scheme, to make a formal approach to the Council as to the expected timescale for completion of the approved works. The Council, for its part, under s173A(1)(b) of the 1990 Act as amended, has powers to vary the notice to extend the period for compliance as it considers fit.
14. The appeal on ground (f) therefore succeeds.

Overall Conclusion

15. Although the dpa in respect of the outbuilding's retention as it stands fails I have determined that, given there is now an obvious alternative scheme in the form of approved modifications to the building, the appeal on ground (f) should succeed. The enforcement notice is corrected, accordingly.

Formal Decision

16. The appeal on ground (a) is dismissed and the enforcement notice is upheld, but is corrected by deleting Requirement 1 and substituting it with the following wording:

Either: Demolish the detached outbuilding shown red on the attached plan;

Or: Carry out remedial works and complete the development in accordance with the terms and conditions of planning permission ref P/5260/18, dated 1 February 2019, and amended by way of the s78 appeal decision dated 29 November 2019 (ref: APP/M5450/W/19/3227043).

Timothy C King

INSPECTOR