



Appeal Decision

Site visit made on 9 March 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2020

Appeal Ref: APP/T5150/C/19/3220633

39 Birchen Grove, London NW9 8RT

- 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 Vincent Kieran Howard 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 building, not incidental to the main house, in the rear garden of the premises.
 - The requirements of the notice are:
 - Step 1 Demolish the building in the rear garden of the premises.
 - Step 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.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision

1. The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Matters concerning the notice

2. The alleged breach refers to the erection of a building, not incidental to the main house, in the rear garden of the premises. It is apparent that the notice attacks it as a single dwellinghouse. Although not identified within the alleged breach, the reasons for issuing the notice state 'the unauthorised building's kitchen and bathroom facilities result in the provision of a separate residential unit of accommodation, which is not incidental to the enjoyment of the dwelling house'. Whilst not specifically citing ground (b)¹, the appellant has dealt with this in his statement, where he indicates that the building is not a dwelling, and so I am satisfied that the notice can be corrected without causing injustice to any party.

Procedural Matter

3. Although the appellant has not appealed under ground (g), since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK. S176(1)(b) of the Act gives an Inspector appointed by the Secretary of State wide powers to vary the terms of an enforcement notice, provided it does not cause injustice. In light of this, the views of the appellant and Council

¹ Ground (b) is that the matters alleged in the notice have not occurred.

were sought to establish whether the compliance period should remain unchanged or a different compliance period should be specified. I have taken these views into account in reaching my decision.

Ground (d)

4. An appeal on ground (d) is made on the basis that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. S 171B(1) of the Town and Country Planning Act 1990 (as amended)(the 'Act') sets out that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.
5. Since the enforcement notice was issued on 11 December 2018, to succeed on ground (d), the appellant must prove on the balance of probability that the building was substantially completed on or before 11 December 2014. Case law has established that it is for the appellant to make their case on the balance of probabilities.
6. The appellant states that a cabin was erected in the rear of the garden in around 1991/92. A letter from a neighbour confirms that a shed was erected at the bottom of 39 Birchen Grove in 1991-2 the same size and shape as the one presently in situ.
7. An invoice dated 20 June 2004 details include the provision of a cable to summer house/shed and a letter written by S.Ince, a general contractor of Ince Builders, confirms that there was a lockable log cabin type garden building at the end of the garden of 39 Birchen Grove in July 2011. The appellant has also submitted a photograph which appears to show an alternative garden shed to the rear of the garden.
8. In July 2016 the appellant started to demolish the cabin and construction work to build a new cabin commenced. The foundations, walls, roof, windows and door were finished by about the first week or so in October 2016. Over the next 6 months or so works to the inside of the cabin were carried out, with services reinstated.
9. The appellant confirms that the cabin was built to the same width as the old cabin but back behind the line of the old cabin toward the back fence. The appellant asserts that Council officials made three visits to the property during the installation of the garden cabin, 5 May 2017, 10 November 2016 and 27 June 2017.
10. Whether or not the Council officials raised concern during the inspections, the evidence provided by the appellant supports the Council's case that the cabin was constructed within the past four years and that the previous one had been demolished. On the available evidence and on the balance of probabilities, I find that the cabin was not substantially completed on or before 11 December 2014. Consequently, the appeal on ground must (d) fail.

Ground (a)

11. The allegation forms the basis of the deemed planning application. As set out above, I have corrected the notice and so planning permission is sought for the erection of a dwellinghouse.
12. The main issues are the effect of the building on:
 - The character and appearance of the area and whether the appeal scheme would affect the setting of the adjacent St Andrews Conservation area (SACA); and
 - The living conditions of nearby residents and the occupiers of the appeal building, having particular regard to privacy, outlook and the provision of outdoor amenity space.

Reasons

Character and appearance

13. The appeal property is located in a generally residential area comprising semi-detached dwellings with modest front gardens fronting onto the highway. The building comprises a detached single storey building timber-clad building which is located towards the end of the rear garden of No 39 Birchen Grove, a two storey semi-detached dwelling.
14. The appeal site shares a boundary to the rear and side with the St Andrews Conservation area (SACA). The SACA extends around properties in Church Walk and incorporates a small number of properties along Birchen Grove. A number of properties along Church Walk overlook the appeal site. The SACA has a generally verdant character, with residential properties typically set in generous plots and St Andrew's Church acting as the focal point for the area. From my assessment of the evidence before me, the significance of the SACA is derived from the pattern of development, and the verdant character of the area.
15. Policy CP17 of the adopted Brent's Core Strategy (BCS) 2010 states that development of garden space and infilling plots with out-of-scale buildings that do not respect the settings of the existing dwellings will not be acceptable. Policy DMP1 adopted London Borough of Brent Development Management Policies (DMP) document 2016 seeks to ensure that development is of a location, use, concentration, siting, layout, scale, type, density, materials, detailing and design that complements the locality, amongst other things. Policy DMP18 of the DMP states, in part, that planning permission will only be granted for outbuildings that will not be residential accommodation or do not support the increased occupation of a dwelling.
16. Supplementary Planning Document No 2 "Residential Extensions and Alterations" (SPD) states that if any part of your outbuilding would lie within a distance of 2m of the boundary with the neighbours' garden then the maximum height permitted would be 2.5m. It also states that the outbuilding should not include any forms of primary accommodation such as bedrooms/shower rooms, toilets or kitchens.
17. The building is accessed via the rear garden of No 39 Birchen Grove and has two entrances, the first, leads to a workshop area with toilet and basin and the

second leads to a living room with kitchen area, a separate room with pool table and stored items, and a bathroom with shower, toilet and sink. Although the kitchen was largely covered with material, I saw that there was an oven, sink, white goods and various cupboards. A cupboard off the main living area contains a boiler. The building provides all the facilities necessary for day to day living. This is in conflict with policy DMP18 of the DMP and is also contrary to the requirements of the SPD, as set out above.

18. The appellant asserts that the garden cabin is not a house or a flat and states that the cabin is mostly used by the appellant's wife as a prayer room, for storage of household items and for playing games. However, the building has all the facilities required for day to day human habitation. It is apparent that the notice attacks the building on the basis that it is a dwellinghouse and I have therefore considered it on this basis. Even if I were to conclude that the building was not a dwelling, and the allegation had not been corrected, as the building includes primary living accommodation, it would still breach Policy DMP18 and the SPD, as well as Policy CP17.
19. The building is of substantial single storey construction and extends across much of the width of the garden and greatly exceeds 2.5m in height. The building is less than 2m of the boundary with neighbouring gardens, which is also contrary to the requirements of the SPD, as set out above. Although the outbuilding is set some distance from properties along Birchen Grove, properties along Church Walk overlook the rear garden, with the rear of No 10 Church Walk directly facing the side elevation of the outbuilding.
20. Whilst there are very limited public views of the building the building is highly visible from properties along Church Walk. Consequently, whilst the appeal site is not within the SACA, there is a high degree of inter-visibility between the appeal site and properties within the SACA. Due to its size and proximity to the site boundary, it appears an overly dominant feature which is out-of-scale with the surrounding buildings and fails to respect the settings of the existing dwellings, detracting from the verdant character of the area, which is harmful to the setting of the SACA, contrary to Policy CP17 of the BCS and Policy DMP1 of the DMP.
21. When considering the effect of the character of a development on an area it is important to consider both its appearance and function. A detached dwelling to the rear of the dominant building line would be at odds with existing development along Birchen Grove and, as a result, would diminish the character of the area, including the setting of the SACA.
22. Paragraph 196 of the National Planning Policy Framework (2019)(the 'Framework') states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. Paragraph 200 of the Framework seeks to ensure that Local Planning Authorities look for opportunities within the setting of heritage assets, to enhance or better reveal their significance.
23. I consider that the harm arising to the significance of the designated heritage asset is less than substantial in the context of paragraph 196 of the Framework. Such harm should be weighed against the public benefits of the proposal. The Framework is clear that any harm to the significance of a designated heritage asset should require clear and convincing justification.

24. Whilst I have found that the building constitutes a dwelling, I acknowledge that it has been used to provide additional living accommodation for the occupiers of the host property. However, I have no substantive evidence before me that the public benefits of the appeal scheme outweigh the harm I have identified to the SACA, the conservation of which I attribute great weight to.

Living conditions

25. Policy DMP1 of the DMP seeks to ensure that development provides high levels of internal and external amenity and complements the locality and policy DMP19 of the DMP states 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.
26. The appeal building directly faces the rear of No 39 Birchen Grove with a significant level of overlooking between the two buildings. Although the rear garden to No 39 is a generous size and the appeal building is single storey, the separation distance is insufficient to prevent overlooking. Furthermore, users of the rear garden of No 39 would be able to look into the window of the appeal building.
27. The side elevation of the appeal building faces towards No 10 Church Walk. Due to the limited distance between the two buildings, there is a significant degree of mutual overlooking between the windows in the side elevation of the building and the windows to the rear of No 10 Church Walk. Although I was not able to access No 10 Church Walk, I consider it highly likely that some of the windows on the rear elevation serve habitable rooms. Furthermore, the windows in the appeal building which face towards No 10 Church Walk serve rooms which could be used as habitable rooms. Thus, privacy from the appeal building and No 10 Church Walk is unacceptably diminished, giving rise to significant harm to the living conditions of residents, contrary to Policy DMP1 of the DMP.
28. No outdoor amenity space is provided and though the appellant states that the cabin is used by his wife and son, in the event that the appeal were successful, it would be difficult to prevent the building from being used as a separate dwelling or by someone outside of the appellant's household.
29. I consider such overlooking and loss of privacy is harmful to the living conditions of occupants of both the appeal building and Nos 39 Birchen Grove and No 10 Church Walk. This would be contrary to Policy DMP1 of the DMP, the requirements of which are set out above.

Ground (g)

30. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. Since the appeal was lodged, the Covid-19 outbreak has had a profound effect on all areas of life in the UK.
31. Whilst the appellant states that he does not know whether the current public health emergency has any bearing on the compliance period, the Council advise that it considers it reasonable that an extra 3 months be added on to the existing compliance period. The Council has further advised that if it transpires that further time is needed because it (the pandemic) carries on

longer than 3 months, the Council can decide to use its own powers to extend the compliance period further.

32. In light of the above and, given the likelihood that compliance with the enforcement notice would require a builder to carry out some of the works, I consider extending the compliance period for 3 months is reasonable. I shall therefore vary the terms of the enforcement notice accordingly.

Conclusion

33. For the reasons given above I conclude that a reasonable period for compliance would be six months and I shall vary the notice accordingly. The appeal under ground (g) succeeds to that extent. I conclude that the appeal on ground (d) and (a) should not succeed. I shall uphold the enforcement notice with variations and corrections and refuse to grant planning permission on the deemed application.

Decision

34. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of '3' months in relation to the time period for compliance at Schedule 5 and the substitution of '6' months as the period for compliance.
35. It is directed that the enforcement notice is corrected by the deletion of the following words in Schedule 2 '*a building, not incidental to the main house, in the rear garden of the premises*' and the substitution therefor of the following words '*a dwellinghouse*'.
36. Subject to these variations and corrections, 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).

M Savage

INSPECTOR