
Appeal Decision

Site visit made on 23 June 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2020

Appeal Ref: APP/K3605/C/19/3242822

Land at 364 and 364A Walton Road, West Molesey, Surrey KT8 2JE

- 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 Onofrio Narcisi against an enforcement notice issued by Elmbridge Borough Council.
- The enforcement notice was issued on 27 November 2019.
- The breach of planning control as alleged in the notice is within the last four years and without planning permission, a material change of use of the outbuilding from a garage to a single dwellinghouse.
- The requirements of the notice are: (a) Cease the residential use of the outbuilding on the land; and (b) Removal (*sic*) all bathroom and kitchen fixtures, fittings and appliances from the outbuilding; and (c) Remove from the land any resultant waste associated with fulfilling the requirements of (a) and (b) .
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation.

Preliminary Matter

1. There is a grammatical error in step (b) at paragraph 5 of the enforcement notice, the word "of" being absent. It is clear what step (b) requires. There would be no alteration to its meaning if the missing word is inserted. Therefore, by correcting the notice accordingly no injustice would be caused.

Ground (a) appeal

Main Issues

2. The main issues in this ground of appeal are:
 - The effect of the dwelling on the character and appearance of the area.
 - Whether suitable living conditions for the current and future occupiers of the dwelling have been provided, having regard to internal floorspace and external amenity space.

Reasons

Character and appearance

3. The appeal site contains a two storey building with retail premises on the ground floor and residential accommodation above, forming part of a small

shopping parade largely made up of buildings of similar appearance. The site is located in a predominantly residential area, which forms part of the MOL06 West Molesey residential suburbs character sub-area in the Council's Design and Character Supplementary Planning Document (SPD) Companion Guide. The surroundings mostly consist of two storey buildings, neatly arranged in pairs or terraces. The buildings are generally of similar appearance, set back regular distances from the street and occupying comparably sized plots. Extensive areas of open space are also present in the locality. These factors mean that the environs of the site generally exhibit a pleasantly spacious and coherent suburban character and appearance, largely consistent with the visual qualities of the character sub-area described in the SPD Companion Guide.

4. The dwelling has been formed from a modern detached single storey flat roofed structure, which originated as a garage and store. The dwelling is modest in scale when compared with the two storey buildings typically found in the surrounding area. Moreover, the dwelling occupies a site which is limited in size when compared with the more generous plot sizes typical of dwellings in the wider locality. There is little space left over on the site after the built form has been accommodated. The size and bulk of the dwelling is situated quite close to the main building and to the site boundaries. Consequently, the dwelling gives the impression of being cramped and restricted on its plot and contributes to a significantly more enclosed and built-up feel in the environs.
5. Furthermore, being situated at the rear of the main building, the dwelling occupies a 'backland' plot, lacking any street frontage and only accessible by a pedestrian gate between the frontage buildings. This is markedly at variance with the prevailing pattern of development in the vicinity, in which the built forms front directly onto the street. Although properties in the parade have been added to at the rear, I have not been made aware that any such additions are used other than for purposes ancillary to the main building.
6. Due to the above factors, the dwelling is entirely at odds with the prevailing pattern of development in the locality and it is viewed as an alien and urbanising feature in its surroundings. I appreciate that the dwelling is mainly visible to the occupiers of adjoining property. Even so, the dwelling is generally seen in conjunction with development possessing the suburban qualities more typical of the surrounding area. As a result, the limited public visibility of the dwelling does not appreciably offset the significant visual harm caused. In any event, a lack of wider public views is not a good argument for permitting otherwise unacceptable development as it could be repeated, causing further visual harm. As the building contains the facilities required for independent day-to-day living, even if joined to the main building it would still be a dwelling. Also, this would exacerbate the visual harm caused, as the extent of the site covered by built form would increase and it would not address the 'backland' location.
7. Therefore, the dwelling has caused unacceptable harm to the character and appearance of the area. The failure to integrate sensitively with locally distinctive townscape means that the dwelling does not accord with Policy CS17 of the Elmbridge Core Strategy (CS). Moreover, the failure to preserve the character of the area taking account of the SPD and having regard to the dwelling's appearance, scale, mass and height and the prevailing pattern of built development, does not accord with Policy DM2 of the Elmbridge Local Plan: Development Management Plan (LP).

Living conditions

8. The dwelling is of a modest size. Internally, the dwelling is laid out as a combined living and sleeping area, with a separate kitchen and shower room. During my visit, I observed that the living and sleeping area contained basic items of furniture including a sofa, a dining table with chairs and a coffee table, together with two full height wardrobes, one of which contained a vertical fold away double bed. Had the bed not been folded away, most of the available floor space in the living and sleeping area would have been occupied by furniture items. It is reasonable to assume that most occupiers would not fold away the bed on a daily basis. This means that in practice, there is likely to be limited floor space available for general circulation in the living and sleeping area. Also, access to the shower room is likely to be awkward. Moreover, it means that there is likely to be limited space to accommodate other day-to-day domestic items, such as household electrical appliances and personal storage, without the living and sleeping area becoming cluttered. In the kitchen, an upright fridge freezer reduced the limited circulation space available after the cooker, hob, sink and drainer, worktop, kitchen units and a washing machine had been installed. Overall therefore, my view is that the dwelling provides an uncomfortably cramped and congested living space for its occupiers.
9. I am given to understand that the dwelling has an external footprint of around 35m². Allowing for the thickness of external walls, the amount of internal floor space provided is likely to be significantly less than the above figure. Therefore, the dwelling is likely to be substantially smaller than the 37m² recommended minimum internal floor space for a new one-bedroom, one-person dwelling with a shower room, set out in the Government's Technical Housing Standards-Nationally Described Space Standard (THS)¹. The significant deficiency in floor space compared with the minimum size recommended in the THS reinforces my findings regarding the restrictive size of the dwelling.
10. Although south-facing, the external amenity area at the rear of the dwelling is of very modest size and is in proximity to tall built structures. The latter factors significantly reduce the attractiveness and usefulness of this area in terms of giving occupiers of the dwelling a suitable space in which to undertake a range of outdoor activities such as informal recreation, cultivating plants and drying washing. The absence of an attractive and useable external amenity space reinforces the restrictive living environment experienced by occupiers of the dwelling. The SPD, which recommends that an external amenity space of an appropriate size should be provided in order to meet the needs of future residents, lends further weight to my findings regarding the unsuitability of the external amenity area.
11. Occupiers of dwellings can change quickly, whilst future occupiers might have differing expectations. Moreover, some occupiers will accept restricted living conditions, for example due to their economic circumstances, locational factors, or both. As a result, although the current occupiers might well be satisfied with their living conditions that is not a reliable measure of the acceptability of the dwelling in terms of its internal floor space and external amenity space provision.

¹ DCLG March 2015.

12. Therefore, I find that the dwelling does not provide suitable living conditions for the current and future occupiers. The failure to offer an appropriate standard of living, internally and externally, by not meeting the THS minimum size for a one- bedroom, one-person dwelling and by not offering an appropriate level of outdoor amenity, does not accord with criterion in LP Policy DM10.

Other matters

13. The absence of a financial contribution towards the provision of affordable housing, required by CS Policy CS21, was not one of the reasons for the Council issuing the notice. Nevertheless, this forms part of their case at appeal. No completed and executed Unilateral Undertaking under s106 of the Act making such a contribution was submitted. However, given that I am dismissing the appeal for other reasons it has not been necessary to consider this matter in further detail.

Conclusion on ground (a)

14. The dwelling unacceptably harms the character and appearance of the area, it provides an unsuitable living environment for the current and future occupiers and does not accord with the Development Plan. Therefore, the ground (a) appeal does not succeed.

Ground (g) appeal

15. The ground of appeal is that the time for complying with the notice requirements is unreasonably short. At the time of making his appeal, the appellant sought a lengthening of the compliance period to up to two years. This was to provide time to obtain planning permission and build an enlargement to join the dwelling to the main building. However, for the reasons set out above enlarging the dwelling would not overcome the planning harm caused. Therefore, a lengthening of the period for compliance of such magnitude would perpetuate the breach of planning control unnecessarily.
16. Be that as it may, I must also have regard to the national emergency caused by the COVID-19 pandemic and the ongoing uncertainty surrounding when restrictions placed on movement by the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 might be eased further. Therefore, I sought additional comments from both main parties regarding the reasonableness of the six-month period for compliance in the notice.
17. In my view, extending the compliance period by three months, as suggested by the Council, would take proper account of the continuing restrictions due to the pandemic. It would also strike an appropriate balance between remedying the planning harm as soon as is practicable, whilst allowing the occupiers a reasonable amount of time to find suitable alternative accommodation once current restrictions are likely to have been eased further. Additionally, the appellant would then be afforded ample time to arrange for a suitable builder to undertake and carry out the required small-scale, straightforward remedial works, once occupation of the dwelling had ceased. Therefore, extending the compliance period by three months would mean that neither the appellant nor the occupiers of the dwelling had been disadvantaged by the restrictions associated with the pandemic.
18. I have reached the above conclusions bearing in mind that given ongoing uncertainty regarding the duration of the pandemic, the current situation is

likely to evolve and change over time. In particular, there will remain a likelihood of a continuing in force of some or all of the current restrictions, or a re-introduction of other restrictions, for some time ahead. Emergency legislation introduced by the Government to prevent the eviction of tenants during the pandemic might also be extended in its duration. However, in the above respects I am also mindful that s173A (1)(b) of the Act affords the Council the power to extend the compliance period should they consider that the circumstances at the time make it appropriate to do so.

19. For the reasons given above I conclude that the period for compliance falls short of what is reasonable. A reasonable period for compliance would be nine months and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (g) succeeds to that limited extent.

Conclusion

20. For the reasons given above, I shall uphold the enforcement notice with correction and variation and refuse to grant planning permission on the deemed application.

Formal Decision

21. It is directed that the enforcement notice be corrected by inserting the word "of" after "Removal" in step (b) at paragraph 5 and varied by in paragraph 6 the deletion of "6 months" and the substitution of "9 months" for the period for compliance. Subject to this correction and variation 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.

Stephen Hawkins

INSPECTOR