



Appeal Decision

Site visit made on 23 June 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2020

Appeal Ref: APP/A5270/C/19/3240180

24 Barmouth Avenue, Perivale, Middlesex UB6 8JT

- 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 F Hayat against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 26 September 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the rear outbuilding to use as 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 three months.
- 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.

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

Ground (a) appeal

Main Issues

1. 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 existing and future occupiers of the dwelling are provided, having regard to internal floorspace, outlook, external amenity space and privacy.
 - The effect on the living conditions of occupiers of adjoining residential property, having regard to noise and disturbance and privacy.

Reasons

Character and appearance

2. The single storey dwelling in this appeal is a detached structure located at the end of the rear garden of an extended two storey building (No 24), the latter having recently been converted to two residential flats. The dwelling, which has been formed from an ancillary building, backs onto a private lane which

provides vehicular access to residential outbuildings in the rear gardens of adjacent property.

3. The environs of the appeal site are largely made up of two storey residential buildings of similar age, scale and architectural style, arranged in well-balanced and regularly spaced pairs, set back similar distances from the tree-lined street and occupying generous rectilinear plots. The above factors contribute significantly to the pleasant, coherent and spacious suburban character and appearance of the surrounding area.
4. The dwelling has a modest footprint and is of limited overall height compared with the more substantial proportions of the two storey buildings characteristic of the surrounding area. The dwelling also occupies a plot which is limited in size when compared with the more generously proportioned plots occupied by most dwellings in the locality. This has meant that the dwelling is adjacent to the site boundaries, leaving very little space around the built form. High timber fencing erected adjacent to the modest covered patio in front of the dwelling and alongside the pedestrian path at the side of No 24 emphasises the restricted nature of the site. Consequently, the dwelling gives the impression of being cramped and restricted on the site and has led to a significantly more built-up and enclosed feel in the environs.
5. Additionally, the dwelling is set well behind No 24 and neighbouring built forms, alongside the rear gardens of adjoining residential property. The dwelling has no street frontage and it occupies a 'backland' location, accessed by a narrow pedestrian way between the frontage buildings. As far as I have been made aware, none of the residential outbuildings in adjacent rear gardens are used other than for ancillary purposes and there are no other 'backland' dwellings nearby. Therefore, the dwelling occupies a situation markedly at variance with the prevailing pattern of development in the vicinity, in which for the most part dwellings directly address the street frontage.
6. Due to the above factors, the dwelling is viewed as an alien and urbanising feature in its surroundings, entirely at odds with the prevailing pattern of development in the locality and causing unacceptable harm to the character and appearance of the area. Although there are limited public views of the dwelling it is clearly visible from adjoining residential property, where it is generally seen in conjunction with development possessing the suburban qualities more typical of the surrounding area. As a result, the significant visual harm caused by the dwelling is experienced by the adjoining occupiers. In any event, an absence of wider public views is not a good argument for permitting otherwise unacceptable development as it could be repeated, causing further visual harm. Whilst the available evidence suggests that the building from which the dwelling has been formed was erected some years ago, that carries limited weight. This is because it is the use as a dwelling, together with the associated external alterations including the erection of boundary enclosures, which have given rise to the harm identified above.
7. Therefore, the dwelling does not reinforce the character of the neighbourhood, failing to accord with criterion in Policy 7.1 of the London Plan (MALP). Also, by not providing a high quality design response that has had regard to the pattern and grain of the existing spaces and streets in scale and proportion and by not ensuring a positive relationship with street level activity, the dwelling does not accord with criteria in MALP Policy 7.4. Furthermore, by not being of high

architectural quality or of proportions and scale that enhance, activate and appropriately define the public realm, the dwelling does not accord with criterion in MALP Policy 7.6.

8. The dwelling does not accord with criterion in Policy 1.1 of the Ealing Development (Core) Strategy (CS), as suburban communities have not been protected. Additionally, the failure to complement the street sequence, building pattern and scale of the existing built area means that the dwelling does not accord with Policy 7.4 of the Ealing Development Management Development Plan Document (DPD). The failure to achieve high quality architecture and an appropriate level of development on the site with a positive visual impact, does not accord with DPD Policy 7B. Moreover, as the dwelling does not safeguard the environment it is inconsistent with the National Planning Policy Framework (the Framework) chapter 11 concerning making an effective use of land. In any event, the dwelling is inconsistent with the Framework chapter 12 (the equivalent of chapter 7 in the previous version of the Framework), as it does not achieve a well-designed place.

Living conditions of existing and future occupiers

9. During the site visit, I observed that internally, the dwelling has a combined living and bedroom area, with a separate kitchen and bathroom. In the living and bedroom area the double bed, sofa, table and two full-height wardrobes took up most of the available floor space. There was little floor space left for circulation or for storage of other everyday domestic and personal items. In the kitchen, there was little floor space left after a work top, cooker, hob, sink and drainer and kitchen units as well as a washing machine and upright fridge/freezer had been installed. Overall therefore, my impression of the interior of the dwelling was that it provided an uncomfortably cramped and congested living space. External storage on the covered patio of items including a chest of drawers, also reflected the restrictive nature of the interior of the dwelling.
10. The dwelling has a gross internal floor area (GIA) of around 25m². According to the Council, there are currently two occupiers. Therefore, it is appropriate to assess the dwelling against the 50m² GIA minimum space standard for a new one-bedroom, two-person dwelling set out in the MALP Table 3.3, which reflects the Government's Technical Housing Standards-Nationally Described Space Standard (THS)¹. The dwelling is of a GIA around half that required by the minimum space standard. The significant deficiency in GIA when assessed against Table 3.3 reinforces my findings regarding the restrictive size of the dwelling in terms of providing suitable living conditions for its occupiers. The Parker Morris standards pre-date the MALP by many years and they are unlikely to reflect the needs of modern residential occupiers. As a result, I afford those standards limited weight in terms of assessing the suitability of the occupiers' living conditions. In any event, the dwelling is deficient in size in terms of the Parker Morris standards for this form of accommodation.
11. The dwelling has a single aspect, the living and bedroom area being lit by one window. This window provides the sole source of outlook for the dwelling; the other window lights the bathroom and is obscure glazed. There is no direct source of natural light to the kitchen. The window in the living and bedroom area is orientated to the north and looks towards a high timber boundary fence

¹ DCLG March 2015.

around a couple of metres away. Furthermore, as the patio is largely covered by a canopy of translucent sheeting, this further restricts such limited outlook as there is from the window. During my visit, levels of natural light inside the dwelling were limited and it is likely that at most times, the occupiers will largely be reliant on artificial light sources. Consequently, occupiers of the dwelling have a restricted outlook and only experience limited levels of natural light. It follows that the occupiers are likely to experience an oppressive and unrelieved sense of enclosure in the dwelling.

12. According to the notes accompanying DPD Table 7D.2, an area equating to 50 m² of private garden space should typically be provided for a new dwelling. This includes the baseline requirement of 5m² of private outdoor space provision for one to two person dwellings derived from the Mayor of London's Housing Supplementary Planning Guidance. However, the covered patio between the front of the dwelling and the boundary with No 24 is only around 12m² in size. Consequently, this area provides little opportunity for occupiers of the dwelling to undertake the range of activities that might typically be associated with external amenity space, such as informal recreation or cultivating plants. Moreover, the proximity to tall structures and position on the northern side of the dwelling appreciably reduces the useability and attractiveness of this area. As the private garden at No 24 is used and overlooked by occupiers of that property, it cannot also form part of a private amenity space for the dwelling.
13. The above factors reinforce the deficiency of the external amenity space when assessed against Table 7D.2. The lack of a functional and attractive amenity space reinforces the restrictive living environment experienced by occupiers of the dwelling. Although public facilities for informal recreation and sport are available in the wider area, it was not obvious that they could be conveniently accessed from the site by foot. As a result, such facilities are not an acceptable alternative to suitable on-site provision.
14. I accept that there are pressures on housing in London generally. Also, I am mindful that some residential occupiers will accept restricted living conditions due to factors such as their economic circumstances, the affordability of living accommodation and the relative ease of access to employment, services and facilities. In this respect, the dwelling is located conveniently in terms of pedestrian access to local facilities and has links to good public transport services. However, such factors are capable of being repeated regularly and therefore carry limited weight when set against the above harm.
15. Given the distance to No 24 and other adjoining residential property and having regard to the high timber fencing on the site boundaries, occupiers of the dwelling do not experience any unacceptable overlooking. Therefore, they enjoy a suitable level of privacy. Nevertheless, due to its restricted size, limited outlook and inadequate external amenity space, the dwelling provides an unsuitable living environment for its existing and future occupiers.
16. Therefore, the dwelling does not accord with MALP Policy 3.5, as it does not reflect the minimum space standards for new housing at Table 3.3 and it does not have a convenient, efficient and functional room layout. For similar reasons, the dwelling does not accord with DPD Policy 3.5. The dwelling does not accord with criterion in MALP Policy 7.6, as it fails to provide high quality indoor and outdoor spaces. Also, the dwelling does not accord with DPD Policy

7B, as a high standard of amenity for users with good levels of daylight and sunlight and an appropriate level of development on the site has not been provided. Furthermore, the dwelling does not accord with DPD Policy 7D, as the garden space standards in Table 7D.2 have not been met, and it is inconsistent with guidance in the Council's Planning New Garden Space Supplementary Planning Document. Moreover, the failure to create a high standard of amenity for existing and future users is inconsistent with the Framework paragraph 127 (f). MALP Policy 7.8 concerns heritage assets and is therefore not relevant.

Living conditions of adjoining residential occupiers

17. Although there are sources of urban noise in the wider area, the site and surroundings enjoy an appreciable sense of tranquillity consistent with the predominantly suburban setting. The lane at the rear appears to be in limited use. The occupiers of adjoining properties might therefore reasonably expect to be able to enjoy significant levels of peace and quiet in their private gardens and rear-facing rooms.
18. Due to the 'backland' location, the dwelling has introduced its associated day-to-day activities and pedestrian comings and goings thereto, in proximity to the rear gardens and elevations of adjoining residential property. Whilst I understand that the dwelling cannot be accessed by vehicle, the above is likely to have resulted in adjoining occupiers experiencing an appreciable increase in levels of noise and disturbance in their private gardens and rear-facing rooms. Ancillary use of the building is unlikely to generate a similar level of day-to-day activities and comings and goings. I understand that at intervals, the Council have received third party complaints regarding the use of the building as a dwelling. Also, interested residents referred to noise and disturbance associated with the dwelling in their written comments on the appeal. Such representations are therefore supportive of adjoining occupiers experiencing significant additional noise and disturbance due to the presence of the dwelling.
19. For similar reasons to those set out in paragraph 15, I acknowledge that the dwelling has not caused an unacceptable reduction in the privacy levels enjoyed by occupiers of adjoining residential property. Nevertheless, there has been unacceptable harm to their living conditions, on account of significant additional noise and disturbance. Therefore, although I found no failure to accord with CS Policy 1.2, the dwelling does not accord with criterion in DPD Policy 7A, as the amenity of surrounding uses has been eroded. Additionally, the failure to create a high standard of amenity for existing users is inconsistent with the Framework paragraph 127 (f).

Ground (a) conclusion

20. The dwelling unacceptably harms the character and appearance of the area, it provides an unsuitable living environment for the existing and future occupiers, it has unacceptably harmed the living conditions of adjoining occupiers and it does not accord with the Development Plan, also being inconsistent with the Framework. Therefore, the ground (a) appeal does not succeed.

Ground (f) appeal

21. The ground of appeal is that the requirements of the notice are excessive for its purpose.

22. At s173 (4), the Act provides that the purpose of an enforcement notice can be (a) to remedy a breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity caused by the breach. Although the notice does not state as such, by requiring cessation of the use as a dwelling and removal of the kitchen, bathroom and associated drainage connections, its purpose clearly falls into sub-paragraph (a) above. This is because the requirements seek restoration of the site to its condition before the breach took place. In doing so, it is legitimate to require the undoing of works undertaken integral to and solely for the purpose of facilitating the unauthorised use².
23. Although the bathroom might well have been in situ for some years, there was no firm evidence to show that it had been installed as part of a previous lawful use. Installation of a bathroom and kitchen are works which are integral to and facilitate the material change of use to a dwelling. Consequently, removing the bathroom is a necessary part of remedying the breach of planning control. Moreover, based on the limited evidence available I am not persuaded that a future use of the building as living accommodation ancillary to No 24 is a realistic proposition. As a result, retaining the bathroom is not an obvious alternative to the notice requirements.
24. Therefore, the requirements of the notice fulfil the purpose of restoring the site to its condition before the breach took place and go no further than what is necessary to achieve that objective. The ground (f) appeal fails.

Ground (g) appeal

25. The ground of appeal is that the time for complying with the notice requirements is unreasonably short.
26. I sought further comments from the main parties regarding the reasonableness of the three-month period for compliance specified in the notice, having regard to the COVID-19 pandemic and the ongoing uncertainty surrounding when the restrictions placed on movement by the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 might be further eased.
27. Given my overall conclusions in respect of the ground (a) appeal, extending the compliance period to twelve months so that the appellant could seek planning permission to extend the building would largely perpetuate the planning harm caused by the breach of planning control. As such, this does not represent a good reason for extending the compliance period.
28. Nevertheless, three months would leave the occupiers needing to vacate the dwelling in around two months, to also allow sufficient time for the remedial works to be undertaken. Therefore, in practice the occupiers would have had very little time in which to search for and secure alternative living accommodation, even without accounting for the effects of the pandemic. The appellant might have access to other rented properties in the area, but this does not mean that those or other rental properties would be suitable for the occupiers or be available in such a short timeframe. Whilst I understand that the dwelling is occupied on a month-to-month basis, that is not a reliable indicator of the time that the occupiers might take to secure suitable alternative accommodation; there might be any number of factors affecting

² *Murfitt v SSE* [1980] JPL 598; *Somak Travel v SSE* [1987] JPL 630.

their ability to do so. The general pressure on housing in London is also relevant in this regard. There was no indication that the occupiers would have resisted any eviction proceedings. However, given the ongoing uncertainty regarding the duration of the pandemic, I have given this limited weight. Moreover, it is entirely possible that the emergency legislation currently preventing the eviction of tenants, which expires towards the end of August, could be further extended to be effective for longer. Although there was no suggestion that the occupiers might be in a group at a greater risk of suffering severe health issues should they contract COVID-19, I have adopted a precautionary approach.

29. Extending the compliance period by an extra six months would take account of all the factors identified above. It would strike an appropriate balance between remedying the planning harm identified as soon as is practicable, whilst also allowing the occupiers a reasonable amount of time to find suitable alternative accommodation once restrictions due to the pandemic are likely to have further eased. Additionally, the appellant would then be afforded sufficient time to arrange for a suitable builder to undertake and carry out the remedial works, once occupation of the dwelling had ceased. Therefore, extending the compliance period accordingly would mean that neither the appellant nor the occupiers had been disadvantaged by restrictions in force during the pandemic.
30. I have reached the above conclusions recognising that given the ongoing uncertainty, the consequences of the pandemic are likely to evolve and change over time. In particular, there is a likelihood of the continuing in force of some or all of the current restrictions, or a re-imposition of local restrictions, for a considerable period. However, in the above respects I am also mindful that s173A (1)(b) of the Act affords the Council power to extend the compliance period should they consider that the circumstances at the time make it appropriate to do so.
31. Therefore, 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

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

Formal Decision

33. It is directed that the enforcement notice be varied by in paragraph 5 the deletion of "3 months" and the substitution of "9 months" for the period for compliance. Subject to this 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