



Appeal Decision

Site visit made on 6 July 2020

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2020

Appeal Ref: APP/T5150/C/19/3237904

49 Rydal gardens, Wembley HA9 8SA

- 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 Sayed Mirhejazi against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/19/0338, was issued on 22 August 2019.
 - The breach of planning control as alleged in the notice is the demolition of a garage, the erection of a single storey rear extension, the erection of a two storey side and rear extension and the erection of an outbuilding in the rear garden for residential purposes.
 - The requirements of the notice are:
 - STEP 1 Cease the use of the outbuilding for residential purposes;
 - STEP 2 Demolish the outbuilding; and
 - STEP 3 Demolish the single storey rear extension, the two storey side and rear extension and restore the premises back to its original condition before the unauthorised development took place.
- OR
- Alter the unauthorised development so that it reflects the approved planning permission granted by the London Borough of Brent on 19th June 2019 under planning reference number 19/1587.
- STEP 4 Remove all associated debris, items and materials arising from the compliance of steps 1-3 from the premises.
 - The period for compliance with the requirements is 4 months.
 - 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.
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Decision

1. The appeal is dismissed, 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.

Background and main issues

2. The area is predominantly residential, with generally matched pairs of semi-detached dwellings set within small front and generous rear gardens. The dwelling conforms to this pattern of development and is sited to the west of Rydal Gardens. It forms one half of one of these pairs with No 47. The Council have expressed concern about the use of the property, but have provided no evidence to substantiate their concerns. At the time of my visit I was shown through the ground floor to gain access to the rear garden. I observed that at

least this room appeared to be in separate occupation, and the downstairs doors were provided with locks.

3. The enforcement notice targets two distinct elements, namely the construction of an outbuilding, which they allege is in residential occupation, and the extensions that have been carried out to the original dwelling. For this reason, I shall consider each of these elements in turn.
4. I have had regard to the reasons why the Council issued the notice and consider that the main issues are:
 - The effect of the extensions and the outbuilding on the character and appearance of the host building and the area;
 - The effect of the extensions on the living conditions of existing residents with regards to loss of light and outlook; and
 - The provision of cycle and waste storage for the residential occupation of the outbuilding.

Ground (a) reasons

Character and appearance of outbuilding

5. There were two outbuildings in the rear garden, although only one is pertinent to this appeal. The subject single storey outbuilding has been sited in the back garden and close to the rear boundary. It is of 'U' shape construction and at the time of my visit there was a large canopy covering the central space and entrance. An internal inspection revealed a central large room being used as a gym, with various pieces of gym equipment and a large fridge. One of the side wings had a worktop with storage below and the other was equipped with a shower, toilet and hand basin. The building was provided with electric sockets, but no cooking facilities were seen. All of the rooms benefitted from a window and the main room was fitted with what was described as an air conditioning unit.
6. I acknowledge that since the issue of the notice, the appellant has indicated that the building will be used as a gym, with the bathroom and kitchenette providing convenience for those using the facilities. However, from the evidence before me, I am satisfied that the building, had all of the facilities necessary for independent residential occupation, and was being residentially occupied following its completion.
7. The allegation in the notice relates to the erection of a dwelling. The appeal, under ground (a), can only consider the planning merits of the alleged development that has already taken place. In this case the allegation is for the erection of a dwellinghouse, rather than an incidental outbuilding required for a gym. I have accordingly considered the appeal on this basis.
8. Access to the building is from the rear garden, either through a narrow side passage adjacent to No 51, or through the main house. The building spans almost the width of the rear garden with a low hipped slate roof. The design of the building gives it the appearance of a small bungalow. This together with its siting in the rear garden is significantly at odds with other residential properties in the area.

9. Whilst buildings in rear gardens are not uncommon, the development has introduced a substantial building, for use as a separate dwelling, into the rear garden of the appeal property. This back garden type of development is not a common feature of the area, where most of the dwellings are arranged in pairs and front the road. Moreover, the domestic paraphernalia and activity that would normally be associated with an additional residential unit would further harm the character and appearance of the area.
10. For the above reasons, I find that the dwelling in this rear garden location, appears unplanned and incongruous in the context of the area, causing significant harm to the character and appearance of the area.

Character and appearance of extensions

11. By way of background, planning permission was granted for, the demolition of side garage, proposed single storey rear extension and two storey side and rear extension to the dwellinghouse (19/1587). A further application (19/0322) was refused for proposed changes to that scheme.
12. It is accepted by the appellant that the extensions that have been built are larger than that permitted. These changes include: an increase in the depth of the first floor side extension by some 1.5m to the front; an increase in depth of the first floor rear extension by approximately 0.8 m, with an increase in width by 1.5 m; and the single storey rear extension has been infilled to the northern rear corner.
13. When viewed in combination with the large flat roof dormer, these changes have substantially increased the size, width and bulk of the extensions, increasing the overall volume of the original dwelling, and the previously approved scheme. As a result, the development appears overly large and dominant, when compared to the size and architectural design of the original dwelling. I find therefore, that it does not relate sympathetically to the original design and scale of the host property and others in the immediate area.
14. Drawing the above points together, I find that the extensions and the outbuilding appear overdeveloped and dominant, when viewed from surrounding dwellings, their gardens, and in the context of the character of the surrounding area. They are therefore harmful to the host dwelling and the character and appearance of the area. Accordingly, both elements of the development are in conflict with Policy CP17 of the London Borough of Brent Core Strategy (2010) (CS) and saved policy DMP1 and DMP 18 of the Brent Local Plan (2016) (LP). In summary these policies seek to protect the distinctive suburban character and setting of existing buildings and do not support outbuildings used for residential occupation.

Living conditions

15. The increase in the depth of the rear extensions, together with the infill results in the development being immediately adjacent to the common boundary with No 51. It is acknowledged that there is a narrow pedestrian access to the side of the dwelling, with a timber boundary fence and No 51 has an existing garage. Nonetheless, the blank wall of the extension is in very close proximity to the rear windows of No 51 and the part of the garden most likely to be used as private amenity space. This results in a strong sense of enclosure, with the development having an overbearing effect on the occupiers of that dwelling.

16. The Council's reasons for issuing the notice include the loss of light to neighbouring dwellings. However, details of any calculations have not been provided as part of this appeal and therefore I give only limited weight to the Council's concerns. The appellant has provided a drawing that gives an indication of the context of the development in relation to the neighbouring properties and windows.
17. Although I have no reason to disagree with this evidence, an assessment of any harm beyond that indicated by the drawings is still required. From my site visit and the evidence before me, the separation distances between the first floor elements of the development and both adjoining dwellings means that there is unlikely to be an unacceptable loss of light and overshadowing. Accordingly, whilst I find that the development would unacceptably affect the outlook of No 51 Rydal Gardens, I am not persuaded that it results in an unacceptable level of overshadowing or loss of light to either of the adjoining properties.
18. For the above reasons, I do not find that the development has resulted in unacceptable overshadowing or loss of light to the adjoining properties. I have however, found that the increased depth and proximity to the boundary has created an unduly strong sense of enclosure that is unacceptably overbearing on No 51. The development is therefore harmful to their living conditions. The development is contrary to saved policy DMP1 of the LP, which aims to ensure that new development provides high levels of external amenity.

Cycle and waste storage

19. I have not been provided with any evidence to demonstrate where the required cycle and waste storage would be located for the residential outbuilding. As outlined above, I have already found unacceptable harm to the character and appearance of the area in respect of this element. However, in the absence of this information, had I been minded to allow this appeal, and grant planning permission for the deemed application, I am satisfied that details for both of these could have been secured through a suitably worded condition.

Other matters

20. My attention has been drawn to a number of properties where two storey side extensions have been carried out. I have not been provided with information about the planning history, or circumstances of any of these sites, and little evidence to explain why they are considered to set a precedent relevant to this appeal. However, I did take the opportunity to view several properties, from the street at the time of my visit. Although I acknowledge that some other properties appear to have been extended, I was unable to view the rear of any of these to establish any similarities to the appeal proposal. I can therefore give them very little weight, and their existence does not change my conclusion.

Ground (f)

21. The evidence provided by the appellant to support the ground (f) appeal, only relates to the outbuilding and I shall therefore consider the appeal on this basis.
22. In appealing ground (f) the appellant needs to demonstrate that the requirements of the notice exceed what is required to remedy the breach of

planning control, or injury to amenity, depending on the purpose of the notice. In essence it is the appellant's case that as he would be willing to remove the kitchenette and bathroom to alleviate the Council's concerns about residential occupation, the cessation of the residential use is sufficient.

23. From the wording of the notice, the Council are seeking to remedy the breach of planning control, in respect of the outbuilding, by restoring the land to its condition before the breach took place. It is therefore necessary to consider whether these requirements exceed what is necessary.
24. My attention has been drawn to properties that have similar development in their rear gardens and acknowledge that garden outbuildings are not uncommon. The appellant seeks permission to retain the development but without any kitchenette or bathroom facilities. This would mean that, the building without the bathroom fixtures and fittings would remain. Indeed, by the time of my visit the removal of the cooking equipment and residential furniture, with the exception of the fridge, had already been carried out.
25. Whilst I recognise that, in some cases, a WC and shower room have been found to be an acceptable element of a building considered to be 'incidental' to the dwelling', this will depend on the circumstances of the case. In this case, on the balance of the evidence before me, it is clear that the building was built with the intention that it would be used as a self-contained unit of residential accommodation and was indeed brought into use for this purpose. The current use of the host property is unclear, with it having the appearance of flats, or an HMO at the time of my visit. I have not been provided with evidence about the current use of the property. However, if it is no longer used as a single dwelling, it is unclear how the building would be used if retained.
26. The development subject of this appeal is that of a new dwelling and it needs to be considered in that context. As the notice issued by the Council clearly sought to remedy the breach of planning control, by the removal of the dwelling and restoration of the land. Lesser steps would not achieve that purpose and therefore, the appeal on ground (f) fails.

Conclusion

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

Hilary Orr

INSPECTOR