



Appeal Decision

Site visit made on 13 July 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/C5690/C/19/3242268

Rear garden of 30 Arcus Road, Bromley BR1 4NW

- 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 Mrs Tanya Erol against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The enforcement notice was issued on 28 October 2019.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the construction of a 1-storey one bedroom dwellinghouse in the rear garden of 30 Arcus Road, Bromley, BR1 4NW.
 - The requirements of the notice are:
 - 1) Cease the use of the outbuilding as a self-contained residential dwelling.
 - 2) Remove the single storey dwellinghouse from the Property outlined in Photo 1.
 - 3) Demolish all associated building works from the Property outlined in Photo 2.
 - 4) Remove all materials, debris, waste and equipment resulting from compliance with the other requirements of this notice from the Property and its curtilage.
 - The period for compliance with the requirements is 6 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. 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. It is directed that the enforcement notice be:
 - varied by deleting the words "6 months" within section 6 (time for compliance) and its replacement with "9 months"
2. Subject to this variation, 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.

Procedural Matters

3. The Appellant's final comments include submissions relating to two separate appeals for the same site¹. These other appeals have been determined separately by another Inspector. I have therefore not considered this additional information unrelated to the current appeal and have solely determined this appeal on the information relating to the enforcement notice outlined above in the banner heading.

¹ Appeal ref: APP/C5690/C/18/3206841 and APP/C5690/X/18/3204048 both dismissed on 13 March 2020.

4. The appellant has not submitted her appeal on the basis of ground (b), 'that the allegation has not occurred as a matter of fact'. However, she has addressed this ground in her submission, in so far as she considers that the development is an incidental outbuilding used in connection with the main house. I have therefore considered this under a ground (b) appeal below.

The appeal on Ground (b)

5. This ground of appeal is that the matter stated in the notice which may give rise to the breach of planning control, has not occurred. The burden of proof lies with the appellant, the relevant test of the evidence being the balance of probability.
6. The appellant states that they erected an outbuilding incidental to the main dwelling. The appellant therefore considers that planning permission is not required for the development, which would benefit from permitted development rights, under the provisions of Class E of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015, as amended (the GPDO). The appellant states that the following demonstrates that the building is permitted development, under Class E of the GPDO for the following reasons:
 1. Direct access to the main house;
 2. There are no kitchen or cooking facilities;
 3. There are no facilities to qualify the building as residential accommodation, e.g. washing machine;
 4. The building has shared amenity space;
 5. The building has no separate or direct external amenity space;
 6. The building is connected to the main house by the footpath;
 7. The building is currently used for storage and temporary resting place by members of the family.
 8. Photographs which show that the outbuilding is incidental to the enjoyment of the main house.
7. Whilst there is no definition of a dwellinghouse within the Act, case law has established that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. Furthermore, the Government's Technical Guidance (TG)² whilst not determinative provides a useful guide to interpretation of the GPDO. Regarding Class E development, page 41 of the TG states that "a purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen".
8. At the time of my site visit the building stored various household items and furniture. I also noted that it contained a separate toilet and a separate washroom containing a shower and sink. I was able to access the appeal

² The Ministry of Housing, Communities and Local Government's publication 'Permitted Development Rights for Householders' Technical Guidance, September 2019

building independently from the main house through a side gate in the fence, and therefore access through the main house was not required.

9. The Council's Enforcement Report explains that the enforcement officer witnessed the building was being used as a self-contained dwelling on 14 March 2017 and explained to the owner that the development was unauthorised, and the owner confirmed to the officer that they would cease the use. In a later site visit on 2 October 2019, the Council's enforcement officer witnessed that the outbuilding had been converted into a self-contained dwelling, comprising a microwave (cooking facilities), a toilet, shower room and double bed.
10. Although the appellant claims that the building is incidental to the main house, very limited evidence has been submitted to support this claim. The photographs provided³ neither contradict the Council's version of events set out in the Planning Enforcement Report, nor provide any conclusive evidence that the breach has not occurred. For example, the photographs from outside of the building do not provide any clarification on what the building was used for, and the undated internal photograph submitted only shows a bed, a mattress and tv.
11. I consider that given the facilities provided in the building, the fact that the Council Officers have witnessed the building being occupied on what would appear from the evidence to be an independent basis, it would constitute a self-contained dwelling within a separate and distinct planning unit
12. Therefore, based upon all the evidence before me, the appellant has not demonstrated, on the balance of probability, that the development as alleged has not occurred. There has therefore been a breach of planning control and the very limited evidence put forward in support of the contention that the breach has not occurred falls well short of discharging the burden of proof.
13. Accordingly, the appeal on ground (b) must fail.

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

Main Issues

14. The main issues are the effect of the development on:

- the living conditions for current/future occupiers of the development with regard to floor space; and
- the character and appearance of the area.

Reasons

Preliminary

15. The development plan comprises the London Plan, 2016 (LP), the Lewisham Local Development Framework – Core Strategy Development Plan Document, 2011 (CS) and the Lewisham Local Development Framework – Development Management Local Plan, 2014 (DMLP).
16. The Written Ministerial Statement (WMS) dated 25 March 2015 sets out the Government's policy on the technical standards for new dwellings. The WMS

³ In the Appellant's appeal statement and final comments.

states that 'decision takers should only require compliance with the new national technical standards where there is a relevant current Local Plan policy'. To ensure that new housing development provides an acceptable level of residential quality and amenity, DM Policy 32 of the DMLP requires compliance with the minimum space standards in the LP. Those standards are set out in LP Policy 3.5, which requires housing developments to be of the highest quality, internally and externally. Therefore, it is appropriate to consider this appeal in accordance with those policies in addition to the nationally described space standard, 2015.

Living conditions – Floor Space

17. The Council state that the development provides an overall internal floor space of 27.7sq.m, and I have not been provided with any contrary evidence. This figure falls well short of the 50sq.m required for a 1 bedroom 2 person flat or the 37sq.m required for a 1 bedroom 1 person flat within the LP and the nationally described space standard, 2015. Owing to the limited space within the building, the development results in a sense of enclosure that feels oppressive for occupiers of the development. Furthermore, Paragraph 127 of the National Planning Policy Framework, 2019 (Framework) states that development should ensure high standards of amenity are created for future as well as existing users.
18. Consequently, the development results in a cramped and claustrophobic environment to the detriment of the living conditions for current/future occupiers, which fails to provide a pleasant environment for occupiers in which to relax.
19. Therefore, I find the development results in a poor living conditions to the detriment of current/future occupiers with regards to floor space, in conflict with Policy 3.5 of the LP, DM Policy 32 of the DMLP, the Technical housing standards – nationally described space standards (2015), and the Framework which taken together, seek the aforementioned aims.

Character and appearance

20. Whilst not specifically referred to within the enforcement notice, the Council's Planning Enforcement Report, refers to conflict with Part C of DM Policy 33 of the DMLP which states that the development of back gardens for separate dwellings in perimeter form residential typologies identified in the Lewisham Character Study will not be granted planning permission.
21. No 30 Arcus Road is an end of terrace two storey property with reasonably sized front and rear gardens. The surrounding area comprises similar sized two storey properties with spacious rear gardens. During my site visit I noted that the openness of these gardens contributes to the overall open and spacious character of the area.
22. In this case the building is single storey, timber clad structure with a flat roof. The building appears both be limited in scale and in height and would appear subservient to the surrounding properties. However, I saw on my site visit that that the building is apparent in views from surrounding land and properties. Despite its modest height and timber clad appearance it nevertheless appears as an independent dwelling, which would constitute piecemeal development that would be out of keeping with its garden setting.

23. I have had regard to the permitted development fallback position for an outbuilding, but it is the nature of the use as a separate and independent dwelling, and the resulting impact on the character and appearance of the area that are of concern.
24. For the reasons set out above, I find that the development results in harm to the character and appearance of the area, in conflict with Policy 15 of the CS and Policies 30 and 33 of the DMLP, which amongst other things requires new development to attain a high standard of design, and that private back gardens in all urban typologies should be retained.

Other matters

25. The appellant states that the development is considered to have been in continued use for more than 4 years. This is an argument more appropriately advanced under ground (d) 'that it was too late to take enforcement action'. However, no appeal was made on this basis and the evidence put forward in the appeal statement is very limited. Furthermore, the dated photographs in the appellant's response to the Council's statement⁴ only show certain parts of outside of the building, and not the inside. Therefore, it does not clearly and unambiguously demonstrate that the whole of the building was substantially completed, or that the building was in continued use as a dwelling for more than four years. Based on the lack of any sufficiently precise and unambiguous evidence, it is therefore not necessary for me to consider this further under a 'hidden' ground (d) appeal.
26. The appellant suggest that planning permission could be granted with conditions to restrict the use of the building to that incidental to the main house. However, this is not part of the development before me. In an appeal under ground (a), 'that planning permission should be granted for what is alleged in the notice', the allegation cannot be corrected to enable a development different to that which is correctly defined in the notice. I am therefore unable to consider granting permission for this alternative development. It is however open to the appellant to apply for planning permission for an incidental outbuilding.

Conclusion on Ground (a) and the Deemed Planning Application

27. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

28. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
29. The enforcement notice requires the use of the building as a self-contained residential dwelling to cease, together with the demolition of the unauthorised development. Therefore, the purpose of the notice is to remedy the breach of

⁴ Dated 4 March 2020.

- planning control rather than only remedy any injury to amenity. It is not therefore excessive to require the unauthorised development to be demolished.
30. The appellant states that development could be granted planning permission with a condition to restrict the use of the building so that it remains incidental and ancillary to the main house. However, as stated above, under the ground a) appeal, that is an entirely different development than the one before me and therefore I cannot consider this under this ground (a) and (f) appeal. It would also not achieve the purpose of the notice which is to remedy the breach.
31. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
32. Therefore, the appeal on ground (f) fails

The appeal on Ground (g)

33. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 6 to 9-12 months, in order to hire suitable contractors to complete the required works.
34. I have found under the ground a) appeal that the unauthorised development is harmful to the character and appearance of the area, and to the living conditions of current/future occupiers of the building with regard to floor space. As such, the 12 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements of the notice.
35. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, 9 months would strike a more reasonable and proportionate balance in light of Government policy regarding Covid-19 and restriction of social contact. This would also provide additional time to explore the possibility of providing a lawful incidental outbuilding, if they so wish. I shall therefore extend the period from 6 to 9 months for compliance with the notice.
36. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

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

R Satheesan

INSPECTOR