



Appeal Decision

Site visit made on 3 August 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 24 August 2020

Appeal Ref: APP/A5270/C/18/3205712

47A Montague Road, Southall, Middlesex UB2 5PD

- 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 Fatima Iftikhar against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered EN180388CUOB(1), was issued on 30 May 2018.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the outbuilding to the rear of the property to use as a separate self-contained residential dwelling.
 - The requirements of the notice are to:
 - a) Cease the use of the outbuilding as a separate self-contained residential dwelling;
 - b) Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling;
 - c) Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling; and
 - d) Remove all resultant debris.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended (the Act). Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act fall to be considered.
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Decision

1. The appeal is dismissed and 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.

Procedural Matter

2. Despite appointment letters having been sent, Inspectors (myself included on the above date) have visited the site on 3 occasions but have not been able to view the outbuilding due to failure of the appellant to attend or otherwise arrange access.
3. Notwithstanding the above, I am of a view that there is sufficient information and evidence within the appeal papers to make a decision on the appeal.

Ground (c)

4. For an appeal to be successful under this ground, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.

5. The appellant says that she purchased 47A Montague Road (the appeal property) with the outbuilding in 2007. She further submits that she renovated the outbuilding in 2012 and started to use it for living purposes, residing there with her husband while tenants lived within the host dwelling.
6. Following prohibitive enforcement action by the Council under the Housing Act 2004 on 21 September 2012, works to the outbuilding were undertaken by the appellant to remedy hazards categorised under the Housing Health and Safety Rating System (HHSRS) pursuant to that Act. The appellant says in relation to this that she “modified the outbuilding in accordance with the specified Local Authority’s Planning permission requirement, and thus undertook substantial renovation” leading on 8 November 2016 to the Council revoking the Prohibition Order it had served. The appellant says that since this date she has been paying separate council tax for the outbuilding as a separate dwelling (and has provided documentary evidence in support of this), but that she and her husband had resided within the host dwelling during the period of the Prohibition Order.
7. While I note that a ground (d) appeal has been withdrawn, for the purposes of clarity I am satisfied that the planning enforcement notice was served within the time limit of 4 years as the relevant date in respect to the alleged material change of use was when the outbuilding was reoccupied as a separate dwelling after it had been unoccupied for renovation between 2012 and 2016.
8. The use of the outbuilding as a self-contained dwelling, relative to its previous use ancillary to the host dwelling on the site, is as a matter of fact and degree a material change to the character and impact of the use of the land. It therefore constitutes development under Section 55 of the Act for which no planning permission has been obtained, and to which no permitted development rights pertain. Compliance with the Housing Act or rating for council tax does not provide planning permission. The development is therefore a breach of planning control and accordingly the appeal under ground (c) fails.

Ground (a) and the deemed planning application

Main issues

9. The main issues in this appeal are the effect of the development on:
 - the character and appearance of the appeal property and surrounding area;
 - the living conditions of occupiers of the outbuilding, host dwelling and neighbouring dwellings as regards noise and disturbance, outlook and privacy; and
 - the living conditions of occupiers of the outbuilding as regards floorspace and private outside amenity space.

Reasons

Character and appearance

10. The host dwelling on the site is a 2-storey end of terrace property, built as a side extension to 47 Montague Road. It is largely typical of nearby properties in the predominantly residential area, although there is a motor repair workshop immediately to the south.

11. The brick-built building of the appeal development is at the end of the host dwelling's garden, in a comparable position and not wholly dissimilar in scale to the outbuildings of the other dwellings in the same terrace of the host dwelling. Notwithstanding this, and based on the appeal papers, the appeal building's use as a self-contained dwelling and the associated comings and goings from it provide it with a distinct character which is significantly different from nearby outbuildings and the incidental relationships they form within their plots with their associated dwellinghouses. The self-contained dwelling of the appeal development disrupts the sub-ordination of ancillary outbuildings to their host dwellings within this local pattern of development, and accordingly represents unacceptable backland over-development which is incongruous within its context when viewed from the rear of nearby properties.
12. For the above reasons, the appeal development causes significant harm to the character and appearance of the appeal property and surrounding area. As such it is in conflict with Policies 1.1 and 1.2 of the Ealing Development Strategy 2026 Development Plan Document (2012) (CS), Policies 7.4 and 7B of the Ealing Development Management Document Plan Document (2013) (EDMDPD), and Policies 3.5, 7.4, and 7.6 of the London Plan (2016) (LONP) which together seek to protect the character and appearance of places. It is also in conflict with the design principles in Chapter 12 of the National Planning Policy Framework (the Framework).

Living conditions - noise and disturbance, outlook and privacy

13. Notwithstanding that the appellant has provided copies of representations made by local residents to the effect that they have not experienced harm from the use of the outbuilding as a self-contained dwelling, its use as such is a more intensive use than that associated with an ancillary outbuilding.
14. In particular, the appeal use is necessarily associated with the comings and goings of residential occupancy. The appellant has said that this involves access and egress through the garden of the host dwelling, through the host dwelling itself and use of the main entrance of the host dwelling. In my judgement this will necessarily involve an unacceptable degree of noise and disturbance and loss of privacy to the occupiers of the host dwelling, as well as to the occupiers of neighbouring properties whose upper rear windows overlook the rear garden of the appeal property and outbuilding. The outlook from those windows, and from those to the host dwelling's rear, are also deleteriously affected by the use of the reasonably close outbuilding for residential use aggravated by the associated need to light the outbuilding for living purposes.
15. While there may not be stated concern from residents about the activities and movements of the current occupier of the outbuilding (the appellant, who is also the landlord of the host dwelling), the Framework reinforces that planning decisions should create places that promote health and well-being, with a high standard of amenity for future users (paragraph 127).
16. Therefore, the appeal development causes significant harm to the living conditions of occupiers of the host dwelling and neighbouring dwellings, as regards noise and disturbance, outlook and privacy. As such it is contrary to Policies 1.1 and 1.2 of the CS, Policies 7A and 7B of the EDMDPD, and Policies 3.5, 7.1 and 7.6 of the LONP which together seek to protect living conditions. It is also in conflict with the Framework.

Living conditions – floorspace, private outside amenity space

17. The Council says that the floor area of the dwelling is approximately 48 square metres. I have no information from the appellant which conflicts with or contradicts this. The Council says that this falls short of the requirements of the Nationally Described Space Standard (the Standard), adopted in the LONP, working on the basis that the outbuilding equates to a 2 bedspace, 1 bedroom flat since a double bed was present at the officer site visit. In which case, the internal space requirement should be at least 50 square metres. However, I am aware from the appellant's submissions that she resides singly within the dwelling and note that the Standard requires a minimum of 39 square metres in respect of a 1 bedspace, 1 bedroom flat. Also, while a double bed may have been present on the officer's visit the Standard requires that a bedroom be at least 11.5 square metres to be considered to provide 2 bedspaces and I have no measurements of the bedroom. For the above reasons, it could therefore be more appropriate to use the minimum floor area for a 1 person, 1 bedroom flat.
18. Notwithstanding the above, and despite not being able myself to see the outbuilding on my site visit, the Council has provided a number of photographs of the inside of the dwelling. From looking at the photographs it appears to me that there is sufficient internal space to comfortably accommodate the necessary facilities for day to day living, a reasonable amount of furniture, and space for circulation and storage, as well as providing internal sufficient living space.
19. As far as private outside amenity space is concerned, there is no genuinely private area since there is no delineation from the rear garden of the host dwelling. While I acknowledge the presence of the host dwelling's rear garden and areas of open space nearby, these are not adequate substitutes for private external amenity space necessary for wellbeing. This causes significant harm to the living conditions of the occupier of the appeal development. As such it is in conflict with Policies 1.1 and 1.2 of the CS, Policies 7B and 7D of the EDMDPD and Policies 3.5 and 7.6 of the LONP, supported by Ealing Planning New Garden Space Supplementary Planning Document (2015), which together seek to protect living conditions. It is also in conflict with the Framework.

Conclusion on ground (a) and the deemed planning application

20. The appeal development does not accord with the development plan as a whole, and there are no considerations which outweigh this finding. Accordingly, the ground (a) appeal fails.

Conclusion

21. 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 deemed application.

Andrew Walker

INSPECTOR