



Appeal Decision

Site visit made on 18 August 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2020

Appeal Ref: APP/T5150/C/19/3243587

3B Brondesbury Park, Kilburn, London NW6 7BS

- 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 Ms. Touraya Chakdoun against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice was issued on 21 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a dwelling in the rear garden of the premises (in the approximate location shown hatched on the attached plan A).
 - The requirements of the notice are:
 - Step 1 Demolish the unauthorised dwelling in the rear garden of the premises.
 - Step 2 Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised development from the premises.
 - 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 (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 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.

Preliminary Matters

2. As I saw at my site visit, the use as a dwelling of the building in the rear garden has ceased and it contains no kitchen, bathroom or internal partitions.
3. The appellant states that planning permission is sought for the retention of an outbuilding for ancillary use relating to the host property. However, in an enforcement appeal, under section 177 of the 1990 Act, planning permission may be granted under ground (a) only in respect of the matters stated in the enforcement notice. So the deemed planning application cannot include a different scheme and I am therefore unable to consider the alternative proposal referred to by the appellant in this appeal.
4. Nor may I impose a planning condition on the deemed planning application requiring the permanent removal of all elements that facilitated self-contained accommodation, as has been suggested by the appellant, as this would nullify the benefit of the description of development described in the notice.

Reasons

The ground (a) appeal

5. The main issues in the ground (a) appeal are:

- the effect of the appeal dwelling on the living conditions of neighbouring occupiers, with particular regard to amenity space, noise and disturbance, privacy and the demand for on-street car parking;
- the effect of the appeal dwelling on the character and appearance of the area; and
- whether the appeal dwelling provides a suitable standard of accommodation, with particular regard to floorspace, personal, bin and cycle storage, outdoor amenity space and access arrangements.

Living Conditions

6. The appeal dwelling is sited in a rear garden. It is accessed via a long path which runs along one side of the principal residence, the rear of which its entrance faces. In my judgement, this arrangement means occupants of the appeal dwelling look directly back at the rear of the principal residence and its garden and generate noise and disturbance, particularly as they come and go to the appeal dwelling.
7. The siting of the appeal dwelling also means the rear garden in which it is situated may no longer be privately used by occupants of the principal dwelling. So the appeal dwelling detracts significantly from the quality of the amenity space in which it sits.
8. There is no evidence the appeal dwelling has a harmful effect on on-street car parking demand. Nevertheless, in light of my findings above, I conclude it harms the living conditions of neighbouring occupiers, with particular regard to amenity space, noise and disturbance and privacy. As such, it does not comply in this regard with Policy DMP1 of the Brent Development Management Policies 2016 (the DMP), the Brent Design Guide 2018 (SPD1), or the Residential Extensions and Alterations Supplementary Planning Document 2018 (SPD2).

Character and Appearance

9. The appeal dwelling is a flat-roofed, detached bungalow constructed of brick. In its rear garden setting, it is entirely inconsistent with the character and appearance of the area which consists of substantial detached, pitched roof homes, fronting the road with spacious back gardens.
10. The appellant states that the enforcement notice does not raise objection to the building itself. But it is clear from the five paragraphs of text in Schedule 3 of the notice that the Council objects to what it refers to as the structure's poor design. It is an entirely alien and incongruous structure in the context within which it sits and it is clearly seen from the adjoining homes and gardens as well as from the highway of Christchurch Avenue.
11. I conclude the appeal dwelling harms the character and appearance of the area and so in this regard does not comply with Policy DMP1 of the DMP, CP17 of the Brent Core Strategy 2010 (the Core Strategy) or SPD1.

Standard of Accommodation

12. The evidence indicates the appeal dwelling has a gross internal area of approximately 20 sqm. The minimum size for a 1 bedroom 1 person dwelling is 37 sqm and so the appeal dwelling falls far short of this.
13. Despite the condition of the interior at the time of my visit, it is clear the appeal dwelling is cramped, makes no provision for personal, bin or cycle storage and has no sense of arrival by reason of the means by which it is accessed, described above.
14. Whilst the appeal dwelling is sited in a garden and so has use of some outside amenity space, I conclude overall that it does not provide a suitable standard of accommodation with particular regard to floorspace, storage and access arrangements. As such, it does not comply in this regard with Policies DMP1 and DMP18 of the DMP, Policy 3.5 of the London Plan 2016 (as amended) or the Technical housing standards – nationally described space standard, March 2015.

Other Matters

15. My attention has been drawn to an earlier planning permission, Ref: 16/4106. But from the information available to me, that permission was for a materially different building, with a different use, in a different location. So it did not grant planning permission for the development which is before me, nor does it justify a grant of planning permission for the development which is before me and it makes no difference to my overall conclusion.

Conclusion on ground (a)

16. Considering each of the main issues above I conclude the appeal on ground (a) fails.

The ground (f) appeal

17. Under section 173(4) of the above Act, when serving an enforcement notice the Council may seek to (a) remedy the breach of planning control or (b) remedy any injury to amenity which has been caused by the breach. In this case, the purpose of the enforcement notice is to remedy the breach of planning control. This is explicitly stated in Schedule 4 of the notice.
18. The appellant considers a condition could be imposed on the ground (a) appeal that requires the cessation of the residential use and removal of the associated items. But this would not remedy the breach of planning control as the building would remain.
19. Alternatively the appellant considers they could implement the aforementioned earlier planning permission. But from the information available to me, this permission has lapsed and so cannot now be implemented.
20. Considering all of the above points, I am satisfied the requirements of the notice do not exceed what is necessary to remedy the breach of planning control and there are no lesser steps that would achieve the stated purpose of the notice. Accordingly, the appeal on ground (f) fails.

Conclusion

21. For the reasons given above I conclude that the appeal does not succeed. I uphold the enforcement notice and refuse to grant planning permission on the deemed application.

L Perkins

INSPECTOR