



Appeal Decision

Site visit made on 18 July 2020

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2020

Appeal Ref: APP/M5450/C/19/3236676

Land at 34 Clitheroe Avenue, Harrow HA2 9UX

- 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 Merino Limited against an enforcement notice issued by the Council of the London Borough of Harrow.
 - The enforcement notice was issued on 31 July 2019.
 - The breach of planning control as alleged in the notice is without planning permission:
 1. The material change of use of the single family dwellinghouse on the Land to use as two self-contained flats ("Unauthorised Flats");
 2. The construction of a detached outbuilding in the rear garden on the Land for the use as a self contained flat ("Unauthorised Outbuilding");
 3. The construction of a loft conversion comprising of a hip to gable and rear dormer ("Unauthorised Loft Conversion")
 - The requirements of the notice are:
 1. Cease the use of the Land as Unauthorised Flats and return the use of the Land back to a single family dwellinghouse
 2. Remove all kitchens from the Land except (1) one from the dwellinghouse
 3. Remove all internal installations and partitions from the dwellinghouse that enable the use of the main dwelling as two self contained flats
 4. Demolish the Unauthorised Outbuilding
 5. Demolish the Unauthorised Loft Conversion or revert to the approved loft conversion given under certificate reference P/2334/17
 6. Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the Notice.
 - The period for compliance with the requirements is three (3) calendar months after the Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)[a], [b], [c], [f] and [g] of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by:
 - The deletion of the following wording from section 5 (1) of the notice: 'and return the use of the Land back to a single family dwellinghouse'
 - The deletion of '3' calendar months in relation to the time period for compliance at section 6 of the notice and the substitution of '12' calendar months as the period for compliance.
2. Subject to these variations 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.

Ground (b)

3. An appeal on ground (b) is made on the basis that the breach of control alleged in the enforcement notice has not occurred as a matter of fact. The onus of proof is firmly on the appellant to show that some or all of the alleged matters had not in fact occurred by the time the notice was issued, on the balance of probabilities. The appeal on ground (b) is advanced in respect of the outbuilding only.
4. The appellant states, within its statement of case, that the outbuilding is not used as a separate dwellinghouse. However, the appellant's statement in this regard is written in the present tense. The statement does not detail how the outbuilding has been used following its construction, nor does it state that the outbuilding has never been used as self-contained accommodation.
5. The current tenant, Mr Choudhry, states in a letter dated 15 August 2019, that he and his family have been living at the property since 1 February 2019. Mr Choudhry's evidence confirms that he has not used the outbuilding for habitation and points towards the outbuilding currently being used as incidental to the use of the ground floor flat. Whilst the letter confirms that Mr Choudhry has been living in the ground floor of 34 Clitheroe Avenue since 1 February 2019, it is not clear whether he has had access to and control of the outbuilding from this date. Furthermore, it does not demonstrate that the outbuilding has not previously been used by other persons as self-contained living accommodation.
6. I have been provided with an officer report, dated 18 June 2019, reference P/1423/19, which includes comments from a Planning Enforcement Officer that 'during initial site visit by enforcement visit by enforcement officer, it was clear from looking through the window that it was fully self-contained and occupied'. The Council's photographic evidence, dated 30 May 2019, shows an area which is identified as the 'former kitchen area', with what appears to be a kitchen cupboard and splashback tiling to the wall, typically used in kitchens. A bathroom is also shown in the outbuilding.
7. I have been provided with no cogent evidence to explain why such fixtures were present within the building or to dispute the Council's conclusion that it was previously used as self-contained accommodation. Whilst the outbuilding was not being used as self-contained accommodation at the time of my visit, an appeal on ground (b) is made on the basis that the breach of control has not occurred. The appellant has not proven, on the balance of probabilities, that the outbuilding has not been used as self-contained accommodation since its construction. The appeal under ground (b) therefore fails.

Ground (c)

8. An appeal on ground (c) is made on the basis that those matters (if they occurred) do not constitute a breach of planning control. The appellant's case in respect of this ground is made in relation to the outbuilding only. The appellant asserts that the use of the outbuilding as incidental to the dwellinghouse is permitted by Class E to Part 1 of Schedule 2 to General Permitted Development Order (GPDO) 2015 (as amended) and has drawn my attention to case law¹ and other decisions² in this regard.

¹ *Emin v Secretary of State for the Environment* [1989] J.P.L. 909 and *Peche d'or Investments v Secretary of State for the Environment* [1996] J.P.L. 311

9. Class E permits the provision of buildings within the curtilage of the dwellinghouse. However, flats do not benefit from such permitted development (PD) rights. Furthermore, by virtue of Article 3(5) of the GPDO, PD rights do not apply if, in the case of permission granted in connection with an existing use, that use is unlawful.
10. It is not disputed that No 34 has been converted into flats, as such the outbuilding would not be incidental to the enjoyment of a dwellinghouse. The appellant has not provided me with a chronology of events showing when the outbuilding was constructed, or when the dwelling was converted into flats. Even if it were demonstrated that the outbuilding was constructed prior to the conversion of the dwelling to flats and complies with the height limitations set out in Class E, it cannot be PD as it wasn't built as an incidental building, it was built as a dwellinghouse. Although the kitchen and bathroom had been removed by the time of my site visit, the GPDO does not grant retrospective planning permission. Accordingly, the appeal under ground (c) fails.

Ground (a)

11. The ground (a) appeal is advanced in respect of all three breaches, namely the material change of use of the single family dwellinghouse on the Land to use as two self-contained flats ("Unauthorised Flats"); the construction of a detached outbuilding in the rear garden on the Land for the use as a self contained flat ("Unauthorised Outbuilding"); and the construction of a loft conversion comprising of a hip to gable and rear dormer ("Unauthorised Loft Conversion").

12. Main Issues:

- Whether the flats provide satisfactory living conditions for occupants, with particular regard to privacy, internal space and outdoor amenity space; and
- The effect of the loft conversion on the character and appearance of the area; and
- The effect of the outbuilding on the character and appearance of the area; and
- The effect of the outbuilding on the living conditions of nearby residents, having particular regard to noise and disturbance.
- The effect of parking and waste storage on the character and appearance of the area;
- Whether the flats provide satisfactory provision for waste and recycling; and
- Whether there would be adequate provision of functional cycle and car parking.

Living conditions: 'Unauthorised Flats'

13. The ground floor flat is laid out as a two bedroom flat, with the bedrooms to the front of the building looking out towards Clitheroe Avenue and the living area, and kitchen/dining area to the rear. Although the upper floors flat was

² APP/G3110/X/18/3206158 and Appeal decision reported at [1987] J.P.L 144

not occupied at the time of my visit, it was laid out on two levels with a bathroom, kitchen, living room and box room on the first floor and a bedroom and bathroom on the second floor. The appellant states that the application is for a 2 bed flat with box room.

14. Policy CS1 of the Harrow Core Strategy (HCS)(2012) states that the Council will require a high standard of residential design and layout consistent with the London Plan and associated guidance. Policy 3.5 of the London Plan (LP)(2016) states that new homes should have adequately sized rooms and convenient and efficient room layouts which are functional and fit for purpose, supported by the London Plan Housing Supplementary Planning Guidance (SPG)(2016) which requires new dwellings to meet the Nationally Described Space Standard (NDSS)(2015).
15. Whilst the ground floor flat would meet the requirements for overall Gross Internal Area (GIA) set out in the NDSS the single bedroom is noticeable narrow and fails to meet the minimum required width for a single bedroom. The appellant asserts that the width of the single room is compensated for by the overall size of the flat. However, the width of the single bedroom falls well short of the 2.15m minimum. This shortfall is not compensated for by the length of the room, which causes parts of the room to appear dark, meaning that occupants are likely to need to use artificial light much of the time.
16. The box room to the upper floors flat falls significantly short of the minimum size required of a single bedroom. Whilst the appellant's intentions in this regard are not entirely clear, the Council confirms that the box room was set up as a bedroom with a child's bed at the time of the officer's visit. I consider it highly likely were I to allow the appeal that the box room would be utilised as a bedroom. Whilst such rooms may be a common occurrence, its very limited size means it is unlikely to be able to accommodate items of furniture which future occupants may reasonably expect to have in a bedroom, such as a wardrobe and bedside table or to store clothing, without significantly restricting manoeuvrability within the room so that essential tasks such as getting dressed would become difficult.
17. Within its Statement of Case, the appellant accepts that based on an assessment of the upper floors flat as a two-bedroom, four person maisonette dwelling, the minimum required GIA is 79sqm. The appellant accepts that the overall GIA of the flat is below the requirement for a 2 bed / 4 person unit, however, it is asserted that the GIA may be acceptable for a 1 bed / 2 person or 2 bed / 3 person unit allowing for the constraints and limitations of converting existing buildings. The appellant has calculated the GIA of the flat as 55.5msq. However, even if I considered the flat as a 1 bed 2 person dwelling, it would fall below the 58msq set out within the NDSS for a one bed two person two storey dwelling. Furthermore, the flat does not meet the minimum floor to ceiling height requirements set out in the NDSS. Whilst the development is a conversion of an existing property, this does not remove the need to comply with NDSS.
18. Policy DM26 of the Harrow Development Management Policies Local Plan (HDMPLP)(2013) supports the conversion of houses to multiple homes where they make adequate arrangements for the provision of amenity space. Where an existing garden is available, the policy states that proposals must make this available for all future occupiers of the development. Policy DM27(C) of the

HDMPLP states that proposals that would fail to provide appropriate amenity space will be refused.

19. The Supplementary Planning Document: Residential Design Guide (SPD)(2010) advises that the Council will seek to ensure that all flats (except for the conversion of maisonettes above shops and mid terraced properties) have access to a garden. I saw that the ground floor flat has direct access to the rear garden of the property. However, there is no direct access to the rear garden from the upper floors flat. Whilst access to the rear garden could be gained via the service road, I consider occupants of the upper floors flat would be unlikely to utilise it given the distance that they would need to travel to it. Furthermore, I am not aware of any arrangements in place to ensure that they have access to the rear garden at all.
20. Parking is located to the front of the bay window of the ground floor bedroom. The appellant states that the single parking space would be allocated to the ground floor flat. Since the parking is for the ground floor flat, I consider that any effect on the living conditions of the occupants of the ground floor bedrooms would be limited and there would be no conflict with Policy CS1 of the HCS in this regard, or Policy DM26 of the HDMPLP which seeks to ensure that all habitable rooms have a satisfactory environment in terms of privacy, amongst other things.
21. The appellant has drawn my attention to section 5.11 of the Harrow Supplementary Planning Document: Residential Design Guide (SPD)(2010) which advises 'it is recognised that the constraints associated with existing building layouts means that some flexibility and pragmatism will be required at the margins of each space standard.' However, as a whole, I consider the accommodation afforded by the flats falls substantially short of the standards required by the NDSS and fails to provide adequate outdoor amenity space for the occupants of the upper floors flat. This would significantly outweigh any benefit arising from the increase in housing stock in terms of unit numbers and tenure type. The appellant has drawn my attention to other examples of flat conversions in the area, however, I do not have full details of these conversions and cannot be sure that they are comparable to the appeal scheme before me.
22. Drawing everything together, although I have found no loss of privacy from the use of the forecourt area, for the reasons set out above, the flats fail to provide satisfactory living conditions for occupants with regards to internal space and external amenity space, contrary to Policy 3.5C of the LP, Policy CS1 of the HCS and policies DM1, DM26 and DM27 of the HDMPLP, the SPD and the SPG, the requirements of which are set out above.

Character and appearance: 'Unauthorised Loft Conversion'

23. The appeal property is located in a generally residential area characterised by rows of terraced dwellings with hipped roofs. I saw that a number of properties have been modified with hip-to-gable conversions. Though I saw that roof designs vary in the wider area, hipped roofs are still the dominant roof type along the street. No 34 Clitheroe Avenue is an end terraced dwelling which has been extended to create a gable roof with rear dormer.
24. Photographs provided by both the Council and the appellant show that the rear dormer was integrated with the gable end and was finished in render. Whilst I

saw the dormer is now finished in red tile with a setback from the gable end, as these modifications were carried out after the enforcement notice was issued, they are not part of the development the subject of the deemed application before me and do not fall to be considered. I have no power to grant planning permission for those later alterations. Were I to grant planning permission for the works covered by the deemed application for planning permission, this would be for the alleged works, as originally carried out, not as altered by the appellant after the notice was issued.

25. Policy CS1.B of the HCS seeks to ensure that development reinforces the positive attributes of local distinctiveness and states that extensions should respect their host building, amongst other things. Policy DM1 of the HDMPLP seeks to ensure that proposals achieve a high standard of design and layout. Policy 7.4B of the LP seeks to ensure that buildings provide a high quality design response that has regard to the pattern and grain of the existing spaces and streets in orientation, scale, proportion and mass. Policy 7.6 of the LP states that buildings and structures should comprise details and materials that complement, not necessarily replicate, the local architectural character.
26. Paragraph 6.69 of the SPD states that the preferred form of roof alteration to semi-detached or terraced houses is the extension of a hipped roof to form a gable with the addition of a rear roof extension (or rear dormer window). To achieve visual containment within the roofslope the SPD states that a rear roof extension (or dormer) must be: set-in at least 500mm from a shared (party) boundary with an attached house; and set in at least 1000mm from the gable end; and set back at least 1000mm from the roof eaves measured externally along the roof slope.
27. The appellant has drawn my attention to No 23 Clitheroe Avenue and 245 Oxleay Road which have both had similar roof extensions to the appeal property. However, I do not know the circumstances surrounding their approval. Whilst I saw that there are instances of such extensions in the area, they are not typical and do not define the character of the area.
28. The integration of the gable end and rear dormer fails to meet the requirements set out in the SPD and results in a dominant feature which is uncharacteristic of the area. This diminishes the character and appearance of the area, contrary to Policy CS1.B of the HCS, Policy DM1 of the HDMPLP and Policy 7.4B of the LP, the requirements of which are set out above.

Character and appearance of the outbuilding

29. The outbuilding is a substantial single storey structure which is located towards the end of the rear garden of No 34, adjacent to a service road. Although the outbuilding occupies a slightly elevated position compared with the service road, given its setback from the service road and the prevalence of other outbuildings in the area, it does not appear a dominant feature. However, when considering the effect of the character of a development on an area it is important to consider both its appearance and function.
30. Policy CS1 of the HCS, which is supported by the adopted Supplementary Planning Document: Garden Land Development (GLD)(2013), seeks to ensure that development responds positively to the local historic context in terms of siting, amongst other things and Policy DM1 of the HDMPLP seeks to ensure that development has regard to the context provided by neighbouring buildings

and the local character and pattern of development. Policy 3.5 of the LP seeks to ensure that new housing development enhances the quality of local places, taking into account physical context and local character, amongst other things. Policy 7.4 of the LP seeks to achieve a high quality design response that has regard to the pattern and grain of the existing spaces and streets in orientation, scale, proportion and mass.

31. Although I saw that outbuildings are common features of the area, a detached dwelling to the rear of the dominant building line would be at odds with existing development along Clitheroe Avenue and, as a result, would diminish the character of the area, contrary to Policy CS1 of the HCS, Policy DM1 of the HDMPLP, and Policies 3.5 and 7.4 of the LP, and the GLD, the requirements of which are set out above.

Living conditions: Outbuilding: Noise and disturbance

32. Concern is raised that the use of the outbuilding as a dwelling would result in undue amenity impact on neighbouring properties due to increased activity and disturbance. Given the proximity of the outbuilding to No 34 and the fact that the windows and door face towards the ground floor of the property, activity within the outbuilding has the potential to cause noise and disturbance to the occupants of the main building which would be harmful to the living conditions of occupants of No 34.
33. In addition, since there is no direct access to the rear garden from Clitheroe Avenue, I consider it highly likely that occupants of the outbuilding would access it via the service road to the rear of the property, passing along the rear of a number of properties. This would significantly increase the noise and disturbance generated along the service road, causing noise and disturbance to occupants of the neighbouring properties.
34. The use of the outbuilding as a dwelling would therefore be contrary to Policy DM1 of the HDMPLP which seeks to protect the privacy and amenity of neighbouring occupiers and Policy 7.6 of the LP, which seeks to ensure that development does not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings.

Character and appearance : Parking and waste storage

35. I saw that parking and storage of waste bins to the front of dwellings is a common feature of the area with various other front gardens comprising hardstanding. Where natural landscaping has been retained, it provides a positive contribution towards the character of the area. The forecourt is laid with paving and is bound on one side by wooden fencing and by a hedge on the other, with brick built pillars either side.
36. Policy CS1.B of the HCS states that proposals that would harm the character of suburban areas and garden development will be resisted. Policy DM1 of the HDMPLP seeks to ensure that proposals achieve a high standard of design and layout having regard to, amongst other things, the appearance, capacity, convenience of arrangements for waste, recycling and composting. Policy DM22 seeks to ensure that proposals include hard and soft landscaping that is appropriate to the character of the area. Policy DM26 supports the conversion of houses to multiple homes where they contribute positively to their surroundings, make adequate arrangements for the storage of waste and do

not detract from the streetscene, amongst other things. Policy DM45 seeks to ensure that the provision of waste is sufficient to meet the need arising from the site and is located and screened to avoid adverse visual impact.

37. The SPD advises that the layout of the forecourt should make provision for soft landscaping of the parts of the forecourt not needed to provide car parking space and access to the premises. A hedgerow has been retained next to the bin storage area and an area for planting is proposed next to the parking space, which is to be retained for the occupants of the ground floor flat. I consider it would be reasonable to secure the proposed layout by condition to ensure that parking does not dominate the frontage and does not harm the character and appearance of the area and there would be no conflict with Policy CS1.B of the HCS and policies DM1, DM22 and DM26 of the HDMPLP in this respect.

Waste and recycling

38. The SPD states that the design and layout of residential development must make satisfactory arrangements for the storage and collection of recycling and waste. A conversion of one house to two flats is identified as needing to accommodate six bins, which can be visually intrusive when located on the forecourt. The appellant has proposed screening of bin storage on the front forecourt which could be secured by condition. The screening, which was in situ at the time of my visit, provides a relatively discrete means of ensuring that the required bins and cycle storage can be accommodated within the appeal site, in a location which is convenient to users of the property.
39. Given the above, the appeal scheme makes adequate provision for waste, in accordance with Policy DM1, DM26 and DM45 of the HDMPLP and the SPD which all seek to ensure adequate arrangements for waste, recycling and composting.

Cycle and car parking

40. Policy DM26 (i) of the HDMPLP seeks to ensure that development makes adequate provision for parking. The appeal scheme makes provision for one parking space, which the appellant suggests allocating to the ground floor flat. Although there is no parking provision for the upper floors flat, I saw that the appeal site is within walking distance of a range of facilities, including public transport.
41. Policy DM42 of the HDMPLP seeks to ensure that proposals have regard to the maximum London Plan standards and Policy 6.13 of the LP sets out the Mayor's intention to preventing excessive car parking provision that can undermine cycling, walking and public transport use. As such, the appeal scheme would not conflict with policies DM26, DM42 of the HDMPLP and Policy 6.13 of the LP in this regard.
42. Policy 6.9 of the LP states that development should provide secure, integrated, convenient and accessible cycle parking facilities and Policy 6.13 sets out that development must meet minimum cycle parking standards and Policy DM42 of the HDMPLP requires that the number of spaces would meet or exceed the minimum London Plan standards. The SPD states that cycle parking facilities should be located in safe, well-lit and overlooked areas that are within close proximity to main building entrances. Bicycle storage is proposed on the

forecourt which would provide secure storage for two bikes. There is ample space in the rear garden for storage of cycles for occupants of the ground floor flat. Given the above, there would be no conflict with policies 6.9 or 6.13 of the LP or the SPD in this regard.

Other Matters

43. The Council has made a number of references to Policy 7.48 of the London Plan (2016) in the enforcement notice. However, I am not aware that such a policy exists. I therefore consider this likely to be an error. The Council has provided me with copies of the relevant London Plan policies, including Policy 7.4 which is relevant to the matters before me and which I have considered accordingly.

Conclusion on ground (a)

44. Although I have found that there would be no harm arising from the provision of parking, cycle storage and waste storage, I have found that the flats fail to provide satisfactory living conditions for occupants and that the outbuilding harms the living conditions of nearby residents and harms the character and appearance of the area. I have also found that the loft conversion harms the character and appearance of the area.
45. Whilst the occupants of the ground floor flat consider that the outbuilding provides useful storage, I have no substantive evidence that quantum of storage would be required if the property was used as a single dwellinghouse. This does not therefore weigh in support of the appeal scheme.
46. The appellant asserts that the development plan is substantially out of date and without an up-to-date LDP the Borough is unlikely to be able to demonstrate the five-year supply of sites to meet the housing target set for the Borough within the London Plan. Even if I were to conclude there is a shortfall in the five-year housing land supply, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.
47. Accordingly, the appeal on ground (a) fails.

Ground (f)

48. An appeal on ground (f) is made on the basis 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
49. The appellant asserts that the demolition of the outbuilding is excessive since the Council's issue is with the use of the outbuilding, not the structure itself. The appellant asserts that the size of the structure is in accordance with the limits set down in the GPDO and suggests the maximum steps should be to change its use to one incidental to the dwellinghouse. However, as set out in the reasoning under ground (c) above, since the building as constructed could not be permitted by Schedule 2, Part 1, Class E of the GPDO, even if I were to find that the height of the building is within the tolerances set out under Class E, there is no fall back position. Since the notice requires complete removal of the outbuilding it is clear that the purpose of the notice is to remedy the breach of planning control which has occurred. That can only be achieved by complete removal of the outbuilding.

50. In respect of the loft conversion, the appellant submits that the maximum steps to be taken should be to reduce the dormer in size to that permitted by the GPDO (50m³) or to return to the approved conversion (whichever is the larger). The appellant has provided details of the scheme approved under reference P/2334/17, however, no details have been provided as to what form a scheme permitted by the GPDO (50m³) would take. The requirements of a notice need to be clear so that the recipients of the notice and the Council know what is required in order to achieve compliance. The requirements of the notice already give the appellant the option to revert to the approved loft conversion given under reference P/2334/17. I consider including an additional requirement which simply references the GPDO would introduce uncertainty for all concerned.
51. In respect of the flats, the appellant's case under ground (f) relates to the planning merits which I have considered under ground (a) above. Whilst no lesser steps have been put forward by the appellant, I consider the requirement to return the use of the Land back to a single family dwellinghouse goes beyond what is necessary to remedy the breach as a notice cannot require a former use to be resumed, it is sufficient to require the breach of planning control to cease. I will therefore vary the notice by deleting this part of the requirement. The ground (f) appeal succeeds to this limited extent.

Ground (g)

52. An appeal on ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant requests a period of 12 months for compliance. Whilst no justification is provided for the request, I saw that the ground floor flat is occupied by a family who would need sufficient time to find alternative accommodation. I therefore agree that the period of compliance is too short and a period of 12 months would be more reasonable to enable the occupants of the property to find alternative accommodation and for the works to be carried out, having regard to the scale of the works that would be required.
53. In light of the above, I consider that a period of 12 months is a reasonable period for compliance and shall vary the terms of the notice accordingly.

Conclusion

54. For the reasons given above I conclude that the requirements are excessive and that a reasonable period for compliance would be 12 months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeal under ground (f) and (g) succeeds to that extent.

M Savage

INSPECTOR