
Appeal Decisions

Site visit made on 13 July 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 September 2020

Appeal A Ref: APP/R5510/C/19/3239017 43 Swanage Way, Hayes UB4 0NY

- 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 Hardev Singh against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice, numbered HS/ENF/015871, was issued on 13 September 2019.
- The breach of planning control as alleged in the notice is the material change of use of an outbuilding to a separate self-contained residential unit.
- The requirements of the notice are:
 - (i) Cease the unauthorised use of the outbuilding as a separate self-contained residential unit.
 - (ii) Dismantle and remove from the outbuilding the "fitted kitchen" comprising the sink, washing machine, fridge, oven, work surface(s) and wall/floor cupboard units.
 - (iii) Dismantle and remove from the outbuilding the "shower room" comprising the shower, shower cubicle, shower tray and associated plumbing; the sink unit and associated plumbing, and the toilet pan and toilet cistern.
 - (iv) Dismantle and remove from the outbuilding the internal studwork wall delineating the shower room from the kitchen/lounge/bedroom.
 - (v) Remove from the land all the debris, items, fixture and fittings, building materials, plant and machinery resulting from the works listed in (ii), (iii) and (iv) above.
- The period for compliance with the requirements is three months.
- 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/R5510/C/19/3239018 43 Swanage Way, Hayes UB4 0NY

- 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 Dalbir Kaur against an enforcement notice issued by the Council of the London Borough of Hillingdon.
- The enforcement notice, numbered HS/ENF/015871, was issued on 13 September 2019.
- The breach of planning control as alleged in the notice is the material change of use of an outbuilding to a separate self-contained residential unit.
- The requirements of the notice are:
 - (i) Cease the unauthorised use of the outbuilding as a separate self-contained residential unit.
 - (ii) Dismantle and remove from the outbuilding the "fitted kitchen" comprising the sink, washing machine, fridge, oven, work surface(s) and wall/floor cupboard units.
 - (iii) Dismantle and remove from the outbuilding the "shower room" comprising the shower, shower cubicle, shower tray and associated plumbing; the sink unit and associated plumbing, and the toilet pan and toilet cistern.

- (iv) Dismantle and remove from the outbuilding the internal studwork wall delineating the shower room from the kitchen/lounge/bedroom.
- (v) Remove from the land all the debris, items, fixture and fittings, building materials, plant and machinery resulting from the works listed in (ii), (iii) and (iv) above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not 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 as amended have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Hidden Ground (e)

1. An appeal on ground (e) is that copies of an enforcement notice were not served, as required by s172 of the Town and Country Planning Act 1990 (the Act).
2. Under their ground (f) appeals the appellants state that 'The notice was dated 13/9/2019 and it was not received until 15/9/2019 September 2019 by the Appellant. The appellant was asked to comply by 16/10/2019, which is under a month. Therefore, it is not in accordance with the law and procedure.'
3. Section 172 of the Act states that the service of a notice must take place not less than twenty-eight days before the date specified in it as the date on which it is to take effect.
4. By their own admission, the appellants received the notice on 15 September 2019, which provided more than 28 days before the notice came into effect on 16 October 2019. Therefore, it was in accordance with the provisions of s172 of the Act.
5. For the reasons given above, the hidden ground (e) appeal must fail.

Ground (b)

6. An appeal on ground (b) is that, on the balance of probabilities, the breach of control alleged in the notice has not occurred as a matter of fact.
7. The appellants argue that the appeal building has not been used as a self-contained unit and is only used as a second facility.
8. The Council confirm that in 2011 a certificate of lawful development was granted for a single-storey, detached outbuilding, and the approved plans indicated a single, open plan room, with no internal partitions. The appellants do not dispute this.
9. Following a complaint received by the Council that someone was living in the building, a Council Planning Enforcement Officer inspected the building on 19 August 2019. The officer found that the building contained four separate rooms – a kitchen/dining room, two bedrooms and a shower room. The kitchen included a fridge freezer, washing machine and sink, although the cooker had been removed. There was also a pre-paid electricity meter. At the time, the owner confirmed that the outbuilding was occupied by one person.

10. The observations I made during my site visit were similar to the Council Officer's, although the washing machine was not present. I also noted a water heater under the kitchen sink and an electric wall-mounted radiator in the larger of the two bedrooms. The building appeared to be vacant at the time of my visit, as the cupboards and wardrobes were empty and there was an upturned double bed and mattress in the larger bedroom. However, the building is clearly capable of being occupied as a self-contained residential unit.
11. Although the appellants state that the building is used as a 'second facility' to the main house, there is no evidence before me demonstrating how it is so.
12. Based on the evidence before me, including my own observations, on the balance of probabilities, I find that the building is, or at the very least was at the time the enforcement notice was issued, being used as a self-contained residential unit. Therefore, the ground (b) appeals fail.

Ground (c)

13. The appeals on this ground are that, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control.
14. I note that the Council, following a site visit, found no breach of planning control in 2015. However, that does not, in anyway, indicate that a breach of planning control could not take place after this date.
15. Whilst I acknowledge that the building itself was granted a certificate of lawful development in 2011, there is no substantive evidence before me that its use as a self-contained residential unit is lawful. As I have found that the building is a self-contained residential unit, planning permission is required for it.
16. The ground (c) appeals therefore fail.

The appeal on ground (a)

Preliminary Matter

17. Following the Council's issuing of the enforcement notice, the Hillingdon Local Plan: Part two – Saved UDP Policies 2012 has been withdrawn and the Council confirm that they no longer rely on the policies contained within it. I have determined the ground (a) appeals on this basis.

Main Issue

18. The main issues are the effect of the development on the character and appearance of the area; the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance; whether the development provides adequate living conditions for existing/future occupants, with regard to floor space; and, highway safety.

Character and Appearance

19. Swanage Way is a well-established residential area predominately comprising semi-detached and terraced, two-storey dwellings. Properties are of a similar design and there is consistency in that they are generally located within generous plots, follow established building lines and have a presence within the streetscene, which creates a strong pattern and grain of development.

The generous rear gardens provide a spaciousness to the rear of the properties, which makes an important positive contribution to the leafy suburban setting.

20. The siting of the dwelling behind the existing properties is in marked contrast to other properties on the road which have a clear frontage that embraces the street. Therefore, the dwelling's lack of frontage with the road would appear incongruous and fail to engage with the streetscene.
21. In addition, the proposal introduces a dwelling within the backland area, which, with the exception of small, ancillary domestic buildings, is otherwise free from built residential form. This would be in marked contrast with the existing pattern of development. I note that there are other similar sized buildings in similar positions on adjacent plots. However, there is no evidence before me regarding their use or planning history. Consequently, I attribute their presence limited weight in the appellant's favour.
22. I find therefore that the use of the appeal building as a self-contained residential unit represents an unacceptable form of backland development that fails to respect the existing pattern and grain of development. As such, it would significantly harm the character and appearance of the area, contrary to Policy BE1 of the Hillingdon Local Plan: Part One – Strategic Policies (LP1) 2012 and Policy DMH6 of the Hillingdon Local Plan: Part two – Development Management Policies with Modifications (LP2) 2019. Amongst other things, these policies seek to ensure that new development makes a positive contribution to the local area, in terms of layout and form, and protects against the loss of rear gardens.

Living Conditions of Neighbouring Residents

23. The building sits adjacent to the boundary with the rear gardens of Nos 41, 45 and 49 Swanage Way. As a result of this proximity, the comings and goings of the occupants of the property and visitors and other sources of noise, such as conversing, playing music or watching television, would be discernible to the occupants of these neighbouring properties, particularly when sat in their gardens.
24. By itself, such noise and disturbance would not be unacceptably harmful. However, as there are effectively two residential properties on the site - the appeal building and 43 Swanage Way - the noise and disturbance generated by both properties would be unacceptably harmful. The neighbouring residents have a reasonable expectation to enjoy the peacefulness of their rear gardens. The cumulative noise and disturbance generated by the occupants of both No 43 and the appeal building would unacceptably harm the ability of neighbouring residents to enjoy this peacefulness.
25. I find therefore that the use of the appeal building as a self-contained residential unit has a significantly harmful effect on the living conditions of the occupants of neighbouring residential properties, with regard to noise and disturbance. As such, it would be contrary to Policy BE1 of the LP1, which seeks to ensure that new development protects the amenity of surrounding residential properties.

Living Conditions of Existing/Future Occupants

26. The Council state that the floor area of the appeal building is 30sqm (externally measured). Policy 3.5 of The London Plan 2016 states that the minimum space standard for a two-bedroom three person dwelling is 61 sqm. Consequently, the appeal building falls far below this standard and as a result represents an oppressively confined form of residential accommodation that would have a significantly harmful effect on the wellbeing of its occupants.
27. I acknowledge the appellant's argument that the building meets the relevant building regulations. However, this has had no bearing on my consideration of the planning merits of the proposal.
28. I find therefore that the self-contained residential unit does not provide adequate living conditions, with regard to internal floor space, for existing/future occupants. As such, it is contrary to Policy 3.5 of the London Plan 2016.
29. The Council also refer to Policy DMH4 of the LP2, which states that the internal floor area of the original building to be converted should be at least 120sqm. However, the wording of the policy and its supporting text suggests that this policy targets development comprising the conversion of single dwellings into more dwellings or the redevelopment of dwellings into new blocks of flats. As the proposal is the conversion of an outbuilding, not a dwelling, I do not find that this policy is relevant.

Highway Safety

30. 43 Swanage Way has two off-street parking spaces. These spaces do not have sufficient space to manoeuvre within the site to ensure that vehicles can enter and exit the site in a forward gear. Consequently, vehicles have to reverse into or out of the parking spaces, similar to other properties on the street.
31. The Council contend that in accordance with their adopted parking standards (appendix C of the LP2), the appeal building should provide 1-1.5 parking spaces. However, this is on the basis of the appeal building being a flat.
32. The building is a standalone building with a single residential unit within it with no part of it divided horizontally. Therefore, I consider that the proposal should not be considered on the basis of a flat, but rather a dwelling with curtilage. The parking standards state that such properties should provide a maximum of 1 space per 1 or 2 bed unit.
33. The appeal building does not have any parking spaces and there is no opportunity to provide any. Therefore, there is a reasonable likelihood that occupants would park on the street. There are no parking restrictions on Swanage Way, with the exception of the double yellow lines on the bends in the road. I noted during my site visit, which was late morning on a weekday, that there were many on-street spaces available, although I acknowledge that this was a snap-shot in time. The Council contend that on-street parking provision is at a premium, although there is no substantive evidence to justify this claim. I note that the vast majority of the properties have off-street parking provision for two cars.

34. Overall, it has not been demonstrated that the loss of one on-street parking space would lead to haphazard parking that would cause significant harm to highway safety or the free flow of traffic. As such, I find no conflict with Policy DMT6 of the LP2, which seeks to ensure that new development does not contribute to the deterioration of the safety of all road users and residents.

Balance and Conclusion on the ground (a) appeals

35. I have found that the self-contained residential unit does not cause any unacceptable harm to highway safety. However, this is a neutral effect and does not outweigh the harm I have found with regard to the character and appearance of the area, the living conditions of neighbouring residents and the inadequacy of the living conditions of existing/future occupants. Consequently, and having regard to all other matters raised, I conclude that the ground (a) appeal should fail and the deemed planning application should be refused.

The appeals on ground (f)

36. For the appeals to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
37. The appellants contend that it is unreasonable to dismantle the items as set out in the requirements of the enforcement notice. However, the items set out in the requirements clearly facilitate the use of the building as a self-contained residential unit. Therefore, I do not consider that their removal would be excessive in order to remedy the breach of planning control, ie. the use of the building as a self-contained residential unit.
38. The appellants have not provided any lesser steps that may be taken that would overcome the breach of planning control.
39. I therefore conclude that the ground (f) appeals must fail.

The appeals on ground (g)

40. This ground of appeal is that the period for compliance is unreasonably short.
41. The time for compliance with the requirements of the enforcement notice is three months. The appellants argue that a further two months is required because, at the time the appeal was lodged, they were out of the country looking after an ill relative. However, the appeal was lodged in November 2019 and there is no evidence before me that the appellants have not since returned. Therefore, I find no reason to allow a further two months to comply with the requirements of the notice.
42. As there is no evidence that the building is currently occupied, which is confirmed by the appellant, I find no reason why the requirements of the notice could not be completed within three months.
43. The appellant contends that the time for compliance is not in accordance with the law. However, there is no statutory limitation on the time for compliance, providing a period of time is specified.
44. I therefore conclude that the ground (g) appeals must fail.

Formal Decision

45. For the reasons given above I conclude that both Appeal A and Appeal B should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Alexander Walker

INSPECTOR