



Appeal Decision

Site visit made on 3 August 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 5TH OCTOBER 2020

Appeal Ref: APP/A5270/C/19/3230888

60 Keats Way, Greenford, Middlesex, UB6 9HF

- 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 Amina Awaleh against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice, numbered EN190119CUOB(2), was issued on 18 April 2019.
 - The breach of planning control as alleged in the notice is the material change of use of the outbuilding to the rear of the Premises to use as a separate self-contained residential dwelling.
 - The requirements of the notice are 1. Cease the use of the outbuilding as a separate self-contained residential dwelling; 2. Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling; and 3. 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 (d) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under Section 177(5) of the Act as amended also falls 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.

Ground (d)

2. In order to succeed on this ground the appellant must show on a balance of probabilities that, at the date when the notice was issued, no enforcement action could be taken against the breach of planning control. The appellant must show that there has been a continuous period of 4 years during which the outbuilding has been used as a separate self-contained residential dwelling prior to the issue of the notice.
3. It is accepted that the outbuilding was erected well over 4 years ago, and indeed the Council records show that it had a certificate of lawfulness reference P/2005/4833-NW for proposed development for the conversion of the outbuilding to provide ancillary residential accommodation dated 27 January 2006 ("the LDC").
4. There has been evidence submitted on behalf of the appellant regarding the occupation by Reem Omer and a man named Ziggy (who has not submitted

evidence). Reem Omer states in her unsworn letter she lived in the outbuilding from September 2006 to December 2011. However, Ms Omer is described as a family friend and says that she did not pay rent, but rather helped to care for the appellant in exchange for free accommodation. Ms Soal, the appellant's daughter, in her statement to the Council dated 14 March 2019 referred to Ziggy as becoming a good family friend and confirmed that he did not pay rent but helped with gardening and general maintenance. No additional evidence such as records of utility bills, council tax records or tenancy agreements have been provided regarding either Ms Omer or Ziggy and the arrangement seems to have been an informal agreement allowing residential accommodation ancillary to the use of the main house. It also seems likely at that time that access to the outbuilding was through the house and rear garden.

5. Whilst there were plans attached to the grant of the LDC which show the replacement of the roller shutter door on the rear garage wall with double doors and a window this does not appear to have been done. There is currently a roller shutter door in that location (which has been boarded up internally) next to a single door which appears to be a fairly recent addition. The external door from the toilet extension into the garden has been bricked up and there is currently a large wardrobe inside of the outbuilding in front of the door to the garden which prevents its use. It appears, from my observations on the site visit and representations made by neighbouring residents, that the current tenants access the outbuilding solely through the door in the rear wall which opens onto a small communal area within the gated alleyways behind and adjacent to the houses on Keats Way and Allenby Road. The outbuilding is now arranged as a separate residential unit with its own access, but this has not always been the case, and there is no evidence showing when the current layout was established.
6. During the course of the Council investigation, Ms Soal confirmed that they started to receive rent for the property in September 2017. The documentary evidence that has been provided by way of tenancy agreements is inconclusive, as the agreements do not properly define the parts of 60 Keats Way that are covered and the first agreement with Ms Noor is not signed by either party. But even if this evidence was sufficient to show that the outbuilding had been used as a separate dwelling from September 2017, this would fall far short of the four years continuous use as such prior to the issue of the notice necessary to establish lawfulness due to immunity from enforcement. I conclude accordingly that the appellant has not discharged the burden of proof to show, on the balance of probabilities, that the outbuilding has been used as a separate dwellinghouse for a continuous four year period prior to the issue of the notice, and the appeal on this ground cannot therefore succeed.

Ground (a) and the deemed application for planning permission

7. The main issues in the ground (a) appeal are:
 - the effect of the development on the character and appearance of the area; and
 - whether the development provides acceptable living conditions for the occupiers of the development, the main dwelling and neighbouring residential properties (with particular reference to outlook and privacy, noise and disturbance, and private outdoor space).

Character and appearance

8. The property is a mid-terrace, two storey house with attic accommodation located on a residential street comprising of similar house types. There is a road at the front of the property with pavements and on-street parking and a network of gated side and rear alleyways to provide access to the rear garden. There is a door to the outbuilding from the rear alley which currently seems to be the only access in use.
9. The outbuilding is a one-storey, flat-roofed brick structure with a small extension, which is now accessed from inside of the building, which contains the toilet and shower room. It fills the full width of the garden and the wall facing the garden contains two windows with opaque glazing and a door (although there is a large wardrobe or cupboard on the inside of the door which is therefore not currently in use). The only other way into the garden is to go through the main house – there is no entrance directly from the front street. The outbuilding is overlooked by the rear windows from the main house and the neighbouring houses on each side, as well as several properties further to the left as facing the back elevation of the main house and including several large dormer windows at roof level.
10. The outbuilding is located at the rear of the garden and it is visible from the rear of a number of properties on Keats Way and Allenby Road. The prevailing character of the area is residential with private rear gardens which back onto each other separated by the communal alleyways. Whilst the form of the building is relatively typical of the area, the use as a separate dwelling in a backland location does not accord with the established pattern of development in the area and causes material harm to its character. This is exacerbated by the increased use of the alleyway as the only available outdoor space by the occupants of the development which also detracts from the character of the area and is in conflict with Policy 7.4 of the Ealing Development Management Development Plan Document 2013 (“DPD”).

Living conditions

11. The Council have submitted that the internal floor area of the outbuilding is significantly less than the minimum standard as set out in national and local policies requirements and the appellant has not disputed this. The outbuilding is cramped, consisting of one main room with kitchen and living area, a small bedroom with double bed and no window and small shower room with toilet and sink. The front door, shower room and bedroom lead directly into the main living area, there is no hallway or storage and windows along one wall only (the rear wall facing into the garden). The development does not meet the required standards to provide residential accommodation.
12. Policy 7D of Ealing’s Development Management DPD requires a minimum baseline requirement of private garden space of 6sqm for a three person unit (in line with the actual occupation at the time of the appeal), however the policy states that the provision should also respect the established local character and pattern of building which would typically equate to an area of 50sqm of private garden space per house. The development does not have any private outside amenity space and it does not currently appear to have access into the garden at 60 Keats Way, but this would not be a private space in any event, and use of the garden by the occupants of the outbuilding would erode the private outside space for the main house. It appeared during the site visit

that the outdoor space used by the occupants of the outbuilding was the small shared space between the garages where the alleyways converge, and this accords with representations made by third parties during the course of this appeal. Various outbuildings and garages, from the properties on Keats Way and Allenby Roads, open onto the small communal area between the gardens and whilst the alleyways are gated and therefore not fully public space it can in no way be considered as private outside space. The lack of garden space is a conflict with Policy 7D and a failure to provide adequate living conditions for the occupiers of the development.

13. The location of the outbuilding in close proximity to the neighbouring properties (the closest being the host property) also causes material harm in terms of outlook and erosion of privacy for those occupiers contrary to Policy 7B of Ealing's Development Management DPD which seeks to achieve a high standard of amenity for users and adjacent users. The additional noise and emissions from the outbuilding and the increased use of the alleyways (including for refuse storage) could cause harm to the occupiers of the neighbouring properties. Third party objections have been received regarding an increased disturbance and security risk associated with the additional and more frequent use of the gated alleyways. The separate residential use of the outbuilding causes harm to the living conditions of the neighbouring properties due to additional noise and disturbance which is contrary to Policy 7A of Ealing's Development Management DPD.

Conclusions on ground (a)

14. Overall, I consider that the development causes material harm to the character and appearance of the area and to the living conditions of the neighbours, including the occupiers of the host property. It also fails to provide an acceptable standard of accommodation for the occupiers of the development. It is therefore contrary to the development plan, particularly Policies 3.5, 7.4 and 7.6 of the London Plan 2016, Policies 1.1 and 1.2 of the Ealing Development Strategy and Policies 7.4, 7A, 7B and 7D of Ealing's Development Management DPD which are intended to provide that housing development should be of the highest quality with regard for local character. Since there are not material considerations to outweigh the conflict with the development plan, I conclude that the appeal should be dismissed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Zoë Franks

INSPECTOR