



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/T5150/C/19/3240301
127 Melrose Avenue, London, NW2 4LY

- 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 Mr Daniel Ross against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/19/0381, was issued on 2 October 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.
 - The requirements of the notice are: 1) Demolish the unauthorised dwelling in the rear garden of the premises; and 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), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended ("the Act"). 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. It is directed that the enforcement notice be corrected: by the deletion of the word "dwelling" and the substitution of the word "outbuilding" in Schedule 2; and the deletion of the word "dwelling" and substitution of the word "outbuilding" in Schedule 4, Step 1. Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended, for the development already carried out, namely the erection of an outbuilding in the rear garden of 127 Melrose Avenue, London, NW2 4LY.

Ground (b) and the Notice

2. An appeal on this ground is that the alleged breach of planning control has not occurred. The building in question has clearly been erected, but the appellant's argument is that it is not a dwelling as described in Schedule 2 of the notice.
3. The building has kitchen and bathroom facilities, and hence can be said to have the facilities required of a dwelling. However, the appellant claims it has not been used as such, and there is not evidence to cast significant doubt on that, nor is there any evidence that it is ever intended to be used as such. The appellant stated that the intention was to use the building for the practice of musical instruments and for the occasional overnight guests and that this is how the building has been used. This accords with my observations during the site visit when there was a piano and various other instruments in the

outbuilding along with chairs, music stands and other seats, but no stand-alone bed or other indication of use as a dwelling. In the absence of any contradictory evidence from the Council, I am satisfied that the appellant's evidence is sufficient to show, on the balance of probabilities, that the building has not been, and is not intended to be, used as a separate dwelling or residential unit, and that it is, and has been, used for purposes ancillary to the dwellinghouse at No. 127. The appeal therefore succeeds on ground (b). However, success on this ground does not invariably result in the notice being quashed. I can correct the notice without prejudice to the parties. I consider this to be the appropriate action in the circumstances, since the appellant has paid the fee for the deemed planning application, but has not argued that the building does not require express permission.

4. Permitted development rights under Article 3 and Schedule 2, Part 1, Class E of the GDPO permit the erection of certain buildings within the curtilage of a dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse as such. However, this is generally taken to exclude the provision of facilities that would normally be for purposes integral to the use as a dwellinghouse, as are provided in this case. In the absence of an argument that the building might be development permitted by the GPDO, I shall deal with the appeal on ground (a) and the deemed planning application on the basis of the corrected description of the breach of planning control following success on ground (b).

Ground (a) and the deemed application for planning permission

5. This ground now falls to be considered on the basis of the allegation as corrected pursuant to ground (b). The deemed planning permission is for the erection of an outbuilding in the rear garden of the premises. The Council's reasons for issuing the notice were related, in part, to the use of the building as a separate residential unit. In light of the corrected description, not all remain relevant.
6. The remaining main issues in the ground (a) appeal (which are taken from the reasons on the notice) are the effect of the development on:
 - the character and appearance of the area;
 - the living conditions of the occupiers of neighbouring properties.
7. The host property is located on a residential street consisting of red-bricked semi-detached houses with some mature trees and small front gardens. The development is a one-storey L-shaped building with infill wooden decking and steps to the entrance situated at the rear of the well-established back garden of the host property. The development fills the width of the garden and there are tall wooden fences and some planting on each side boundary so that it is not possible to see into the neighbouring gardens. Windows and doors face into the garden, and the flat roof gives the building a low profile. The development is not visible from the front street or any other public space.
8. The building is subordinate to the main dwelling and does not cause visual harm to the character and appearance of the area as it is tucked into the back of the rear garden and behind the high boundary fences and not visible from the street. It also does not cause harm to the living conditions of the occupiers of the neighbouring properties as it is sufficiently distant, angled and screened from the windows of the adjacent properties. It is not supporting the increased

- occupation of the main house or creating a separate dwelling (with additional use of the garden as amenity space) as the appellant has submitted that the building replaced an existing building in the same location which had a use ancillary to the main dwelling and the Council have not disputed this evidence.
9. The development is therefore in accordance with Policy CP17 from the London Borough of Barnet Core Strategy July 2010 ("the Core Strategy") and Development Management Policy DM1 which are intended to ensure development that respects the settings of existing buildings and are appropriate in terms of scale, massing and design. It is not a separate dwelling and its use ancillary to No.127 does not cause harm to the character of the area.
 10. It does contain a bathroom including shower and small kitchen facilities but it is not contrary to Development Management Policy DMP18 as it replaced a previous outbuilding which contained bathroom and kitchen facilities and it does not therefore support the increased occupation of the primary dwelling. Development Management Policy DM19 does not apply as it concerns new dwellings. The provision of the shower, toilet and kitchen is contrary to the Residential Extensions and Alterations SPG2 2018 which is a material consideration but this is guidance only and does not justify refusal in the circumstances.
 11. The development does not cause harm to the character and appearance of the area or to the living conditions of the occupiers of the neighbouring properties and is therefore not contrary to the development plan policies as set out above which seek to protect these matters by preventing the increase of primary accommodation which would support increased occupation of dwellings and ensuring appropriate development in terms of scale, massing and design.
 12. In support of his case the appellant has provided a completed unilateral undertaking dated 30 October 2019 pursuant to section 106 of the Act to ensure that the building is not used as a separate residential unit. However, while it provides reassurance regarding the purpose of the building, such use would in any case require planning permission. The undertaking is not necessary to make the outbuilding acceptable in planning terms.

Conclusion

13. It is clear from the representations, and from my inspection of the site, that the description of the development in the enforcement notice is incorrect in that the development is not a dwelling but rather an outbuilding with a use ancillary to the host property. I am satisfied that no injustice will be caused if I correct the enforcement notice in this in order to clarify the terms of the deemed application under section 177(5) of the Act as amended.
14. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the Act as amended, which will now relate to the corrected allegation. Grounds (f) and (g) do not therefore fall to be considered.

Zoë Frank

INSPECTOR