The Planning Inspectorate

Appeal Decision

Site visit made on 29 September 2020

by JP Roberts **BSc(Hons) LLB(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 October 2020

Appeal Ref: APP/A5270/C/19/3239028
32 Sussex Road, Southall, Middlesex UB2 5EQ

- 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 Varinder Kumar against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 17 September 2019.
- The breach of planning control as alleged in the notice is:
  Without planning permission, the erection of single storey side and rear extensions as shown with an 'X' on the attached Plan 1 and the material change in use of the land at ground floor as shown hatched on the attached Plan 2 for use as a self contained residential dwelling.
- The requirements of the notice are:
  1. *Cease the use of the land at ground floor as a residential dwelling as shown in Plan 2;*
  2. *Demolish the single storey side and rear extensions as shown with an 'X' on Plan 3 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),(c),(f) and (g) of the Town and Country Planning Act 1990 as amended. 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.

Decision

1. It is directed that the enforcement notice is varied by the deletion of 3 months and the substitution of 6 months as the period for compliance. Subject to this variation, 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.

Appeal on ground (c) – that the matters alleged in the notice do not constitute a breach of planning control

2. The appellant accepts that the use as a self-contained residential dwelling amounts to a breach of planning control. However, it is argued that the erection of single storey side and rear extensions is permitted through the grant of planning permission, albeit that non-material departures from the approved scheme have taken place.

3. Planning permission was granted on 22 May 2014 for single storey side/rear infill and rear extensions to nos. 32 and 34, part first floor rear extension to no. 32, single storey front entrance extension to no. 32 and alterations to

shopfront (LPA Ref: PP/2014/0747). That permission was, insofar as it applies to the ground floor of the appeal premises, for an extension to a shop; what has been built forms the greater part of a new dwelling. There is no evidence to show that the extension was first used as an addition to the shop and later changed to a separate dwelling. Thus, the development for which permission was approved has not been carried out. Although there are some physical similarities between what was approved and what has been built, the difference between a shop extension and a new dwelling is material, and thus I find that neither the building operations nor the use as a dwelling benefit from the planning permission.

4. There is no suggestion that the development constitutes permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015, and I find that the development is not one which is permitted by the Order. Accordingly, I find that the matters alleged in the notice constitute a breach of planning control, and that the appeal on ground (c) fails.

Appeal on ground (a) – that planning permission should be granted

Main Issues

5. The main issues are:

   i) The effect of the development on the character and appearance of the surrounding area;

   ii) The effect of the development on the living conditions of the occupiers of the neighbouring dwelling at 34 Sussex Road;

   iii) Whether the flat provides satisfactory living conditions for the occupiers with particular regard to floorspace, outlook, noise and amenity space.

Reasons

Character and appearance

6. The site lies on the corner of Sussex Road and Scotts Road. Whilst the properties in this part of Sussex Road have a mixed commercial and residential character, Scotts Road is wholly residential. The appeal site lies to the rear of 32 Sussex Road, abutting onto an alleyway which runs along the back of Sussex Road properties, on the other side of which is a pair of semi-detached houses.

7. The extension infills all of the space between the shop and the alleyway running along the rear boundary, and fills the width of the plot. I accept that dwellings in such a backland position are not typical of the area. Even so, the Council has approved an extension with a very similar siting and design in the rear garden of No 32, along with one at the rear of No 34, which was required to be built simultaneously as the one at No 32, with the effect that an even larger backland development has been permitted.

8. Although the development as carried out is a dwelling, it is not obviously different in appearance from the approved extension to the shop when seen from the street or from nearby dwellings. There is no clear pattern of open spaces at the rear of the buildings along Sussex Road where they meet side roads. The extension steps down in height from the two storey extension and

appears as a subordinate addition. Its design is of simple brick elevations with a stepped flat roof, which fits in satisfactorily in its context.

9. I therefore consider that the extension is not harmful to the character or appearance of the area. Nor does it conflict with Policies 7.4 or 7B of the Council's Development Management Development Plan Document (DMDPD), which respectively deal with Ealing's character and design amenity. I also find no conflict with Policy 7.4 of The London Plan, which also deals with local character.

Living conditions – occupiers of 34 Sussex Road

10. The extension runs along the whole of the boundary with the rear garden of the next-door house at 34 Sussex Road. The Council makes the point that the planning permission referred to above also related to an extension at No 34, and it was a condition of that permission that the two developments be carried out at the same time. This has not occurred. Furthermore, the design of the approved extension included a pitched roof on the boundary with No 34, thereby reducing its height and bulk when seen from the garden of that property.

11. There have been no objections to the development from the occupiers of No 34, but that in itself is not a determinative consideration; there may be many reasons why an occupier might not object and I have to take into account the living conditions of future occupiers as well.

12. The extension creates a flank wall along the boundary with No 34 about 3m high over its whole length, abutting a small pathway for about 4m or so, and then bordering the open rear garden for about a further 8m. The combination of height and length of the extension, together with side extension of No 1 Scotts Road which forms the rear boundary of the garden, is likely to create a claustrophobic and hemmed in feeling when seen from ground floor windows in the rear of the main part of No 34 and from those in the side wall facing the extension, as well as from the garden, which results in poor living conditions for the occupiers of that property.

13. I consider that the impact of the development on occupiers' living conditions is materially worse than would have been the case had the extension been carried out to No 34 and had the pitched roof to the rear extension at No 32 been carried out. Amending the roof to No 32 alone would not adequately mitigate the harm that I have found.

14. Accordingly, I conclude that the extension results in harm to the living conditions of the occupiers of 34 Sussex Road, with particular regard to outlook and visual appearance. The development conflicts with DMDPD Policy 7D, which amongst other things, requires development to have a positive visual impact.

Living conditions – occupiers of the flat

15. The appellant's case is based on the flat providing 1 bedroom for 2 people. The Council says that it appeared to them it was occupied by a couple with a child, and is therefore a 1 bedroom, 3 person flat. On my visit I found that an additional bedroom with a double bed had been created by sub-dividing the living room. I sought the parties' comments on the existing arrangement, but

no comments were received. Thus, on the evidence, the flat is laid out as a 2 bedroom, 4 person dwelling.

16. In terms of floorspace, a 2 person, 4 bed flat requires 70 sq.m. to meet the minimum space standards set out in Policy 3.5 (and Table 3.3 which adopts the Government's Nationally Described Space Standards) of the London Plan 2016. The objective behind the policy is to ensure that residential development is of the highest quality, internally and externally. The floorspace available in the flat is about 57 sq.m. by the Council's reckoning or 60 sq.m. according to the appellant. In either event, it is well below the 70 sq.m. needed to meet the policy standard.

17. Other than some skylights, none of the windows of the flat are clear glazed, and thus there is no outlook available for occupiers. This provides a very poor quality of accommodation, and fails to adhere to the London Plan objective of securing the highest quality for housing developments.

18. Policy 7D of the Council's DMDPD says that development which increases demand for open space will be expected to contribute towards meeting that demand in accordance with details set out in a table. For a flat, it requires private garden space of 5 sq.m. per 1-2 person unit, plus 1 sq.m. for each additional occupant. Thus, for a 4 person flat, it would require 7 sq.m. of space. None is provided.

19. It is true that the existing upper floor flat has no amenity space, but this is not a good argument to justify a lack of provision in new development. The point of the Council's policy is to ensure that new housing is of the highest quality, and repeating poor examples of the past will not achieve that objective.

20. The appellant has suggested that a small amenity area could be provided by demolishing the rear wall of the flat to create an area between the flat and the wall of the alleyway leading from Scotts Road. This would be only be 5 sq.m, and would be hemmed in by the rear wall of the flat and that of the alleyway and the side extension to 1 Scotts Road, providing a very poor quality of amenity. I consider that this would not be adequate to serve the likely needs of occupiers of the flat.

21. The flat lies to the rear of a shop. On my visit I saw that there was an interconnecting door between the shop and the flat, which would be unlikely to offer the same level of soundproofing as would a wall of modern insulation standards. Although the shop was not open at the time of my visit, there is a potential for noise transmission into the bedroom of the flat, and this adds to my concerns about the quality of the accommodation. I am less concerned about the relationship to the flat above, as it involves a bedroom over part of a bedroom in the appeal flat, which is less likely to result in undue noise or disturbance.

22. Taking all these matters into consideration, I find that the use as a flat results in harmful living conditions for the occupiers, and conflicts with the policies I have referred to above.

Other matters

23. The requirements of the notice engages with the occupiers' rights to respect for their family life and their home under Article 8, as well as the appellant's right to respect for property, under Article 1 of the First Protocol, which are

Convention rights enshrined into UK law by the Human Rights Act 1998. However, these rights are not absolute, and interference may be justified in the public interest. In this case, the planning system exists to regulate the use of land in the public interest, and in doing so interferes with occupiers' and landowners' rights.

24. I have not been told anything of the circumstances of the tenants. The appellant would have known that the residential use of the site required planning permission and must have been aware of the possibility of enforcement action being taken against an unauthorised use. In this case, upholding national and local planning policy, and the importance of protecting occupiers' living conditions are matters of legitimate public interest.

25. There are no lesser steps which could be taken to meet the policy objectives, and whilst I recognise that the interference with the rights I have referred to would be significant, the burden of complying with the enforcement notice would be necessary and would not be disproportionate.

Conclusion on ground (a)

26. For the reasons I have set out above, whilst I find that the building does not result in material harm to the character and appearance of the surrounding area, it does result in clear harm to the living conditions of the occupiers of 34 Sussex Road, and the use of the flat is harmful to the living conditions of occupiers, with particular regard to floorspace, outlook, amenity space, noise and disturbance. Accordingly, I conclude that planning permission should not be granted and that the appeal on ground (a) should fail.

Appeal on ground (f) – that the requirements of the notice are excessive

27. The enforcement notice states on its face (paragraph 4, sub-paragraph 5) that the purpose of the notice is to remedy the breach of planning control. Having found that the building operations are in breach of planning control, the requirement to demolish the building does no more than is necessary to remedy the breach. I have given consideration to lesser steps, but because I have found that the building is harmful to the living conditions of the neighbouring occupier, merely altering the roof to provide a pitch on the side closest to No 34 would not overcome the harm that I have found.

28. No other steps have been suggested to me which could form the basis of an amended requirement. It may be possible to alter the building in an acceptable manner by demolishing the part nearest to the boundary, in order to provide a gap between it and the boundary with No 34, but in the absence of any clearly worked out plans setting out such a proposal, it is not possible to vary the enforcement notice to require such a step. In my judgement, there are no other obvious alternatives having regard to the facts and circumstances of the case.

29. The demolition of the extension would leave a void beneath the first floor extension; the requirements of the notice are silent on the treatment of this elevation. However, this is not a sufficient reason to allow the extension to remain. It is open to the appellant to apply for planning permission to build a new wall to enclose the void.

30. Accordingly, I find that the steps required to be taken are not excessive, and that the appeal on ground (f) fails.

Appeal on ground (g) – that the period for compliance falls short of what is reasonably necessary

31. The notice sets out a compliance period of 3 months. I consider that this would not provide reasonable or adequate time for the tenants to find new accommodation and for a contract to be let and fulfilled to carry out the demolition work. I shall therefore extend the period for compliance to that of 6 months. To this limited extent this ground of appeal succeeds.

Overall conclusion

32. For the reasons given above, I conclude that the appeal should not succeed, other than in respect of the appeal on ground (g). I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

JP Roberts

INSPECTOR