The Planning Inspectorate

Appeal Decisions

Site visit made on 22 September 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd November 2020

Appeals A and B: APP/U5930/C/19/3241460 and 3241461
22 Forest Drive West, London E11 1LA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Rehana Iqbal (Appeal A) and Mr Javed Iqbal (Appeal B) against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
- The enforcement notice, numbered 084994, was issued on 23 October 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the rear section of the Land (hatched in red on attached Plan A) to provide an independent self-contained dwelling.
- The requirements of the notice are:
  1) Cease the use of the rear of the Land for separate residential use;
  2) Remove from the outbuilding currently on the rear of the Land the kitchen and all associated drainage connections which facilitate the use of the Land for separate residential use;
  3) Remove from the outbuilding currently on the rear of the Land the bathroom and all associated drainage connections which facilitate the use of the Land for separate residential use;
  4) Demolish and remove from the Land the outbuilding currently on the rear of the Land; and
  5) Remove from the land all resultant debris.
- The period for compliance with the requirements is 4 months.
- Appeal A is proceeding on the grounds set out in sections 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered. Appeal B is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is varied by deleting requirement (4). Subject to this variation the appeals are dismissed, and the enforcement notice is upheld.

Preliminary matters

2. Since the notice was issued the outbuilding has ceased to be used as an independent self-contained dwelling, it has been altered and is being used for the parking of vehicles associated with the residential occupation of 22 Forest Drive West. The bathroom, kitchen, drainage connections and the pedestrian access door onto Forest Drive have also been removed from the outbuilding.

3. The appeal must however be determined based on whether the matters alleged where occurring at the date the notice was issued. The appellant and Council agree that the allegation was occurring at the relevant date.

Appeal A - Ground (a) and the deemed planning application

4. In respect of whether planning permission ought to be granted for the provision of an independent self-contained dwelling, the **main issues** are the effect of the development on:

   - character and appearance;
   - living conditions; and
   - on-street parking provision.

Character and appearance

5. The Land lies in a predominantly residential area, characterised by two storey dwellings fronting the highway. Dwellings fronting the south east side of Forest Drive West have relatively long back gardens which abut the highway on Forest Road. Forest Road only has dwellings fronting the south eastern side of the highway. Built development along the north western side of Forest Road consists of single storey outbuildings, of varying designs and materials, which are used for purposes ancillary to the dwellings fronting Forest Drive West.

6. While the outbuilding has a similar scale, design and appearance to ancillary buildings located on the north western side of Forest Road, its use as an independent self-contained dwelling is out of keeping with the established character and pattern of development. Furthermore, the provision of a single storey dwelling is at odds with the predominantly two-storey nature of existing dwellings in the surrounding area. For these reasons the development conflicts with policies CS2 and CS15 of the Waltham Forest Local Plan – Core Strategy 2012 ("the WFCS") and policies DM6 and DM29 of the Waltham Forest Local Plan – Development Management Policies 2013 ("the WFDMP"), which seek, amongst other things, to secure a high standard of urban and architectural design that responds positively to local context and character.

Living Conditions

7. The internal subdivision and accommodation provided confirm its use as a one bedroomed dwelling. Access into the independent self-contained dwelling was via pedestrian access doors that opened on to Forest Road and open into the private garden of the host dwelling. The only windows serving the development look out onto the private garden of the host dwelling.

8. The provision of windows in only one elevation of the outbuilding provides for a limited outlook for residents. The window positions and pedestrian access door opening into the host dwelling's garden result in an unacceptable loss of privacy. In addition, anyone using the host property's garden would have unrestricted views into the appeal dwelling. The development therefore causes significant loss of privacy to No 22 and fails to provide adequate levels of privacy and outlook for the new dwelling.

9. The new dwelling has no outside private amenity space. The amount of internal accommodation, while meeting the minimum floor area standard[1] for a 1 bed/1 person dwelling, does not meet the minimum floor area standard for a 4 person

[1] Table 8.1 of the WFDMP

dwelling[2]. The independent self-contained dwelling therefore fails to provide an adequate amount of accommodation and residential amenity for residents.

10. The pedestrian access onto Forest Road would result in occupiers potentially stepping out of the outbuilding into oncoming traffic and having to stand in the road while entering the outbuilding. The use as an independent self-contained dwelling therefore represents a danger to residents and other highway users.

11. For these reasons, the development conflicts with policies CS2 and CS15 of the WFCS and policies DM6 and DM7 of the WFDMP, which seek, amongst other things to ensure the provision of high quality development that provide adequate internal living space and outside amenity facilities.

On-street parking

12. While No 22 benefits from having off-street parking facilities available from Forest Drive West, the development has resulted in the loss of its garaging facilities. The development may not have displaced all off-street parking facilities for No 22 but the provision of an additional dwelling would increase demand for on-street parking provision. The development therefore conflicts with policy DM16 of the WFDMP, which seeks, amongst other things, to resist development that reduces on-street parking provision in areas where parking spaces cannot meet existing demand.

Other matters

13. There may be ancillary outbuildings located in other gardens along Forest Road but this, coupled with the existence and physical condition of the previous garage, carries limited weight in relation to the use of the Land as an independent self-contained dwelling. The previous garage and the outbuilding may be of a similar size and scale, but they are put to very different uses. The outbuilding may also have improved the visual amenity of the surrounding area by replacing the dilapidated garage. These matters, when taken together, do not however outweigh the harms I have identified.

14. The appellant suggests that conditions can be imposed to prevent the reinstatement of the pedestrian access door on to Forest Road and to prohibit the use as an independent self-contained dwelling; as occurred in a nearby proposal. The appeal decision[3] referred to by the appellant however relates to the erection of an outbuilding, rather than the use of land as an independent self-contained dwelling. Given the nature of that proposal, it was before the Inspector to impose conditions that regulate the outbuilding's use.

15. In this instance, it would be appropriate for a condition to prevent the reinstatement of the pedestrian access door to be imposed. However, a condition cannot be imposed where it would prevent the proposed development from being implemented. This development relates to the use of Land as an independent self-contained dwelling and the imposition of the appellant's suggested condition would prevent that use. The relevant condition tests would not therefore be met.

[2] Completed Planning Contravention Notice dated 23 May 2019 signed by Mr Naseer Ahmed
[3] APP/T5150/C/09/2111798

Conclusion on ground (a)

16. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeals A and B - Ground (f)

17. Having regard to the requirements of the notice, its purpose is to remedy the breach of planning control. To succeed on ground (f) the appellants must show that the requirements of the notice exceed what is necessary to remedy the breach.

18. The appellants claim that the cessation of the use and removal of its associated fixtures and fittings would remedy the breach of planning control, which is the use of Land as an independent self-contained dwelling. Requirement (4) relating to the demolition of the building is therefore unnecessary given the lack of objection to its physical presence, if it is put to an incidental use for No 22.

19. S173(a) states that "remedying the breach [can be achieved] by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing the use of the land or by restoring the land to its condition before the breach took place". There is no relevant planning permission and requirements (1) to (3) would secure the discontinuance of the use as an independent self-contained dwelling. The inclusion of requirement (4) would suggest that the Council is seeking to restore the land to its condition before the breach took place.

20. While s173(5)(a) confirms that the notice may require "the alteration or removal of any buildings or works" that facilitate the breach of control, the requirements should go no further than is necessary to remedy the breach. I saw that the appellants have complied with the notice in so far as it relates to the discontinuance of the use as an independent self-contained dwelling. The removal of the kitchen, bathroom and drainage facilities would ensure that the outbuilding could not readily be re-occupied as an independent self-contained dwelling.

21. There is no dispute that the outbuilding has been erected for more than 4 years and as such it would be immune from enforcement action in its own right, having regard to s171B(1). The Council however alleges that the provision of the external roller shutter doors was used as a means of concealing the residential use, so that the outbuilding could become immune from enforcement.

22. The appellants claim that the outbuilding was erected as a replacement garage facility but that it was completed as a dwelling to accommodate family members. The residential use was only intended to be temporary and the outbuilding would be reinstated as a garage when the dwelling was no longer needed.

23. The installation of the roller shutter doors goes some way to corroborate the appellants' intentions, although there is ambiguity elsewhere in the appellants'

evidence. S124 of the 2011 Act[4] makes provision for enforcement action to be taken against a breach of planning control when the time limit for taking action has expired and the breach has been concealed. To use these powers the Council would have to apply for a 'planning enforcement order' within 6 months of the day they became aware of the apparent breach. I am not aware that the Council took such action. In the circumstances I find, on the balance of probability, that the breach of planning control was not deliberately concealed.

24. There is no dispute that a timber garage of similar size and scale to the outbuilding occupied the outbuilding's position previously. The outbuilding may be constructed of more substantial materials but that does not cause any detriment to No 22 or the surrounding area. Also, s173(5)(a) does not specifically require the removal of buildings that facilitate the breach of control, leaving it to the decision maker's discretion as to necessity.

25. Taking a holistic approach to all the evidence and the actions of the appellants since the notice was issued, I find the demolition of the outbuilding to be excessive and will vary the notice accordingly by deleting requirement (4).

26. The appeals on ground (f) succeeds to this limited extent.

M Madge

INSPECTOR

[4] Localism Act 2011