



Appeal Decision

Site visit made on 7 December 2020

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal Ref: APP/A5270/C/20/3256766

Land at 6 Dukes Avenue, Northolt, Middlesex UB5 5DA

- 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 Khan Basher against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 11 June 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change in use of the land (hatched on the attached plan) to the rear of the premises for self-contained residential use.
 - The requirements of the notice are:
 1. Cease the use of the land as a separate self-contained residential unit;
 2. Demolish the outbuilding in its entirety;
 3. Remove the fence separating the main dwelling from the outbuilding; and
 4. Remove all resultant debris.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of 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 as amended.
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Decision

1. It is directed that the enforcement notice is varied by deleting the requirement listed as 2. in paragraph 5 and re-numbering the requirements listed as 3. and 4. in the same paragraph as 2. and 3 respectively. Subject to these variations, the appeal is dismissed, 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.

Procedural Matter

2. The Council and the appellant have made reference to emerging policies in The Draft London Plan – Consolidated Suggested Changes Version, July 2019 which has subsequently been published along with further updates and now form the 'Publication London Plan', December 2020. Although the emerging draft London Plan does not yet form part of the Development Plan, given its advanced stage of preparation, I am able to give these draft policies substantial weight.

Background

3. Planning permission was granted in 2014 for a single storey detached granny annex building on the Land. The permission was subject to a number of conditions, including a condition that stated that the outbuilding shall be used as a residential annex ancillary to the existing dwelling at No 6 Dukes Avenue, and shall not be used for any separate residential use or for any industrial, commercial or business use.¹
4. The outbuilding has not been constructed in accordance with the approved plans or occupied in accordance with the conditions imposed. The building has a slightly larger footprint, it is constructed in different materials and the fenestration also differs from that shown on the approved elevations. It is understood that its occupation has always been as a separate dwelling and it has never been occupied as originally intended as accommodation ancillary to the main dwelling, No 6 Dukes Avenue. No 6 Dukes Avenue is privately rented and does not have any access to the Land, which includes the building the subject of this appeal. A material change in the use of the Land has therefore taken place and a new self-contained residential use and separate planning unit formed.

Appeal on ground (a), deemed planning application.

Main Issues

5. The main issues in this case are:
 - The effect of the development on the living conditions of neighbouring residents;
 - The effect of the development on the character and appearance of the area; and
 - Whether the development provides for acceptable living conditions for existing and future occupiers.

Reasons

Living conditions of neighbouring occupiers

6. The new self-contained unit is situated within what was originally the rear garden of No 6 Dukes Avenue, a semi-detached residential bungalow. The site is accessed from the driveway which runs alongside No 6 and the Land has been enclosed by high timber gates and fencing to create a self-contained and private space.
7. It is not clear as to whether the occupiers of the new unit utilise the driveway for parking. However, in order to gain any means of access to the residential unit it is necessary for its occupiers and any visitors to the property to pass close to the flank wall of No 6. This flank wall contains the main entrance door to No 6, as well as several habitable room windows. Furthermore, the rear garden gate to No 6 also exits onto the driveway.
8. I noted on my site visit that whilst one of the windows in the flank wall to No 6 was a bathroom window, the other two windows served habitable

¹ Local Planning Authority ref: P/2014/0712.

rooms. The windows to those rooms have had decorative film fitted to their bottom panes. It seems clear to me that this film had been adhered in order to obscure views into these rooms. Occupants of the new unit, their visitors and any person making deliveries to it would need to pass very close to No 6's flank wall and windows, and in doing so, the privacy of the existing occupants of No 6 would be compromised. Furthermore, the daily activities and comings and goings from the new unit would result in disturbance to existing occupiers, with unknown persons walking directly past No 6's main entrance door and windows and on land which in any other circumstances would be considered to form part of their private garden land.

9. For the reasons given above, I conclude that the creation of a separate residential unit in this location has a harmful effect on the privacy and living conditions of the existing occupants of the main dwelling No 6. There is conflict with the development plan, and in particular with Policy 7B of Ealing's Adopted Development Management (Development Plan Document), 2013 (DMDPD) which seeks to ensure that new development achieves a high standard of amenity for users and adjacent users by ensuring, amongst other criteria, good levels of privacy and coherent development of the site. I also find conflict with Draft Policy D3 of the Publication London Plan, 2020 (PLP) which seeks to ensure that the form and layout of a place delivers appropriate outlook, privacy and amenity.

Character and appearance

10. Dukes Drive is situated in a residential area which is predominantly characterised by bungalows set back from the road with frontage gardens and private driveways. In the vicinity of the site many properties have garden buildings, including garages.
11. Policies 7.4 and 7B of the DMDPD, together with Policy 7.4 of the London Plan, 2016 (LP) and draft Policy D3 of the PLP seek to ensure, amongst other criteria, that new development is of a high standard of design and complements the existing building patterns, street sequence and local character, and have a positive visual impact on the residential environment. In addition, Policy 3.5 of the LP requires the design of all new dwellings to take account of factors relating to 'arrival' at the building.
12. I appreciate that an outbuilding used for purposes incidental to the residential use of the main dwelling would not be uncharacteristic within the rear garden of the main dwelling. However, a self-contained residential unit has very different characteristics. Where a new dwelling is to be formed it should conform to the design standards for new residential units and be appropriately located. In this case, the dwelling is situated in a backland location which conflicts sharply with the pattern and layout of existing dwellings in this residential neighbourhood. The dwelling has no street frontage and its overall siting and appearance tucked away in the corner of a private garden and close to boundary fences, has resulted in a form of development which is poorly related to the existing character of the area.
13. I conclude that the development of a separate self-contained residential dwelling in this location has a harmful effect on the character of the area. It conflicts with the development plan, and in particular with Policy 7.4 and 7B

of the DMDPD and Policies 3.5 and 7.4 of the LP the aims of which are set out above.

Living conditions for future occupiers

14. The new unit is a single storey one bedroom unit which, according to the appellant, has been primarily occupied by one or two persons since its construction. However, I am aware that in one instance three people have resided there. It has a living room, bedroom, bathroom and a kitchen area which opens out onto an enclosed yard/amenity area. There is also an area for covered storage and a storage shed.
15. The LP states that the design of all new housing development should enhance the quality of local places and Policy 3.5 of the LP requires minimum space standards² (MSS), as set out in Table 3.3 of the LP to be adhered to. Policy 7B of the DMDPD seeks to ensure that new development achieves a high standard of amenity for users and adjacent users. In addition, Policy 7D of the DMDPD sets a minimum requirement of 5sqm of private outdoor space for a 1-2 person dwelling. However, this is a minimum and, in most cases, should be supplemented to ensure that the area responds to its physical context. The Council advise that this should typically equate to an area of 50m² of private garden.
16. The new unit has a gross internal floor area of 45m² and therefore exceeds the MMS set out in the LP for a one bedroom one person dwelling (39m²), but falls short of that required for a one bedroom two person dwelling (50m²). However, the layout of the accommodation is such that the main living areas are not cramped, they are also well lit and have a reasonable outlook. In addition, the unit has a small garden area of approximately 30m² to the side of the property and a yard area to the front which also accommodates some outdoor storage sheds. The outdoor space is private, not overshadowed and its size and layout make it suitable for outdoor seating, drying cloths and there is also space to store cycles and other outside equipment.
17. Although the internal space falls slightly below the size required for a one bedroom two person dwelling, it exceeds that required for occupation by a single person. In addition, it has a suitably sized area of external amenity space which responds to its physical context. For these reasons, and those set out above, I am satisfied that the unit provides for acceptable living conditions for its existing and future occupants. There is therefore no conflict with the development plan and in particular with Policy 3.5 of the LP or Policies 7B and 7D of the DMDPD.

Other Matters

18. I have taken into account the letter of support from a neighbouring resident, and I appreciate that the dwelling would contribute towards the provision of a new home on a small site, for which there is a recognised need. However, these considerations do not outweigh the harm that I have identified to the character of the area and living conditions of neighbouring residents.

² Technical housing standards-nationally described space standards. DCLG 2015.

Conclusion

19. Although I have found that the development provides for acceptable living conditions for its existing and future occupants, I have found that it would have a harmful effect on the character of the area and on the living conditions of neighbouring residents. There is conflict with the development plan, and I find no material considerations of sufficient weight to justify a grant of planning permission for what is alleged in the notice. I conclude that the appeal on ground (a) and the deemed planning application should not succeed.

Appeal on ground (f)

20. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
21. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. The Council has confirmed that the purpose of the notice in this case is to remedy the breach of planning control.
22. The appellant considers that as the notice only alleges a material change in the use of the land and not operational development, it is unreasonable to require the removal of the building and fencing. Conditions attached to the planning permission for the granny annex did not require the building to be demolished and only that the use should cease if no longer occupied as such. In addition, the fence benefits from permitted development rights and is not therefore unlawful. The requirement to cease the use of the Land as a separate self-contained dwelling should therefore be sufficient to remedy the breach of planning control.
23. It is the Council's view that the planning permission for the granny annex was not implemented and therefore there is no extant planning permission to which the building can be brought into conformity. Only the cessation of the use and removal of the outbuilding and fence will restore the land to its condition prior to the breach. In addition, the Council contend that following the principle in *Murfitt v SSE and East Cambridgeshire DC (1980) 40 P. & C.R. 254*, the notice can require the removal of all items which facilitated the change of use, whether or not those items are themselves immune development or not development at all.
24. In *Murfitt*, Waller LJ said (at page 8G – 9A):
- “If one wishes to see some logic as to the distinction between the two types of breach, that is a breach where the variation has existed for four years or more and a breach where that which is described as a variation is something ancillary to the use, as it seems to me the former cases are cases where something is done which on the whole would have been obvious, which on the whole would be permanent by the mere fact that it was done and therefore one which should be dealt with within a period of four years; whereas the second case, where it is an ancillary purpose, the planning matter [sic] might leave land, as in this case, in a useless condition for any

purpose and therefore it is logical that when the apparent use which has no planning permission is enforced the condition should be restored to that in which it was before that use started.”

25. Considering the view expressed in *Murfitt*, in this appeal the erection of the building would have been obvious and permanent. Given its nature and scale, and as a matter of fact and degree, the erection of the building/dwelling in this case cannot be properly described as for a purpose “ancillary” to the material change of use of the land. Furthermore, the works undertaken to construct the building were operational development. Considering that this development was substantially complete at least four and a half years before the notice was issued, the building itself would be immune from enforcement action because of the four-year rule³. That said, I am not persuaded that the removal of the building can be required. Furthermore, in this case there is an obvious alternative use for the building. Once the requirement to cease separate residential use has been met, the building/land could be used for incidental purposes in connection with the main dwelling, No 6.
26. However, the fence that has been erected to separate the outbuilding from the main dwelling, No 6 and its garden area is a structure that was erected for a purpose ancillary to the material change in the use of the land, and was has clearly been erected to facilitate the use as a separate self-contained dwelling. It is not therefore excessive for that fence to be removed to achieve the purpose of the notice.
27. In conclusion, a requirement to cease the use of the land (which includes the building) for separate residential use and the removal of the separating fencing, is the minimum necessary to remedy the breach of planning control. The requirement to remove the building does exceed what is necessary to remedy the breach of planning control in the circumstances of this case. Ground (f) therefore succeeds in so far as the notice should be varied to delete that requirement. Nevertheless, the remaining requirements will prohibit separate residential use of the building comprised within the ‘Land’. This variation will not therefore cause any injustice to either party.

Human Rights

22. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the appellant’s rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified and taking into account the variation to the notice to allow the building to remain, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant

³ Section 171B(1) establishes the four year immunity period for breaches of planning control consisting in the carrying out without planning permissions of building, engineering, mining or other operations.

planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR