



Appeal Decision

Site visit made on 25 May 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 July 2021

Appeal Ref: APP/A5270/C/20/3265194

Premises known as 142 Carr Road, Northholt, Middlesex UB5 4RF

- 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 L Kwasiborski against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 2 November 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey detached outbuilding ("the Unauthorised Development").
 - The requirements of the notice are:
 1. Remove the kitchen facilities including all cupboards, worktops, sinks, cooking equipment and drainage connections from the outbuilding.
 2. Remove the bathroom facilities and drainage connections from the outbuilding.
 3. Demolish the outbuilding.
 4. Remove all resultant debris resulting from compliance with the above steps.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the construction of a single storey detached outbuilding, in accordance with the following plans: 1491-12 and 1491-12 dated March 2017, at 142 Carr Road, Northholt, Middlesex UB5 4RF and subject to the following conditions:
 - 1) The outbuilding hereby permitted shall not be used other than for purposes ancillary to the use of the dwelling known as 142 Carr Road.
 - 2) Notwithstanding the provisions of Article 3 Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), the outbuilding shall not be improved or altered and no additional windows or other openings shall be inserted.
2. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the single storey detached outbuilding as erected and planning permission is refused in respect of the outbuilding on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Preliminary Matter

3. The London Plan Publication London Plan December 2020 The Spatial Development Strategy for Greater London (London Plan 2020) has been adopted since the notice was issued. I have therefore had regard to the policies of the adopted plan in determining the appeal.

The appeal on ground (a) and the deemed planning application

Background

4. A Lawful Development Certificate (LDC) (proposed operations) was issued on 13 June 2017 for a single storey detached outbuilding for use as a gym/storage/summerhouse reference 172117CPL. In the reasons for the decision it is stated that the proposed outbuilding falls within Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
5. The decision listed several plans the effect being that there are two designs which the appellant could construct, one with a pitched roof and another with a hipped roof, both measuring 3m to ridge and including steps down inside. It seems that a further revision was submitted during consideration of the application showing a flat roof building with a maximum height of 2.5m but those plans were not listed in the decision.
6. The Council now considers that the LDC should not have been issued as the proposed outbuilding would exceed the limitation at E.1.(e)(ii) of Class E in that the height of the building would exceed 2.5m and would be within two metres of the boundary of the curtilage of the dwellinghouse. Additionally, the Council pointed out that in the officer report it is noted that the building did not appear to be incidental.
7. The LDC was however, incorrectly it seems, issued. As the Council acknowledge S192(4) provides that the lawfulness of any use or operation for which an LDC is in force under s192 *shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness*. The Council confirmed that the LDC has not been revoked and there is no dispute that there has been no material change in circumstances.
8. In support of their case, the Council referred to Article 3(5) of the GPDO, that if the operations involved in the construction of any part of a building are unlawful then the planning permission granted by the GPDO does not apply, this is in respect of an allegedly unauthorised porch. However, the porch was in situ, as shown on the approved plans, when the LDC was issued and as already stated the LDC is conclusively presumed. Consequently, this has no bearing on the status of the LDC and I find the LDC represents a fallback.
9. Whilst I note the Council's comments about the differences from what could be built as permitted development, the appellant does not attempt to suggest that the outbuilding erected does or could constitute permitted development, their case on ground (a) is essentially that the outbuilding is not materially more harmful than that which could be erected by virtue of the LDC.
10. Additionally, the appellant stated that should the notice be upheld, without variation, they would comply with the requirements and then build another

building in accordance with the terms of the LDC. Since the appellant is, according to the Council, a builder, I consider that this is a realistic prospect and as such the fallback is an important material consideration. It is therefore legitimate and reasonable to consider the development as built against that which could be built.

11. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice and as built. Nevertheless, I do have the power under s177(1)(a) of the 1990 Act to grant planning permission for any part of the matters stated in the notice. I am also required to consider whether there is an obvious alternative which could overcome the planning difficulties, at less cost and disruption than total removal as currently required by the notice. I can though, only grant planning permission for one scheme.
12. Under the ground (f) appeal the appellant has suggested two alternatives to demolition. Firstly, the alteration of the outbuilding so that it complies with one of the two certified schemes. Second, that the outbuilding is altered so that it has a flat roof, in accordance with the plans submitted to the Council but not listed in the LDC.
13. By virtue of s173(4)(a) it is open to me to vary the requirements of the notice to offer the opportunity to modify the development by making it comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, this includes permission granted by the GPDO.
14. However, the LDC is not the equivalent, in law, of a planning permission, nor, do the developments subject of the LDC constitute permitted development despite the Council having confirmed to the contrary. Whilst I do not dispute that the appellant could comply with the notice and then erect a building in accordance with the terms of the LDC, as discussed above, I do not consider it would be appropriate to vary the notice as suggested.
15. However, since there is an appeal on ground (a) and the proposed alternatives form part of the matters constituting the breach of planning control, it is open to me to consider their merits.

Differences between as built and the certified schemes

16. There is no suggestion that the footprint of the building is larger. Externally the principal differences between the building as built and as shown in the LDC, relate to the overall height, the roof structure (overhang, fascia) and the number and position of windows and doors. Also, internally, as built, the building provides a kitchen area and toilet facilities as well as stairs to an upper level.
17. In the latter respect the Council consider the building to be two-storeys and refer to caselaw in support. However, whilst I have had regard to that judgement, whether the building has more than a single-storey is not relevant since the appellant does not seek to establish that the building constitutes permitted development and, in any event, I note that the allegation refers to a *single storey detached outbuilding*.
18. There is dispute between the parties about the height difference, with the appellant stating that the height to ridge measures 3.23m and the Council 4m. I note that the appellant's initial response to the Council's investigation

included a sketch with measurements showing the height to ridge, measured at the front of the building to be 3.53m. Since the lower figure is measured from the service road at the rear, which is not the level of the surface of the ground immediately adjacent to the building, I am content to take the higher figure. In any case, it is evident from my own observations that the outbuilding is taller than shown in the LDC.

Main issues

19. The main issues are the effect of the outbuilding on (i) the character and appearance of the area and (ii) the living conditions of neighbouring occupants with particular regard to outlook and privacy.

Reasons

Character and appearance

20. 142 Carr Road is a modest semi-detached house located in a suburban residential area consisting of pairs of semi-detached houses and rows of terraces. The gardens to the rear of the semi-detached houses are relatively wide and long and back onto a private service road, which I observed at my visit was overgrown and did not appear well used.
21. The outbuilding is substantial in size with a shallow pitched roof and extends across the majority of the width of the plot, located towards the end of the garden.
22. At my visit I noted outbuildings in the gardens of surrounding properties of varying size and design. Notwithstanding the outbuilding at 186 Castle Road and having regard to the aerial images provided by the appellant, few appear to be of the same overall massing as the appeal building. Furthermore, most of those that I could see, were of utilitarian form and appearance in contrast to the more obvious domestic form and design of the appeal building which features a porch and domestic style fenestration.
23. In any case, irrespective of the architectural merits of other existing outbuildings or the sensitivity of this context, the National Planning Policy Framework (the Framework) sets out that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Further, that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.
24. As already noted, notwithstanding the precise height difference, the outbuilding viewed in this modest domestic context appears substantial. The chunky facias, soffits and overhang, result in the roof having a top heavy appearance which combined with the increase in height and fenestration arrangements results in a building of awkward proportions, which lacks architectural subtlety and appears as a dominant and incongruous feature within the garden.
25. The certificated (fallback) schemes, to which I attach significant weight, are more straightforward in terms of their appearance and proportions, particularly in views from the front. Consequently, I consider the fallback would be less harmful than the appeal scheme.

26. There are limited wider views of the outbuilding however, it is clearly visible from a number of neighbouring houses. As such, whilst reasonably localised in its extent, the effect is to unacceptably harm the character and appearance of the area. There is therefore conflict with the overall design aims of Policy D3 of the London Plan (2020) and Policies 7B and 7.4 of the Ealing Development Management Development Plan Document Adopted 10 December 2013 (DPD). Together these policies require high quality architecture and development to be compliant in terms of scale and detailing. There is also conflict with the design aims of the Framework.
27. However, the appellant's proposed alternatives, as discussed above, include the alteration of the roof structure, namely the reduction in height and bulk, the removal of the upper level and the kitchen and toilet facilities. Whilst the principal difference between the three alternatives is the roof form, I consider that with the dual pitched roof has the most straightforward appearance and proportions and it would not cause harm to the character and appearance of the area. Therefore, there would be no conflict with the design principles set out in Policy D3 of the London Plan, Policies 7B and 7.4 of the DPD or the Framework.

Living conditions

28. The outbuilding is located at the end of the garden in reasonably close proximity to the shared boundaries with neighbouring properties however, whilst it projects above the existing boundary fences it does not extend along the entire length of the boundaries and the roof slopes upwards away from those boundaries. Consequently, although the outbuilding will be seen from the neighbouring houses and their gardens, given its distance from the rear of the houses and as views from the garden are otherwise largely unobstructed, I find there is no harmful overbearing impact on the outlook from within either the houses or gardens.
29. In respect of privacy, the houses are located in a suburban environment where some mutual overlooking of gardens is inevitable. Given that the roof window is located high in the slope and serves the upper level which it would be difficult to stand up in and, that window in the front is located below the level of the garden fence, I find there is no harm as a result of overlooking.
30. As proposed, the outbuilding would be lower in height and have four rooflights and windows in the side elevations. However, there would be no upper level and those windows in the side elevations would be obscure glazed and situated below the level of the adjacent fences. As such, there would be no harm to neighbouring occupants as a result of overlooking.
31. Therefore, for the reasons given I find that both as built and proposed there is no harm to the living conditions of neighbouring occupants as a result of either an overbearing impact on outlook or loss of privacy. There is therefore no conflict with the overall amenity protection aims of Policy D3 of the London Plan (2020), Policy 7B of the DPD or the Framework.

Other Matters

32. Comments made about the extent of the facilities provided and the use for business purposes have no bearing on my assessment since the allegation relates to the erection of an outbuilding. If there were a subsequent material

change of use of the outbuilding it would be open to the Council to investigate and take enforcement action. I cannot dismiss the appeal on the basis of what might be.

Conclusion on ground (a)

33. For the reasons given, I find that the outbuilding as built is unacceptable. However, since the appellant's alternative would resolve the harm caused by the outbuilding, I find this to be acceptable. I therefore intend to grant planning permission under s177(5) of the 1990 Act for the outbuilding as proposed.

Conditions

34. The permission is subject to the plans specified and a separate plans condition is not necessary. I have imposed a condition limiting the use of the outbuilding in the interests of certainty and a further removing Class E permitted development rights, in the interests of safeguarding the living conditions of neighbouring occupants.

The appeal on ground (f)

35. The appellant's case under ground (f) I have already considered in detail under ground (a). Although planning permission has been granted in respect of parts of the development enforced against, the notice has been upheld without varying any requirements relating to them, since this could have given rise to two separate planning permissions, namely the one that has been granted in this appeal decision and the one that would be deemed to be granted by section 173(11) due to under-enforcement.
36. Attention is drawn to the provisions of section 180(1) as to the effect on the notice of the permission that has been granted. This provides that where planning permission is granted after the service of a copy of the notice for any development already carried out, the notice shall cease to have effect insofar as it is inconsistent with the planning permission. The appeal on ground (f) therefore fails.

The appeal on ground (g)

37. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that in the event that the ground (a) appeal failed but the requirements were varied, they would like four months and an additional two months for the removal of the materials.
38. The purpose of the time period within an enforcement notice is to allow for the physical works associated with the notice to be removed. Therefore in the absence of substantive explanation and considering the appellant is a builder, I consider the period of three months for either the demolition of the outbuilding, as specified in the notice, or its alteration in accordance with the approved plans, is proportionate to the breach of planning control that has occurred.
39. Accordingly, the appeal on ground (g) therefore fails.

Conclusion

40. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the construction of a single storey detached outbuilding in accordance with the following plans: 1491-12 and 1491-12 dated March 2017 but otherwise I will uphold the notice and refuse to grant planning permission in respect of the outbuilding as erected. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Felicity Thompson

INSPECTOR