



Appeal Decision

Site visit made on 20 July 2021

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 18 August 2021

Appeal Ref: APP/P4605/C/19/3223079

29 Ludford Road, Birmingham B32 3PG

- 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 Mrs Jennifer Webb against an enforcement notice issued by Birmingham City Council.
- The enforcement notice was issued on 24 January 2019
- The breach of planning control as alleged in the notice is the unauthorised use of the structure shown edged in green on the attached plan as a separate dwelling to that of the existing dwelling at 29 Ludford Road.
- The requirement of the notice is to cease the use of the structure shown edged in green on the attached plan as a separate dwelling.
- The period for compliance with the requirements is 3 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Procedural Matter

1. On 20 July 2021 the Government published its revised National Planning Policy Framework which represents the Government's up-to-date planning policies for England and how they should be applied. Both main parties were given the opportunity to comment on the relevance of the revised Framework to their cases.
2. From other appeals I am determining elsewhere in Birmingham I am aware that the Development Management in Birmingham Development Plan Document (DMB) has progressed. The City Council has agreed some Main Modifications with the Inspector and consultation on these took place in May 2021. It is my understanding that the City Council is awaiting the Inspector's report which is anticipated in September 2021. Therefore, the DMB carries some weight in policy terms. With reference to the main issues the overall aims and objectives of both sets of policies are broadly similar and so neither party has been prejudiced by the updated position with respect to the DMB.

The appeal on ground (a)

3. The ground of appeal is that planning permission should be granted. The main issues are:
 - i. whether the development provides adequate living conditions for occupants with particular reference to private amenity space; and

- ii. the effect on the living conditions of the occupants of neighbouring residential properties with particular reference to overlooking.
4. The appellant contends that 44.3 square metres of private amenity space is adequate for a one bedroom property and meets the requirements of the Council's Places for Living Supplementary Planning Document March 2001 (the SPD) which requires there to be 42 square metres. The current property which is known as 29A Ludford Road has one bedroom at first floor level and an additional bedroom at second floor level which is currently being used for storage purposes. As a two bedroom dwelling a total of 52 square metres of private amenity space should be provided. The SPD goes on to state that the rear of properties gives householders an area for private leisure and other activities.
5. The two bedroom property is quite capable of being inhabited by a family and therefore the associated private amenity space should be capable of accommodating a range of outdoor uses that can be enjoyed by a family as well as by a single adult or a couple. The appeal property has a relatively small but pleasant private amenity space to the rear and side of the building, providing space for seating, landscaping, a small pond, bin storage, a mini greenhouse and other garden storage space. Therefore, the space allows the opportunity to enjoy the limited outdoor space available.
6. However, it does not allow for the full range of activities that would reasonably be expected for a family home. The potential use of the limited space is further restricted by its awkward, angular and elongated shape which does not lend itself to outdoor play and recreation. Furthermore, the use of some of the space is restricted as it is required for specific uses such as the storage and manoeuvring of bins, for example.
7. The appellant contends that the amount of private amenity space could be increased by adjusting the rear dividing fence between Nos 29 and 29A. The private amenity space is already contrived by there being a high timber panel fence in the front garden of the property which is unsightly and at odds with the character and appearance of the area. Further extension of the amenity space by encroaching into the neighbouring garden is not a satisfactory solution in this case as such space would impinge on the existing amenity space enjoyed by the occupants of 29 Ludford Road and may also have implications for issues such as privacy. Therefore, the evidence presented with respect to extending the private amenity space of the appeal property does not convince me that it is an acceptable solution to overcome this concern.
8. I understand that there are residential properties elsewhere in the City which have small, irregularly shaped gardens, but that does not persuade me that the space provided in this case meets the standards set out in the development plan or should be acceptable in other respects.
9. Consequently, I conclude that the development does not provide adequate living conditions for occupants with particular reference to private amenity space. As such there is conflict with Policies PG3 and TP27 of the Birmingham Development Plan (Adopted 2017), saved paragraph 3.14C of the Birmingham Unitary Development Plan 2005, Policy DM2 of the DMB, guidance in the SPD and the Framework. Among other objectives these seek to ensure that all development will be appropriate to its location and not result in unacceptable

adverse impacts on the amenity of occupiers and neighbours and private amenity space is useable for a number of activities .

10. The appellant argues that a degree of overlooking in an urban environment is long accepted and if the property was used as a house in multiple occupation (HMO) the Council could not control that use. There is little evidence that it is the appellant's intention to use 29 and/or 29A Ludford Road for HMO purposes and therefore I give little weight to this fallback position. The second floor rear facing bedroom window is approximately 5.8 metres from the boundary with the garden of No 31. According to the SPD the separation distance should be 15 metres and therefore it is clear that the separation is significantly below the standard.
11. In this particular case there are no factors such as trees, landscaping or boundary treatment which mitigate the level of overlooking at such close quarters. Therefore, although I do accept that a degree of overlooking may be acceptable in some circumstances and may even be inevitable in an urban setting, the level of overlooking in this case is so significant that I find it to be unacceptable.
12. Therefore, on this issue I conclude that the development has a harmful effect on the living conditions of the occupants of neighbouring residential properties with particular reference to overlooking. Therefore, there is conflict with Policies PG3 and TP27 of the BDP, saved paragraph 3.14C of the UDP, Policy DM2 of the DMB, the SPD and the Framework. Among other objectives these seek to ensure that all development does not result in unacceptable adverse impacts on the amenity of occupiers and neighbours

The appeal on ground (f)

13. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in s173 of the Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). Since the notice requires the permanent cessation of the use of the structure as a separate dwelling, the purpose is to remedy the breach. Any measures short of that would not achieve that purpose. Therefore, the appeal on ground (f) fails.
14. I have considered the appellant's suggestion to overcome the shortfall on private amenity space but do not find that the proposal is acceptable as set out above.

The appeal on ground (g)

15. The ground of appeal is that the time given to comply with the requirements is too short. The appellant has suggested that six months would be a reasonable timescale and the Council accepts that this suggestion would be reasonable having regard to the impacts of the ongoing pandemic. Therefore, the appeal on ground (g) succeeds.

Formal decision

16. The enforcement notice is varied by the deletion from paragraph 6 of the words "3 months" and the substitution therefor of the words "6 months" as the time for compliance with the requirements.

17. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

A A Phillips

INSPECTOR