



Appeal Decision

Site visit made on 3 November 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 January 2022

Appeal Ref: APP/A5270/C/20/3260817

47 Bideford Avenue, Perivale, Middlesex, UB6 8DE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Bilal Majed against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 20 August 2020.
 - The breach of planning control as alleged in the notice is without planning permission: The material change of use of the outbuilding to a self-contained dwelling.
 - The requirements of the notice are to:
 1. Cease the use of the outbuilding as a self-contained unit;
 2. Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a self-contained residential dwelling;
 3. Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling; and
 4. Remove from the land 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), (d) 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.
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Decision

1. It is directed that the enforcement notice is varied at section 5, by the deletion of 'room' from requirement 3 and the addition of 'associated', so that it says *'Remove the bath and associated drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling'*.
2. 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 section 177(5) of the 1990 Act as amended.

Ground (d)

3. An appeal under ground (d) is made on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
4. The main thrust of the appellant's case is that the outbuilding has been in continuous residential use since 1 September 2013, which is a period over four years prior to the issue of the enforcement notice.
5. Given the above, the main issues are:
 - Whether the appellant can show on the balance of probabilities that the material change of use of the building began on or before 20 August

2016¹ and, if so, whether it continued without significant interruption for at least 4 years thereafter.

6. It is for the appellant to make their case on the balance of probabilities. As set out in Planning Practice Guidance (PPG), the appellant's evidence should not be rejected simply because it is not corroborated. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
7. A use can only become lawful if it continues throughout the relevant immunity period, such that the local planning authority could have taken enforcement action at any time. The correct approach is to ask whether there was any time during the relevant four year period when the local planning authority could not have taken enforcement action against the use of the building as a dwellinghouse, even if it was available for use, because it was not actually occupied or used as a dwelling. Whether any period of non-occupation would result in the four year clock starting again is a matter of fact and degree.
8. The appellant has provided a document entitled 'statutory declaration', dated 26 July 2019. The document makes reference to the 'Statutory Deceleration Act 1835' within the document. Given the wording used in the document, I consider this is highly likely to be typo. I shall go on to consider the weight that should be afforded to the document, having regard to the evidence and the circumstances of the case.
9. The appellant states within the document that the self-contained flat known as 47C Bideford Avenue has been used continuously without interruption as a separate independent self-contained unit for more than 4 years. I find the description of the use as 'a separate independent self-contained unit' ambiguous. Furthermore, whilst the declaration is supported by a series of tenancy agreements, it does not declare the documents to be true, nor does it set out their relevance. It also does not show how the tenants occupied the building.
10. The tenancy agreement dated 1 September 2013, identifies a term of 36 months from 1 September 2013. The first payment is identified as to be made on the 1 September 2013, whilst the next payment date is identified as 1 October 2016. This may be a typo, however, in my view it undermines the authenticity of the document.
11. There is an overlap between the tenancy agreements dated 1 December 2016 and 8 October 2017, the former of which is stated to terminate on 1 December 2017. Although it is not uncommon for there to be overlap between different tenancy agreements, this highlights the difficulty in relying on tenancy agreements to demonstrate occupancy, since they only demonstrate a tenant's right to occupy a property, not that they actually have occupied it.
12. Within the statutory declaration, the appellant makes reference to a tenancy agreement dated 8 October 2017 for a tenant 'for a period of 24 months from 10/10/017 to present day'. However, a tenancy agreement dated 26 June 2019 for different tenants has also been provided, to commence on 15 July 2019, which is less than a month before the statutory declaration was made.

¹ Namely 4 years prior to the date of issue of the notice.

13. This, in my view, casts doubt on the accuracy of the statutory declaration provided by the appellant. While it may be difficult for an appellant to recall the names and details of occupants going back a number of years, given the very limited period of time between the tenancy agreement apparently being entered into and the statutory declaration being made, I would expect the appellant to recall this information relatively easily.
14. A letter from the occupant of No 45 Bideford Avenue, states that the outbuilding has been used as a residential dwelling for at least 5 years to present day. Whilst I have no reason to doubt the authenticity of the letter, it does not provide any detail of how the building was occupied or by whom. It therefore does little to support the appellant's case.
15. Electoral roll records provided by the Council show a record was created August 2016 for the tenant of the property who allegedly occupied the outbuilding between September 2013 and December 2017. The electoral roll record for the tenant, however, was created in August 2016 and was not deleted until July 2018. Whilst occupants may not always inform the Council of their occupation, I see no reason why the tenant would choose to register a number of years after they have begun to occupy the premises and would then remain listed so long after vacating it.
16. Since the electoral details are given for No.47 and do not differentiate between the main building and outbuilding, it is not possible to confirm where the occupant was residing. Nevertheless, the period of occupation for this resident indicated by the electoral register is different to that indicated by the tenancy agreements and therefore conflicts with the suggestion that he was residing in the outbuilding between September 2013 and December 2017².
17. An email dated 3 April 2019 by the Regulatory Services Officer, states that the landlord's mother insisted nobody was occupying the property. Detailed notes of the housing inspection, also dated 3 April 2019, state the appellant's mother advised visitors were using the outbuilding but it is not rented. The appellant's mother is stated as asking the officer 'not to say anything about the outhouse'. While this undermines the information provided by the appellant's mother, it is inconsistent with the appellant's statutory declaration.
18. The appellant has provided a number of Google Earth images, which show the building has been in situ for a number of years. However, the enforcement notice does not allege operational development. The fact that the building can be seen in such images is not an indicator of how it was used or over what period.
19. The appellant has also provided a number of photographs of the building which are asserted to show the building has been used and is in a worn state. However, the photographs are undated. Furthermore, it is simply not possible to determine how the building has been occupied on the basis of the photographs, as they cannot possibly demonstrate continuous use.
20. The appellant has provided a document showing Council Tax charges dating back to 1 September 2013. However, as pointed out by the Council, the appellant asked for the council tax to be backdated. It does not, therefore, demonstrate that the building has been occupied over that period. Curiously,

² Or 7 October 2017, as indicated in the appellant's statutory declaration.

the appellant has stated that the arrears should not be pursued until the development is found to be lawful and if it is not, it should not attract Council Tax. While this is a matter for the Council, this does cast doubt on the appellant's reasons for requesting the Council Tax to be backdated.

21. In my view, the appellant's evidence is not sufficiently precise and unambiguous and has therefore not demonstrated, on the balance of probabilities, that the material change of use of the building began on or before 20 August 2016, nor has it been demonstrated that it continued without significant interruption for at least 4 years thereafter.
22. Thus, for the reasons given above, the ground (d) appeal must fail.

Ground (a)

Preliminary Matters

23. The enforcement notice makes reference to policies 7.1 and 7.6 of the Ealing Development Management DPD (DPD)(2013), however, the Council has confirmed this is an error and it should have referred to the London Plan 2016. As the 2016 plan has been superseded, the Council confirms it considers policies D3 and D6 of the London Plan (2021) are relevant now.

Main Issues

24. The main issues are the effect of the appeal scheme on:

- The character and appearance of the area; and
- The living conditions of the occupants of the building, having regard to the internal floor space provided; and
- The living conditions of the occupants of the building and the host dwelling, having regard to privacy, outlook, noise and disturbance; and
- Whether the appeal scheme makes satisfactory provision for outdoor amenity space.

Character and appearance

25. No 47 Bideford Avenue is located in a generally residential area, characterised by semi-detached and terraced dwellings with modest front gardens, fronting onto the highway. The appeal building is located to the rear of the No 47 Bideford Avenue. Although it can be accessed via the rear garden, it can also be accessed from Tavistock Avenue, via an alleyway which serves a number of other properties.
26. Policy D1 of the London Plan (2021) sets out how boroughs should plan to meet borough-wide growth requirements. Although the policy states that an area's character should be defined to understand its capacity for growth, the policy does not apply to development proposals.
27. Policy D3 of the London Plan seeks development which responds to local distinctiveness through layout, amongst other things and Policy 7.4 of the Ealing Development Management Development Plan Document (DPD) 2013 which seeks development which complements street sequence and building pattern.

28. When considering the effect of the character of a development on an area it is important to consider both its appearance and function. Occupants of the outbuilding are highly likely to use the access from Tavistock Avenue, with the comings and goings likely to be noticeable to users of the road and occupants of nearby dwellings. Dwellings to the rear of the dominant building line are at odds with existing development along Bideford Avenue and, as a result, diminishes the character of the area.
29. Thus, the appeal scheme is contrary to policy D3 of the London Plan and policy 7.4 of the DPD, the requirements of which are set out above.

Living conditions: Internal living space

30. Policy 3.5 of the DPD seeks minimum space standards for new housing. The Council state that the building lacks adequate indoor living space and has made reference to policies 3.5 and 7.4 of the London Plan (2016) in its enforcement notice. The Council has also made reference to policy D4 of the London Plan, however, this relates to delivering good design through the use of masterplans and design codes.
31. Housing standards have been incorporated into policy D6 of the new London Plan, which seeks adequately sized rooms. The minimum space requirement set out in the London Plan for a one bedroom, two-person single storey dwelling remains at 50 square metres. The appeal building measures around 25sqm and so falls well below the minimum required, contrary to policy D6 of the London Plan.

Living conditions: Outlook, privacy, noise and disturbance

32. Policy 7B of the DPD seeks a high standard of amenity for users and adjacent users. The bedroom window of the appeal building looks out towards the alleyway and has been obscure glazed, presumably to afford occupants a degree of privacy. Although users of the alleyway cannot peer into the bedroom, the use of obscure glazing significantly limits the outlook from the bedroom.
33. A close boarded fence has been erected between the appeal building and the rear garden. While the fence affords a degree of privacy to occupants of the appeal building and host building, limiting the harm caused by noise and disturbance, due to its proximity to the appeal building and its height, it restricts the outlook from the kitchen and living room. This, together with the use of obscured glazing in the bedroom, has resulted in an oppressive living environment within the building, contrary to policy 7B of the DPD.
34. Without the fence, users of the rear garden would easily be able to peer into the lounge and kitchen of the outbuilding, which, given the limited size of the garden, would result in a significant loss of privacy for both occupants of the appeal building and the host dwelling, contrary to policy 7B of the DPD.

Amenity space

35. Photographs provided by the appellant, show the building without the fencing and the Council has assessed the appeal scheme on the basis of the garden being shared with the host dwelling. However, at the time of my visit, the outbuilding had been enclosed by a close boarded fence, leaving sufficient space to gain access to the building. Although an appeal under ground (a) is

made on the basis that planning permission should be granted for the matters stated in the notice, it would be possible to condition the provision or retention of fencing.

36. The Council has made reference to policy D4 of the London Plan in its enforcement notice. Policy D4 relates to design quality of development and, in my view, is not determinative in terms of my consideration of the provision of amenity space.
37. Where development increases demand for open space, policy 7D of the DPD seeks to secure an appropriate contribution towards meeting this additional demand. Table 7D.2 sets out the space provision that should be made for private garden space for a house or a flat of 5sqm per 1-2 person unit, plus 1sqm for each additional occupant. Ealing's Planning New Garden Space SPD (SPD)(June 2015) advises that where spaces offer little or no privacy to users, then they will not be considered to count towards the quantitative garden space standards. Without the fencing, occupants of the outbuilding would have no private garden space, contrary to policy 7D and the SPD.
38. The fencing, as erected, provides private outdoor space to occupants of the outbuilding. However, the guidance provided to Table 7D.2 of the DPD states that narrow, unusable areas should not count towards this provision. The strip between the front of the outbuilding and the rear garden of the host dwelling is so limited in width, occupants of the building are unlikely to utilise it in any meaningful way and the strip to the side of the outbuilding provides access and is therefore unlikely to be used for sitting out, or the drying of clothes.
39. Even if I were to condition the fencing is retained, I am not persuaded it would be possible to provide satisfactory private garden space for occupants of the outbuilding, contrary to policy 7D of the DPD and the SPD, the requirements of which are set out above.

Ground (a) conclusion

40. While the appeal building is located in a generally residential area and would provide an additional dwelling, I have found that the appeal scheme harms the character and appearance of the area, fails to provide satisfactory living conditions for its occupants, is harmful to the living conditions of occupants the host dwelling and fails to provide sufficient outdoor amenity space.
41. I therefore conclude that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.

Ground (f)

42. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control, or to remedy any injury to amenity which has been caused by any such breach. The Council confirm that the purpose of the notice is to remedy the breach of planning control.
43. The main thrust of the appellant's case under ground (f) is that the retention of a toilet and sink would not enable the building to be used as a separate dwelling but would offer ancillary facilities to the host property and requests that the wording of step 3 is amended to simply state that the bath and

associated connections need to be removed. The Council states it considers retention of the toilet and sink would be acceptable.

44. I have a duty to consider whether there is any obvious alternative or lesser step which would achieve the purpose of the notice, with less cost and disruption. Since the removal of the bath and kitchen would ensure the building does not have the facilities required for day to day living, I consider it would be acceptable in this instance to vary the notice to enable the retention of the toilet and sink.

45. Thus, for the reasons given above, the ground (f) appeal succeeds.

Overall conclusion

46. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f) succeeds to that extent.

M Savage

INSPECTOR