



Appeal Decision

Site visit made on 17 January 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 February 2022

Appeal Ref: APP/A5270/C/20/3261809

43 Leonard Road, Southall UB2 5HZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ('the Act'). The appeal is made by Mr Sudesh Kumar Sharma against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The notice was issued on 1 October 2020.
 - The breach of planning control as alleged in the notice is without planning permission: the material change in use of the rear outbuilding to use as a separate self-contained dwelling.
 - The requirements of the notice are to:
 1. Cease the use of the rear outbuilding as a self-contained dwelling;
 2. Remove the kitchen facilities and drainage connections which facilitate the use of the outbuilding as a self-contained dwelling;
 3. Remove the bathroom facilities and drainage connections which facilitate the use of the outbuilding as a self-contained dwelling; and
 4. Removal [sic] all resultant debris
 - The period for compliance with the requirements is: 6 months from the date this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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 notice is corrected at section 5, by the deletion of the word 'Removal' and its replacement with 'Remove'.
2. Subject to the correction above, 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.

Preliminary Matters

3. Since the appeal was lodged, the London Plan 2021 has been published. The Council has provided me with copies of relevant policies and the appellant has been given the opportunity to comment on the implications of these policies through the appeal process and so I shall take them into account in my decision.

Ground (d)

4. 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.
5. The main issue is whether the appellant can show on the balance of probabilities that the material change of use of the building began on or before

- 1 October 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.
 8. The appellant has provided a licence for the appeal building, dated 24 August 2020, which licenses the building for a maximum of 1 household comprising of no more than 2 persons. While this indicates the building is used as a dwelling, it does not demonstrate that the building has been continuously occupied as a dwelling for at least four years.
 9. The appellant has also provided me with Council Tax bills between 7 January 2016 to March 2020, which show the building banded as Band A. However, the bills appear to be addressed to the appellant and whilst they show that the outbuilding has been separately banded for Council Tax purposes, they do not show how the building has been used over that period.
 10. The Council inspected the outbuilding on 4 August 2016 and found that it had no kitchen. As such, at that time, it did not have the facilities required for day-to-day private domestic existence. The Council has also provided me with a licence application form, which states that the property was empty. The Council advise that the form was submitted in December 2019, a matter which is not disputed by the appellant.
 11. The Council has provided notes of a telephone conversation with the appellant. It is stated that the officer was advised that the annex was part of a care home use, which ended in November or December 2019 and the appellant first started to rent out the outbuilding to a couple in July 2020. The notes of an inspection carried out in 2016 also state that this is a care home for children age 16 – 18, which supports the information provided in the notes referred to above.
 12. The evidence provided by the Council points towards the building not being a self-contained dwelling until 2020. Even if the building was used as a dwelling prior to 2020, it has not been demonstrated that any periods of non-occupation would not result in the four year clock starting again. 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 rear outbuilding to use as a separate self-contained

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

dwelling began on or before 1 October 2016 and continued without significant interruption for at least 4 years thereafter.

13. The appeal under ground (d) therefore fails.

Ground (a)

Main Issues

14. The main issues of the appeal are:

- the effect of the appeal scheme on the character and appearance of the area; and
- the effect of the appeal scheme on the living conditions of occupants of the outbuilding, the main dwelling and neighbouring properties, having regard to outlook, privacy and noise and disturbance; and
- Whether the appeal building provides sufficient living space for its occupants; and
- The effect of the appeal scheme on the provision of outdoor amenity space for occupants of the appeal building and main dwelling.

Reasons

Character and appearance

15. The appeal site is located in a generally residential area, off Leonard Road, which is characterised by terraced dwellings with modest front gardens fronting onto the road. The appeal building comprises a red brick building which has been constructed towards the end of the rear garden of No 43 Leonard Road. Access to the building is gained via an alley, which serves a number of other properties. To the rear of the building is Southall Recreation Ground.
16. When considering the effect of the character of a development on an area it is important to consider both its appearance and function. Although the building is located to the rear of the host dwelling, the building is readily visible to users of the park to the rear. A dwelling to the rear of the dominant building line is at odds with existing development along Leonard Road and, as a result, diminishes the character of the area.
17. Thus, the appeal scheme is contrary to policy D3 of the London Plan (2021) which seeks development which responds to the existing character of a place and policy 7.4 of the Ealing Development Management Development Plan Document (DPD) 2013, which seeks development which complements street sequence and building pattern, amongst other things.

Outlook, privacy, noise and disturbance

18. The bedroom/living room window of the appeal building faces out towards the park and has been obscure glazed, presumably to afford the occupants a degree of privacy. This, however, significantly limits the outlook from the building. Although there is a window in the kitchen, the kitchen itself is modest in size and so occupants are likely to spend much of their time in the main bedroom/living area.

19. The Council advise that the rear garden of No 43 Leonard Road was not delineated, which would enable occupants of the host dwelling to peer into the appeal building. At the time of my visit, fencing had been erected between the appeal building and the host dwelling, presumably to provide a degree of privacy. While it would be possible to secure the provision of fencing by condition, due to its proximity to the building, it significantly limits outlook from the kitchen window.
20. Furthermore, the kitchen window faces towards the host dwelling. Noise and disturbance generated by the occupants of both the appeal building and the host property would compound this loss of privacy. I consider such overlooking and loss of privacy is harmful to the living conditions of occupants of both the appeal building and the host property.
21. Due to the limited outlook from the appeal building, the lack of privacy and the potential for noise and disturbance, the appeal scheme fails to provide a high standard of amenity for occupants of the appeal building and the host dwelling and is harmful to the living conditions of its occupants, contrary to policy 7B of the DPD, which seeks a high standard of amenity for users and adjacent users and policy 7A of the DPD, which seeks to ensure that development does not erode the amenity of surrounding uses.

Living conditions: Space standards

22. The building is laid out with a living and sleeping area, separate kitchen facilities and separate bathroom. Policy 3.5 of the DPD seeks minimum space standards and makes reference to the provisions of the London Housing Design Guide and the London Housing SPG. Since the DPD was adopted, policy D6 of the London Plan has been published, which seeks to ensure that housing development is of high quality design and provides adequately-sized rooms. Table 3.1 of the London Plan sets out the minimum gross internal floor area for a one bedroom, two person dwelling is 50 square metres (sqm).
23. The Council advise that the internal floor area of the building is around 25sqm and is occupied by 3 people, a matter which is not disputed by the appellant. This is well below the minimum requirement set out in the London Plan. I saw the fenced outside space, between the building and the host dwelling, is used to store various domestic paraphernalia, with plastic sheeting used to protect items from the weather. The storage of items left limited space for manoeuvring and indicates that the internal space is insufficient for the current occupants' needs.
24. Given the limited internal floor area of the building, the appeal scheme fails to provide adequately sized rooms, which is harmful to the living conditions of its occupants and contrary to policy 3.5 of the DPD and policy D6 of the London Plan, the requirements of which are set out above.

Outdoor amenity space

25. 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 space provision requirements of 5sqm per 1-2 person unit, plus 1sqm for each additional occupant for a house. The guidance states that narrow, unusable areas should not count towards this provision. Ealing's Planning New Garden Space Supplementary Planning Document

(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.

26. While there is space to the front and rear of the building, the space to the rear is readily visible from the adjacent park and does not therefore provide privacy. The space to the front is limited in depth and is overlooked by the host dwelling. Similarly, the outdoor amenity space for the host dwelling is overlooked by the appeal building.
27. While a fence had been erected between the outbuilding and the host dwelling, which could be secured via condition, there is a gate which allows free access between the different areas. Furthermore, as set out above, the outside space around the building is currently used by its occupants for storage leaving very little space for other activities.
28. Although Southall Recreation Ground is located to the rear of the building, it is not readily accessible due to metal fencing, which delineates the appeal site and the park. Occupants would need to walk to the pedestrian access via Florence Road. Furthermore, while the recreation ground would provide open space for the occupants to enjoy, it would not provide private outdoor space for the occupants to carry out activities such as hanging out washing.
29. I consider it highly unlikely that occupants of the appeal building and host dwelling would choose to spend time outside given the limited extent of the outside space and the lack of privacy, contrary to policy 7D of the DPD and the SPD, the requirements of which are set out above.

Conclusion

30. 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 and is harmful to the living conditions of occupants the host dwelling.
31. Thus, I 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. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected and refuse to grant planning permission on the deemed application.

M Savage

INSPECTOR