



Appeal Decision

Site visit made on 8 March 2022

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 March 2022

Appeal Ref: APP/M5450/C/20/3253818

671 Honeypot Lane, Stanmore, HA7 1JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr J P McGoldrick against an enforcement notice issued by London Borough of Harrow.
- The notice was issued on 15 April 2020.
- The breach of planning control as alleged in the notice is: Without planning permission 1. The unauthorised construction of a single storey rear extension and wooden canopy ("Unauthorised Development"); and 2. The unauthorised change of use of the Land from use as a single family dwellinghouse to use as two dwellinghouses ("Unauthorised Use").
- The requirements of the notice are: 5.1 Cease the unauthorised use; 5.2 Remove all kitchens except one (1) from the Land; 5.3 Remove all bathrooms except one (1) from the Land; 5.4 Demolish the Unauthorised Development; 5.5 Make good any damage caused to the building as a result of the above stapes and ensure that all materials used shall match those used in the existing building; 5.6 Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
- The period for compliance with the requirements is: 9 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) 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.

Decision

1. The appeal is allowed and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended, insofar as it relates only to the construction of a single storey rear extension and wooden canopy at 671 Honeypot Lane, Stanmore, HA7 1JE.
2. The appeal is dismissed and the Enforcement Notice (EN) is upheld insofar as it relates to the change of use of a single family dwellinghouse to use as two dwellinghouses at 671 Honeypot Lane, Stanmore, HA7 1JE and planning permission is refused in respect of that part of the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for Costs

3. An application for costs made by Mr J P McGoldrick against the Council of the London Borough of Harrow is the subject of a separate decision.

Preliminary Matter

4. In legal grounds of appeal such as under s174(2)(b) and (c) of the 1990 Act, the onus to make the case out rests firmly with the appellant. The test of the evidence is the balance of probability.

The ground (b) appeal

5. As a matter of fact, in the rear extension there are all the means of self-contained living including a kitchen/dining area, a bathroom with a toilet, shower and sink, and a bedroom. There is an internal door between the extension and the main part of the house. Nevertheless, this does not mean that this could not be closed/locked/not used, and the extension thus occupied independently. I note that there is a tenancy agreement between the tenants of 671 Honeypot Lane and the landlord. That may mean that under the Housing Act the premises should be only rented as a single dwelling. However, this does not mean that the premises is not in use as two dwellinghouses and therefore the matter alleged in the EN has not occurred.
6. Misgivings have been raised about the Council's decision to take enforcement action. Nevertheless, there is nothing to seriously counter the Council's evidence that enforcement site visits carried out in November 2017 and September 2019 confirmed that the single storey extension was in use as a fully self-contained one bed flat with access from the rear garden.
7. The appellant's evidence is not, as a matter of fact and degree, sufficient to discharge the burden to show that the property has not on the balance of probability been occupied as two dwellinghouses. The ground (b) appeal therefore fails.

The ground (c) appeal

8. The development attacked in the EN is operational development comprising the construction of the rear extension and the wooden canopy, and the change of use of one dwellinghouse into two dwellinghouses.
9. The rear extension and the wooden canopy are clearly development. The appellant accepts that the extension was not subject to a Prior Approval application procedure under the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). This, and the wooden canopy added later, also do not have any express planning permission from the local planning authority. The material change in the use of a dwellinghouse into two or more dwellinghouses is also development and no planning permission has been granted for that either. Against this background, there have been breaches of planning control.
10. The appellant's case that the kitchen and the shower room in the extension are not development requiring planning permission, meaning they cannot be subject to enforcement action, are matters more appropriately considered under the ground (f) appeal.
11. The ground (c) appeal fails.

The ground (a) appeal – planning merits

12. The appellant has not made a case that planning permission should be granted for the change of use to two dwellinghouses. The gross internal floorspace of

the dwelling in the extension falls well below the space standard for a one bed single storey dwelling needed to ensure a satisfactory standard of accommodation. From what I saw, the internal accommodation was very small and not a suitable standard. Moreover, it is not clear whether occupiers of this dwelling would have access to the rear garden and there is nothing to show where and how cycles and refuse may be stored. The appeal development conflicts with the residential amenity and waste management aims of policies DM1, DM26 and DM45 from the Harrow Development Management Policies Local Plan (LP) and the Council's Residential Design Guide (RDG). The fact the LP and the RDG predate the GPDO does not render them out of date.

13. The Council has also referred to policies from the London Plan 2016. This has been replaced by The London Plan 2021. However, the appellant has not sought to rely on any London Plan policies, and I have already found conflict with the LP, which brings the scheme into conflict with the development plan taken as a whole. Not considering the new London Plan policies has therefore not affected the cases of either side one way or the other.
14. The main rear extension projects out from the back wall of the house by 6m. However, the property closest to it at No. 669, which is the other half of the semi-detached pair, already has a rear extension that extends out by about 2.7m. Consequently, views by the occupiers of next door from their ground floor extension are out towards a flank wall that is just over 3m deep. Along with the appeal extension's single storey flat roof height, it does not therefore have an intrusive or undue overbearing and enclosing effect on the outlook from the nearest ground floor windows to No. 669. As for the canopy this is a small open-sided lightweight structure with a corrugated roof supported on timber posts. Due to a side boundary hedge and its limited depth, it is unlikely that the occupiers of No.669 can see it to any significant extent. Its open side also means that it is not overbearing. It has no undue effect on next door.
15. On the other side, there is a driveway between the appeal property and no. 673 meaning that the extensions are not alongside the house to the north. Moreover, no. 673 has rear extensions and outbuildings that project beyond the depth of the main appeal extension. Thus, it does not have an overbearing or enclosing effect on the outlook from no. 673s windows.
16. The Council's RDG may specify that rear extensions on semi-detached houses should project out no further than 3m. However, where planning permission is required the RDG also specifies that the acceptable depth of extensions will be determined by taking account of other factors that include site considerations and greater depths are possible in special circumstances. The examples of special circumstances include where the neighbouring dwelling has a deeper extension. Given the circumstances in this case, I find that there is no conflict with the amenity protection aims of either the RDG or policy DN1 from the LP when it comes to the extensions.
17. Under s177(1)(a) of the 1990 Act I have the power to grant planning permission for the whole or any part of the matter stated in the EN. For the reasons given, I find that the use of the building as two dwellinghouses in terms of the living accommodation provided in the extension to be unacceptable. In relation to the extensions, I find them to be acceptable. Given that the operational development has been attacked separately in the

EN, I intend to grant planning permission under s177(5) of the 1990 Act for the extensions.

The ground (f) appeal

18. Following on from the above, I shall leave the allegations of the EN as they are and let s180 of the 1990 Act take effect. This states that where, after the service of a copy of an enforcement notice planning permission is granted for any development carried out before the grant of that planning permission, the notice shall cease to have effect so far as inconsistent with that permission.
19. Consequently, I have no need to consider whether requirement 5.4 of the EN is excessive. Making good any damage to the building (5.5) and for the resulting debris (5.6) to be removed are requirements clearly aimed at remedying the breach of planning control by putting the land back to its condition before the breach took place. The requirements do no more or less than is necessary to achieve this purpose. They are therefore not excessive. When it comes to the unauthorised use, it is necessary to have a requirement for that use to cease. Requirement 5.1 would only achieve this aim and remedy the breach of planning control. It is therefore also not an excessive requirement.
20. Picking up the points referred to above about the shower room and the kitchen in the extension, these works may not be development requiring planning permission. However, it has been held in material changes of use ENs, where works that were carried out to facilitate the material change of use, the EN may require that the works are removed in order that the site is restored to its previous condition and the breach is thereby remedied. In this case the shower room and the kitchen were installed in the extension to accommodate an elderly parent of a previous prospective tenant. I have also found that there has been a breach of planning control related to the change of use of one house into two houses. Consequently, I find that the additional kitchen and bathroom were installed to allow the unauthorised use to occur, and it is not excessive to require the property to have only kitchen and one bathroom.
21. Against this background, the steps required by the EN to be taken do not exceed what is necessary to remedy the breaches of planning control. Therefore, the ground (f) appeal fails.

The ground (g) appeal

22. The appellant has specified that a more appropriate period would be two years, instead of the nine months specified in the EN. However, in view of my findings above, the requirements are narrowed down to ceasing the unauthorised use, removing a kitchen and a bathroom, making good any damage and removing resulting debris from the land. Nine months to carry out just these works, in my view is not short of what should be reasonably allowed. As such, the ground (g) appeal fails.

Conclusion

23. 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 rear extension and a wooden canopy, but otherwise I will uphold the EN and refuse to grant planning permission in respect of the change of use of a single family dwellinghouse to use as two dwellinghouses. The requirements of the EN will

cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.

Gareth Symons

INSPECTOR