



Appeal Decision

Site visit made on 9 May 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 May 2022

Appeal Ref: APP/A5270/C/20/3255449

Land at 59 Bilton Road, Perivale, Middlesex OB6 7BA

- 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 Faisal Hassan against an enforcement notice issued by the Council of the London Borough of Ealing.
 - The enforcement notice was issued on 20 May 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey front extension to a rear outbuilding and the material change of use of the outbuilding to a separate self-contained residential unit.
 - The requirements of the notice are:
 1. Cease the use of the rear outbuilding as a separate self-contained residential unit;
 2. Demolish the single storey front extension to the rear outbuilding;
 3. Remove the kitchen and drainage facilities which facilitate the use of the rear outbuilding as a separate self-contained residential unit;
 4. Remove the bathroom and drainage facilities which facilitate the use of the rear outbuilding as a separate self-contained residential unit; and
 5. Remove 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) and (d) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. I have dealt with another appeal on this site (APP/A5270/C/20/3256264). That appeal is the subject of a separate decision.
3. The ground of appeal set out on the appeal form is ground (c). However, during the validation process the appellant clarified that his appeal has been made on ground (d), in relation to the change of use of the outbuilding to a separate dwelling, and on ground (a), in relation to the extension to the outbuilding. The Council has considered the appeal on that basis and so shall I.

Appeal on ground (d)

4. In relation to a breach of planning control consisting of a material change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach (s171B(2)).
5. The main issue is whether the material change of use took place before the 20 May 2016 with the use as a single dwellinghouse continuing for at least four years thereafter. The onus of proof is on the appellant and the test is on the balance of probability.
6. In summary, the appellant maintains that the outbuilding has been in use as a single dwellinghouse since 2009. To support his case, tenancy agreements which span a ten-year period, commencing on 3 May 2009 through to 2019 have been provided. In addition, a letter from the Council is included which confirms that the appellant has been the registered owner of the Garden Flat R/O 59 Bilton Road since 27 June 2011.
7. The Assured Short Hold Tenancy Agreements are generally in the same format and are signed by the landlord and tenant. With the exception of one agreement, dated 6 June 2013, none of the agreements are witnessed. The agreements do not on their own, however, provide evidence of continuous occupation by the tenants, and only demonstrate that a 12 month tenancy was taken out and the date that tenancy commenced.
8. Furthermore, when looking at the agreements submitted alongside evidence produced by the local planning authority, the veracity of the agreements produced to support the appellant's appeal is questionable.
9. Firstly, the Council's record of visits to the property and associated correspondence show that the outbuilding was under construction on 3 June 2009 and at that time had not been completed internally. It was still incomplete on 26 June 2009¹. However, the appellant has submitted a tenancy agreement which is intended to show that the outbuilding was rented out for a 12 month period starting on 3 May 2009. Furthermore, the appellant advised the Council that the outbuilding was empty in December 2010 and provided photographic evidence to confirm that position². However, according to the tenancy agreements submitted in this appeal, the property was rented out continuously during that period and under tenancy.
10. The tenancy agreements submitted to support the appeal also differ from the details within the Planning Contravention Notice (PCN) completed by the appellant and dated 28 May 2014³. The PCN included tenancy agreements supplied by the appellant to show that the outbuilding had been occupied by a single person since 1 April 2010. However, the agreements submitted with the appeal show four different sets of occupiers between 3 May 2009 and 27 July 2014, with the occupiers cited in the PCN only being resident in the outbuilding between 16 June 2013 and 27 July 2014. The evidence submitted in the form of the tenancy agreements clearly contradicts both the information provided in

¹ LPA, Statement of Case, Appendix 3, 4 & 5.

² LPA, Statement of Case, Appendix 6.

³ LPA, Statement of Case, Appendix 9.

the PCN, and the evidence provided to support the application for a lawful development certificate for the appeal premises in 2020⁴.

11. In addition, the Council's evidence in the form of council tax records show that the outbuilding benefitted from an "unoccupied but furnished discount" for the three years before the current tenant became liable on 1 April 2019.
12. As set out above, even if the tenancy agreements are taken as authentic, they do not in themselves provide evidence of continuous occupation. There are no records to confirm the length of tenancy in the form of rent books, receipts or bank statements. Furthermore, the local planning authority has produced evidence to contradict and make the appellant's version of events less than probable. Consequently, the circumstances of this case are such that I am not satisfied that the appellant's evidence is sufficiently precise and unambiguous to conclude, on the balance of probability, that the use in question is immune from enforcement action.
13. I conclude that the use has not become lawful due to the passage of time. The appeal on ground (d) does not succeed.

Appeal on ground (a), deemed planning application

14. The terms of the appeal on ground (a) are derived from the alleged breach of planning control as set out in the notice. In this instance, the breach alleges both operational development in the form of an extension to the outbuilding, and a material change of use of the outbuilding to a separate self-contained residential unit.
15. Section 177(1) (a) of the Town and Country Planning Act 1990 (as amended) allows permission to be granted under the appeal on ground (a) for any part of the matters alleged in the notice. The appellant does not seek a grant of planning permission for the use of the outbuilding as a separate dwelling, only for the works undertaken to extend it. My considerations on ground (a) therefore relate solely to the operational development which comprises a single storey front extension to a rear outbuilding.

Main Issues

16. The main issues are the effect of the extension on the:
 - character and appearance of the area; and
 - living conditions of existing and future occupiers, and neighbouring residents.

Reasons

Character and appearance

17. The appeal premises form one end of a short terrace of three dwellings which are situated in a predominantly residential neighbourhood. The property has previously been extended to the rear at single storey level. The main dwelling is currently unlawfully in use as self-contained flats, and in recent years has

⁴ LPA, Statement of case, Appendix 12 & 13.

been occupied as both a small House in Multiple Occupation and as a single dwellinghouse⁵.

18. The property has a modest rear garden which comprises a small lawned area where a large storage shed is sited, and a single storey outbuilding adjacent to the garden's rear boundary and spanning its full width. The original outbuilding is a substantial construction. However, prior to its extension it was similar in scale and form to other ancillary garden buildings within the street and thus in itself not a discordant development.
19. The extension has almost doubled the size of the outbuilding. It has introduced a patio door and window to the outbuilding's front elevation, and it has a Perspex roof. Consequently, the building now has a residential rather than utilitarian or ancillary appearance. As extended, the outbuilding is now of a scale and design which appears incongruous in a garden setting and dominates the property's amenity area. Furthermore, it no longer appears subordinate to the host property, and it detracts from the character and appearance of this residential area.
20. I recognise that many properties within the street have constructed ancillary residential buildings within their gardens, and they are apparent from the satellite images contained within the Council's evidence⁶, and observations on my site visit. However, I have not been provided with any substantive evidence that identifies an outbuilding with an extension such as the one for consideration in this appeal. By reason of its scale and design the extended outbuilding dominates the garden area and its appearance detracts from the setting of the property's residential garden. The existence of other outbuildings in the area does not therefore justify the harm I have identified from the extension in this appeal.
21. I conclude that the extension has a harmful effect on the character and appearance of the area. It conflicts with the development plan, and with Policies 7.4 and 7B of Ealing's Development Management DPD, adopted 2013 (DPD) which seek to ensure, amongst other things, that new development achieves a high standard of amenity for users by ensuring coherent development of the site, high standards of architecture and a positive visual impact which should complement the built area in terms of scale, materials, detailing and building pattern. I also find conflict with the design aims of the London Plan, 2021 and the National Planning Policy Framework (the Framework).

Living conditions

22. The extended outbuilding occupies approximately half of the property's rear garden area. Taken together with the existing detached storage shed adjacent to it, the area now available for the occupiers of the original main dwelling as outdoor amenity space, including outdoor play has been significantly reduced and is small.
23. Moreover, the appellant has not provided any information as to how the extension would be utilised. The original outbuilding and detached shed would provide significant capacity and opportunities for ancillary residential storage, including cycle storage. Given the scale and proximity of the extended

⁵ APP/A5270/C/20/3256264

⁶ LPA, Statement of Case: Appendix 10.

outbuilding to the main dwelling, and to neighbouring gardens, any utilisation of the extension for more intensive ancillary residential activities or accommodation, particularly during the late evening, would result in noise and disturbance, including light pollution to occupiers of the main dwelling and neighbouring residents.

24. For the reasons set out above, I conclude that the extension has a harmful effect on the living conditions of existing, future, and neighbouring residents. There is conflict with the development plan, including Policy 7B of the DPD which seeks to ensure that new development achieves a high standard of amenity for users and adjacent users, including appropriate levels of development on the site. I also find conflict with paragraph 130 of the Framework which seeks to ensure a high standard of amenity for existing and future users, and the design aims of the London Plan.

Conclusion

25. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal on ground (a) made in relation to the single storey front extension to the rear outbuilding should not succeed.

Human Rights

26. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European Convention on Human Rights. I recognise that dismissal of the appeal would interfere with the occupier's rights under Article 8 and the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified, the action is in accordance with the law and pursues a legitimate aim of regulating land use in the public interest, and is necessary and proportionate to the situation.

Overall Conclusion

27. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Town and Country Planning Act, 1990, as amended.

Elizabeth Pleasant

INSPECTOR