



Appeal Decision

Site visit made on 26 July 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2022

Appeal Ref: APP/N5090/C/22/3290450

Land adjacent to 68 Brent Terrace, London, NW2 1BY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter “the Act”).
 - The appeal is made by Mr A Schwebel against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 30 November 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the use of a single storey building as a separate residential unit.
 - The requirements of the notice are:
 1. Cease the use of the building as a separate residential unit.
 2. Permanently remove all kitchen units, sinks, cookers and food preparation areas from the building.
 - 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 (g) of the Act. 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. 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 Act.

GROUND (a)/DEEMED APPLICATION FOR PLANNING PERMISSION

Main Issues

2. These are the effect of the use of the building as a dwellinghouse upon the character and appearance of the area, and upon the living conditions of its occupiers with regard to internal space.

Reasons

Character and appearance of the area

3. The southern side of Brent Terrace is primarily characterised by its distinctly uniform layout comprising two storey terraced houses along its length with a consistent building line to the front and rear. Additionally, a footpath runs along the rear of, and parallel to, the houses separating them from a long strip of land which I understand was part of railway sidings. Some of this strip of land has been divided, by fencing or otherwise, into smaller plots of varying width. The single storey appeal building sits on one of these plots to the rear of Nos. 67 and 68 Brent Terrace.

4. I agree with the appellant that a number of these rear plots, including the appeal site, have the appearance of having evolved over time to form rear gardens, some with timber sheds or other forms of outbuildings. Although these plots are to the rear and mostly hidden they are nonetheless a feature of the wider character and appearance of the area I have described.
5. Although the appeal building has the appearance of an outbuilding it is occupied as a separate dwellinghouse with kitchen/living area, bathroom and bedroom along with some internal and external storage space and enclosed garden area. The appellant states other outbuildings along the rear of Brent Terrace have also formed separate dwellings. However, none have been identified in the appellant's submissions, and of other outbuildings that I saw none appeared obvious to me to be in use as a dwellinghouse.
6. It is argued that since the use of the appeal building is residential there is no harm to the wider residential character of the area. However, I disagree.
7. Along with the usual domestic activities and paraphernalia one might expect in the garden area, together with associated movement of people to and from the dwelling, it introduces a new and more intensive primary residential use of the building and the plot which previously had not existed. In my view that is significantly and materially different in nature and character to the prevailing character of the area I have previously described, with any outbuildings and uses on this rear strip of land appearing to be either non-residential, or which at most appear incidental to primary residential use of main dwellinghouses along Brent Terrace. As such, and contrary to the appellant's view, I consider the use of the outbuilding as a separate dwelling to be a distinctly out-of-place 'backland' type of primary residential development which significantly and harmfully impacts upon the otherwise well-defined pattern, character and appearance of the wider area.
8. To conclude on this issue; the use of the building as a separate residential dwelling conflicts with the requirements of Policies DM01¹ and CS5² which, taken together, seek to ensure that development proposals should be based on an understanding of local characteristics and which respect local context and distinctive local character.

Occupiers living conditions

9. The appellant states the building has a gross internal floor space area (GIA) of 46m². As such, it falls short of the Council's 50m² minimum GIA requirement for a one bedroom flat.
10. However, the internal area is well laid out maximising the internal circulation space and did not appear to me to be cramped. Additionally, the detached nature of the building is more akin to a small bungalow, and has a sizeable private garden area for the use of the occupiers. Having regard to all of these factors together, I find there would be no significant harm to occupiers' living conditions overall. However, my finding on this issue does not overcome the significant harm I have previously identified with regard to the character and appearance of the area.

¹ Policy DM01 Development Management Policies Development Plan Document 2012)

² Policy CS5 Core Strategy Development Plan Document (2012)

Other matters

11. Planning conditions would not mitigate the harm resulting from the use of the building as a separate dwelling given that I have found it to be unacceptable in principle in respect of its effect on the character and appearance of the area. For this same reason I need not consider the adequacy of refuse storage and collection arrangements.
12. Additionally, while the location of the site is reasonably close to public transport and other services and facilities, this does not overcome the harm I have described. Consequently, it does not represent sustainable development overall contrary to the provisions of the National Planning Policy Framework (2021).
13. I have taken into account the third party representations from people who live nearby. However, these do not lead me to reach a different conclusion overall.

Conclusion

14. The use of the building as a separate dwelling fails to respect the contextual character of the site and the surrounding area, thereby resulting in significant harm to the character and appearance of the area. As such, it conflicts with the requirements of the Council's Development Plan policies. There are no material considerations which either by themselves or cumulatively outweigh the identified harm. The appeal on ground (a) therefore fails.

APPEAL ON GROUND (g)

15. The ground of appeal is that the period of time for compliance with the enforcement notice requirements falls short of what should reasonably be allowed. The appellant considers the notice period of 6 months is insufficient time for someone to find and relocate to alternative accommodation and that eviction proceedings would take longer.
16. However, no details of current tenancy agreements are before me, and no information has been provided to show that the current tenants have indicated they would not relocate of their own volition within the 6 months period, rather than waiting for eviction proceedings.
17. The above notwithstanding, for an offence of failing to comply with an enforcement notice it is a defence³ against prosecution for owners to show that they had done everything possible which could be expected of them to secure compliance. That would include the taking of formal eviction proceedings. The potential for eviction proceedings being required does not therefore persuade me that 6 months is an unreasonably short period of time.
18. Overall, I am mindful that the harm resulting from the breach of planning control should be remedied as soon as possible. In this regard I find that a period of 6 months does not fall short of what should reasonably be allowed for compliance.
19. The appeal on ground (g) therefore fails.

Thomas Shields

INSPECTOR

³ s179(3) of the Act.