



Appeal Decisions

Site visit made on 9 June and 22 September 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 November 2022

Appeal A Ref: APP/G5180/C/20/3257962

Land at 29 Marlings Park Avenue, Chislehurst BR7 6QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ernest J Nunoo against an enforcement notice issued by the Council of the London Borough of Bromley.
- The notice was issued on 3 August 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of a detached garage at the end of the large rear garden to a self-contained residential unit.
- The requirements of the notice are to:
 1. Cease the use of the garage for residential accommodation.
 2. Reinstate the permitted use as a domestic garage.
- The period for compliance with the requirements is one month from when the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary Decision: The appeal is dismissed, the enforcement notice, corrected and varied, is upheld and planning permission is refused.

Appeal B Ref: APP/G5180/X/20/3257902

Land at 29 Marlings Park, Chislehurst, Kent BR7 6QN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Ernest Junior Nunoo against the decision of the Council of the London Borough of Bromley.
- The application ref DC/20/00566/ELUD, dated 10 March 2020, was refused by notice dated 6 May 2020.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the conversion of an existing garage to living space with a kitchen and shower room.

Summary Decision: The appeal is dismissed

The Site Visit

1. I attended the site on 9 June 2022, expecting to undertake an accompanied site visit of the appeal site. However, on arrival at the site I did not know that the parties had not been informed of the arrangements for the site visit. Nevertheless, I was able to make some observations of the general area.

2. A second site visit was arranged. At this visit I had access to the building to the rear of the site and the land associated with this. It was not necessary for me to have access to the remainder of the appeal site as I was satisfied with what I was able to see of this from the adjoining public highway and from the land enclosed with the rear building and.

Costs

3. The appellant has submitted with the appeals a copy of the receipt for the LDC application (Appeal B) and a copy of the receipt for the ground (a) appeal on the appeal against the enforcement notice (Appeal A). These were not, however, accompanied with any formal costs application. Neither has the appellant suggested in his evidence that these costs were a direct result of unreasonable behaviour on the part of the Council. In view of this, I have not dealt these documents via a separate costs application decision. It is, of course, normal for the parties in planning appeals to meet their own expenses, as advised in paragraph 28 of the Planning Practice Guidance on Appeals.

APPEAL A

Preliminary Matters

4. In appealing under ground (a) only, the appellant says he wishes to apply for 'the conversion of an existing garage into a habitable room'. Whilst there is a difference between this and the matter stated in the notice, there is no suggestion in the appellant's case that the breach of planning control alleged in the notice has not occurred or is not correct, such that his case should be considered under ground (b) as well as ground (a). In view of this, I have only considered the ground (a) appeal that has been made.
5. Since the issue of the enforcement notice and the submission of evidence in respect of these appeals, the London Plan March 2021 (LP) has been published. This replaces the former version of the London Plan. As such, I have not had regard to the policies of the former London Plan referred to in evidence, including those mentioned in the enforcement notice. The comments of the parties were sought with regard to the effect of the change to the development plan. Only the Council responded. Whilst it suggests that there are no significant changes to the policies, it has not drawn my attention to any policies of the LP that might be relevant to this case. I have not, therefore, referred to the LP in reaching my decision.

The Notice

6. The allegation is of 'the material change of use of a detached garage at the end of the large rear garden to a **self-contained residential unit**'. Requirement 1 in part 5 of the notice seeks the cessation of 'the use of the garage for **residential accommodation**'. Having regard to the highlighted words, I note that the use the notice requires to cease is not the same as the use alleged in part 3 of the notice. This is an error of the notice, not least because the notice might interfere with a use of the building that would otherwise not require planning permission. A correction to the notice to require the cessation of the use of the detached garage as a self-contained residential unit would overcome this issue.
7. As for the second requirement in part 5, the requirements of a notice should only be what is necessary to remedy the breach or remedy any injury to

amenity. I find the requirement to 'reinstate the permitted use of the building as a domestic garage' to exceed what is necessary to remedy the breach in this case. A variation of the notice to replace requirement 2 with a requirement to return the land and buildings to its former condition prior to the breach of planning control taking place would overcome this issue.

8. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether or not the correction or variation would cause any injustice to the appellant or the local planning authority.
9. With this in mind, I sought the views of the parties on this matter. Despite the lack of a response from the appellant and a brief case being made in his appeal, I can see no reason why injustice would be caused were I to correct and vary the notice as set out above, particularly as the requirements would be less onerous. As for the Council, their response was to confirm its agreement to the suggested changes.
10. Having regard to the above, I am satisfied that the errors identified in the notice are capable of correction, as indicated, and that no injustice would be caused to any party were I to make the necessary correction and variation.

Ground (a) and the deemed application for planning permission

Main Issues

11. The appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
12. As noted above, the appellant says he wishes to apply for 'the conversion of an existing garage into a habitable room'. To be clear, the deemed planning application subject of the ground (a) appeal is for the matters stated in the notice, which in this case is the material change of use of the detached garage to a self-contained residential unit. Whilst section 177(1) of the 1990 Act allows me to grant permission for the whole or any part of the matters stated in the notice, I cannot be satisfied that the appellant's proposal forms part of any of this matter.
13. I have noted the substantive reasons for issuing the enforcement notice which refer to 'the configuration and standard of the accommodation' as well as parking. I have also noted the Council's appeal statement, which provides little evidence on the matter of parking, but introduces matters of 'neighbouring residential amenities' and the effect of the development on the character and appearance of the surrounding area. These are matters that have also been raised by interested parties. Accordingly, I have identified the following main issues to be considered in this case:
 - The effect of the development on the living conditions of the occupiers of the appeal site, with regard to the standard of the accommodation;
 - The effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance;

- The effect of the development on the character and appearance of the surrounding area; and
- Whether or not the development results in inconveniences for road users and is prejudicial to highway safety as a result of any additional demand for on street parking.

Reasons

Planning policy and guidance

14. The Council has referred to Policy 37 (General Design of Development) of the London Borough of Bromley Local Plan January 2019 (LBBLP), which requires, amongst other matters, that development respects the amenity of occupiers of neighbouring buildings and those of future occupants, providing healthy environments and ensuring they are not harmed by inadequate daylight and sunlight. The Council also refer to the standards set out in the Mayor of London Housing Supplementary Planning Guidance March 2016 (SPG). Although this refers to policies of the now superseded London Plan, the SPG has not itself been withdrawn or superseded. Reference is also made to the Technical housing standards – nationally described space standard published 27 March 2015 (THS), as well as to various parts of the National Planning Policy Framework (the Framework).

The appeal site and the surrounding area

15. The appeal site is within a predominantly residential area characterised by detached properties of varying sizes set within spacious plots that also vary in size. The appeal site is a corner plot occupied by a large, detached property to the front and a building to the rear. The rear building is the subject of the appeal. A timber fence has been constructed across the width of the appeal site to separate the rear building and a portion of the external space on the site from the remainder of the property.
16. The rear building retains two garage doors on its elevation facing Marlings Park Avenue and is, therefore, clearly a former garage. I will refer to it as the garage building from here on in. There is a timber gate to the side which provides access to the side door entrance to the garage building. Within the garage building there is a kitchen area and a shower room with a w.c. and sink. There is also an enclosed room, the internal walls of which create a void between the room and the external walls of the garage building.

Living conditions of occupiers

17. Having inspected the garage building, I can see that the accommodation comprised within it provides facilities required for day-to-day private domestic existence. This includes a kitchen with cooking facilities, a sink with running water, a fridge and storage, as well as a shower room with a w.c. and wash hand basin. The main room within the building has a bed, as well as a television and a desk. As such, this room appears to have a dual purpose of a living room and bedroom, an arrangement not unusual in studio type accommodation. Around the main room the void area was being used for storage.
18. The Council suggests that the garage building subject of this appeal has an internal floor area of some 33 metres squared. This is not disputed by the

appellant. I note that this is below the minimum standard of 37 square metres for a 1 person 1 bed dwelling, as stated in table 1 of the THS.

19. Whilst the internal floor space may be marginally below the minimum standard, the internal arrangement of the garage building means that a large portion of the floorspace is taken up by the void surrounding the main room. This effects the layout of the property and how it can be used. Whilst the garage building provides all internal facilities to be expected in a self-contained residential unit, this is provided within a confined space that does not render it a comfortable place of retreat. The rooms within the building are particularly restricted and do not easily accommodate the furniture and circulation space necessary for the accommodation to function as a self-contained residential unit, whilst also providing sufficient and comfortable space for relaxation.
20. In addition to the above, the internal layout of the garage building is such that none of the living space has the benefit of any windows or door openings, save for the side entrance door. I noted a window in the side elevation of the building, but this opens onto the void between the external wall and the internal wall of the main living/bed room. As such, the living space within the garage building has little access to natural daylight and ventilation.
21. Indeed, I can agree with the Council on this, that rather than providing even a single aspect dwelling, the provision of which Standard 29 of the SPG seeks to minimise, the accommodation in the garage building fails to provide a dwelling with **any** aspect, due to the lack of fenestration for the main living areas. Furthermore, I have no reason to find the development in accordance with Standard 32 of the SPG, which advises of the need for direct sunlight in at least one habitable room, and that living areas and kitchen dining areas should preferably receive direct sunlight.
22. I have had regard to the covered decking area to the rear of the garage building and the spacious open space enclosed with the building. This does not, however, mitigate the poor quality of the internal space provided within the garage building.
23. All things considered, I find the accommodation comprised within the garage building to be harmful to the living conditions of its occupiers. The development subject of Appeal A is, therefore, in conflict with Policy 37 of the LBBLP. The development also fails to accord with the standards set out in the SPG and the THS.

Living conditions of neighbouring occupiers

24. The garage building and its enclosed outdoor space adjoins two neighbouring properties. The building sits towards the front of the land that it occupies and, as such, is some distance from these neighbouring properties. The building is, however, close to the boundary shared with 29a Marlings Park Avenue.
25. The Council has specifically referred to the noise and disturbance from the comings and goings of the occupiers of the garage building. Whilst noise and disturbance is also referred to by interested parties, their objections primarily result from the way in which the property is let and used, and to particular incidents of visitors to the property attending late night parties with loud music being played. I have seen a number of references to the garage building being let for short stays via AirBnB.

26. I do not dismiss the objections of local residents; neither do I underestimate the effect that these late night incidents have had on them. However, the use of the appeal site that I must consider in this case is not for the purposes of a special type of event accommodation, or for a party house. It is for a self-contained residential unit. Were I to grant permission for this use, it would be for the Council to consider whether the use of the garage building in the future for the purposes of short term lets for events and late night parties would result in a material change of use of the property from a self-contained residential unit to some other type of use. The Council could also consider using its powers in these circumstances under the anti-social behaviour legislation.
27. Notwithstanding the above, I acknowledge the sub division of the appeal site and the addition of a self-contained residential unit within the garage building is likely to have increased the level of activity on the site and on the adjoining street. I also acknowledge the suggestion that the appeal site is within a quiet residential area. However, I cannot conclude that the addition of a one bedroom, studio type unit of accommodation that is the subject of this appeal would result in an unacceptable degree of noise and disturbance to nearby occupiers on a day to day basis. I conclude as such, having particular regard to the degree of separation between the garage building and adjoining properties and the spaciousness of the surrounding area in general.
28. For the reasons given above, I conclude that the effect of the development on the living conditions of neighbouring occupiers with regard to noise and disturbance is not unacceptable. I do not, therefore, find conflict with Policy 37 of the LBBLP or the standards set out in the SPG and the THS.

Character and appearance

29. The Council suggest that the appeal site is within an 'Area of Special Residential Character'. It has not, however, explained what this means, or provided any policy or guidance that deals with such areas.
30. Notwithstanding this, I have already noted that the area surrounding the appeal site is characterised by detached properties. Although most properties in the area are set within spacious plots, the size of these plots and the size of properties vary.
31. The area of land enclosed with the garage building is small compared to others in the area. I can, however, see from the plan attached to the enforcement notice that small plots are not unusual in the context of the appeal site. Neither is the position of the plot unusual in relation to the remainder of the appeal site.
32. The self-contained residential unit comprised within the garage building is small compared to other dwellings in the area. I also acknowledge that the development results in a more dense pattern of use. For this reason I acknowledge that the development has an effect on the prevailing character of the area. However, in the absence of any particular policy that identifies the character of the area as special and worthy of preservation, I cannot, on balance, conclude that the development has an unacceptable effect on the character and appearance of the surrounding area. I am, therefore, unable to identify any conflict with Policy 37 of the LBBLP.

Parking

33. Although the issue of parking is mentioned in the enforcement notice, there is little evidence before me on this matter. Whilst the garage doors are retained on the front elevation of the garage building, the internal arrangement of the building prevents any vehicle parking within it. On my site visit I could not see any off street parking to serve the garage building and none has been drawn to my attention. I did, however, note the substantial off street parking area serving the main dwelling on the appeal site.
34. Most properties in the area have the benefit of off street parking within spacious front gardens. At both site visits I also observed that Marlings Park Avenue is not an area with significant demand for on street parking. No particular issue with on street parking has been brought to my attention.
35. The sub division of the appeal site and provision of an additional self-contained residential unit without any off street parking provision is likely to result in demand for on street parking in the area. However, for the reasons given above, the development does not result in any inconvenience for road users and it is not prejudicial to highway safety as a result of any additional demand for on street parking. I find no conflict with the development plan policies or guidance that have been drawn to my attention and is referred to above.

Other Matters

36. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise.
37. I note the appellant's reference to the other decisions of the Council and the suggestion that these set a precedent for the development that is the subject of this appeal. I have, however, been provided with limited details of the development subject of those decisions in order for me to make an informed comparison.
38. Nevertheless, the appellant suggests that each case relates to the provision of a habitable room within an existing garage. The Council has referred to these cases and notes that the proposals were for accommodation that would be either incidental or integral to the main dwelling on the site. The Council refers to internal connections between the accommodation proposed in each case and the main dwelling.
39. On the basis of the evidence before me, these cases are of little relevance to my decision. They relate to proposals that do not compare to the development that is before me, which is the use of the garage building as a self-contained residential unit.

Planning Balance

40. I have considered whether conditions would overcome the harm caused in this case, but conclude that they would not. Accordingly, and having regard to the above, I have not been able to identify material considerations of sufficient weight to indicate that the determination of this ground (a) appeal and the deemed planning application should be made otherwise than in accordance with the development plan.

Conclusion – Appeal A

41. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with a correction and variation, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

APPEAL B

Preliminary Matters

42. The description of the use for which the LDC subject of Appeal B is sought in the header above is one that I have drafted. I have not used the description of the use given in the LDC application form as it is long and not particularly precise in identifying the nature of the use to which the application relates. I have noted the description of the use given by the Council in the decision notice. I have used this as the words 'living space' are also mentioned in the application form. I have also included reference to the kitchen and shower room I observed on my site visit; these are also referred to in the application form as a kitchenette and welfare facilities.

Main Issue

43. Section 191(4) of the 1990 Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, the planning merits of the development (a use of the site in this case) are not relevant to the determination of Appeal B and the main issue is whether the Council's decision to refuse to grant a LDC was well founded.
44. The appellant's evidence in this case is very limited and is principally to point to other decisions of the Council that he suggests set a precedent for the development that is the subject of the LDC application.
45. The Council refer to technical guidance on the matter of the use of outbuildings for a purpose that is incidental to the enjoyment of the dwellinghouse. It does not, however, say what technical guidance this advice is taken from. Nevertheless, the Council point to the fence dividing the garden of the appeal site to provide an area to serve the garage building, the facilities within the garage building and the separate means of access to it. It says that the use of the garage building is not incidental to the enjoyment of the dwellinghouse; rather the conversion of the garage building provides a self-contained residential unit.
46. Having regard to the above, the main consideration in this case is whether the living space within the garage building is incidental to the enjoyment of the dwellinghouse, or whether the use of the garage building and associated land is as a self-contained residential unit (i.e. a dwellinghouse) separate to the main dwelling at the appeal site.

Reasons

47. I am mindful that the distinctive characteristics of a dwellinghouse are its ability to afford to those who use it the facilities required for day-to-day private domestic existence. I have noted above that the garage building includes a kitchen with cooking facilities, a sink with running water, a fridge and storage, as well as a shower room with a w.c. and wash hand basin. I also note that the main room within the building provides both sleeping and living accommodation.
48. In addition to the facilities within the building, I also noted the fence referred to by the Council, which separates the building and its associated garden from the remainder of the appeal site. I could see no means of gaining direct access from this enclosed land into the remainder of the appeal site, and no means of direct access was drawn to my attention. I noted the only means of access to the garage building and associated land was from Marlings Park Avenue. There is also a lack of evidence that demonstrates a use of the garage building by the occupiers of No 29 or, indeed, any relationship between the two buildings in terms of their use.
49. On the basis of the evidence before me, it is less than probable that the garage building and land associated with it is shared or accessed by the occupiers of the main dwelling on the appeal site. I cannot, therefore, conclude that the garage building is used in a way that is incidental to the enjoyment of the main dwelling. The appeal site has been sub-divided and I find as a matter of fact and degree that a separate planning unit has been formed, which comprises the garage building and associated garden. This planning unit provides its occupiers with facilities required for day-to-day private domestic existence. Accordingly, it has the distinctive characteristics of a dwellinghouse.
50. Whilst the LDC application describes the conversion of an existing garage to living space with a kitchen and shower room, having regard to the above and the evidence I have on how the garage building and associated land is used, I conclude as a matter of fact and degree that the living space described in the LDC application form is a dwellinghouse. This dwellinghouse and associated garden is separate to the dwellinghouse and garden occupying the remainder of the appeal site.
51. The change of use of the appeal site to two separate dwellings (i.e. two separate planning units) is material. Development is defined in section 55(1) of the 1990 Act as including 'the making of any material change in the use of any building or other land'. Furthermore, section 57 of the 1990 Act informs that planning permission is required for the carrying out of any development of land. Permission has not been granted for the material change of use in this case. The use of the garage building that is the subject of this appeal is not, therefore, lawful.
52. As I have noted above, the other decisions referred to by the appellant relate to proposals for habitable rooms within existing garages. Based on the information I have about these cases, the accommodation proposed would have been connected in some way to the main dwellinghouse on that site and, therefore, would have been incidental to, or an integral part of, that dwelling. I cannot conclude the same for the development subject of Appeal B. These decisions do not, therefore, alter my conclusions above.

53. I have been given no other reason to conclude that the development subject of the LDC application was lawful on the date the application was made, and I am unable to identify any having regard to the evidence available to me. Accordingly, and having regard to all of the above, I conclude that the conversion of the garage building to living space with a kitchen and shower room would not have been lawful on the date the LDC application was made.

Conclusion - Appeal B

54. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the conversion of the garage building to living space with a kitchen and shower room was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

FORMAL DECISIONS

Formal Decision - Appeal A

55. It is directed that the enforcement notice is corrected and varied by:

- The substitution of the words 'for residential accommodation' with the words 'as a self-contained residential unit' in Part 5.1.; and
- The substitution of the words 'Reinstate the permitted use as a domestic garage' with the words 'Return the land and buildings to its former condition prior to the breach of planning control taking place' in part 5.2..

56. Subject to the correction, 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.

Formal Decision - Appeal B

57. The appeal is dismissed.

J Moss

INSPECTOR