



Appeal Decision

Site visit made on 18 October 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2022

Appeal Ref: APP/A5840/C/22/3294538

3 Ivydale Road, London SE15 3DR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Samson Nejo against an enforcement notice issued by the Council of the London Borough of Southwark.
 - The notice was issued on 14 February 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of single storey timber outbuilding, shown for identification purposes hatched blue on the attached plan ("the Unauthorised Development").
 - The requirements of the notice are to:
 - 5.1 Demolish and remove from the Land the Unauthorised Development which for the avoidance of doubt includes any hardstanding, foundations or base;
 - 5.2 Remove from the Land all materials and debris resulting from the carrying out of step 5.1 above.
 - The period for compliance with the requirements is: Two (2) months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (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.
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Decision

1. It is directed that the enforcement notice is varied by the deletion of 'Two (2)' at section 6 and the insertion of 'Four (4)', so that the compliance period reads 'Four (4) months after this Notice takes effect'.
2. Subject to the variation 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. The Council requested in writing that the LPA reference is amended to 20/EN/0016. There is no suggestion that any other details on the enforcement notice should be changed and so I have used the information provided on the enforcement notice in the banner heading above.
4. Since the issue of the enforcement notice, the Council has adopted The Southwark Plan 2019-2036 (February 2022)(the SP). The SP replaces the Core Strategy and Southwark Plan 2007. The enforcement notice refers to policies of the SP, however, since its adoption, the numbers of these policies has changed. Nevertheless, the substance of the policies has not changed and so I shall consider them accordingly.

Ground (a)

5. An appeal under ground (a) is made on the basis 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 or, as the case may be, the condition or limitation concerned ought to be discharged.

Main Issues

6. The main issues are the effect of the appeal scheme on:
- The character and appearance of the area; and
 - The living conditions of existing and future occupants of the main dwelling, having regard to the availability of outdoor amenity space; and
 - The living conditions of neighbouring occupants, with respect to outlook and privacy; and
 - Fire safety.

Reasons

Character and appearance

7. The appeal site comprises a terrace dwelling which fronts on to Ivydale Road, with a modest rear garden which backs onto St Asaph Road. An outbuilding has been constructed in the rear garden, which abuts the rear boundary with St Asaph Road at an angle. The building has been constructed in what appears to be plywood, with a felt roof fixed to the plywood using nails with a slightly uneven finish, which gives the outbuilding a makeshift appearance.
8. The area is generally characterised by terrace dwellings which front onto the road. The use of traditional materials makes a significant positive contribution to the area. Policy P13 of The Southwark Plan 2019-2036 (adopted 2022)(SP) seeks to ensure the height, scale, massing and arrangement of development responds positively to the existing townscape, character and context and policy D4 of the London Plan (2021) seeks to deliver good design.
9. Extensions and outbuildings to properties along Ivydale Road typically have a limited effect on the character and appearance of St Asaph Road due to their setback from the highway and/or intervening vegetation. In particular, mature vegetation significantly limits views of the rear of No 5 Ivydale Road. However, while the vegetation restricts views of the appeal building when travelling from the south east along St Asaph Road towards the junction with Ivydale Road, it does little to screen views when travelling in the other direction.
10. Although the outbuilding is constructed to the rear of the dwelling, given its height and proximity to the boundary wall with St Asaph Road, it extends well above the boundary wall and is clearly visible from the public domain. The material used in the construction of the outbuilding contrasts with the more traditional materials used elsewhere in the area and in construction of the appeal dwelling. While I saw there are other outbuildings in the area, I did not see any which were, in my view, comparable to the appeal building.
11. As a consequence of its height and proximity to St Asaph Road and the use of unsympathetic materials, the outbuilding appears an incongruous feature which

diminishes the character and appearance of the area, contrary to policy P13 of the SP and D4 of the LP, the requirements of which are set out above.

Living conditions: Outdoor living space

12. The rear garden of No 3 Ivydale Road is modest. The appeal building occupies a significant proportion of the rear outdoor space and given its angle with the boundary wall, restricts access to the part of the garden between the wall and the outbuilding, with very limited useable space remaining between the main dwelling and the outbuilding.
13. Policy P56 of the SP states that development should not be permitted when it causes an unacceptable loss of amenity to present or future occupiers or users. The 2015 Technical Update to the Residential Design Standards Supplementary Planning Document (SPD)(2011) advises that any extension should not reduce the outdoor amenity space associated with the dwelling to less than half of its original size and the remaining amenity space must be at least the minimum standards set out in section 3.1, amongst others. Paragraph 3.1 advises a minimum of 50 square metre (sqm) private garden space in new housing. The remaining useable outdoor space is substantially below 50sqm is likely to be less than half its original size.
14. While the occupants of the dwelling may not desire a large garden, which would have maintenance requirements, the availability of even a modest private outdoor space provides opportunity for children to play, for occupants to enjoy the outside and for activities such as hanging out washing. Due to the siting of the building, I consider occupants of the property are highly unlikely to choose to spend time outside given the very limited extent of the outside space.
15. The appellant has drawn my attention to the availability of public open space, including Telegraph Hill Upper Park, which is stated to be an 8-minute walk from the appeal site. However, although the park would provide open space for the occupants to enjoy, it would not provide private outdoor space for the occupants to enjoy or to carry out activities such as hanging out washing, nor would it provide private space for children to play.
16. While I note the appellant has sought to improve the level of accommodation that is available for his family and future occupants would be aware of the limited outdoor amenity space available, I consider the loss of outdoor amenity space to be harmful to the living conditions of current and future occupants of the dwelling, contrary to policy P56 of the SP and the SPD, the requirements of which are set out above.

Living conditions: Outlook and privacy

17. The outbuilding appeared to be used for storage at the time of my visit. Nevertheless, the appellant advises it is intended to be used to improve the level of accommodation for his family. It is therefore likely that occupants of the main dwelling will also spend time inside the outbuilding. I saw that, due to its elevation within the site and the position of one of the windows, users of the building would be able to peer into the rear windows of No 1A Ivydale Road, which occupants of the neighbouring property are likely to find intrusive.
18. Although the appeal building has a flat roof, due the proximity of the building to the boundary with No 1A and its significant height, I consider users of the

garden of No 1A are likely to find the outbuilding overbearing, which, given the limited size of the rear garden of No 1A, is harmful to the living conditions of its occupants.

19. Thus, given the harmful effect of the building on privacy and outlook on the occupants of No 1A, the appeal scheme is contrary to policy P56 of the SP, the requirements of which are set out above and the SPD, which advises development should be arranged to safeguard the privacy of occupiers and neighbours and should not visually dominate neighbouring properties.

Fire Safety

20. Policy D12 of the LP seeks to ensure fire safety and sets out a number of criteria against which all development proposals must achieve. The requirement to provide a Fire Statement applies to major development proposals. Nevertheless, the London Plan Guidance Fire Safety Policy D12(A), although in draft form, advises that householder planning permission should provide information on space provisions for fire appliances and assembly points, on passive and active safety measures, on construction products and materials, means of escape and evacuation strategy and access and equipment for firefighting.
21. The outbuilding has already been constructed and it is not clear from the evidence, or from my inspection of the site, whether the building has been designed to incorporate features which reduce the risk to life and the risk of serious injury in the event of a fire, including passive and active fire safety measures or whether it is possible to retrofit such features. The appellant suggests that a condition could be imposed to secure details of a fire evacuation plan and appellant suggests a safe evacuation point to be in a carpark along St Asaph Road. However, the building sits between the dwelling and St Asaph road, preventing access from the appeal site to St Asaph Road.
22. I am not persuaded it would be possible to secure measures via condition so that the development would be satisfactory with respect to fire safety and comply with policy D12. Given the outbuilding is intended to be used by the occupants of the dwelling as additional living accommodation, and given the very limited external space, I consider the fire risks to users of the outbuilding to be unacceptable, contrary to policy D12 of the LP, the requirements of which are set out above.

Ground (g)

23. An appeal under ground (g) is made on the basis that any period specified in the notice...falls short of what should reasonably be allowed. The appellant asserts that the compliance period, 2 months, is too short given the pandemic and that they will have to engage a contractor to carry out the work and that a period of 9 months should be given to enable this to be undertaken.
24. Although the country has been subject to various restrictions as a result of the Covid-19 pandemic, I am not aware of any current restrictions which would impede the appellant's ability to secure the services of an appropriate contractor to carry out the works required by the notice and as such, consider a compliance period of 9 months is excessive.
25. Nevertheless, although the act of taking down the building may not take a significant amount of time, the appellant will need time to secure an

appropriate contractor to do the works and arrange for the materials and debris to be taken away. While the Council has powers under section 173A of the Act to vary the compliance period, I consider that 2 months is likely to be too short, particularly given the timing of this decision over the winter period. I therefore consider it would be reasonable and proportionate to extend the compliance period to 4 months. The appeal under ground (g) therefore succeeds to that extent.

Conclusion

26. While the appeal building is located in a generally residential area with access to a range of facilities and would provide an additional accommodation for the appellant's family, I have found that the appeal scheme harms the character and appearance of the area, fails to provide satisfactory living conditions for occupants of the host dwelling and is harmful to the living conditions of occupants No 1A Ivydale Road. 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.
27. For the reasons given above I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it and refuse to grant planning permission on the deemed application. The appeal on ground (g) succeeds to that extent.

M Savage

INSPECTOR