The Planning Inspectorate

Appeal Decision

Site visit made on 5 December 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 January 2023

Appeal Ref: APP/N5660/C/21/3288016
20 Colmer Road, London SW16 5JZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Dr Virendra Kumar Mittal against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The notice was issued on 19 October 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a single-storey flat roofed outbuilding at the end of the rear garden of the premises, fronting onto Danbrook Road and with a roller shutter garage door and means of access allowing for vehicular ingress and egress to and from the outbuilding over the pedestrian footpath.
- The requirements of the notice are:
  a) Remove the unauthorised outbuilding and means of access from the premises and reinstate the rear garden of the premises and boundary enclosures as existed prior to the breach of planning control; and
  b) Remove all associated waste and debris resulting from compliance with above steps, from the premises.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

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

   1) Deleting the words *and means of access allowing for vehicular ingress and egress to and from the outbuilding over the pedestrian footpath,* from the allegation in section 3 of the enforcement notice.

   2) Deleting the words *and means of access from the premises,* from requirement a) in section 5 of the enforcement notice.

2. Subject to this correction and variation, 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.

The Enforcement Notice

3. The allegation refers to a *means of access allowing for vehicular ingress and egress to and from the outbuilding over the pedestrian footpath.* I saw at my visit that there is a street tree which would prevent vehicular access over the pavement to the outbuilding and there is no dropped kerb. As a matter of fact, there is no means of access allowing for vehicular ingress and egress to and from the outbuilding.

4. However, the allegation can be corrected to reflect that the development was the erection of a single-storey flat roofed outbuilding at the end of the rear garden of the premises with a roller shutter garage door. Such a correction neither enlarges nor reduces the scope of the breach or requirements and consequently, there would be no injustice to either party. I shall correct the notice accordingly under the available powers of section 176(1)(a) of the Act.

The appeal on ground (a) and the deemed planning application

5. The main issues are the effect of the outbuilding on (i) the character and appearance of the area (ii) the living conditions of the occupiers of 20 Colmer Road with regard to outlook and the availability of outdoor amenity space and, the living conditions of nearby residents with particular regard to noise and disturbance and (iii) highway safety.

Reasons

Character and appearance

6. The appeal site is located on a residential street consisting predominantly of traditional terrace houses with a pleasant, well-maintained appearance.

7. The outbuilding is constructed from concrete blocks with a flat roof and metal roller shutter door of modern, industrial appearance. It is a rudimentary construction which relates neither in terms of design nor materials to the surrounding houses. Combined with its siting, the outbuilding appears as an obtrusive and discordant feature in the street scene which is at odds with the character of the area.

8. The lack of harm to designated heritage assets or local views, are not matters that outweigh my finding of harm.

9. Accordingly, the outbuilding conflicts with Policy D4 of The London Plan 2021 and Policies Q5, Q7 and Q8 of the Lambeth Local Plan 2020–2035 (the Local Plan). Together these policies require design which is visually attractive, and which responds to the positive aspects of the locality and historic character in terms of quality and architectural detailing.

Living conditions

10. The outbuilding is located to the rear of and once formed part of the garden of 20 Colmer Road. There are patio type doors in the rear elevation of No.20 which, I assume, in the absence of contrary evidence, serve a habitable room.

11. The outbuilding has been built on the shared boundary with No.20 and runs along the boundary for a reasonable distance. Because of the height, depth, and proximity to the patio doors, the outbuilding will have a dominant and overbearing effect upon the outlook from No.20. The effect is such that the living conditions of occupiers of that property are harmed.

12. Whilst I acknowledge there was previously a fence on the boundary, I have no details of what that consisted of and cannot therefore be certain that it had the same effect. In any event, since it has been removed its former existence is a matter of little weight.

13. It appears from the appellant's statement of truth that the site was fenced off from No.20 in 2005, and until 2017 was occupied by a shipping container.

Consequently, there is no loss of amenity space to No.20 resulting from the appeal development.

14. The outbuilding is used by the appellant for storage purposes associated with their property business, for the storage of materials and equipment. Delivery trips to the outbuilding are by van, a maximum of two times a week.

15. Third parties have expressed concerns regarding noise associated with the use. Given the residential context there is an unacceptable risk that the storage use would cause harm to the living conditions of neighbouring residents as a result of noise and disturbance associated with comings and goings, people talking, and engines running, in particular during the quieter times of the day and week.

16. Whilst the appellant stated that they would be willing to accept conditions restricting the use and activities, no suggested wording has been provided. A condition restricting the use to storage would be reasonable and enforceable however, this alone would not safeguard the living conditions of nearby residents. In the absence of substantive details about the activities which take place, I could not construct conditions that would be reasonable and enforceable, and which would safeguard the living conditions of nearby residents.

17. For the reasons given, the outbuilding does not accord with Policy Q2 of the Local Plan which requires development to avoid wherever possible, any undue sense of enclosure, and that the adverse impact of noise is reduced to an acceptable level through the use of attenuation.

Highway safety

18. There is no dropped kerb or crossover, and a street tree prevents vehicular access across the pavement to the outbuilding. Whilst I note concerns raised by the Council's Highway Team, the development does not concern an existing or proposed vehicle crossover, nor is there substantive evidence that the development has led to on-street parking problems. Accordingly, I conclude based on the existing situation and submitted evidence, that there is no highway safety harm.

19. There is therefore no conflict with Policy T1 of the Local Plan which requires that all development should reduce road danger.

Other matters

20. The appellant suggested that the outbuilding could be rendered or painted, the roller shutter could be painted, and an internal shutter box provided. Whilst rendering and painting the walls may improve its appearance and could be secured by condition, there are no details of the internal shutter and painting the roller shutter door would not improve its industrial appearance.

21. In any case, this would not overcome the harm caused to the outlook from No.20 and to the living conditions of nearby residents in respect of the use.

22. The Council referred to Policies, D5, H5, Q11, Q14 and Q15 of the Local Plan. These relate to the Council's enforcement policy, the creation of new dwellings, building alterations and extensions, boundary treatments and development in gardens and amenity spaces. Since the development concerns an outbuilding

on land which it appears was not formerly in use as garden, I find none of these policies relevant to the considerations in this case.

Overall conclusion on ground (a) and the deemed planning application

23. My finding no harm in respect of highway safety or loss of amenity space, cannot outweigh the harm in respect of character and appearance and the living conditions of the occupiers of 20 Colmer Road and nearby residents. Consequently, the development does not accord with the development plan when taken as a whole. The appeal on ground (a) therefore fails and planning permission will not be granted.

The appeal on ground (f)

24. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)).

25. I have considered the appellant's suggestion that rendering and/or painting the building, painting the shutter door, and replacing the shutter housing would be sufficient under ground (a) and come to the opposite conclusion.

26. Given my findings in respect of the allegation, the allegation is corrected as set out in my decision. Subject to the corrected allegation, the requirements are also varied to reflect that there is no means of access.

27. As varied, I consider the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place. That purpose can only be achieved in this case by demolishing the outbuilding, removing all resulting materials, and reinstating the land.

28. Since the varied requirements would do no more than seek to achieve this purpose, they are not excessive. There is partial success under the ground (f) appeal.

Conclusion

29. For the reasons given above, I conclude that the appeal 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 as amended.

Felicity Thompson

INSPECTOR