



Appeal Decision

Site visit made on 6 February 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2023

Appeal Ref: APP/R5510/C/22/3294040

161 Ryefield Avenue, Uxbridge, Middlesex UB10 9DA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Arulkumaran Kandasamy on behalf of Flexi Property Development Ltd against an enforcement notice issued by London Borough of Hillingdon.
- The notice, numbered HS/ENF/019683, was issued on 20 January 2022.
- The breach of planning control as alleged in the notice is the unauthorised demolition of a store/garage building (associated with retail unit) and replacement with a studio flat (Use Class C3).
- The requirements of the notice are to:
 - (i) Demolish and remove the studio flat (Use Class C3) shown in the approximate position hatched in blue on the site plan.
 - (ii) Remove from the land all debris, items, fixtures and fittings, plant and machinery resulting from compliance with points (i) above.
- The period for compliance with the requirement is 3 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) 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.

Summary of Decision: 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 ground (a) appeal and the deemed planning application

Preliminary Matter

1. Planning permission is sought for the demolition of a store/garage building (associated with retail unit) and replacement with a studio flat (Use Class C3). The appellant states that they present 4 alternative options involving various reconfigurations of the internal and external layout of the building and outdoor space. However, the plans submitted with the appeal include 6 alternative options. As it is not clear which 4 options the appellant wishes to be considered, for the avoidance of doubt, I have considered all six. Five of these options seek to retain the use of the building as a studio flat. The sixth option is to retain the building as ancillary storage for the shop.
2. Section 177(1)(a) of the Town and Country Planning Act 1990 (the Act) only allows the grant of planning permission in respect of matters stated in the Notice as constituting a breach of planning control "whether in relation to the whole or any part of those matters". The use of the building as a studio flat is included in the matters alleged in the notice and therefore the first five options, seeking to retain the use of the building as a studio flat, can be considered

under s177(1)(a). However, the use of the building as ancillary storage for the shop is not included in the allegation and therefore does not relate in whole or to any part of the matters alleged. Accordingly, I cannot consider the use of the building as ancillary storage for the shop (option 6) as part of the deemed planning application as to do so would go beyond the provisions of s177(1)(a). In making this judgment, I have had regard to the relevant case law¹ cited by the appellant.

Background

3. Prior approval was sought and granted in June 2021² for the conversion of store/garage space (associated with retail unit) into studio flat (Use Class C3). However, the store/garage was subsequently demolished and replaced with the building that is the subject of this appeal.

Main Issues

4. The main issues are:
 - the effect of the development on the character and appearance of the area;
 - whether the development provides adequate living conditions for existing and future occupants, with regard to outlook and private garden space;
 - the effect on the living conditions of the occupants of neighbouring residential properties, with regard to outlook; and
 - the effect of the development on highway safety.

Character and Appearance

5. Ryefield Avenue is located within a mixed-use area comprising retail and residential properties laid out in short rows of terraces fronting the road. The appeal site forms part of a shopping parade consisting of two-storey terraces with retail on the ground floor and flats above. The shopping parade is flanked on either side by two-storey, terraced dwellings. The front of the parade is largely uniform in scale and design, with the exception of various advertisements. In contrast to this uniform frontage, the rear of the parade comprises various outbuildings/garages, single storey extensions and small rear amenity spaces enclosed by high brick walls and timber fencing. A number of residential properties are accessed via the rear service track to the rear of the parade. Although there are flats accessed via the rear of the parade, this rear area is very much viewed as, and has the character of, a subservient service area to the front elevation of the parade.
6. The appeal property comprises a single-storey, brick building with flat roof that occupies almost the full extent of the rear area of 161 Ryefield Avenue. It also sits adjacent to the conservatory and access that serves the first-floor flat at No 161. Due to its extensive footprint and overall scale, the building dominates the rear area. Furthermore, it introduces a form of residential

¹ *Tapecrown Ltd v First Secretary of State & Anor* [2006] EWCA Civ 1744, *Moore v Secretary of State for Communities and Local Government & Anor* [2012] EWCA Civ 1202 and *Ahmed v Secretary of State for Communities and Local Government & Anor* [2014] EWCA Civ 566

² Council reference 4084/APP/2021/1538

development, ie a single dwelling, where there currently is none. Consequently, it appears as an incongruous addition to the area and fails to reflect the prevailing pattern of development.

7. I note that the neighbouring property, 159 Ryefield Avenue has a large, single-storey addition that extends the full depth of the rear of the property. However, this is clearly read as an extension to its host property. Moreover, existing nearby outbuildings are clearly read as subservient to their host properties.
8. I have had regard to the appellant's proposed alternative options. Options 1, 2, 4 and 5 would reduce the footprint of the building in various ways. Whilst this would reduce the overall scale of the building, in the case of Options 4 and 5 to a similar scale to the previous building, its use as a dwelling would still overly dominate the area and fail to reflect the prevailing pattern of development. Option 3 would not change the footprint of the building and therefore its effect on the character and appearance of the area would be no less harmful than the existing.
9. I therefore find that the development, as well as the proposed alternative options, has an unacceptably harmful effect on the character and appearance of the area, contrary to Policy BE1 of the Hillingdon Local Plan: Part 1 – Strategic Policies 2012 (LP1) and Policy DMHB11 of the Hillingdon Local Plan Part 2 – Development Management Policies 2020 (LP2), which, amongst other matters, seek to ensure all new development improves and maintains the quality of the built environment and are designed to the highest standards.

Living Conditions of Existing and Future Occupants

10. The internal layout of the building has an open living/bedroom area with separate kitchen and bathroom. There are two external entrances; one to the side and the other leading to the garden area. In addition to the external doors, three windows serve the building; a small, obscure glazed one in the bathroom and two windows serving the open living/bedroom space.
11. Due to the limited distance between the side of the building and the adjacent boundary brick wall, the outlook from the side window serving the living/bedroom space is dominated by the wall. Similarly, the limited depth of the garden area results in the outlook from the window in the end elevation being dominated by the close boarded timber fence. The bathroom window offers no outlook. Consequently, the lack of outlook from the building due to distances between windows and boundaries creates a sense of enclosure that results in an oppressively confined form of accommodation that would be detrimental to the living conditions of the occupants of the building.
12. Table 5.3 of the LP2 states studio and 1 bedroom flats should provide a minimum private amenity space of 20sqm. It also states that 1 bedroom houses should provide a minimum amenity space of 40sqm. There is no evidence to suggest why the Council consider the appeal building to be a flat and not a dwelling. Nevertheless, they have considered it on this basis and, as it has not been disputed by the appellant, I have too.
13. The garden space associated with the building is approximately 12sqm and rectangular in shape. Although a close boarded timber fence encloses the garden, thus providing privacy, the size of the garden falls far short of the

minimum standards set out in Table 5.3 of the LP2. Due to its limited size and high timber fencing, the garden area has an undue sense of enclosure that exacerbates the harmful effects of the oppressively confined internal accommodation on the living conditions of the occupants of the building.

14. I have had regard to the proposed alternative options, all of which seek to increase the overall size of the garden space and improve outlook. Option 1 seeks to remove the existing bathroom corner of the building to create a second, smaller garden area. However, access to the neighbouring conservatory would be via this garden, therefore eliminating any privacy it could potentially afford. Furthermore, at only 8sqm and relatively narrow, its functionality as a garden space would be severely limited.
15. Option 2 would also provide a second garden area as a result of demolishing a larger section of the building than option 1. This garden would be private. However, it would be enclosed on all sides by high walls and the adjacent conservatory. Consequently, the undue sense of enclosure experienced in the larger, existing garden would be even greater in this smaller garden.
16. Option 3 seeks to demolish the neighbouring conservatory to provide a communal garden space for the appeal building and neighbouring flat at No 161. Notwithstanding the lack of evidence as to how this would affect the overall internal floorspace available to the occupants of the upper floor flat at No 161, the communal space would not be private as access to the flat at No 161 would be gained through it.
17. Option 4 seeks to extend the existing garden to approximately 16sqm by reducing the length of the building. However, this would still fall far short of the minimum standard of 20sqm as set out in Table 5.3. Whilst this option would also include the removal of the neighbouring conservatory, the same issues with option 3 would arise in respect of this, ie it is unclear how this would affect the internal floorspace of the upper floor flat at No 161 and the garden would not be private.
18. Regarding option 5, the existing garden would be extended to approximately 18.3sqm by reducing the length of the building. Whilst it would be a noticeable improvement on the existing garden space, its limited size and high timber fence boundary would still create an undue sense of enclosure.
19. With regard to outlook, although all of the options would provide additional windows and/or bi-folding doors, the distance between these windows/doors and the surrounding boundary walls and fences would significantly limit the outlook from them to such an extent that the building would still represent an oppressively confined form of residential accommodation.
20. Consequently, whilst the 5 options would improve the existing living conditions, with regard to outlook and private garden space, they would not do so to such an extent that they would be acceptable.
21. I therefore find that the development, as well as the proposed alternative options, fails to provide adequate living conditions for existing and future occupants, with regard to outlook and private garden space. As such, it is contrary to Policies DMHB11 and DMHB18 of the LP2, which seek to ensure new buildings are designed to the highest standards and provide good quality and

useable private outdoor amenity space, in accordance with the standards set out in Table 5.3.

Living Conditions of Neighbouring Occupants

22. The appeal building sits adjacent to the conservatory that serves the flat at No 161 and therefore dominates the outlook from the conservatory. This is further compounded by the close boarded timber fence. However, from the evidence before me, the previous outbuilding was similarly positioned. Consequently, whilst the outlook from the conservatory is poor, it does not appear to be materially worse than when the previous outbuilding was in situ. Similarly, when viewed from upper floor windows in the adjacent flat, the building would not appear to dominate the outlook from them any greater than the previous building.
23. I therefore find that the proposal would not be harmful to the living conditions of the occupants of neighbouring residential properties, with regard to outlook. As such, in this respect, it complies with Policies DMHB11 of the LP2, which seeks to ensure new buildings are designed to the highest standards.

Highway Safety

24. Appendix C of the LP2 provides the Council's maximum parking standards, which state that a studio flat should provide 1 space per 2 units. The development does not provide any off-road parking and therefore does not meet the standards.
25. Notwithstanding this, the site is located within proximity of a number of convenience shops for general day-to-day goods as well as bus stops providing a frequent bus service to the wider area. As a result, the need for a private car to access goods and services is limited for the occupants of the 1 bedroom studio flat.
26. In the event that the occupants of the dwelling do have a car, the residential roads within short walking distance of the site have unrestricted on-street parking. During my site visit, I observed sufficient capacity along these roads to accommodate the potential increase of one car. I appreciate this was only a snapshot in time. Nevertheless, there is no substantive evidence to suggest these observations are not representative of the typical on-street parking capacity in the vicinity of the site.
27. I therefore find the development does not have an unacceptable harmful effect on highway safety. As such, it complies with Policy DMT6 of the LP2, which allows for a variance to the parking standards in Appendix C if it would not lead to a deleterious impact on street parking provision, congestion or local amenity.

Other Matters

28. I have had regard to the appellant's argument that prior approval was granted for a similar sized building on the site. However, that was considered under a different planning regime to the appeal development. The prior approval scheme was granted on the basis that an existing building would be utilised for a change of use to a dwelling, thus repurposing an existing building. That building has since been demolished and therefore it is not possible to implement that approved scheme. The proposal before me is the erection of a

new building and therefore must be considered in the context of the development plan, as well as other material considerations. Whilst the appeal development may well be better in many ways than the prior approval scheme, as the prior approval scheme is no longer implementable, it cannot be considered a fallback position against which the proposal can be compared. Accordingly, I attribute very limited weight to the fact that prior approval was granted for a similar scheme.

29. I have also had regard to the appellant's argument that the requirements of the notice would result in the loss of housing. Whilst local and national policy seek to prevent the loss of housing, I do not consider that such policies relate to unlawful dwellings, such as the appeal development.

Planning Balance

30. The Council cannot demonstrate a five year supply of deliverable housing land. Therefore, in accordance with footnote 8 of the National Planning Policy Framework (the Framework), the policies which are most important for determining the application are deemed to be out-of-date and paragraph 11 d) of the Framework is engaged.
31. The appeal site is in an accessible area with good transport links to services, facilities and employment opportunities and makes use of a previously developed site. It would also make a positive benefit by contributing towards the supply of housing in the area. Given that the development only comprises a single, one bedroom dwelling, I attribute moderate weight to these benefits.
32. In the balance, I find that the development's harm to the character and appearance of the area and the inadequate living conditions it provides for existing and future occupants significantly and demonstrably outweigh the benefits I have identified above. Accordingly, the proposal does not represent sustainable development in accordance with the Framework.

Conclusion on the ground (a) appeal

33. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that the ground (a) appeal should fail and the deemed planning application should be refused.

The ground (f) appeal

34. This ground is that the notice requirements are excessive. Depending on the purpose of the notice, this can be assessed against the question of whether the requirements exceed what is necessary to remedy the breach of planning control; or, any injury to amenity.
35. I have considered the effects of the alternative options advanced by the appellant and whether they would remedy the injury to amenity. However, under my consideration of the ground (a) appeal I find these options would also be harmful to the character and appearance of the area and would fail to provide adequate living conditions for existing and future occupants.
36. Whilst the alternative options would produce less waste and disturbance than the demolition of the building, I do not consider that this would outweigh these harms identified.

37. Consequently, the alternative options would not remedy the injury to amenity and therefore would not amount to lesser steps that would overcome the breach of planning control.

38. I have also had regard to the appellant's argument that in the event planning permission is refused the requirements of the notice should be varied to allow the retention of the building to be used as ancillary shop storage. However, this would not remedy the breach of planning control, which is the erection of the studio building.

39. I therefore conclude that the ground (f) appeal must fail.

The ground (g) appeal

40. This ground of appeal is that the period for compliance is unreasonably short.

41. The time for compliance with the requirements of the notice is 3 months. The appellant argues this is not sufficient time as the law requires a minimum notice period for evicting tenants. However, I have not been provided with any evidence that such minimum notice periods are in excess of 3 months.

42. I have also had regard to the time needed to employ a contractor to demolish the building and clear the site. Given the relatively small size of the building and its single-storey height, 3 months is not an unreasonable time to employ a contractor and carry out such works.

43. From the available evidence I consider the 3 month period of compliance specified in the notice is not unreasonably short, and I do not find justification for extending it. I am also mindful that the Council have the power to vary the period of compliance under section 173A (1)(b) of the Town and Country Planning Act 1990 should they see fit to do so, although this is not to be prejudiced by my decision.

44. I therefore conclude that the ground (g) appeal must fail.

Formal Decision

45. 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.

Alexander Walker

INSPECTOR