



Appeal Decision

Site visit made on 20 March 2023

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 5 June 2023

Appeal Ref: APP/A5270/C/21/3279388

Land at 139 West End Road, Southall, Middlesex UB1 1JF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the 1990 Act as amended).
- The appeal is made by Mr M Yousaf against an enforcement notice issued by London Borough of Ealing.
- The notice, numbered EN190453CUOB(2), was issued on 2 June 2021.
- The breach of planning control as alleged in the notice is, without planning permission: The material change of use of the outbuilding in the rear garden to a separate self-contained residential dwelling ('the Unauthorised Development').
- The requirements of the notice are to: 1. Cease the use of the rear garden outbuilding as a separate self-contained residential dwelling; 2. Remove the kitchen and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling; 3. Remove the bathroom and drainage connections which facilitate the use of the outbuilding as a separate self-contained residential dwelling; and 4. Remove all resultant debris.
- The period for compliance with the requirement is: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) 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 and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Procedural Matter

1. It is the convention in enforcement notices to identify the address to which the notice relates with the prefix 'Land at'. The Enforcement Notice (the notice) in this case does not follow that convention and, in deference to the normal convention, I will correct the notice to refer to 'Land at'.
2. The power under section 176(1) of the 1990 Act as amended provides that a notice may be corrected provided that no injustice would be caused by doing so. I am satisfied that no injustice would be caused by correcting the notice in the above respect.
3. The potential implications of the appeal in relation to the rights conveyed under Article 8, and Article 1 of the First Protocol, of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, and the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, are not addressed by the main parties and appeals on ground (f) and/or (g) have not been pleaded. At my request, the appellant and Council were offered an opportunity to comment on i) the potential implications of the

- appeal in relation to this matter; and ii) the time given for compliance with the requirements of the notice. Neither party responded to i) and only the Council replied to ii).
4. My findings in relation to the rights conveyed under Article 8, and Article 1 of the First Protocol, of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, and the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, are set out below.
 5. In relation to the time given for compliance with the requirements of the notice, I have had regard to the Council's comments on this matter and have not varied the notice in this respect.

Background

6. Number 139 West End Road (No 139) is an end of terrace, two-storey dwellinghouse with a two-storey outrigger and single-storey extension at the rear. It is constructed of brick (part rendered) with a tile roof and uPVC doors and fenestration. The submitted evidence confirms that the appellant has been the registered owner of the property since 2000.
7. The outbuilding, which is the subject of the appeal, is located within the rear garden/yard of No 139. It is a single-storey, flat roof, L-shaped structure, which is formed, in part, from the garden's/yard's brick boundary wall, with the rest being constructed of brick with a mineral felt roof, timber doors and uPVC fenestration. Access is gained via a door into the garden/yard area from an immediately adjacent gated alleyway which runs between West End Road and a service road to the rear of the property.
8. On my site visit I noted that the outbuilding principally comprises a main room with a bed, sink, cooking facilities and a fridge, and a separate adjoining toilet and shower room.

The appeal on ground (d)

9. The appeal on ground (d) is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. On this ground of appeal, the onus is on the appellant to make out their case to the standard of the balance of probabilities.
10. In this context, I consider the main issue to be, whether the appellant has demonstrated on the balance of probabilities that the change of use of the outbuilding to use as a dwellinghouse began more than four years before the date of the issue of the notice and continued without material interruption for a period of four years thereafter, so as to be immune from enforcement.
11. There is no definition of the term 'dwellinghouse' in the 1990 Act as amended, but it has been held in settled case-law¹ that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it, the facilities required for day-to-day private domestic existence.
12. At the time of my site visit, as a matter of fact and degree, I consider that the outbuilding met the 'Gravesham' tests as a dwellinghouse. Nonetheless, to

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306.

succeed on ground (d) in this instance, the appellant must demonstrate that, on the balance of probabilities, the change of use began from, or prior to, 2 June 2017 and continued without material interruption for a period of four years thereafter.

13. No date is given by either of the main parties as to when the outbuilding was constructed. Although the Council state that the presence of an outbuilding at the rear of No 139 is first seen on aerial photographs between 2003 and 2005, with the front lean-to section being present between 2006 and 2010.
14. The appellant submits that the 'self-contained use' of the 'annexe' at the rear of No 139 has been established since 23 July 2014. This assertion is supported by a screen shot of the Council Tax Valuation List illustrating the Council Tax Band Details of the 'Garden Annexe R/O 139 West End Road'; and augmented by copies of a Council Tax Reminder Notice addressed to the appellant dated 16 June 2015, a Court Summons addressed to the appellant dated 14 July 2015, a letter to the owner/occupier of the 'Annexe' regarding the alley gates dated 24 July 2015, and a Vote Household Enquiry Form addressed to the occupier of the 'Garden Annexe' dated 4 November 2015.
15. The appellant's supporting evidence confirms that the outbuilding was banded for Council Tax purposes from July 2014, the payment of which the appellant was liable for. However, it does not demonstrate that, at that time, the outbuilding provided viable facilities for living or that its use as a dwellinghouse had actually commenced.
16. The appellant's assertion is also undermined by notes from a site visit undertaken by Council officers on 2 September 2015. These state that, at that time, the outbuilding had 'no washroom/WC and no kitchen facilities', and that it was being used only for sleeping, with the occupants having access to shared bathroom and kitchen facilities in No 139. This disparity has not been challenged or explained by the appellant. On the basis of this evidence, the outbuilding did not meet the 'Gravesham' tests as a dwellinghouse in September 2015, and no corroborative information has been provided as to when the building was fitted out for such purposes.
17. Furthermore, the appellant's supporting documents only span a period between 23 July 2014 and 4 November 2015. Even if I accepted that the outbuilding has been in use as a dwellinghouse since July 2014, which from the evidence available to me I do not, there is nothing before me which demonstrates that the outbuilding's use for that purpose has been continuous for a period of four years or over between then and the date when the notice was issued.
18. From the limited information presented by the appellant, I cannot be certain that there was any point in any four year period between 23 July 2014 and 2 June 2021 that the Council could not have taken enforcement action against the use of the outbuilding as a dwellinghouse, even if it was available for use, because it was not actually occupied or used as a dwelling. As such, the use of the outbuilding as a dwellinghouse has not been 'affirmatively established' over a four year period.
19. I therefore find that the appellant has not demonstrated on the balance of probabilities that the change of use of the outbuilding to use as a dwellinghouse began more than four years before the date of the issue of the

notice and continued without material interruption for a period of four years thereafter, so as to be immune from enforcement.

20. I conclude that, on the balance of probabilities, at the date when the notice was issued, enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. Accordingly, the appeal on ground (d) fails.

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

21. 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.

Main Issues

22. Having regard to the Council's reasons for issuing the notice, the main issues are:

- The effect of the development on the character of the area;
- The effect of the development on the living conditions of occupants of neighbouring properties, with regard to privacy and noise and disturbance; and,
- Whether the development provides satisfactory living conditions for occupant(s) of the outbuilding, with regard to the quality and standard of accommodation, provision of external amenity space and privacy.

Reasons

Character of the area

23. The area within which the site is located is predominantly residential. Housing development mostly comprises short terraces of two-storey properties, constructed of brick with tile roofs, which front, but are slightly set back from, the long parallel streets of the locale. The properties possess enclosed garden/yard areas at the rear, which are accessed by gated alleyways that route between the streets.
24. I acknowledge that there are many properties in the area which possess outbuildings within the rear gardens/yards of the main houses. However, no substantive evidence has been presented which demonstrates that the use of these structures is anything other than ancillary to the main dwellings.
25. In the context of the above and notwithstanding that the structure is built of similar materials to No 139, the development's backland position, orientation, size, scale, form and design are fundamentally out of keeping with the identified characteristics of dwellinghouses in the area.
26. Moreover, the outbuilding's use as a permanent dwellinghouse undermines the ancillary relationship of outbuildings to adjacent main properties in the neighbourhood, and also gives rise to increased activity along routes to and from the rear of No 139 as well as in the rear garden/yard of the property. As a result, the development adversely disrupts the area's distinctive pattern of development and does not reflect the local character of the site's context.

27. The development's incongruity in its form is not visible from the public domain. However, it is reasonable to conclude that the increased comings and goings to the site is noticeable from the adjacent public routes. Moreover, the development's incompatible size, scale and design along with its discordant use are keenly perceptible when viewed and experienced from the private domain of neighbouring houses.
28. Accordingly, I conclude that the development is harmful to the character of the area. As such, it conflicts with Policy 7.4 of the Ealing Development Management Development Plan Document, 2013 (the DPD) and Policy D3 of the London Plan 2021 (the LP) which, amongst other things, require development to respond to and complement the area's existing local character. Also, it does not comply with the Ealing Supplementary Planning Document 4 – Residential Extensions in so far as it states that proposals to provide separate accommodation in an outbuilding are unlikely to be permitted.

Living conditions of occupants of neighbouring properties

29. The outbuilding is in close proximity to the rear of No 139, with its windows directly facing habitable rooms within the main house. This orientation gives rise to a significant level of overlooking and a harmful loss of privacy by occupants of No 139. Additionally, it is reasonable to conclude that the activity generated by the habitation of the outbuilding by an individual(s) independent of the occupants of No 139, results in a greater intensity of use with an associated propensity for increased noise and disturbance, not only to residents of No 139, but also to occupants of adjacent properties. This harmful effect is corroborated by a representation submitted by an interested party objecting to the development.
30. As a consequence, the living conditions of occupants of neighbouring houses are materially harmed, and the use and enjoyment of the properties as their homes are severely diminished.
31. That the modest size, scale and massing of the outbuilding do not give rise to any harmful effects to the living conditions of occupants of neighbouring properties, with regard to outlook or light, are neutral considerations and do not weigh in favour of the appeal.
32. Accordingly, I conclude that the development has a harmful effect on the living conditions of occupants of neighbouring properties, with regard to privacy and noise and disturbance. As such, it conflicts with Policies 7A and 7B of the DPD and Policy D3 of the LP, in so far as they require development to not erode the amenity of surrounding uses or the site itself and achieve a high standard of amenity for adjacent uses; and deliver appropriate privacy and amenity.

Living conditions of occupant(s) of the outbuilding

33. The design and construction of the outbuilding are extremely basic. Indeed, a Prohibition Order (PO), prohibiting the use of the outbuilding for use as living and sleeping accommodation because of its poor quality, was issued to the appellant on 13 November 2015, which the Council states there is no record of it being removed. Although under different legislation, POs are indicative of poor quality accommodation.
34. Additionally, with an internal floorspace of about 18m² and a general floor to ceiling height of approximately 2.2m, it falls substantially short of the minimum

internal space standards as set out in local policy². These require a minimum of 39m² for a single person flat and 50m² for a two person flat; and a minimum floor to ceiling height of 2.5m for at least 75% of the gross internal area of each dwelling.

35. Also, while the rear garden/yard is stated to measure around 30m², it provides no private space to the occupant(s) of the outbuilding. It is not demarcated in any way and is shared with the occupants of No 139. As such, it fails to meet the minimum requirements in relation to the provision of external amenity space as set out in local policy³, which advises that a minimum of 5m² of private outdoor space should be provided for a 1-2 person dwelling.
36. Similar to above, the proximity and orientation of the outbuilding and its windows to the rear elevation of No 139, also gives rise to a significant level of overlooking and a loss of privacy by the occupant(s) of the outbuilding.
37. Drawing the above together, these are significant deficiencies in the quality and standard of accommodation provided by the outbuilding, giving rise to tangible harmful effects to the living conditions of its occupant(s).
38. Accordingly, I conclude that the development does not provide satisfactory living conditions for occupant(s) of the outbuilding, with regard to the quality and standard of accommodation, provision of external amenity space and privacy. As such, it conflicts with Policies 3.5, 7A and 7D and table 7D.2 of the DPD and Policy D6 of the LP, in so far as they require housing developments to meet minimum space standards regarding internal and external space; not erode the amenity of the site; and be of a high-quality design.
39. Under this reason for issuing the notice, the Council also cite conflict with the Ealing Planning New Garden Space Supplementary Planning Document 2015; the National Technical Housing Standards 2015; and the Mayor of London Housing Supplementary Planning Guidance 2016. However, these documents have not been submitted as part of the appeal. Therefore, I have not referred to them in my reasoning above.

Other considerations

40. 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. I have found that the development fails to accord with up-to-date policies in the development plan in the above respects. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that the determination should be made otherwise than in accordance with the development plan.
41. Upholding the notice would interfere with the existing tenant's rights conveyed under Article 8, and Article 1 of the First Protocol, of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998. Article 8 is the right to respect for private and family life, home and

² Policy 3.5 the Ealing Development Management Development Plan Document, 2013; and Policy D6 of the London Plan 2021.

³ Policy 7D and table 7D.2 of the Ealing Development Management Development Plan Document, 2013; and Policy D6 of the London Plan 2021.

correspondence and Article 1 of the First Protocol is the right to the peaceful enjoyment of possessions including property. These are qualified rights, whereby interference may be justified in the public interest, but the concept of proportionality is crucial.

42. In this case, the interference with the existing tenant's rights under Article 8 and Article 1 of the First Protocol arises from an enforcement notice issued to the appellant under section 171 of the 1990 Act as amended. The interference with the tenant's rights in this regard is therefore lawful.
43. Achieving well designed places including high quality development which responds to and complements its context, with a high standard of living conditions for occupants and neighbours, are legitimate and well-established planning policy aims.
44. The cumulative harm which arises as a consequence of the development to the character of the area, as well as to the occupant(s) and neighbours of the development, is substantial. Against this harm, is that upholding the notice would result in the existing tenant having to find alternative accommodation. No evidence has been put before me which demonstrates that there is a need for the tenant to remain in the outbuilding, for example to look after an elderly relative. Moreover, it is reasonable to conclude that the tenant would be aware that they would need to move out at the end of the tenancy. As such, this carries moderate weight.
45. Balancing all these factors, I consider that the interference with the existing tenants rights under Article 8 and Article 1 of the First Protocol would be proportionate and necessary. In reaching that conclusion, I am satisfied that the protection of the public interest cannot be achieved by means that are less interfering of their rights.
46. I have had regard to my responsibilities under the Public Sector Equality Duty contained in section 149 of the Equality Act 2010. However, neither party has claimed that the existing tenant shares a protected characteristic. I have therefore not considered this matter further.

Planning balance and conclusion on the appeal on ground (a)

47. I have found that the development is harmful to the character of the area; is harmful to the living conditions of occupants of neighbouring houses; and does not provide satisfactory living conditions for occupant(s) of the outbuilding.
48. I acknowledge the Government's support to increasing the supply of housing, and to provide a real choice of housing which meets people's needs. However, achieving well-designed places with high quality buildings and ensuring that sites are suitable for their proposed use are fundamental aims of the planning system.
49. I have had regard to the material consideration of the implications of the requirements of the notice in relation to the rights of the existing tenant under Article 8, and Article 1 of the First Protocol, of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998, and consider that the interference would be proportionate and necessary.
50. Drawing all of the above together, I have found the development to be contrary to the relevant policies of the development plan and no material

considerations of sufficient weight have been advanced to justify a decision other than in accordance with the development plan. Therefore, I conclude that planning permission ought not to be granted for the matters stated in the notice. Accordingly, the appeal on ground (a) fails.

Conclusion

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

Formal Decision

52. It is directed that the enforcement notice is corrected by:

- In paragraph 2 of the notice, deletion of the words 'Premises known as' and insertion of the words 'Land at' before the words '139 West End Road, Southall, Middlesex, UB1 1JF'.

53. 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 as amended.

F Cullen

INSPECTOR