The Planning Inspectorate

Appeal Decision

Site visit made on 25 July 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal Ref: APP/P4605/C/23/3319345
5 The Vale, Birmingham B11 4EN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ajaz Beg against an enforcement notice issued by Birmingham City Council.
- The notice, numbered 2020/1231/ENF, was issued on 28 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a rear outbuilding.
- The requirements of the notice are to:
  i. Demolish the unauthorised outbuilding in its entirety;
  ii. Remove all materials from the Premises as a result of compliance with i and restore the land to its original condition prior to the unauthorised development taking place.
- The period for compliance with the requirements is: 4 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

Main Issue

1. The main issue is the effect of the development on the character and appearance of the area.

Reasons

2. The Vale is a residential cul-de-sac comprising dwellings that vary greatly in their size, design and materials. Many of the properties appear to have been largely altered through extensions to the front and rear. The set back position of the dwellings from the road and their open frontages and large rear gardens creates an openness that makes a positive contribution to the character and appearance of the area. This openness is enhanced by the large rear gardens. Although there are a number of outbuildings in rear gardens, their size is subordinate to their host dwellings.

3. The rear garden of the appeal site is large and extends a significant distance from the dwelling and then returns along the back of the rear gardens of 7 and 9 The Vale. The outbuilding that is the subject of the enforcement notice (the Notice) is located within this return.

4. The building is of a substantial size at approximately 216.7sqm and is 3.8m at its highest point. Notwithstanding its use, as a result of its size, the building

appears as a large, detached bungalow that is read as a separate unit to 5 The Vale and fails to respect its scale and proportions. As a result, it competes with, rather than has a subordinate relationship with, the host dwelling.

5. I acknowledge that there are outbuildings in the rear gardens of Nos 7 and 9. However, these are significantly smaller than the rear outbuilding and retain a subordinate relationship with their respective host dwellings. The size of the appeal building is significantly greater than these neighbouring outbuildings and introduces an excessively large form of built development that dominates the rear gardens, diminishing the openness of the area.

6. I note that the building is not readily visible from public views. However, it is clearly visible from neighbouring properties as well as from within the appeal site itself.

7. The appellant contends that the building could be altered to either increase its distance from the boundaries so that it is 2m from them and/or the height is reduced to 2.5m and the roof is changed to a flat roof then it would be permitted development. Notwithstanding the lack of any drawings indicating these proposed works, this argument fails to recognise the Council's contention that the building is so large that it is not used incidental to the host dwelling.

8. The building contains a number of rooms used for various recreational activities such as a gym, toy storage, general domestic storage, a prayer room, table tennis, air hockey, basketball, a pool table, numerous sofas and chairs, a TV and a shower and toilet. Individually, these uses are incidental to the enjoyment of the main dwelling. However, when considered in the context of the size of the building and the number of uses taking place within it, it is more akin to a leisure facility than a building used incidental to the enjoyment of the dwelling. Therefore, the building is not used incidental to the enjoyment of the host dwelling for the purposes of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

9. Whilst the resultant alterations would create a smaller building that would have less of an effect on the character and appearance of the area, it would nevertheless still be a substantially large building. For the same reasons as the existing building, it would remain significantly harmful to the character and appearance of the area.

10. I find therefore that the building significantly harms the character and appearance of the area. As such, it is contrary to Policy PG3 of the Birmingham Development Plan 2017 and Policy DM2 of the Development Management in Birmingham Development Plan Documents 2021, which, amongst other matters, seek to ensure development responds to site conditions and the local area context and is appropriate to its location. Furthermore, it would fail to comply with the guidance set out in the Birmingham City Council Extending Your Home Supplementary Planning Document 2007 which states that outbuildings should be in proportion to the size of the house and their size must be incidental to the main dwelling. Moreover, it fails to accord with the design objectives of the National Planning Policy Framework.

Other Matters

11. The appellant contends that were the building to be 2m from the boundary with neighbouring properties then it would be permitted development. Therefore, they argument that 2m would be so minor to the current distance that the existing should be acceptable. I do not have the existing measurements between the building and neighbouring boundaries before me. Nevertheless, based on my own observations on site, the building is very close to these boundaries, almost abutting them in places. Therefore, if the building was 2m from these boundaries, it would be a materially smaller building and therefore have less of an effect on the character and appearance of the area. Consequently, I do not find the difference between the existing building and one that would be 2m from the boundaries to be minor.

12. I acknowledge that the building does not have any detrimental effect on the living conditions of neighbouring residents. However, this is a neutral matter that does not weigh in favour of or against the development. I also note the level of support for the development from neighbouring residents. However, I do not consider that this outweighs the conflict with the development plan. Moreover, I do not consider that the appellant's intended fostering of children justifies the harm caused to the character and appearance of the area. Such requirements could be met with a smaller building.

13. Whilst the appellant attempted to discuss the erection of the building with the Council prior to works starting, proceeding without the required planning permission was done so at their own risk. This has had no bearing on my consideration of the planning merits of the development.

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

14. For the reasons given above, having considered the development plan as a whole and all material considerations, I conclude that planning permission should not be granted in response to the ground (a) appeal against the enforcement notice and the deemed application. Therefore, the ground (a) appeal fails.

The ground (f) appeal

15. For the appeal to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.

16. The appellant's argument under this ground of appeal is that the building could be altered to bring it inline with permitted development rights for outbuildings through the increase in the distance of the building from boundaries and lowering its height and adding a flat roof.

17. As I have set out in my consideration of these alterations under the ground (a) appeal, the resultant building would not likely be permitted development and would still be harmful to the character and appearance of the area. Therefore, it would not amount to a lesser step that would overcome the breach of planning control or the injury to amenity.

18. The ground (f) appeal therefore fails.

The ground (g) appeal

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

20. I acknowledge the loss of the building may cause some distress to family members. However, it has not been demonstrated how this loss would be any less were I to extend the period of compliance to 12 months instead of 4. 4 months is a reasonable time to carry out the requirements of the Notice and any distress caused would not likely be any greater than were I to extend it to 12 months.

21. From the available evidence I consider that the 4 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.

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

Formal Decision

23. 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