



Appeal Decision

Site visit made on 31 May 2023

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 31st August 2023

Appeal Ref: APP/P1805/C/22/3308050

108 Kidderminster Road, Bromsgrove, Worcestershire B61 7LD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Shareen Jilka against an enforcement notice issued by Bromsgrove District Council.
- The notice was issued on 25 August 2022.
- The breach of planning control as alleged in the notice is: Change of use of outbuilding located on the land shown shaded green on the plan attached to Appendix 3 to this notice (hereafter called the " Building") from ancillary residential use in association with the main dwelling to independent unit of residential accommodation.
- The requirements of the notice are to
 - (a) Permanently cease the use of the Building as an independent unit of residential accommodation
 - (b) Permanently remove from the Building all the kitchen and bathroom units, fixtures, fittings, appliances, sanitary ware and associated pipework supplying water to and draining foul water from the Building, in each case which facilitated the unauthorised development.
 - (c) Permanently remove from the Land all debris resulting from compliance with steps (a) and (b)
- The period for compliance with the requirement is 2 months
- The appeal is proceeding on the ground set out in section 174(2)(a), (f) 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.

Decision

1. It is directed that the enforcement notice is varied by deleting requirements (b) and (c) from Paragraph 5 of the notice.
2. Subject to the 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.

Preliminary Matters

3. In order to ensure procedural fairness, the appellant was allowed to comment upon third party comments after the site visit as the appellant did not receive those comments with the Council's statement. The appellant was advised not to introduce new evidence and her original final comments were not accepted. However, a further version was accepted.
4. In reaching my decision, I have disregarded any new evidence. The only exception to that is where the Council chose to respond to comments made by

the appellant about the kitchen and bathroom and referred to Council records that the Council had not previously relied upon in the planning history.

5. During the course of the appeal, both the appellant and the third parties have commented upon a number of matters which are outside the remit of this appeal. Examples include the condition of the outbuilding, whether it accords with approved plans, whether there is encroachment, tree issues and neighbour disputes. I have not taken into consideration in reaching my decision, any matters which do not relate to the grounds of appeal before me.
6. Planning permission was granted on 22 September 2005 for single storey extensions to front and rear, two storey extension to side, internal alterations, detached outbuilding – as amended by plans received 08/08/2005. It is the use of this outbuilding which forms the allegation.

The appeal under ground (a) and the deemed planning application (the DPA)

7. In an enforcement appeal, the allegation forms the DPA for planning permission. The appellant is therefore seeking planning permission to use the outbuilding as an independent unit of residential accommodation.
8. The Council's reason for issuing the notice replicates the Council reason for refusal of the planning application to retain the development. The reason is not broken into different components but does refer specifically to overlooking and privacy which I have addressed as the main issue. I have also addressed the shared amenity space in the context of overlooking.

Main Issues

9. The main issue is the effect of the development upon the living conditions of the occupiers of the host dwelling and the occupiers of the outbuilding with particular regard to overlooking and loss of privacy.

Reasons

10. The appeal site consists of a two storey semi- detached dwelling with parking to the front and a rear garden within a residential area of similar detached and semi-detached dwellings. The outbuilding is located at the end of the garden and extend across its full width.
11. The outbuilding is made up of two connected parts, a brick building and a conservatory element which provides additional living space which is described as a dining room in the rental particulars provided. Although not occupied at the time of my site visit, there is no dispute that the accommodation has been rented out through a letting agent and has been used as an independent unit for residential purposes.

The living conditions of the occupiers of the host dwelling and the outbuilding

12. Paragraph 4.2.48 of the BDC High Quality Design Guide (SPD) (the Design Guide) sets out factors which affect the impact of overlooking. They include the distance between buildings, the presence of openings, whether properties face each other or are offset, changes in levels across sites and the types and uses of rooms facing each other.

13. The fully glazed element to the front of the outbuilding which provides habitable space is an unusual feature which also provides the only access to the outbuilding. The glazing element creates privacy issues particularly for the occupiers of the single storey outbuilding in terms of a satisfactory living environment. At night, any use of the conservatory element is going to be illuminated and will be particularly visible by occupiers of the habitable upper rooms of both the host dwelling and the neighbouring dwellings at No 106 and 110.
14. Whilst the Design Guide states that habitable rooms do not include bathrooms when considering separation distance, there are other rooms particularly bedrooms that will have views into the conservatory from the main dwelling and the neighbouring properties. At ground level, there will be views looking from the rear rooms of the main dwelling directly towards the outbuilding but the angle and presence of fences and other physical features means that views from the ground floor of neighbouring properties of the outbuilding are more limited.
15. The outbuilding is in close proximity to the host dwelling as the garden is not particularly large. The garden space is shared between the appellant and her family and any occupiers of the outbuilding. The only means of access to the glazed element of the outbuilding is along the side and front of the glazed element of the outbuilding which impacts upon the privacy of the appellant. Any use of the shared garden by the occupiers of the outbuilding or the original dwelling will be observed by the other set of occupiers from their dwellings impacting upon privacy. The appellant refers to the presence of an open field behind the appeal site for recreational use but it is not clear how the garden could revert to private amenity space due to its location in relation to the outbuilding and the need for access. Having no use of outside space would not be satisfactory for the occupiers of the outbuilding.
16. The combination of the nature of the outbuilding particularly the conservatory element, the shared garden, and the proximity of the host dwelling to the outbuilding harms the living conditions of both the occupiers of the host dwelling and the outbuilding with particular regard to overlooking and privacy.

Objectors

17. The occupiers of No 106 and No 110 object to the development. I have already addressed the overlooking and privacy issues that arise for the occupiers of the outbuilding due to the proximity of the outbuilding to both the main dwelling and neighbours. No 106 is the adjoining semi-detached dwelling to the main dwelling and No 110 has a shared boundary to the other side. The designated door for access to the outbuilding is through a corridor inside the main dwelling which is directly on the boundary with No 110 at the front.
18. The difference in heights between the neighbouring dwellings and the single storey outbuilding does mean that there are more vantage points for overlooking from the neighbouring houses than the other way round. The issues raised by the objectors largely relate to how the day to day use of the outbuilding impacts upon them. They refer to matters such as lost keys to the only access door through the house causing disruption, overflowing refuse bins and overhearing conversations between the tenants and the appellant.

19. These concerns essentially arise from the proximity of the outbuilding to other dwellings and the nature of the use. Whilst the Council has referred to intensification in the reason for issuing the notice, its concern is limited to the location of the path. Whilst the neighbours' concerns are also noted, I have already found on the main issue that the development does primarily harm the living conditions of the occupiers of the outbuilding and the occupiers of the main dwelling.
20. In the event of a finding of harm, the appellant has proposed a condition with the following wording "the outbuilding shall be tied to and not function or be sold separately from the parent dwelling." However, ensuring that the development is not sold off does not address the harm that I have found or prevent the separate residential use of the outbuilding. The appellant refers to the creation of a separate planning unit being unlikely in policy terms but this not the reason for issuing the notice. The outbuilding contains primary living accommodation and is not being used for a purpose incidental to the enjoyment of the main dwelling which has resulted in a material change of use.
21. The appellant refers to vetting potential occupants who would be suitable occupants for her and her family. However, the harm arises from the day to day occupation of the outbuilding by a separate household rather than the suitability of prospective tenants. The harm is also not limited to the appellant due to the proximity of neighbouring properties.
22. The appellant has referred to the occupation of a neighbouring outbuilding. I have no details of how that outbuilding is used on a daily basis, what facilities it contains, how it is accessed or whether that occupation constitutes a breach of planning control. Whether or not there are any other breaches with regard to any buildings in the vicinity of the appeal site is a matter for the Council. It remains the case that each development has to be assessed on its own merits.

Other Matters

23. I note the personal circumstances of the appellant and her wish to have a separate income from the development for her family. However, personal circumstances rarely outweigh harm when any grant of planning permission runs with the land and the development would remain after the appellant has ceased occupation.

Planning balance

24. The Council is currently unable to demonstrate a 5 year housing supply. The tilted balance set out in the National Planning Policy Framework paragraph 11(d) applies. The benefits of the development are limited as the size of the accommodation would result in only a modest contribution to housing numbers. Set against this is the harm to the living conditions of the various parties. I am satisfied that the harm that I have found significantly and demonstrably outweighs the benefits.
25. I have found harm to the living conditions of the occupiers of the outbuilding and the main dwelling with particular regard to overlooking and loss of privacy. The development is therefore in conflict with Policy BDP1 of the Bromsgrove District Plan (2017) which, amongst other things, refers to compatibility with adjoining uses and the impact on residential amenity. It is also in conflict with Policy BDP19 of the Bromsgrove District Plan which, amongst other things,

states that development of garden land will be resisted unless it fully integrates into the residential area. Paragraph 134 of the National Planning Policy Framework refers to taking into account local design guidance and the development is contrary to the paragraphs of the Design Guide which address overlooking including Paragraphs 4.2.31 and 4.2.48.

26. Paragraphs 4.2.29 and 4.2.49 of the Design Guide are less relevant than the other paragraphs referred to as they refer to the size and location of private amenity space rather than the principle of providing it and separation distances between two storey dwellings.
27. I find that the development conflicts with the development plan read as a whole, and there are no material considerations to indicate that the development should be permitted despite the policy conflict. The appeal under ground (a) fails and planning permission is refused.

The appeal under ground (f)

28. This ground relates to whether the steps required by the notice exceed what is necessary to remedy the breach of planning control or as the case may be, any injury to amenity caused by the breach. In this case, where requirements include cessation and removal, the purpose of the notice is clearly to remedy the breach of planning control.
29. The first requirement is to cease the use of the outbuilding as a separate unit. That requirement is not excessive to remedy the breach of planning control. The other requirements relate to the removal of the kitchen and the bathroom and appliances and fittings which the Council describes as supporting the unauthorised use. However, the outbuilding was constructed as a result of the planning permission granted in 2005 and the approved plan shows a kitchen and bathroom albeit in different locations. A third party states that the kitchen and bathroom were installed from the outset and the same amenities were still in the outbuilding when the appellant bought No 108 in 2010. The Council does not address in its statement when the fittings were installed.
30. The Council was given an opportunity to comment upon the approved plan and the case of *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598 which sets out that where an enforcement notice is issued in respect of a material change of use and works were carried out to facilitate that use, the notice may require that the ancillary works are removed. Those works can include works that would otherwise be immune or not require planning permission. However, the works must have been integral to or part of the making of the change of use. The enforcement notice cannot require the removal of works that were undertaken for a different and lawful use.¹
31. In response to an email from the appellant, the Council then referred to earlier planning records that had not been included in the planning history provided. On the 21 July 2011, it was noted that the kitchen had not been removed " but not being used as a separate means of accommodation only used by family members on an occasional basis. Breach has ceased NFA. (No further action)." There was clearly a kitchen present in 2011.
32. The Council argues that whether such facilities existed prior to use as an independent unit does not preclude those works being integral to and solely for

¹ *Bowring v SSCLG & Waltham Forest LBC* [2013] EWHC 1115 (Admin)

the purpose of facilitating the unauthorised use. I disagree. The facilities are not solely for the purpose of facilitating the unauthorised use. From the evidence before me, it appears very likely that a kitchen and bathroom existed in 2005. The Councils own records show that a kitchen was present in 2011 and it has facilitated the lawful use that has taken place until the breach occurred in 2021.

33. The Council has referred to the notice being amended to allow the bathroom fittings to remain as they could be used for ancillary purposes. However, it is not clear why the Council has drawn a distinction between the bathroom and the kitchen when both are very likely to have been present since construction and were shown on the approved plan and have been used in connection with the lawful use.
34. Whether or not that increases the risk of a recurrence of a breach is not in itself a justification for the removal of the fittings. The first requirement to cease the unauthorised use would remedy the breach and could result in criminal proceedings in the event of a future breach.
35. Whilst the presence of the fixtures and fittings has no doubt allowed the separate rental of the outbuilding to take place, those facilities were installed and used in connection with the previous use for several years. In these circumstances, the removal of those fixtures and fittings is excessive to remedy the breach. I have no details of when specific appliances were fitted and the removal of domestic appliances is also excessive. The ground (f) appeal succeeds to that extent and I will delete requirements (b) and (c) from the notice.

Conclusion

36. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a 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.

E Griffin

INSPECTOR