



Appeal Decision

Site visit made on 29 August 2023

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 11 October 2023

Appeal Ref: APP/T5150/C/22/3311970

16 Nettleden Avenue, WEMBLEY, HA9 6DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by MRS FARRAH ZAHID against an enforcement notice issued by London Borough of Brent.
- The notice was issued on 19 October 2022.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the outbuilding to the rear of the premises to separate residential accommodation.
- The requirements of the notice are 1. Cease the unauthorised use of the outbuilding to the rear of the premises as separate residential accommodation and 2. Permanently remove the bathroom and kitchen facilities located within the outbuilding to the rear of the premises and remove all items and debris arising from the removal, and remove all materials associated with the unauthorised use from the premises.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f), (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.

Decision

1. The appeal is dismissed, the enforcement notice upheld and planning permission refused in respect of the deemed planning application, made under section 177(5) of the 1990 Act as amended, for the material change of use of the outbuilding to the rear of the premises to separate residential accommodation, at 16 Nettleden Avenue, London.

Reasons

2. Ground (b)

3. The appellant acknowledges that the outbuilding has been converted to ancillary living accommodation, but says this is temporary and used by her daughter. When the Council visited the site in 2021 the occupier directed them to the owner of the building, who lived at No 14. So even if it was for the daughter, it would not be an ancillary use to the parents' house, which the Council note as being next door. In addition, the Planning Contravention Notice of 2021, which has to be completed correctly, indicates the outbuilding was rented out under a Short Term Tenancy Agreement to someone else. I consider on the balance of probability that the building is capable of independent living and has been independently let to tenants, so is not an ancillary use, but the material change of use alleged by the Council. The appeal on ground (b) fails.

4. Ground (c)

5. The conversion of an outbuilding to an independent dwelling use substantially changes the character and use of the outbuilding and is a material change of use that requires planning permission, and there is no permitted development that would cover this change of use. The appeal on ground (c) fails.

6. Ground (d)

7. The appellant notes on the Planning Contravention Notice that the use of the building commenced in 2021 and that use was temporary. In supporting facts the ancillary accommodation use was said to have commenced in 2018. Either way the appellant cannot show the use has been continuous for 4 years prior to the enforcement notice. The appeal fails on ground (d).

8. Ground (a)

9. The development plan includes the Brent Local Plan [BLP] and the London Plan [LP].
10. The main issues are the effect of the change of use in relation to planning policy and the living conditions of neighbouring occupiers.
11. The ground (a) appeal relates to the allegation in the enforcement notice (the material change of use of the outbuilding to the rear of the premises to separate residential accommodation).
12. The appellant notes the arrangement as sleeping accommodation, a small kitchenette and bathroom. The kitchen provided would not normally be described as a kitchenette, but is more extensive than that. The appellant does not live at No 16, but in the adjacent property. No 16 is let to separate tenants. Therefore, the outbuilding would not be for incidental or ancillary use for the appellant's daughter and a condition to this effect would not be appropriate.

Living Conditions

13. BLP Policy DMP1 requires that development should provide a high level of amenity both internally and externally as well as being satisfactory in terms of access and parking. BLP Policy BH13 requires private amenity space of a sufficient size and to try to satisfy the proposed resident's needs.
14. The accommodation is not shown with external amenity space and would not accord with BLP Policies DMP1 or BH13. Even if amenity space were provided, the space would be taken from the amenity space of No 16, reducing their amenity space unacceptably, as well as removing the outbuildings' utility for them. This would be unacceptable amenity space for both premises and would not comply with these policies.

Planning Policy

15. BLP Policy BH12 notes planning permission will only be granted for outbuildings that will not be residential accommodation, or do not support the increase occupation of the dwelling. This change of use leads to separate residential accommodation, which increases occupation and is directly contrary to this policy.

16. LP Policy D6 and Table 3.1 of the London Plan 2021 requires that housing developments should be of high quality design and provide adequately sized rooms with comfortable and functional layouts which are fit for purpose and meet the needs of Londoners without differentiating between tenures. The appeal building provides poor, utilitarian accommodation and does not accord with this policy, as the room sizes/floor area are small.
17. The proposal does not accord with planning policy and the ground (a) appeal fails and the deemed planning application will be refused.

Ground (f)

18. The purpose of the notice is to remedy the breach of planning control by ceasing the unauthorised change of use, and removing the facilities which facilitate the unauthorised use. As such, the enforcement notice simply seeks to remedy the breach of planning control and is not excessive. No lesser steps than those stated within the enforcement notice would remedy the breach of planning control established. The matter of ancillary/incidental accommodation is considered above and is not appropriate, or acceptable. The appeal on ground (f) fails.

Ground (g)

19. Three months is a reasonable time in which to remove the fittings and to cease the use. The appellant notes the use is only temporary, so it should be capable of ceasing in a very short time. While contractors need to be appointed, this is a small job and should be readily achievable in 3 months, together with the work involved. The appeal on ground (g) fails.

Conclusion

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

Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

INSPECTOR