



Appeal Decision

Site visit made on 16 October 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2023

Appeal Ref: APP/A5270/C/22/3303026

712 Greenford Road, Greenford, Middlesex UB6 8QR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Atakan Terzi against an enforcement notice issued by London Borough of Ealing.
- The notice, numbered 20EN0702(2), was issued on 27 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey detached rear garden dwellinghouse ("the Unauthorised Development").
- The requirements of the notice are to:
 1. Cease the use of the rear garden dwellinghouse for independent residential purposes;
 2. Remove the kitchen and associated drainage connections;
 3. Demolish the rear garden dwelling in its entirety; and
 4. Remove all resultant debris.
- The period for compliance with the requirements is: Six 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 Decision: The appeal is dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is corrected by:
 - a) At section 5 of the notice, the deletion of the wording at requirement 1. and its replacement with the following:
 1. *Cease the use of the single storey detached rear garden dwellinghouse for independent residential purposes.*
 - b) At section 5 of the notice, the deletion of the wording at requirement 3. and its replacement with the following:
 3. *Demolish the single storey detached rear garden dwellinghouse in its entirety.*
2. Subject to these corrections 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 the interests of consistency and for the avoidance of any doubt or confusion, I have corrected the notice's requirements in order to ensure that they refer to

the single storey detached rear garden dwellinghouse in the same terms as the notice does with regard to the alleged breach of planning control. I am satisfied that in so doing, neither party would be disadvantaged.

4. The notice alleges the construction of a single storey detached rear garden dwellinghouse in the rear garden area of the appeal property. It is stated by the Council that the property has been divided into three flats; two at ground floor and one at first floor. An enforcement notice was served against the alleged 'material change of use of the main dwelling as three flats'¹ at the same time as the notice the subject of this appeal. The appellant did not pursue an appeal against that notice and it came into effect on 4 August 2022. A separate application for planning permission was submitted in respect of the ground floor layout and occupation of the main appeal property² (the 2022 scheme). I have not however been advised of the outcome of that application for planning permission or compliance with the other enforcement notice.
5. The appellant's case in the matter before me is made on the grounds set out in the banner heading above and that planning permission should be granted for the whole or any part of those matters set out in the notice. However, the appellant does not make a case that the actual matter alleged in the notice, the construction of a single storey detached rear garden dwellinghouse, should be granted deemed planning approval. Rather, that in complying with the first and second of the notice's requirements, this would ensure that any harm would be remedied and would negate the need for the third and fourth of the notice's requirements. Whilst I consider the matter alleged in the notice, I will also consider the 'lesser' steps advocated by the appellant in the appeal under ground (a).

The appeal on ground (a)

Main Issues

6. The main issues are the effects of the appeal building upon:
 - The living conditions of occupiers of the appeal building and neighbouring properties, with particular regard to outlook, privacy and noise and disturbance;
 - The living conditions of occupiers of the appeal building, with particular regard to internal living accommodation and external amenity space;
 - The character and appearance of the surrounding area; and
 - Vehicle and cycle parking.

Reasons

Living conditions - neighbours

7. The appeal property has been divided into a number of flats including, I am advised, two separate flats at ground floor level. Although subject to a separate enforcement notice and an application for planning permission, I have not been advised of the outcome of that matter. Nevertheless, whether one flat or two at ground floor level, the rear facing ground floor windows, recessed underneath a

¹ Included as Appendix 2 to 'Statement by the Local Planning Authority'

² Included as Appendix 7 to 'Statement by the Local Planning Authority' and given LPA Ref No: 223742FUL

timber-framed canopy, provide direct outlook for occupiers across the small, lawned, garden area towards the subject building.

8. As a consequence, the appeal building's presence results in a claustrophobic and enclosing outlook from the rear of the main building, particularly with regard to the outlook from ground floor areas of that building. Furthermore, the garden is only modest in size and does not offer much in the way of distance to separate the opposing windows of the respective buildings. Nor is it clear exactly how access to the lawned garden area would be arranged between the existing flats and the appeal building. The presence of the appeal building as a detached rear garden dwellinghouse is therefore harmful to the living conditions of occupiers of the flats within the main building, particularly but not exclusively with regard to those at ground floor level.
9. With regard to the living conditions of occupiers of the appeal building, the two rooms within it are single-aspect outlook rooms. From these, the outlook across the small, lawned, garden area towards the rear windows of the main property is as enclosing and claustrophobic for its occupiers, as this arrangement is for occupiers of the main building. So too, in terms of privacy. The appeal building therefore also fails to provide adequate living conditions in terms of outlook and privacy for its occupiers.
10. The plans submitted with the appeal show the main building to have a shared access at the side. As well as providing access to a doorway entrance to the flats within the main building, the path provides direct access to the rear garden and, via the paved path that leads around the garden perimeter, to the appeal building. Whilst this path does not appear to directly pass the main habitable areas and rooms within the ground floor of the main building it does pass into and through the rear garden and amenity area, and close to the windows of habitable rooms at the rear of the main building. An independently occupied residential property of this size may not generate a significant level of comings and goings, but those that it does generate are uncomfortably close to habitable areas of other residential properties.
11. Whether or not the ground floor of the main building is laid out as one flat, or two separate flats, the windows of the appeal building are directly opposed to those of the main building, across a short distance. As the sole point of outlook from these two rooms, the effect is both enclosing and claustrophobic as well as providing little or no privacy to occupiers of either the appeal building or flats within the main building.
12. For the reasons set out, the single storey detached rear garden dwellinghouse fails to ensure adequate living conditions for existing occupiers of the main building in terms of outlook, privacy and noise and disturbance, and for those of the appeal building in terms of outlook and privacy. As such, the single storey detached rear garden dwellinghouse is contrary to London Plan (LP) Policy D3 and Policies 7.4 and 7B of the Ealing '*Development Management*' Development Plan Document (DMDPD) which together seek to secure high quality development providing high standards of amenity and good levels of privacy.

Living conditions – internal accommodation and external amenity space

13. The appellant has not challenged the Council's calculations regarding the floor area provided by the appeal building, or the shortfall of that floor area against the internal space requirements set out in the London Plan³.
14. The substandard amount of floorspace provided, together with the single aspect nature of the two rooms, the limited outlook from them and the direct overlooking of, and between, opposing properties' windows, is such that the appeal building fails to provide a satisfactory quantity and quality of internal living accommodation. Nor is it clear how the small lawned garden area would function as outdoor amenity space, whether as shared or private space, for the appeal building and for the flats within the main building. As such, the single storey detached rear garden dwellinghouse is contrary to LP Policies D3 and D6, supported by the content of Table 3.1 thereof, and DMDPD Policies 3.5, 7B, 7D and the requirements set out by table 7D.2 thereof, which together seek to secure high quality development that provides high standards of amenity.

Character and appearance

15. Buildings within rear gardens are not uncommon in suburban areas, and the appeal site and its surroundings are no exception. I saw from ground level, confirmed by photographs subsequently submitted by the appellant from an elevated viewpoint, that neighbouring properties also have substantial buildings located at their rears. Glimpses of other garden buildings in the gaps between houses could also be seen on neighbouring streets such as Costons Avenue.
16. The appeal building occupies the entire width of the rear of the plot and, because of the plot's awkward shape, also takes on a somewhat incongruous footprint. Nevertheless, its appearance is typical of a detached garden outbuilding and not therefore unexpected.
17. However, for such buildings to provide a separate residential dwelling is at odds with the prevailing pattern of development in the surrounding area where primary residential occupation is typically provided within the main buildings, whether as houses or sub-divided as flats, not within physically and functionally separate outbuildings. In this respect, the single storey detached rear garden dwellinghouse is at odds with the prevailing character of the appeal property and the surrounding area and is contrary to the provisions of LP Policy D3 and DMDPD Policies 7.4 and 7B.

Vehicle and cycle parking

18. The appeal site is located in a busy location close to the junction of Greenford Road and the A40. Greenford Road – on the appeal site side of the road – is subject to parking restrictions (double yellow lines) but on-street parking appears to be unrestricted in nearby streets, including Costons Avenue and the opposite side of Greenford Road.
19. There are currently three in-curtilage parking spaces within the forecourt at the front of the appeal property, but there is no scope for further spaces to be provided. The use of the single storey detached rear garden dwellinghouse as a further residential unit would be likely to intensify the demand for parking locally, even if by only that arising from a single residential unit. However, as

³ Table 3.1 – Minimum internal space standards for new dwellings

the building is capable of accommodating a double bed it could conceivably provide accommodation to a two-car household.

20. Whilst it would not be beyond the capacity of the appeal site and a suitably worded condition to ensure the adequate provision of cycle storage facilities, in the absence of a compelling argument to the contrary, the appeal scheme fails to make appropriate provision for the parking of vehicles. Whilst a planning condition might therefore avoid conflict with LP Policy T5 in respect of cycle parking, the single storey detached rear garden dwellinghouse would be contrary to LP Policy T6.1 in respect of vehicle parking.

Alternative scheme

21. The appellant has indicated a willingness to comply with the provisions of requirements (1) and (2) of the notice. In so doing, the appellant has indicated that the building would be retained but not used for primary accommodation as a separate dwelling. Rather, in the appellant's words, it would be utilised as a gym and study as ancillary accommodation to flat two within the main building. This will, he states, remedy any harm and counter all of the stated reasons for issuing the notice.
22. At the time of my visit to the site, the building appeared to be being used in such a manner. The kitchen units, cooker and sink shown on the plans were no longer present although the worktop-level wall tiles were still incongruously present. Thus, the largest of the rooms was laid out with items of gym equipment within it, as well as other items of sporting equipment and paraphernalia, whilst the adjoining room was, broadly, set up as a study albeit with what appeared to be kitchen-style floor units and counter serving as desk space. In the context of the appellant's alternative proposals, the retention of the shower room and wc as shown on the plans was not unexpected to me nor inconsistent with this alternative proposal.
23. Section 177(1) of the Act provides that planning permission may be granted 'in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates'. The notice refers to the matter enforced against as being a rear garden dwellinghouse. However, the appellant refers on a number of occasions to the retention of the appeal building as an outbuilding to provide gym and study facilities in connection with the occupation of the main building. Therefore its proposed retention as a structure linked to the use of the main building, or a flat within the main building, would render it functionally different to, and therefore not part of, the matters being enforced against. Accordingly, even if the main building were to revert to a single dwelling, or to two flats, the retention of the appeal building as gym and study facilities in connection with that occupation of the main building would not bring it within the scope of s177(1) of the Act. It would not therefore be possible to achieve the proposed use of the outbuilding through this appeal process.
24. Nor, given the appeal building's size relative to the studio flat (flat 2) shown on the plans that accompany the 2022 proposal, could its use in the manner described be said to be incidental accommodation to that unit as it would provide a similar, if not larger, quantum of floor area. Furthermore, the previously approved 2019⁴ scheme for the conversion of the main building to

⁴ LPA Ref No: 193383FUL – planning permission granted 23 September 2019

two flats was contingent, in part at least, upon the area of land now occupied by the appeal building to provide outdoor amenity space for the two flats.

Conclusion on the appeal under ground (a)

25. For the reasons set out, the appeal under ground (a) fails in respect of the development the subject of the notice. Nor, for the reasons set out, am I persuaded that the appellant's alternative scheme satisfies the requirements of s177(1) of the Act and does not therefore amount to any part of the alleged breach of planning control.

The appeal under ground (f)

26. An appeal under ground (f) may be brought if the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.
27. In this case, the notice requires the cessation of the use of the building for independent residential purposes and the subsequent removal of the building in its entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with (s173(4)(a)), the breach being comprised of the construction and occupation of the building for residential purposes, whereas the steps described by the appellant seek only to remedy any injury to amenity caused by the breach. I have dealt with those 'lesser steps' as part of the ground (a) considerations on the appellant's alternative scheme.
28. Given that the purpose of the notice is to remedy the breach of planning control, in the absence of a planning permission this can only therefore be achieved by the removal of the unauthorised development and consequently the restoration of the land to the condition it was in before the breach took place. It is not open to me to grant a planning permission for the outbuilding on the basis it is used for ancillary purposes, as this would not form part of the alleged breach or deemed planning application in this case. It remains open to the appellant to pursue with the Council the possibility of using the outbuilding for incidental residential purposes, but the notice's requirements do not exceed what is necessary and the appeal on this ground must fail.

The appeal under ground (g)

29. A longer period of 12 months within which to comply with the requirements of the notice is sought by the appellant, principally justified as to provide sufficient time to submit an application for planning permission for the building. An application has, however, already been submitted, if not, as far as I am aware from the available evidence, actually determined.
30. Whilst no further justification for a longer compliance period has been put forward, I am conscious that there is no dispute that the building has been occupied and used as a separate detached dwellinghouse. As such, the notice's requirements amount to an infringement upon the appellant's (and potential occupier's) convention rights under Article 8 of the European Convention on Human Rights. As to the building's current use as a gym and home office /

study, the notice's requirements also amount to an infringement upon those rights.

31. Nevertheless, a period of 6 months seems to me to be sufficiently long and proportionate to allow the necessary steps to be taken and I therefore conclude that the appeal under ground (g) fails.

Conclusion

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

G Robbie

INSPECTOR