



Appeal Decision

Site visit made on 21 November 2023

by Chris Preston BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Appeal Ref: APP/W5780/C/23/3317182

Land at 9 Nutter Lane, Wanstead, London E11 2HY

- 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 appeal is made by Mr Harun Kahn against an enforcement notice issued by the Council of the London Borough of Redbridge.
 - The enforcement notice, numbered E0433/22, was issued on 02 February 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the single storey outbuilding to use as a self-contained unit of residential occupation.
 - The requirements of the notice are:
 - i) Cease the use as separate residential use;
 - ii) Remove all fixtures and fittings to facilitate the separate residential use; including the kitchen; and
 - iii) Clear all resultant debris
 - The period for compliance with the requirements is no later than one year of the date the notice takes effect.
 - 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.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal on Ground (d)

2. An appeal on ground (d) is made on the basis that, at the time the notice, was served, no enforcement action could be taken in relation to the breach of planning control due to the passage of time. That links to the time limits for taking enforcement action set out within s171B of the Town and Country Planning Act 1990 (the Act). In respect of a material change of use of a building to use as a single dwellinghouse, as is the case here, the relevant period for taking enforcement action is four years, beginning with the date of the breach.
3. The onus rests with an appellant to prove his case in relation to an appeal on ground (d), on the balance of probability.
4. It is common ground that the building in question was erected as an outbuilding within the garden of 9 Nutter Lane in approximately 2008. The Council accepts that the building itself is immune from enforcement action. What is in dispute is when the breach first occurred and whether it had

- continued for more than four years prior to the enforcement notice being served.
5. A signed and sworn affidavit has been provided from the appellant's daughter which states that she resided in the accommodation from June 2018 to July 2022. However, little detail as to the nature of how she occupied the building is provided. It is not uncommon for members of the same household to occupy outbuildings for sleeping or even living purposes which gives a degree of independence from the main house but not necessarily to a degree that results in the formation of a separate planning unit.
 6. I note that the garden fencing which presently separates the outbuilding from the garden of the main house was absent on the Google Earth photographs provided by interested parties which were dated May 2022 but was present in photographs purportedly taken in July 2022. That would indicate that the fencing was erected at the point the building was let out to people who were not members of the same family in order to maintain privacy for the residents of the main dwelling.
 7. Conversely, it is an indication that such fencing was not deemed necessary when the appellant's daughter resided in the outbuilding on the basis that the garden was a shared space for all members of the household. In other words, even if the appellant's daughter was living and sleeping in the outbuilding it would appear that she was sharing space with the main dwelling and is also likely to have had access to the main dwelling itself where she could share time with other family members, perhaps share meals or make use of the facilities in the dwelling.
 8. If used in such a manner, the outbuilding would effectively have served as an annex to the house or an extension of the living accommodation available within the main house as opposed to an independent planning unit or separate dwelling.
 9. The building does have its own meter cabinet and electricity bills dating back to September 2016 have been provided. However, those bills are jointly in the name of the appellant and his daughter, which does cast some doubt on whether the outbuilding was genuinely independent. Similarly, the water bills, which are provided back to August 2018 are solely in the name of the appellant and not his daughter.
 10. Moreover, if the appellant's daughter did not occupy the building until June 2018, it is not clear why the bills stretch back to September 2016 when, according to him, the building was not occupied independently. Consequently, the utility bills contain some ambiguities and are not enough, of themselves, to indicate that the unit was occupied independently of the main dwelling.
 11. In addition to the above, the property was only registered as a separate address for Council Tax purposes in November 2022. What is referred to as a Licensee (Lodgers) Agreement has been provided which identifies that the accommodation was let to two tenants or "licensees" from 5th July 2022 to 4th July 2023. No explanation of the nature of a Licensee Agreement, as compared to a general tenancy agreement has been provided. However, the term "lodger" is generally used to refer to a person who is renting accommodation within a household as opposed to being separate from it. I note that the appellant, as landlord, continued to be responsible for paying the utility bills.

12. Again, that provides a degree of ambiguity as to the nature of the occupation. The Licensee Agreement does suggest that the garden is a shared space but it is not clear if that is intended to refer to the whole of the garden of the main dwelling or that part to the front of the outbuilding. The fence that has been erected between the two is lockable from the inside and the appellant had to open it from within the garden of No.9 Nutter Lane at the time of my visit. Thus, it is not clear how anyone living in the outbuilding could access that space which does imply that the use is segregated from the main dwelling.
13. No argument under ground (b) has been advanced but the appellant still clearly maintains a degree of control over the use of the building and associated space. Given that the onus is on the appellant to demonstrate his case, the information presented does not provide sufficient detail to indicate that the building was in use as an independent unit of occupation continuously for a period of four years prior to the service of the notice.
14. Rather, on the balance of probability, it seems likely that there were significant physical and functional links between the building and the main dwelling during the period of occupation by the appellant's daughter. A change in the nature of occupation then occurred when the building was let to tenants in July 2022 and the garden was fenced off to separate the accommodation from the adjacent dwelling. In my view, it was only at that point that the breach of planning control described in the notice occurred. It follows that the use had not gained immunity from enforcement action by the time the notice was served and the appeal on ground (d) must fail.

The Appeal on Ground (a)

15. The main issues in respect of the appeal on ground (a) are:
 - i) The effect of the development on the character and appearance of the area;
 - ii) The effect on the living conditions of neighbouring residents; and
 - iii) Whether the unit provides satisfactory living conditions for existing and future residents.

Character and Appearance

16. The outbuilding is situated to the rear of 9 Nutter Lane, a sizeable dwelling at the end of a run of four, with a well-proportioned garden to the rear. The northern boundary of the garden runs parallel with the access road leading to the residential properties of Elm Hall Gardens which comprise a mixture of detached and semi-detached dwellings of varying style and age.
17. Whilst the enforcement notice alleges that the change of use is out of character with the prevailing pattern of development, little analysis of how that has caused harm is set out within the officer report or subsequent appeal statement. The building itself was already in situ prior to the change of use and it would remain if I were to uphold the notice. It is also likely that the hardstanding and some form of perimeter fencing or gate, neither of which are affected by the requirements of the notice, would remain. Residents parking cars outside the outbuilding is perhaps more likely than would be the case if the structure was in ancillary use but that is not visually harmful in a residential street where the parking of vehicles is common.

18. The garden has been subdivided internally but that in itself has had little outward visual impact when viewed from Elm Hall Gardens. Interested parties have referred to light spill from the building being lit internally but that could occur whether it was in use as an independent dwelling or ancillary to No. 9 and, in any event, rooms being internally lit is not out of character or unusual in the context of a residential area.
19. Thus, in terms of outward appearance the change of use has not adversely affected the character and appearance of the area to any notable degree. In that sense there is no obvious conflict with the aims of policy LP26 of the Redbridge Local Plan (2018) (the LP) in terms of design, the use of appropriate materials and the need to integrate with the existing pattern of development in the area.

Living Conditions of Neighbouring Residents

20. The single aspect building runs parallel with Elm Hall Gardens and the front elevation, which contains the windows serving the habitable rooms, is broadly in line with the front of the neighbouring dwelling at No.7 Elm Hall Gardens. It is also off-set slightly from the dwellings on the opposite side of the street and, in any case, is surrounded by timber fencing to the front which prevents any clear views into neighbouring properties. Consequently, the Council's claim that the dwelling has caused a loss of privacy are not borne out in reality and the impact is no greater than one would expect in a street with houses on opposing sides of the road.
21. Similarly, in terms of noise and disturbance the comings and goings from the unit will not be significant given its limited size. Immediately adjacent is the driveway serving No.7. It is common for properties to sit side by side in a residential area and the Council has failed to explain why the relationship is any different to other properties within the cul-de-sac.
22. Thus, the Council's case in respect of the effect on neighbouring living conditions is poorly founded and I am satisfied that the impact is no greater than could reasonably be expected in an urban area, in line with the aims of Policy LP26(1) of the Local Plan.

Living Conditions of Existing and Future Occupants of the Unit

23. Policy LP7(1) of the Local Plan states that the Council will resist the use of outbuildings ordinarily used for ancillary purposes within a dwelling curtilage or garden as separate living or sleeping accommodation. LP7(2) then states that the Council will only support the subdivision of existing housing plots and gardens to create new residential accommodation where sufficient internal space and external amenity space is provided, where the property would have its own access and where it meets the design requirements of policy LP26.
24. The wording is slightly ambiguous in that it is not clear if the first paragraph should be read as a stand-alone policy which seeks to resist any use of outbuildings as separate units of occupation or whether it should be read in conjunction with the second paragraph which permits the 'subdivision of housing plots and gardens to create new residential accommodation', subject to the specified criteria.
25. Whilst the development in this instance is clearly the use of an outbuilding for self-contained accommodation, it could also readily be described as the

- subdivision of a housing plot and garden. Accordingly, if the criteria in LP7(2) are met, there would be no obvious reason to withhold permission, notwithstanding that LP7(1) suggests that the Council will resist the use of outbuildings as self-contained accommodation.
26. In terms of internal and external space standards, Policy LP29 applies. For internal space, the policy refers to the National Minimum Space Standards. Those standards are essentially replicated in policy D6 of the London Plan insofar as they relate to one bedroom dwellings. A one bed, one person dwelling requires a gross internal floor area of 39sqm or a one bed, two person, dwelling requires 50sqm.
27. The appellant maintains that the unit is occupied by a single person and has an internal floorspace of 41sqm. However, the Licensee Agreement for the period July 2022 to July 2023 shows that the property was let to two people. It has clearly been let in that manner and it is difficult to control occupation to a single person. In terms of internal space, the building is therefore below the standard required by the Local Plan.
28. The layout has a separate bathroom, a bedroom with some space for storage and a reasonably sized kitchen/ living area. For a single person it may provide sufficient space but it is somewhat cramped for two, with additional storage space that is required. Although it is single aspect, the building is served by large windows to the living area and bedroom and the glazed entrance door also permits light into the living space.
29. However, the outlook from the windows is poor. A garden shed which opens onto the garden of 9 Nutter Lane (and serves that dwelling) is situated close to the front living room window which restricts the view and creates a sense of being hemmed in. That is amplified by the fact that the gates and fencing to the front are close boarded and approximately 1.8m high such that the small area to the front of the property has an enclosed feel. That may have been appropriate when the outbuilding was used as an annex to the adjacent property because any occupants also had the use of the remainder of the house. However, it provides for an unsuitable outlook for the only windows in a self-contained unit.
30. Furthermore, policy LP29 requires that a minimum of 50sqm of private amenity space is provided for a one bed dwelling and the allocated space would appear to be well short of that amount, all of which is to the front. Moreover, the shed takes up a decent proportion of the space, with parking space taking up most of the remainder. The result is that the unit is devoid of any practical or usable external space that could be used for sitting out, drying washing and the like. When added to the poor outlook the cramped external environment provides unsuitable living conditions for existing and future residents in my view.
31. The appellant's statement suggests that the occupants have use of space within the garden of No.9 Nutter Lane but, as set out above, the gate to the garden is locked from the inside and it is not clear how any tenant would access the adjacent garden in those circumstances. At best, access would appear to be at the discretion of the appellant, as opposed to the unit having any dedicated space.
32. Reference has also been made to access to local parks but I am not satisfied that this is sufficient to overcome the significant deficiencies in the size and

usability of the private amenity space. I have considered whether it would be possible to impose a condition to create a larger dedicated garden space but it is not clear if that would be acceptable to the appellant, given that it would result in a smaller garden for the main dwelling and, in any event, it would not overcome the deficiency in the level of internal space.

33. For all of those reasons, the accommodation provides unsatisfactory living conditions for existing and future occupiers contrary to the aims of policy D6 of the London Plan and LP7 and LP29 of the Local Plan.

Other Matters

34. Interested parties have raised concerns regarding whether the building complies with fire regulations, thermal regulations and whether drainage is adequately discharged. The Council has raised no concerns regarding those matters, there is no evidence of any drainage problems arising from the use and compliance with Building Regulations is a separate matter that falls outside the remit of my decision.
35. I am mindful that the building is occupied and that any decision to dismiss the appeal and uphold the enforcement notice would clearly have significant implications for the home life of the occupants who would be required to leave the accommodation. No representations have been made to this effect but it is clearly a situation where Article 8 of the European Convention on Human Rights (the Convention), as set out in Schedule 1 of the Human Rights Act 1998 (the HRA), is engaged.
36. Article 8(2) identifies that there shall be no interference by a public authority with the exercise of Article 8 rights except as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the prevention of crime and disorder, the protection of health or morals, or for the protection of the rights or freedoms of others.
37. In other words, rights under Article 8(1) are qualified rights and, in appropriate circumstances, interference may be justified in the public interest. Regulation of land use through development control measures is recognised as an important function of Government and is necessary to ensure the economic well-being of the country. In that sense, the regulation of development for legitimate planning aims can be said to be in the public interest. The aim is to strike the right balance between the general interests and rights of the wider community and the requirement to protect an individual's private rights. Central to the principle of a fair balance is the doctrine of proportionality.
38. In this case, the accommodation is substandard, when set against the requirements of the development plan, and does not provide satisfactory living conditions for existing occupiers. Nothing has been provided to suggest that the occupants would be unable to secure alternative accommodation if the notice was upheld, or to suggest that there is a particular attachment to the appeal site. Moreover, the notice provides a 12 month period for compliance which would appear to be the same as the period of the licensee agreement such that the residents will have ample time to find alternative accommodation.

39. Having regard to all of those matters, I am of the view that the interference with the human rights of the occupants, including the loss of their home would be lawful, necessary and proportionate.

Conclusion on Ground (a)

40. I am satisfied that the development has not caused harm to the character and appearance of the area or to the living conditions of neighbouring residents. However, the internal and external environment provides a poor standard of accommodation, contrary to the requirements of policies LP7 and LP29 of the Local Plan and Policy D6 of the London Plan. Given the importance of those policies in determining applications for the conversion of buildings to provide new residential units, the conflict is such that the development is contrary to the development plan as a whole.
41. Having regard to all other matters, including the human rights of the occupants, there are no material considerations that outweigh that conflict. Therefore, planning permission should be refused in respect of the appeal on Ground (a) and the notice upheld. Moreover, for the reasons set out above, I am satisfied that amounts to a proportionate response, having regard to the interference with the home life of the occupants.

Overall Conclusion

42. 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 deemed application.

Chris Preston

INSPECTOR