



# Appeal Decision

Site visit made on 17 October 2023

**by G Robbie BA(Hons) BPI MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 May 2024**

**Appeal Ref: APP/A5270/C/22/3304461**

**27 Somerset Road, Southall, Middlesex UB1 2UA**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr A Chauhan against an enforcement notice issued by London Borough of Ealing.
- The notice was issued on 23 June 2022.
- The breach of planning control as alleged in the notice is Without planning permission: The material change of use of the Property to four self-contained flats and the construction of a detached rear outbuilding.
- The requirements of the notice are to:
  1. Cease the use of the Property as flats;
  2. Remove three kitchens and their drainage connections;
  3. Remove all internal doors, partitions and locks that facilitate the use of the premises as four self-contained flats;
  4. Demolish the outbuilding in its entirety; and
  5. Remove all resultant debris.
- The period for compliance with the requirements is:  
6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (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.

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.**

## Formal Decision

1. 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

2. The appeal property's planning history is lengthy. However, of direct relevance to the matter before me, I am advised that planning permission was granted in 2020<sup>1</sup> (the 2020 scheme) for the conversion and extension of the appeal property, at the time a single dwellinghouse, to create two self-contained residential flats.
3. It is agreed by the main parties that the extensions shown on the 2020 scheme were constructed but that internally the extended property was sub-divided into four self-contained flats in the manner described in the alleged breach of planning control, rather than the two granted planning permission. Usefully, the Council has provided an annotated floor plan showing the layout and sub-

<sup>1</sup> LPA Ref No: 203491FUL – approved 18 November 2020

division of the appeal property and the four self-contained flats. The layout shown closely resembles that seen during the course of my visit to the site.

4. Additionally, and not included as part of the 2020 scheme, the notice alleges the construction of a detached rear outbuilding. The appellant does not dispute the Council's timeline regarding the alteration and extension to the main building or the construction of the outbuilding.
5. The appellant has set out an alternative scheme that would lay out the main building in the manner set out within the 2020 scheme, but with the retention of the outbuilding as a gym and household storage associated with the ground floor flat. I consider these matters as an alternative scheme within the appeal on ground (a), below.

## **The appeal on ground (a)**

### **Main Issues**

6. The main issues are the effects of the appeal scheme upon:
  - The living conditions of the occupiers of the four self-contained flats, with particular regard to internal accommodation and external amenity space;
  - The living conditions of occupiers of the ground floor right flat, with particular regard to outlook, privacy and noise and disturbance;
  - Parking; and
  - The character of the appeal property and the surrounding area.

### **Reasons**

#### *Living conditions – internal accommodation and external amenity space*

7. There are two ground floor flats currently laid out within the appeal building, with further flats at first floor and loft floor levels. The appellant does not dispute the Council's calculations regarding the shortfall, in all instances a significant shortfall, in the quantum of internal living accommodation provided within each of the flats when set against the provisions of policy 3.5 of the Ealing Development Management Development Plan Document<sup>2</sup> (2013) (DMDPD) and London Plan<sup>3</sup> (2021) (LP) Policy D6 and Table 3.1. Indeed, the appellant has clearly stated that the property in its current arrangement 'would not be suitable' for four self-contained flats.
8. I agree. I have not been presented with any further evidence to lead me to reach an alternative conclusion in this respect, whilst my observations of the flats, their layouts and the quality and quantity of the accommodation provided therein reinforce the inappropriate quantum and quality of accommodation provided. The appeal scheme is thus contrary to the provisions of DMDPD policy 3.5 and LP Policy D6 in this respect.
9. The shortfall in the amount of internal accommodation is compounded by a shortage of accessible outdoor space. There is a small yard area, partially covered with artificial grass, to which access from both ground floor flats is possible. However, neither of the two upper floor flats have access to this, or

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<sup>2</sup> December 2013

<sup>3</sup> March 2021

indeed any other area of private or shared outdoor space at the appeal property.

10. Whilst the two ground floor flats share access to this area, the areas are not clearly defined and are, in any event, in clear and open view from each flat. I am also led to understand that the outbuilding, used for storage of building and decorating supplies at the time of my visit, has been used for sleeping accommodation in connection with occupation of the ground floor right flat. This thereby further undermines any privacy this already limited and heavily overlooked space may have otherwise provided to occupiers of either ground floor flat.
11. Thus, for the reasons set out, the appeal scheme as enforced against fails to provide the high quality design and high standard of amenity sought by LP Policies D6 and D3 and DMDPD Policy 7B in terms of both internal living accommodation and outdoor amenity space.

#### *Living conditions – ground floor right flat*

12. As set out above, I am led to understand that the detached outbuilding has been occupied as sleeping accommodation in connection with occupation of the ground floor right flat. The main doorway entrance to this building from the yard is directly opposite the bedroom window and kitchen door of the neighbouring ground floor flat.
13. Whether or not the outbuilding is used for sleeping purposes, or general storage purposes associated with the occupation of the ground floor right flat, the location of the access door remains directly opposite the bedroom window and kitchen door of the neighbouring unit. As such, the noise and disturbance of comings and goings of occupants of this flat accessing the outbuilding is likely to be a disruptive presence so close to the rear windows and door to habitable rooms of the other ground floor flat. The proximity of the outbuilding and its access to the rear, and rear windows, of that flat is also likely to offer the opportunity of direct overlooking between, and into, it adding to a general lack of privacy and opportunity for direct overlooking between the properties. This is, I conclude, materially harmful to the living conditions of occupiers of the ground floor right flat and thus contrary to LP Policy D3 and DMDPD Policy 7B.

#### *Parking*

14. The appeal property has a full width, fully paved forecourt at the roadside which, given arrangements elsewhere within the terraced block, suggests that there is sufficient depth for the parking of vehicles. Previously, as a single dwelling house this may have provided sufficient space for the parking of vehicles and afforded scope for the storage of cycles.
15. The appellant does not challenge the Council's contention that four self-contained flats with four separate households would be likely to increase the demand for parking over and above that of a single dwelling. There may be some capacity within the appeal property's forecourt area but, like other properties along the street, a full width forecourt dedicated to parking compromises the capacity of the street to provide on-street parking. Thus, together with the site's location close to the junction with St Stephen's Close or the absence of mechanism or provision for ensuring a car-free development, I

share the Council's concerns that four self-contained flats here would increase demand for on-street parking in the locality.

16. Nor has the appellant demonstrated that appropriate provision for cycle storage could be provided within the site. Such matters could, in theory, be dealt with by way of a planning condition should an appeal succeed on ground (a). However, without further detail I cannot be satisfied that the competing factors of off-street car parking and cycle storage could be satisfactorily accommodated within the site in a practical and convenient manner. For these reasons, the appeal scheme fails to accord with LP Policies T5 or T6.1.

### *Character*

17. Amongst other factors cited in the reasons for issuing the notice, it is the effect of the outbuilding on the character of the appeal property and the surrounding area that is specifically referred to by the Council. Rear outbuildings are not, I saw during my visit to the site, particularly uncommon features within the surrounding rear garden environment.
18. However, in this instance the outbuilding is sizeable, albeit I accept not as large as those of neighbouring properties. Nevertheless, the appeal outbuilding's still considerable scale added to the scale of previous extensions to the appeal property results in a significantly diminished external area around the building resulting in an unduly and uncharacteristically cramped feel. This is at odds with the more spacious garden block pattern of development that typifies this suburban residential setting. As such, the appeal scheme fails to enhance local context taking account of the scale, built form and proportions of the outbuilding individually and when considered cumulatively with previous additions to the appeal property. Collectively, LP Policies D3 and D6 and DMDPD Policies 7.4 and 7B seek to secure high quality development, which the appeal scheme fails to provide and is therefore contrary to the provisions of these development plan policies.

### *Alternative scheme*

19. The appellant has accepted that the scheme in its current form is not suitable. However, an alternative scheme has been submitted, the appellant proposing implementation of the scheme previously approved under the 2020 scheme's permission. That scheme proposed the extension and conversion of what was then a single dwellinghouse into two self-contained flats; a 3 bedroom / 4 person flat at ground floor and a 2 bedroom / 3 person flat at first and loft floor levels.
20. It is accepted by the Council that compliance with the 2020 scheme, and thus the implementation of the alternative scheme, would resolve the internal living space and parking issues previously cited in the reasons for issuing the notice. However, 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'.
21. On the basis of the 2020 scheme's approved plans and the Council's usefully annotated plans of the appeal building's internal divisions, it is clear that there are significant differences in the internal layout and external appearance of those schemes to facilitate the creation of two and four flats. Nor does the 2020 scheme include the outbuilding that is also a subject of the notice. I

agree therefore with the Council's conclusion that what is being proposed as an alternative is essentially a new scheme.

22. 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'. Even if I were to conclude that the retention of the outbuilding could be considered as part of the implementation of the 2020 scheme under the provisions of s177(1) of the Act, the outbuilding's size relative to that of the ground floor flat (No. 27) is such that its use in the manner described could not be said to be incidental to that unit. Furthermore, the 2020 scheme for the conversion of the main building to two flats was contingent, in part at least, upon the area of land now occupied by the appeal outbuilding to provide outdoor amenity space for the ground floor flat.
23. The continued presence of the outbuilding denies access to that area of outdoor amenity space and further differentiates the alternative scheme from the 2020 scheme that the appellant seeks to implement as an alternative scheme under s177(1) of the Act. Not only that, however, the retention of such a large outbuilding and the consequent reduction in available garden space adds to the cumulative scale and spread of extensions and alterations that have been carried out to the appeal property over time. Whilst a detached rear outbuilding may well prove to be acceptable and not an unreasonable expectation in principle in some form or other, what is before me is of a scale that, cumulatively, results in a form of development at the appeal property that erodes the typical suburban form and pattern of development with reasonably generous, open rear gardens that are not dominated by large, detached outbuildings.
24. Thus, even if I were to entertain as an alternative scheme the retention of the outbuilding and the appellant's alternative layout within the main building, or the implementation of the 2020 scheme including the retention of the outbuilding as alternative schemes under the provisions of s177(1) of the Act, I am not persuaded that it would overcome the harm to the character of the appeal property and surrounding area that the appeal scheme causes. The Council's acknowledgement that it would, to a degree, alleviate some of the concerns regarding internal living space and parking, and would reduce the pressure on the limited outdoor amenity space, are noted but are not sufficient to alter my conclusion on the acceptability of the alternative scheme.

### **The appeal on ground (f)**

25. An appeal under ground (f) may be brought if it is felt that 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.
26. In this case, the notice requires the cessation of the use of the building for independent residential purposes and the subsequent removal of the outbuilding 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 material change of use of the property to four self-contained flats and the construction of the outbuilding, whereas the steps described by the appellant seek only to remedy any injury to amenity caused by the breach, not the breach itself. I have dealt with those alternative steps as part of the ground (a) considerations on the appellant's alternative scheme.

27. Given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved by the cessation of the unauthorised development and the removal of the outbuilding. 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 residential purposes incidental to occupation of the appeal property as a single dwelling, but the notice's requirements do not exceed what is necessary and the appeal on this ground must fail.

### **Conclusion**

28. 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).

*G Robbie*

INSPECTOR