



Appeal Decision

Site visit made on 18 June 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th JULY 2024

Appeal Ref: APP/A5270/C/22/3305505

Premises known as 30 Park Hill, Ealing, London W5 2JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Chetan Sagoo (Argan Asset Holdings Ltd) against an enforcement notice issued by the Council of the London Borough of Ealing.
- The notice was issued on 14 July 2022.
- The breach of planning control as alleged in the notice is without planning permission: The construction of a rear outbuilding.
- The requirements of the notice are to:
 1. Demolish the rear outbuilding; and
 2. Remove all resulting materials from the land.
- The period for compliance with the requirement is: Two (2) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) 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.

Preliminary Matters

1. During the course of the appeal the revised National Planning Policy Framework December 2023 (the Framework) was published. However, there are no substantive changes relevant to the appeal, and no prejudice would be caused by me having regard to it.
2. I note the appellant submitted a planning application to retain the outbuilding, but it was refused by the Council¹. No section 78 appeal has been made on the refusal of the planning application. This appeal relates specifically to the Enforcement Notice (Notice). The deemed planning application as part of the ground (a) appeal considers whether planning permission should be granted for the alleged works set out in paragraph 3 of the Notice. As such, the submissions included with the refused planning application, and whether they accord with what has been constructed on site, are not relevant to the determination of the ground (a) appeal.
3. I acknowledge that issues have been raised with respect to the use of the outbuilding alleged in the Notice. However, the Notice focuses on the erection of an outbuilding and does not allege the material change of use of the land or building. As such, any concerns over the use of the outbuilding for commercial purposes is outside the remit of this appeal. This would be a matter for the Council to investigate and formally pursue, if they consider it expedient to do so.

¹ Council reference 204262FUL

The Appeal on Ground (a) and the Deemed Planning Application

4. The main issue in this appeal is the effect of the development on the character and appearance of the area, including its impact on protected trees and the preservation or enhancement of Montpelier Park Conservation Area.

Reasons

5. The appeal site and surrounding residential areas are within the Montpelier Park Conservation Area (Conservation Area). Based on my observations and the Montpelier Conservation Area Appraisal 2009 (Appraisal), the significance of the Conservation Area stems from Montpelier Park being at its centre, together with the layout and architecture of large period properties on wide and steep tree lined streets. The combination results in a verdant character and spacious townscape.
6. The appeal site is situated on Park Hill, which is predominantly made up of period properties, in large spacious plots along a broad, tree lined road. 30 Park Hill is a detached Victorian red brick house converted to flats, with red ceramic dressing, which has been identified in the Appraisal as a locally listed building. The rear of No 30, and the mature trees in the garden are visible from West Walk to the rear. Also, gaps between the properties allow glimpses through to the trees, resulting in a leafy backdrop from Park Hill. From what I saw, the architectural features and materials of No 30, together with its spacious plot, large rear garden and mature trees positively contributes to the verdant character and spacious townscape of the Conservation Area.
7. The development is a timber outbuilding situated in the garden near to the rear boundary, which adjoins West Walk. West Walk is a combined cycle and walkway with a varied mix of brick built boundary walls and fences at varying heights adjoining along the back of Park Hill and Corfton Road. Due to the topography of the area, West Walk rises from south to north and is situated at a lower level than the garden of the appeal site.
8. The Montpelier Conservation Area Management Plan 2009 (Management Plan) sets out advice for outbuildings in the Conservation Area. Paragraph 5.4 states 'Garden buildings should be small scale and sited discretely, taking care not to locate too near to trees. They should be for ancillary garden use and comprise a single, modest-sized room. Timber is the most appropriate material to ensure they blend in with the landscape.'
9. The outbuilding comprises a single, modest-sized room with a scale, single storey height and design that is typical of a mid-sized residential outbuilding. The outbuilding is subordinate to the converted property and is easily accommodated for in the spacious rear garden. Aside from the elevated siting, the orientation of the outbuilding in combination with the single storey height and shallow roof mitigates the scale and massing, ensuring it is not an overbearing structure when experienced along West Walk. The painted green engineered wood on two of the elevations is an unsatisfactory finish, which is at odds with the guidance set out in the Management Plan. Nevertheless, this issue could be resolved with a suitably worded condition requiring a timber finish to be applied that matches the remainder of the outbuilding.
10. Notwithstanding the above, I am conscious that the verdant character and appearance of the site and wider Conservation Area is enhanced by the mature

trees within the spacious rear garden of the property. While individually not all the trees in the garden of No 30 are notable, they are visible from the rear and through spaces between buildings from the front. As a group they have an amenity value that contributes to both the character and appearance of the site as well as its contribution to the significance of the Conservation Area.

11. Policy G7 of the London Plan 2021 (London Plan) is relevant in this instance, requiring existing trees of value² to be retained wherever possible. It states if planning permission is granted that necessitates the removal of trees there should be adequate replacement based on the existing value of the benefits of the trees removed, determined by an appropriate valuation system. Policy G7 is generally in line with the Framework, which indicates that existing trees should be retained wherever possible³.
12. Although the submissions do not indicate that there is a need to remove any trees, the Council claim that two mature trees have already been removed to accommodate the outbuilding. The appellant has not confirmed this, but there are photographs of two mature trees in the position of the outbuilding prior to its erection. Further to this, contrary to the advice set out in the Management Plan, and from what I saw on site, the outbuilding is located near to a mature Pine tree, and the canopy significantly overhangs its roof.
13. The appellant has indicated that there is a healthy tree coverage along West Walk, so the verdant character is not adversely impacted by the development. He would also accept a condition requiring the replacement of the two trees. I have had regard to the appellant's position, but the appeal submissions are not supported by any detailed information on the existing trees, and how they have been affected by the development. There is also no information on the trees that were removed to accommodate the outbuilding and what would be considered adequate replacements.
14. Given the lack of information on trees with the appeal, I have insufficient information to determine the effects of the development on the protected trees. I am unable to establish the value of the two trees that were removed and whether they were of a category that should have been retained. A condition could be imposed, but without any details of the trees that were removed and the proposed trees to be planted, I am unable to determine whether it would be adequate mitigation. Also, due to its proximity to the outbuilding and potential growth, there is a reasonable likelihood that the development will have some impact on the nearest Pine tree, as well as there being considerable pressure to thin or cut back the canopy or potentially remove the tree in the future.
15. Consequently, the appellant has failed to demonstrate that the development has not had an unacceptable impact on protected trees. The loss of these trees without adequate replacement is contrary to the requirements of Policy G7 of the London Plan, and adversely impacts upon the contribution the trees make to the site and Conservation Area. As such, the development fails to preserve the character and appearance of the Conservation Area, resulting in less than substantial harm to the heritage asset.

² category A, B and lesser category trees where these are considered by the local planning authority to be of importance to amenity and biodiversity as defined by BS5837:2012

³ Paragraph 136 of the Framework

16. Paragraph 208 of the Framework is applicable in these instances and indicates that less than substantial harm to heritage assets should be weighed against the public benefits of the proposal.
17. The appellant has not set out any public benefits, but the development contributes to storage space needed for the 11 residential flats in the main building. There would also have been some limited economic benefits from the use of local trades and materials when constructing the outbuilding. However, these public benefits are limited and are not sufficient to outweigh the less than substantial harm that I have identified. In coming to this conclusion, I am giving considerable weight and importance to paying special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
18. Accordingly, the development has an adverse effect on the character and appearance of the area, due to the loss of protected trees, which fails to preserve or enhance the special qualities of the Conservation Area. Therefore, the proposed development would be contrary to Policies D3, G7 and HC1 of the London Plan and Policies 7.4, 7B and 7C of the Ealing Development Management DPD 2013 as well as the advice and guidance set out in the Appraisal and Management Plan. These policies and guidance, amongst other things, require development to complement the local character, locate outbuildings away from, and retain, trees of value as well as conserve or enhance the significance of heritage assets.

Conclusion on Ground (a) Appeal and Deemed Planning Application

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

The Appeal on Ground (g)

20. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The enforcement notice specifies a period of two months from the date the enforcement notice takes effect. The appellant claims that the Council has only allowed one month for the outbuilding to be demolished. It is set out by the appellant that this is unreasonable, and a period of at least three months would be more appropriate.
21. Although I have had regard to the appellant's case, I can confirm that the enforcement notice allows a two month period for compliance. Further to this, the appellants have not provided any substantiated evidence to demonstrate that the requirements of the Notice cannot be complied with within two months. As such, I have no reason to conclude that the period specified in the notice falls short of what should reasonably be allowed.
22. For this reason, the ground (g) appeal should fail.

Formal Decision

23. The appeal is dismissed, the Notice is upheld, and planning permission is refused for the application deemed to be made under section 177(5) of the 1990 Act (as amended).

M. P. Howell INSPECTOR