



Appeal Decision

Site visit made on 18 September 2024

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 October 2024

Appeal Ref: APP/T5150/C/23/3332526

66 Grasmere Avenue, Wembley HA9 8TD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Panna Pattel against an enforcement notice issued by the Council of the London Borough of Brent ('the Notice').
 - The notice, numbered E/21/0238, was issued on 6 October 2023.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection [of] a dwelling in the rear garden of the premises.
 - The requirements of the notice are: STEP 1 Demolish the dwelling in the rear garden of the premises; and STEP 2 Remove all items and debris, arising from that demolition, and remove all materials associated with the unauthorised development from the premises.
 - The period for compliance with the requirements is: 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) of the Town and Country Planning Act 1990 (as amended) ('the Act').
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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.

Ground (a)

2. An appeal made under Ground (a) is that planning permission should be granted for the development alleged in the Notice, which is to say, the erection of a dwelling on the land.

Main Issues

3. The main issues are the effects of the development on:
 - 1) The character and appearance of the area.
 - 2) The living conditions of occupants of neighbouring properties by way of: privacy, noise and disturbance; pressure on on-street parking; rear garden area available to the occupants of 66 Grasmere Avenue; and an overbearing nature.
 - 3) The living conditions of the occupants of the dwelling by reason of its size and provision of storage facilities.

Reasons

4. 66 Grasmere Avenue ('No 66') is a two-storey end-of-terrace house in a street where residential development is primarily set out in short terraces or semi-detached form. No 66 is typical of the development in the area, being set back from the road, with a small front garden and a more generous garden at its rear.
5. What might be termed a gated alleyway lies between Nos 66 and 68 Grasmere Avenue ('No 68'). This leads to a small path that provides a pedestrian access to the rear of properties on this side of the Avenue, albeit that it is blocked in parts by vegetation and outbuildings.
6. The subject of this appeal is a single storey dwelling set under a flat roof. It lies close to the end of the garden to No 66. Access to the dwelling is via a gate from the alleyway. This gives onto a paved yard, about 2.5m in depth running the width of the plot. The yard lies between the front of the appeal building and a fence that separates it from the garden to No 66.
7. Internally, the dwelling has an open plan kitchen-living area, a bedroom and a separate wc-shower room. it was not in use as a dwelling when I visited, and there was a limited amount of exercise equipment in it. Openings were limited to its front elevation, where there is a glazed door and two windows.
8. The Appellant tells me that the outbuilding was erected to conform with the terms of Part 1, Schedule 2, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended ('GPDO'). Class E sets out permitted development rights for, amongst other things, the provision of buildings within the curtilage of a dwellinghouse for purposes incidental to the enjoyment of the dwellinghouse. However, she does not say that the incidental use required by Class E was ever commenced, but does say that, though conceived as an outbuilding, it was brought into use as a dwelling. The evidence does not clearly show that it was used for purposes incidental to No 66 before it was used as a dwelling.
9. The Appellant sets out that, for the most part, the reasons for issuing the Notice relate to the environmental and parking impacts of the residential use of the building. She makes no case against these points. Her case is limited to the effect of the development on the character and appearance of the area that the Council refers to. Notwithstanding this, I am required to assess the entirety of the effects of the dwelling that has been erected.

Character and appearance

10. Although I saw many other similarly sized and situated outbuildings in the area, I was not made aware of any other being used for residential purposes.
11. Guidance is given for the provision of outbuildings in the Council's SPD2 'Residential extensions and alterations' document, ('SPD'), to which I give substantial weight. Whilst the SPD provides support for the provision of outbuildings, this is limited to those that are reasonably required for purposes incidental to the main dwelling and do not provide any form of primary accommodation. It does not say so, but it seems most likely that the reason for this is the protection of an area's character.

12. Whilst, physically, the building does not cause harm to the appearance of the area, the erection of the dwelling to the rear of No 66, with the consequential sub-division of its rear garden, is totally at odds with, and causes significant harm to, the established layout of the area, which adds much to its character and appearance.
13. This is at odds with Policy DMP1 of the Brent Local Plan 2019-2041, adopted February 2022, ('BLP') that requires, amongst other things, development to complement its setting. It is also contrary to the terms of BLP Policy BD1 that require good urban design in developments, and the terms of London Plan March 2021 ('LP') Policies D3 and D4 that require good design that responds positively to its setting. These policies reflect the terms of the National Planning Policy Framework ('the Framework') and the SPD, with which it also conflicts.

Neighbours' living conditions – Privacy, noise and disturbance

14. It has to be expected that the privacy of residents in an urban area, such as that in which the appeal site lies, will be compromised to a degree. However, the introduction of a residential use to the rear of No 66 leads to a decrease in privacy by way of the occupants of the appeal building being able to look to the rear of No 66 and 64 Grasmere Avenue ('No 64'). Whilst I have not been given any details as to what are considered to be acceptable separation distances between properties' windows, I found that I could see clearly to the rear of those properties. Although the fence that has been erected between the appeal building and No 66, and the boundary fence with No 64, mitigates this effect at ground level, it does not with respect to first floor windows. The effect of this reduction in privacy, whether perceived or actual, would have a significant adverse effect on the living conditions of the occupants of Nos 64 and 66. Given their relative positions, its relationship with No 68 is, however, acceptable in this regard.
15. The introduction of the residential use similarly results in noise generation and disturbance in those parts of the gardens where the occupants of Nos 64 and 66 might otherwise find most peace. The effect of this noise and disturbance is significantly harmful to the living conditions of those properties' occupants.
16. The alley separating Nos 66 and 68 is lined by fences and walls enclosing those properties' rear gardens. Therefore, occupants of the dwelling walking along here would not be able to look into the rear gardens of those properties and there would be no loss of privacy in this regard.
17. For these reasons, the development would cause harm to the living conditions of the occupants of Nos 64 and 66 by way of loss of privacy, as well as noise generation and disturbance. It would, therefore, be contrary to the terms of BLP Policy DMP1(g).

Neighbours' Living Conditions – On-street parking

18. The Council tell me that the area has a PTAL rating of 3 that, it says, "means that occupants are more likely to be reliant on cars due to the limited access to public transport". This has not been countered by the Appellant, nor did she counter the Council's case that the development would lead to increased

pressure on on-street parking. I saw bays marked on the carriageway along Grasmere Avenue with parking restrictions. This indicates that the area is subject to parking pressure. At the time of my visit there were some free spaces, though this was at a fairly quiet time of day. It is safe to assume that parking pressure would be considerably greater in the evenings. Allowing the dwelling without on-street parking would increase this pressure.

19. In the light of the Council's submissions, and given the lack of evidence to the contrary, I find that the development leads to additional demand for on-street parking in an area where such parking is limited. This would be contrary to BLP Policy BT2 that, amongst other things, states that development should not have negative impacts on existing parking on heavily parked streets.

Neighbours' Living Conditions – Overbearing nature

20. In terms of size, the SPD sets out that support for outbuildings is dependent on adherence with its provisions relating to height and floor area, which are 2.5m and 30sqm, respectively.
21. The parties disagree on both measurements for the building. However, neither party provides any substantive evidence, in the form of scaled drawings for example, to support their cases. Given this lack of information, I shall address the effects that the building has on the character and appearance of the area in the light of what I saw at my site visit, development plan policies and the Framework.
22. Any overbearing effect on the living conditions of other residents could only reasonably relate to those in Nos 66 and 64 Grasmere Avenue, given the access lane that separates it from No 68.
23. Whether the height of the building is as much as the 2.75m claimed by the Council, it is not out of the ordinary in this area. I saw little discernible difference in its relationship with neighbouring properties than is found in the outbuildings to the rear of many other properties in this part of Grasmere Avenue. I find that it would not have an adverse effect on the living conditions of the occupants of Nos 66 and 68 by way of an overbearing effect.
24. Due to its size and siting, the dwelling does not have an overbearing effect on the occupants of Nos 64 and 66. Given this, it accords with BLP Policy DMP1.

Living conditions – Occupants of the dwelling

25. Table 3.1, which is part of Policy D6 of the London Plan ('LP') sets out that a one-storey dwelling, if accommodating a single person should have a minimum gross floor area of 37sqm. The Council sets out that it believes that the dwelling has a floor area of 40sqm. Its concern is that no evidence has been given of the numbers of occupants in it, and refers to complaints it has received suggesting that more than one person has lived here.
26. As the number of occupants could be restricted to accord with policy, it would accord with the minimum space standards, and so provide sufficient living and storage space. Furthermore, I find that the yard area could

provide adequate bin and cycle storage space and external amenity space for a single person. Therefore, I find that the dwelling accords with those terms of LP Policy D6 that relate to this issue and the dwelling provides the level of internal amenity required by BLP Policy DMP1.

Conclusion on Ground (a)

27. I find that the dwelling causes harm to the character and appearance of the area as well as neighbours' living conditions by reasons of increased pressure on on-street parking, resultant noise and disturbance, and harm arising from a loss of privacy. That it is not overbearing, it provides appropriate living accommodation for a single occupant and leaves sufficient garden space for the occupants of No 66 does not outweigh the harm I have identified. For the reasoning given above, the Ground (a) case fails.

Ground (f)

28. An appeal made under this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, 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. Here, the purpose of the Notice is to remedy the breach of planning control.
29. The Appellant's case relates to the first requirement of the Notice, to demolish the building; it is that, as the building does not cause harm to the character and appearance of the area, its demolition exceeds what is necessary. She says that, as the building is broadly consistent with Part 1, Schedule 2, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, a similar building might be erected without the need to apply for planning permission.
30. In essence, through a combination of grounds (a) and (f), this would amount to granting planning permission for a dwelling, whilst simultaneously taking away the right to use the building as a dwelling. That would be perverse.
31. The evidence before me leads me to find that the building was erected as a dwelling and was used for this purpose. Any steps that fall short of demolition of the dwelling would not remedy the breach of planning control. Accordingly, it would be inappropriate to allow the building to remain. I therefore find that the requirements of the Notice are not excessive. The appeal made under Ground (f) fails.

Conclusion

32. 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.

Roy Curnow

Inspector