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## Appeal Decision

Site visit made on 28 May 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 June 2025

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### Appeal Ref: APP/A5270/C/23/3319806

### 123 Kingshill Avenue, Northolt, Middlesex UB5 6NX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr R Zielinski against an enforcement notice issued by the Council of the London Borough of Ealing.
  - The notice was issued on 15 February 2023.
  - The breach of planning control as alleged in the notice is without planning permission the material change of use of the land to the rear of the main dwelling to use for separate residential purposes.
  - The requirements of the notice are: 1) Cease the use of the land to the rear of the main building to use for separate residential purposes; 2) Remove all kitchen facilities, including cooking equipment, cupboards, worktops and sinks within the rear garden outbuilding that facilitate the unauthorised use; 3) Remove all washing and toilet facilities within the rear garden outbuilding that facilitate the unauthorised use; 4) Demolish the rear garden outbuilding in its entirety; and 5) 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.
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### Decision

1. It is directed that the enforcement notice is corrected in steps 2 and 3 by substituting "outbuilding" with "building" and varied by deleting step 4. Subject to the corrections and variation 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. Steps 2 to 4 of the enforcement notice refer to "the rear garden outbuilding." However, the term outbuilding is commonly understood as applying to a separate building which is subordinate to a dwelling. As the allegation is a material change to a separate residential use, the structure cannot also be an outbuilding. Therefore, I shall exercise the powers in s176(1) of the Act to correct the notice by substituting "building" for "outbuilding" in the relevant steps. There would be no injustice.
3. My decision takes into account the revised National Planning Policy Framework, which came into force during the course of the appeal.

### Ground (a) appeal

### Main Issues

4. The notice attacks the separate residential use of a freestanding single-storey building, located towards the end of the rear garden of an enlarged two-storey, semi-detached dwelling (No 123). There is no dispute that the building was in residential use separate from No 123 prior to the issuing of the notice. When I visited, the building was vacant. The kitchen facilities, heating system, furniture including a bed, a child's cot, a table, chair and drawers along with household

electrical appliances including a fridge/freezer, washing machine and flat screen TV, all shown in photographs of the building interior supplied by the Council, had been removed. Even so, it is necessary to assess the planning merits of the separate residential use; by making a ground (a) appeal there is a deemed planning application before me for the matters stated in the notice.

5. Therefore, the main issues in this ground of appeal are:

- Whether suitable living conditions are provided for occupiers of the separate residential use, having regard to internal floorspace, outlook, privacy and private outdoor amenity space.
- The effect on the living conditions of occupiers of neighbouring residential property, having regard to noise and disturbance as well as privacy.
- The effect on the character and appearance of the surrounding area.

## Reasons

### *Living conditions-existing and future occupiers of the separate residential use*

6. The building has a relatively modest floor area. There would be limited circulation space in the main room, following the provision of some basic domestic furniture items such as a double bed, chairs, a table and some drawers. Little space would be left for storing a range of everyday household items and personal possessions along with quantities of clothing and footwear, leading to the main room having an appreciably cluttered and restrictive feel. The kitchen area is of limited size, offering little space for circulation after the provision of fittings such as work surfaces, cupboards, a sink and drainer and an oven and hob. The limited size of the kitchen area means that some basic household electrical appliances, such as a fridge/freezer and washing machine, are likely to be placed in other parts of the building. This all results in the building providing separate living accommodation which feels uncomfortably cramped and congested, as well as being inconvenient to use.
7. The building has a gross internal floor area (GIA) of around 43m<sup>2</sup>. This falls substantially short of the 50m<sup>2</sup> GIA minimum private internal space required for a new one-bedroom, two-person flat by Table 3.1 to Policy D6 of the London Plan (LP). The substantial shortfall in the GIA when assessed against the minimum requirement set out in LP Policy D6 reinforces my misgivings concerning the restrictive size of the building in relation to its separate residential use.
8. The building has a single aspect, the entrance lobby being lit by a pair of patio doors and the kitchen area lit by a window. There is also a window on one side of the building, but this faces a tall garden boundary fence nearby. As a result, the main room has a restrictive outlook, with only limited outward views available. Along with the modest levels of natural light obtained from rooflights in the main room and the likely increased reliance on artificial light sources, the restrictive outlook contributes to the occupiers experiencing an oppressive and unrelieved sense of enclosure inside the building. In addition, the proximity of the patio doors and kitchen window to directly facing windows in the rear elevation of No 123 is likely to have resulted in occupiers of the separate residential use experiencing a strong sense of being overlooked, as well as incidences of actual overlooking.
9. The rear garden has an area of around 24m<sup>2</sup>. Such a limited size offers little opportunity for occupiers of the separate residential use to undertake the range of activities that might typically be associated with a private outdoor amenity space, including informal relaxation, cultivating plants and drying washing. Together with the presence of a timber shed, the accumulation of several items of garden furniture and the proximity of boundary treatments, the modest dimensions foster a markedly enclosed and cluttered feel in the rear garden. This reinforces the

restrictive living environment experienced by occupiers of the separate residential use, as well as meaning that the rear garden is unlikely to meet their functional needs.

10. The above does not reflect guidance in the Ealing Planning New Garden Space Supplementary Planning Document, which concerns the qualitative aspects of outdoor amenity space provision. Moreover, Table 7D.2 of the Ealing Development Management Development Plan Document (DPD) typically requires an area equating to 50m<sup>2</sup> private garden space to be provided for a new dwelling. This includes the baseline requirement of providing 5m<sup>2</sup> private outdoor space for one to two person dwellings derived from the Mayor of London's Housing Supplementary Planning Guidance. Accordingly, the rear garden is less than half the size typically required. The significant deficiency in size having regard to the typical requirement supports my reservations concerning the ability of the rear garden to provide a suitable outdoor private amenity space for occupiers of the separate residential use. I appreciate that some public open space is a convenient walking distance from the property. However, since this is unlikely to be available at all times and lacks privacy it does not provide an acceptable alternative to making suitable on-site provision of private outdoor amenity space.
11. For the reasons set out above, suitable living conditions are not provided for the existing and future occupiers of the separate residential use. This is in conflict with criteria in LP Policy D6, which require new development to provide comfortable and functional layouts which are fit for purpose, with dwellings having at least the GIA required in Table 3.1, avoiding the provision of single aspect dwellings and providing sufficient daylight and sunlight appropriate to the context. It is in conflict with DPD Policy 3.5F, which requires new development to meet similar minimum space standards. There is also conflict with criteria in LP Policy D3, which require new development to deliver appropriate outlook, privacy and amenity and to achieve indoor and outdoor environments that are comfortable and inviting for people to use.
12. Furthermore, there is conflict with criterion in DPD Policy 7B, which require new development to achieve a high standard of amenity for users, including by ensuring good levels of privacy, daylight and sunlight and appropriate levels of site development. Additionally, by failing to provide sufficient private and communal garden space to meet the requirements of Table 7D.2, there is conflict with criterion in DPD Policy 7D.

*Living conditions-occupiers of neighbouring residential property*

13. Residential properties in the vicinity of No 123 occupy a largely suburban residential setting. The occupiers of neighbouring residential property might therefore reasonably expect to enjoy relatively good levels of peace and tranquillity, as well as reasonably high levels of privacy, in their dwellings and rear gardens at most times. Given the rear garden location of the building, the separate residential use has introduced considerable additional day-to-day activities, cooking smells and artificial lighting along with pedestrian comings and goings, in proximity to the rear elevation of No 123 and the rear elevations and gardens of neighbouring residential property. This is all likely to have led to neighbouring occupiers experiencing a significant and appreciable increase in incidences of noise and other disturbance in their rear gardens and rear-facing rooms, compared to the situation before the separate residential use commenced.
14. As noted earlier, a window and patio doors in the building face towards windows in the rear elevation of No 123 nearby. Also, comings and goings through the rear garden by the occupiers of the separate residential use and their visitors results in increased opportunities for direct overlooking of the occupiers of No 123. This has significantly and harmfully eroded the levels of privacy and the corresponding appreciable sense of seclusion previously enjoyed by those occupiers.

15. Consequently, the separate residential use unacceptably erodes the living conditions enjoyed by the occupiers of neighbouring residential property. This conflicts with criteria in LP Policy D3, which requires new development to deliver appropriate privacy and to mitigate the impacts of noise. It also conflicts with criterion in DPD Policy 7B, which requires new development to achieve a high standard of amenity for adjacent uses, including by ensuring appropriate levels of site development.

### *Character and appearance*

16. The property is located in an established residential area, the surroundings including many dwellings of similar age, scale and architectural style. In general, the dwellings are neatly arranged in well-balanced and regularly spaced pairs, set back similar distances fronting onto tree-lined streets and they occupy rectilinear plots with ample sized front and rear gardens. Larger scale residential blocks arranged around generous landscaped public open space are at the rear of the property. These factors all contribute to the reasonably orderly and pleasant, spacious suburban residential character and appearance of the surrounding area.
17. The building is of modest proportions in comparison with the generally more substantial built footprint and scale of dwellings in the environs. It is of a size akin to that of an incidental outbuilding rather than a structure in separate residential use. The building occupies a plot which is of limited size compared to the more generously portioned grounds of most dwellings in the locality. There is little space around the building, with few opportunities for providing adequate outdoor amenity space or for softening landscaping. The building also occupies a substantial portion of the rear garden, already reduced in size following the previous enlargement of No 123, thereby further eroding the sense of space at the rear of the property in comparison with other development in the vicinity. In the context of the separate residential use, this has all led to the building appearing cramped and restricted on its plot, as well as contributing to an appreciably greater built-up feel in the environs, all of which contrasts unfavourably with the generally spacious qualities of surrounding development.
18. Additionally, the building is in a 'backland' location, behind No 123 and other dwellings on the street, alongside neighbouring rear gardens and lacking a street frontage, with access via a pedestrian path which runs at the side of No 123 and a neighbouring property. The separate residential use therefore occupies a location which is markedly at odds with the general pattern of local development. This does little to engender street-based activity or to maximise active frontages. Although there are some outbuildings in neighbouring rear gardens, as far as I am aware no other dwellings in the vicinity occupy a similar location.
19. Whilst there are limited public views of the building, the visual impact of the separate residential use is apparent from neighbouring residential property. Also, the likely accumulation of additional waste and recycling receptacles at the front of the property due to the separate residential use would not sit comfortably with the generally limited numbers and more discreet siting of such receptacles at residential property in the surroundings. This and the foregoing factors all contribute to the separate residential use being viewed as an alien feature in its setting.
20. Consequently, the separate residential use causes unacceptable harm to the character and appearance of the surrounding area. This is in conflict with DPD Policy 7.4D, which requires development in the existing built areas to complement their street sequence, building pattern and scale, amongst other things. It is also in conflict with criteria in LP Policy D3, which require new developments to be the most appropriate form and use for the site responding to its context and to enhance local context by delivering buildings and spaces that positively respond to local

distinctiveness, including through their layout, scale, appearance and shape, with due regard to street hierarchy, building types, forms and proportions.

### *Conclusion-Ground (a) appeal*

21. Suitable living conditions are not provided for occupiers of the separate residential use and there is harm to the living conditions of occupiers of neighbouring residential property, as well as harm to the character and appearance of the surrounding area. This is all in conflict with the Development Plan, taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the Development Plan. Therefore, the ground (a) appeal does not succeed.

### **Ground (f) appeal**

22. The ground of appeal is that the notice requirements are excessive.
23. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, and/or remedying any injury to amenity caused by the breach. The notice requires the unauthorised use to cease, along with the removal of works which are considered to facilitate that use. Therefore, although the notice does not state as such, its purpose must be to remedy the breach by restoring the property to its condition before the breach took place.
24. The appellant's case on this ground is largely focussed on step 4, which requires demolition of the building. The intention to apply for a Certificate of Lawful Development and make a planning application has limited relevance to the ground of appeal. Moreover, as far as I am aware no such applications have been made.
25. Be that as it may, since the notice was issued the Court of Appeal has confirmed that an enforcement notice directed at a material change of use can only require the removal of operational development which is ancillary or secondary to or facilitative of the change of use; it cannot require removal of operational development which is fundamental to or causative of that change<sup>1</sup>.
26. I sought the views of the main parties on the above judgement and its implications for the ground (f) appeal and have taken the submitted comments into account. In the individual circumstances of this case, applying the principles set out in the above judgement and as a matter of fact and degree, I consider that erection of the building goes beyond what could be regarded as operations that were merely ancillary or secondary to, or facilitative of, the material change of use. The operational development-erecting the building-was a separate development in its own right, being fundamental to, or causative of, the material change to a separate residential use. In the absence of the building there could have been no separate residential use. Therefore, the building falls outside the scope of the operations that can be required to be removed in a material change of use notice.
27. I have considered whether not requiring the demolition of the building would lead to a structure with no use at the property. However, in the above judgment the Court envisaged that situations could arise where a "useless" building remained after successful enforcement action. Besides, the building could be used for a purpose incidental to the enjoyment of No 123, having regard to s55(2)(d) of the Act.
28. Nor would varying the notice so that demolition of the building is not required grant unconditional permission for a separate residential use. There is no dispute that the building was substantially completed more than four years before the issuing of the notice. Consequently, at the time the notice was issued the building itself was already immune from enforcement action, having regard to s171B(1) of the Act.

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<sup>1</sup> *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467



Moreover, any permission granted by virtue of s173(11) of the Act only follows full compliance with the notice steps.

29. Since the notice does not allege a use of the building for a purpose or purposes ancillary to the use of No 123, such use falls outside the scope of what could be granted permission pursuant to the deemed planning application arising from the ground (a) appeal. The power in s177(1)(a) of the Act to grant planning permission does not extend beyond the whole or part of the matters stated in the notice as constituting a breach of planning control, or in relation to the whole or part of the land to which the notice relates.
30. Therefore, I shall exercise the power to vary the terms of the notice to delete step 4. Steps 1 to 3 and 5 would be sufficient to restore the property to its condition prior to the unauthorised material change of use taking place and in doing so would remedy the breach. There would be no injustice to the Council in varying the notice as set out above. The appeal on ground (f) succeeds to that extent.

### **Ground (g) appeal**

31. The ground of appeal is that the time allowed for complying with the notice requirements is too short.
32. Since the building is vacant, there is no risk of tenants being made homeless. The remedial works would be a small-scale and straightforward task for a suitably experienced small building contractor. No specialist plant or equipment would be needed and the works are unlikely to take more than a few weeks at most to complete. There are likely to be a significant number of contractors who would be available to undertake the works given a reasonable period of notice.
33. Accordingly, in my estimation the six-month period specified in the notice is reasonable and not too short. An appropriate balance is struck between remedying the breach as soon as practicable whilst also not placing a disproportionate burden on the appellant. Extending the compliance period on the other hand would do little more than perpetuate the breach. The ground (g) appeal fails.

### **Conclusion**

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

*Stephen Hawkins*

INSPECTOR