



Appeal Decision

Site visit made on 22 October 2019

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 23 January 2020

Appeal Ref: APP/B5480/C/18/3219412

173 Straight Road, Romford, Essex RM3 7JJ

- 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 Sergiu Boravian against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 23 November 2018.
- The breach of planning control as alleged in the notice is: Without the benefit of planning permission:
 1. The storage of an industrial refrigeration unit in the rear garden; and
 2. Erection of the outbuilding with a mezzanine floor; and
 3. Storage of commercial goods in the outbuilding; and
 4. Increase of land levels in the rear garden; and
 5. Erection of two pergolas constructed by using plastic corrugated sheets at the front and rear of the outbuilding; and
 6. Subdivision of the rear garden by erecting wooden fencing exceeding 2m in height.
- The requirements of the notice are to have:
 1. Demolished the outbuilding with a mezzanine floor; OR
 2. Carried out remedial works to the outbuilding to accord the approved planning permission ref: P0663.17: AND
 3. Removed from the rear garden industrial refrigeration unit; AND
 4. Ceased the use of the outbuilding for storage of commercial goods and removed all commercial goods from the outbuilding; AND
 5. Removed the two pergolas constructed by using plastic corrugated sheets situated at the front and rear of the outbuilding; AND
 6. Reduced land levels in the rear garden to levels before the development started; AND
 7. Removed all fencing exceeding 2m in height that subdivides the rear garden; AND
 8. Removed from the site all debris and materials accumulated as a result of taking the above steps.
- The period for compliance with the requirements is three months after the date when this Notice takes effect.
- 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 as amended, and falls to be considered.

Formal decision

1. The enforcement notice is corrected by the deletion of the wording attached to Breach 4 and its substitution with the wording "The raising of the rear garden to its current level above that before the development took place."
2. The appeal is allowed insofar as it relates to the erection of the outbuilding with a mezzanine floor, and the raising of the rear garden to its current level above

that before the development took place, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of the outbuilding with a mezzanine floor and the raising of the rear garden to its current level above that before the development took place.

3. The appeal is dismissed and the enforcement notice is upheld, and planning permission is refused in respect of the storage of an industrial refrigeration unit in the rear garden, the storage of commercial goods in the outbuilding, the erection of two pergolas constructed by using plastic corrugated sheets at the front and rear of the outbuilding, and the subdivision of the rear garden by erecting wooden fencing exceeding 2m in height, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background

4. In June 2017 planning permission (ref P0663.17) was granted for a proposed rear garage/games room and store with hardstanding to the rear. The permission was subject to a series of conditions which, amongst other things, restricted its use to purposes ancillary to the main dwelling, and which prohibited its use for living accommodation, and any trade or business.
5. The outbuilding was not implemented in accordance with the approved plans, particularly in that the ground level drops down significantly from the rear accessway, via a concrete apron, to allow for the owner to park his van within the garage section, whilst a mezzanine floor has been installed above, and a partial basement area created below.
6. The Council determined it expedient to issue an enforcement notice in its consideration that the developments had a harmful effect on the character and amenity of the neighbouring rear garden environments, and also the outbuilding's bulk and massing.

Procedural Matter

7. At my site visit I noted that the refrigeration unit and the plastic sheeting pergolas, mentioned in the enforcement notice, had been removed from the land. However, as no appeal has been brought on ground (b), as to any claim that the breach of control alleged had not occurred as a matter of fact, my decision must be based on the situation at the time the enforcement notice was issued. The deemed planning application, therefore, also covers these identified elements.

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

Main Issue

8. The main issue is the development's effect on the character and appearance of the area.

Reasons

9. The appellant says that during the course of the outbuilding's construction he made some alterations and deviated from the approved plans in an attempt to make better use of the building and the available space.

10. The Council's Supplementary Planning Document 4 'Residential Extensions & Alterations' (SPD) advises that outbuildings should be subordinate in scale to the existing dwelling and plot. I consider this to be the case here as, save for the lowered floor, mezzanine and basement areas, which are not visible externally to the rear, the building in terms of its main dimensions appears largely consistent with the that which was granted planning permission. In the context of the dwelling and its lengthy rear garden I consider the outbuilding, as erected, shows adequate subordination.
11. Also, there are a large number of rear garages and outbuildings in the vicinity which back on to the rear accessway and, in this setting, I am not convinced with the Council's argument that the building's bulk and massing, near to the site's side boundaries represents a harmful development. The garden level has been raised slightly but, given the physical context and neighbouring structures, the outbuilding does not appear as an isolated and unacceptable form of development.
12. The fact that the building has been designed with a mezzanine, with steps leading up to room with a sink, worktops and a separate WC, is not inconsistent with the main property's residential use. Also, although the outbuilding's lowered floor has allowed for the appellant to park his van within, this is not necessarily a problem in itself. Instead, the Council has correctly identified a breach of planning control in terms of the storage of commercial goods in the outbuilding. I witnessed this at my site visit and I also note the appellant's representations which indicates his intention to store tools and equipment associated with his business. It is not unusual for persons to park their work vans securely at a place of residence, but the storage of commercially related tools and equipment can be seen as changing the character of the property, especially given the intensity of the internal storage use which I witnessed.
13. The placing and storage of a refrigeration unit within a residential rear garden, the erection of the plastic sheeting pergolas, and the partitioning of the garden with fencing and panels over and above what could be lawfully erected under a householder's permitted development entitlement goes beyond that which can be seen as compatible with a settled residential environment. Moreover, such developments cannot reasonably be seen as incidental to the enjoyment of the main dwellinghouse. Accordingly, I find these elements to be out of character with the residential use.
14. Given that the enforcement notice requires for the cessation of the outbuilding's use for the storage of commercial goods I see no need to impose a condition requiring for the same. The 2017 planning permission, given that it was not properly implemented, is now superseded by the planning permission hereby granted in this respect, and it would remain open for the Council to use its powers, as considered necessary, should any identified material change of use of the outbuilding occur at some future time.
15. I conclude that the outbuilding as a structure does not, in its context, cause harm to the character and appearance of the area, and does not materially conflict with the design objectives of policy 61 of the Council's Core Strategy and Development Control Policies Development Plan Document, policies 7.4 and 7.6 of the London Plan, advice from either of the Council's SPDs cited, nor relevant advice on character and design matters within the National Planning

Policy Framework. Also, in this particular instance, the raising of the rear garden level has not had any significant adverse effect and, similarly, does not conflict with the relevant policy objectives and guidance. However, the other identified breaches are harmful to the character and appearance of the area, being inconsistent, both in character and visually, with the residential use and its associated environment, and are at odds with the said policies' aims and requirements.

16. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed, albeit in part, as is set out in the Formal decision.

The Appeal on Ground (f)

17. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) provides that the purpose shall be either to remedy the breach of planning control or to remedy any injury to amenity. In this case it would appear from the requirements of the notice that its primary purpose is to remedy the breach by restoring the property to its condition prior to the current breach.
18. Under ground (a) I have found that planning permission should not be granted for the majority of the various identified unauthorised development carried out and, apart from what was in situ at the time of my site visit, there is no articulated alternative scheme before me which might potentially remedy the breach.
19. Given the circumstances, I find that it is not excessive to require the cessation of the storage use and the removal of the unauthorised operational development which constitute the breaches of planning control.
20. Accordingly, the appeal on ground (f) fails.

The Appeal on Ground (g)

21. The appeal on ground (g) is that the stated time period for compliance falls short of what is reasonable in the circumstances. The appellant states that the period of three months for compliance should be extended to at least four months, to allow for what the appellant considers would be a more realistic period within which to plan and undertake the necessary work.
22. However, given that the required steps for compliance have been significantly lessened I am satisfied that a period of three months would be adequate to make the necessary arrangements and achieve compliance.
23. On this basis the appeal on ground (g) fails.

Overall Conclusion

24. S180 of the 1990 Act says that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as is inconsistent with that permission.
25. In this instance the enforcement notice is corrected as set out in the formal decision. Subject to that correction, the appeal on ground (a) is allowed

insofar as it relates to the erection of the outbuilding and the raising of the rear garden ground level. However, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused insofar as it relates to the storage of an industrial refrigeration unit, storage of commercial goods in the outbuilding, the erection of two pergolas, and the subdivision of the rear garden by erecting wooden fencing exceeding 2m.

Timothy C King

INSPECTOR