The Planning Inspectorate

Appeal Decision

Site visit made on 21 December 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 February 2023

Appeal Ref: APP/B5480/C/21/3282554
290 Upminster Road North, Rainham RM13 9JR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Keith Gilbert against an enforcement notice issued by the Council of the London Borough of Havering.
- The notice, numbered ENF/714/17, was issued on 12 August 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the construction of a building in the rear garden.
- The requirements of the notice are:
  1. Demolish the building in the rear of the rear garden of 290 Upminster Road North, Rainham RM13 9JR in the approximate area as hatched black on the attached plan; AND
  2. Remove all building materials and rubble from the site associated with complying with step 1 above.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f), (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.

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 Matter

2. In its reasons for issuing the notice, the Council identifies that the appeal building has been used as a self-contained dwelling. The appellant has indicated their position is that the use of the appeal building as a self-contained dwelling has not occurred. But as this is not what is alleged in paragraph 3 of the notice, the appellant has not appealed on ground (b).

3. Whilst I appreciate the appellant's conscious decision in this regard, for the purposes of the ground (a) appeal I must consider each of the Council's substantive reasons for issuing the notice. These include matters relating to the use of the building. Therefore, prior to considering the ground (a) appeal, I have treated the issue of whether the building has been used as a self-contained dwelling as a hidden appeal under section 174(2)(b) of the 1990 Act. I am satisfied that this is a fair approach and would not cause injustice to the parties as the evidence is not new and was submitted with the appeal.

Reasons

Ground (b)

4. An appeal on ground (b) is that the matters stated in the notice have not occurred as a matter of fact. In a ground (b) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.

5. Whilst the appellant's position is that the use of the appeal building as a self-contained dwelling has not occurred, they also state that "for a limited period of time the builders were camping out in the property", and that this provided "short-term accommodation".

6. Photographs provided by the Council, dated 4 December 2020, show cooking appliances, a kitchen sink, a washing machine and sleeping arrangements, including a divan bed base. In my view, this indicates that people have lived in the building rather than just "camping out". This is consistent with correspondence from a complainant.

7. Moreover, it has not been explained why any of the domestic items photographed were necessary, given that, according to the appellant, the building is intended as a pool house, which was substantially completed some 3 and a half years earlier (although there is no evidence it has ever contained a pool). In other words, it has not been explained how the builders' stay relates to the building's construction.

8. Taking into account the above, I am satisfied that, in its reasons for issuing the notice, the Council has reasonably and correctly identified that the appeal building has been used as a self-contained dwelling. I say this particularly given that the building also contains 2 rooms which each contain a shower, handwash basin and toilet. Given what has been seen in the building, in my view, and as a matter of fact and degree, it has constituted a dwellinghouse, notwithstanding that plans provided indicate an intension for it to be used as a pool house.

9. I do not need to correct the notice in respect of the above because the allegation of 'the construction of a building' (stated in paragraph 3 of the notice) is not incorrect. I conclude that the appeal on ground (b) fails.

Ground (d)

10. An appeal on ground (d) is that it was too late for the Council to take enforcement action due to the time limits set out in section 171B of the 1990 Act. In a ground (d) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities. The decision must be made on the evidence provided and that evidence must be precise and unambiguous.

11. Section 171B(1) of the 1990 Act provides that where there has been a breach of planning control consisting in the carrying out without planning permission of building operations, as is the case here, no enforcement action may be taken after the end of the period of 4 years beginning with the date on which the operations were substantially completed.

12. The appellant states that the structure was substantially completed as of May 2017 with the installation of the windows. An invoice for windows, dated 13 February 2017, has been provided, together with two statutory declarations.

13. The first of these is by the appellant. In his declaration the appellant states that the windows were fitted in early summer 2017 and that by July 2017 all the works had been "completed (less décor)".

14. The second declaration is by Mr France, a person whom, according to the appellant, managed the foundation work and structure and then came back when the windows were fitted. Mr France states that he was involved in parts of the construction during early 2017 and that he can confirm to the best of his knowledge and recollection that the building was "almost finished less décor by the middle of the summer, at the latest about July 2017."

15. However, a complaint about the building was first raised on 28 October 2017, with the "date the issue occurred" noted on the complaint form as 21 October 2017. There is no explanation for why a complainant would wait until this time to draw to the attention of the Council a building which was substantially complete in May 2017.

16. In addition, contemporaneous emails and photographs of a complainant, submitted by the Council, indicate that the windows were installed between 30 October 2017 and 14 November 2017. This contradicts the appellant's case in respect of the date of substantial completion and I afford greater weight to the above contemporaneous correspondence than to the appellant's statutory declarations.

17. My attention has been drawn to documents submitted with a planning application for the appeal site in July 2017. Its location plan shows the appeal site, neighbouring properties and their outbuildings. But it does not show the building which is the subject of the enforcement notice which, according to the appellant, was substantially complete by this time.

18. Similarly, a plan taken from the Design and Access Statement for the same planning application shows the appeal site with an annotation declaring the owner's intention to construct a structure on the site of the building which is the subject of the enforcement notice. But no building is shown to exist. The contradiction presented by the above two documents has not been explained.

19. Taking all of the above into account, I conclude on the balance of probabilities that it was not too late for the Council to take enforcement action when the notice was issued. Accordingly, the appeal on ground (d) fails.

Ground (a)

20. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice, which in this case is the construction of a building in the rear garden.

21. Based on the reasons for issuing the notice, I consider the main issues in the ground (a) appeal are:

    - the effect of the appeal development on the character and appearance of the area; and

    - whether the appeal development provides satisfactory living conditions for occupiers, with particular regard to space, daylight, outlook and privacy.

Character and Appearance

22. The area is characterised by a mixture of detached, semi-detached and terraced houses with long back gardens, many of which contain modest outbuildings of varying designs.

23. The appeal development is a massive structure with a substantial crown roof. It fills the width of the plot and rises high up above the garden fence level. As such it is not subordinate in scale to the plot or the main dwelling on the site and it is clearly seen from neighbouring gardens and the windows of neighbouring homes.

24. From my own observations and photographs provided by a complainant, views of the building from neighbouring homes are not limited just to first floor windows, as is suggested by the appellant.

25. The combination of the width, depth, height and position of the building, close to the rear and both side boundaries, means that it is a prominent, dominant and visually intrusive backland structure, unlike any other outbuilding or dwelling seen in this area. As such, it is out of character with the area and the significantly more modest structures seen in neighbouring gardens.

26. Due to the height of the building, the alley at the back of the property, referred to by the appellant, makes no material difference to the building's visual effect. Nor do I consider that it matters that the building may not be visible from the public domain as this is not a relevant test of the relevant development plan policy in respect of this main issue.

27. I have taken into account the appellant's view that what is on site is broadly the same as what is countenanced under Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). But as is accepted by the appellant, with a height above 2.5 metres, it is too close to the boundaries to qualify for Class E permitted development rights and these rights are no longer in place in any event.

28. Class E permitted development rights, under Schedule 2, Part 1 of the Order, were lost when planning permission Ref P0651.18, dated 30 November 2018, for the main house on the site was implemented. This is because condition 6 of that permission removed permitted development rights for Class E buildings on the appeal site.

29. As a result, a previous scheme, for which a lawful development certificate (LDC) was granted, Ref D0436.18, dated 8 January 2020, cannot now be lawfully implemented. Nothing has been provided to lead me to a different conclusion in this regard. The LDC scheme therefore provides no realistic fallback position to be taken into account and similarities between the LDC scheme and what has been built are therefore of limited (if any) relevance.

30. I appreciate that the rooftiles used on the building may be of good quality and that the workmanship may be good. But these points make no difference to my overall conclusion in respect of this main issue.

31. I conclude that the appeal development harms the character and appearance of the area. In this regard it does not comply with Policy DC61 of the Havering Development Control Policies Development Plan Document, adopted 2008 (the DCPDPD), the Havering Residential Extensions and Alterations Supplementary

Planning Guidance, adopted 2011, or the design policies of the National Planning Policy Framework (the Framework).

Living Conditions

32. The Council considers that the outbuilding provides poor living conditions for occupiers and refers to Nationally Described Space Standards, daylight, outlook, privacy and space for storage. There is no information before me which satisfies me that the appeal building complies with all relevant standards for space or daylight. I therefore have no reason to disagree with the Council's assessment in these respects.

33. At my site visit it was apparent that access to the appeal building is via the back garden of the main house sited at the front of the site. No physical barrier exists between this main house and the appeal building so there is nothing to provide privacy for occupants of the appeal building, bearing in mind it has large clear glazed doors facing the rear of the main house and its rear garden.

34. Internally, the two en-suite rooms I saw, that the evidence indicates have been used as bedrooms, look directly out on to a high timber fence positioned very close to the windows of these rooms. This has a significant and harmful effect on the outlook from these rooms.

35. Taking the above into account, I conclude that the appeal development does not provide satisfactory living conditions for occupiers, with particular regard to space, daylight, outlook and privacy. This does not comply with Policy D6 of the London Plan 2021, Policy DC61 of the DCPDPD or the design policies of the Framework, in so far as they relate to the amenity of existing and future users.

36. I have also been referred to Policy D4 of the London Plan. But it has not been explained how this is directly relevant to this main issue and so I consider this policy weighs neither in favour of nor against the appeal development.

37. I appreciate that the appellant may consider that living conditions considerations are not relevant in light of their view that the building is intended as a pool house, incidental to the use of the main dwelling on the site. But even if that were the case, it would make no difference as my view is that the ground (a) appeal should still not succeed due to my conclusion on the effect of the appeal development on the character and appearance of the area.

Conclusion on Ground (a)

38. Taking all of the above into account, I conclude that the appeal on ground (a) fails.

Ground (f)

39. An appeal on ground (f) 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.

40. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any

use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.

41. The requirements of the notice reflect section 173(4)(a) above, ie the purpose of the notice is to remedy the breach. This is consistent with the Council's submissions.

42. The appellant seeks that I amend the requirements of the notice to allow the replacement of the roof with a flat roof or reversion to the aforementioned scheme for which an LDC was granted. But neither of the above options would remedy the breach of planning control.

43. I say this bearing in mind that, as the appellant has acknowledged, Class E permitted development rights are no longer in place. As such, the previously granted LDC scheme cannot now be implemented and nothing provided has led me to any different conclusion in this regard.

44. I have taken into account the appellant's view that complete loss of the structure is punitive and that their suggested options are fairer and proportionate. But as neither of the options put forward would remedy the breach, I cannot amend the notice in the manner sought by the appellant.

45. Considering all the above points, I am satisfied that the requirements of the notice do not exceed what is necessary to remedy the breach of planning control. As such, the appeal on ground (f) fails.

Ground (g)

46. An appeal on ground (g) is that the period for compliance with the requirements of the notice falls short of what should reasonably be allowed.

47. The appellant seeks 6 months to comply with the notice. But very limited information has been provided to justify this extended period, particularly given that, on the appellant's own case, they have access to builders.

48. Whilst the evidence indicates that the building has been lived in, it was not occupied at the time of my site visit and I have no reason to believe that anyone stands to lose their home as a result of my decision.

49. On the cases put to me, I am satisfied that the period for compliance specified in the notice does not fall short of what should reasonably be allowed and so the appeal on ground (g) fails.

Conclusion

50. 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

L Perkins

INSPECTOR