



Appeal Decision

Site visit made on 5 November 2019

by Hilary Orr MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 November 2019

Appeal Ref: APP/B5480/C/18/3216873

land R/O 19 Mildmay Road, Romford RM7 7DA

- 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 Miss Victoria Ann Hollington against an enforcement notice issued by the Council of the London Borough of Havering.
 - The enforcement notice, numbered ENF/51/17, was issued on 23 October 2018.
 - The breach of planning control as alleged in the notice is the material change of use of a domestic outbuilding into a self-contained residential unit (Class C3) and construction of a wooden pergola.
 - The requirements of the notice are:
 - (i) cease using the outbuilding as a self-contained residential unit and remove the wooden pergola; and
 - (ii) return the internal layout to the layout that existed prior to the unauthorised conversion as shown on the plan attached to the notice; and
 - (iii) All materials and debris associated with steps (i) and (ii) above, shall be totally removed from the site.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be varied by deleting '3 months' and substituting '6 months' as the periods for compliance with steps (i), (ii) and (iii). Subject to this variation the appeal is dismissed, and 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. A further planning application P1111.19 had been submitted to the Council during the course of the appeal and is referred to in the appellant's evidence. However, the Council has confirmed that this has now been withdrawn and there is therefore no need to consider this further.

Ground (c)

4. The building subject to this appeal is a single storey building sited to the rear of 17, 17a, 19 and 19a Mildmay Road. The parties accept that the material change of use of the outbuilding requires planning permission. Therefore, the ground (c) is in respect of the pergola only, and that the matter alleged in the notice does

not constitute a breach of planning control. This is known as one of the legal grounds and therefore the onus of proof is on the appellant.

5. The appellant's case is that the pergola benefits from rights conveyed by Schedule 2 Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), as amended. This permits buildings to be constructed within the curtilage of a dwelling house, for a purpose that would have been required, incidental to the enjoyment of the dwellinghouse. It is not in dispute that the dimensions of the pergola meet the provisions of the above Order.
6. However, the provisions of Class E of the GPDO are reliant on the development being carried out within the curtilage of a dwelling house. An application for a certificate of lawfulness was submitted and approved by the Council in 2012 (application No. E0014.12). This application was made on the basis that the properties known as 17, 17a, 19 and 19a Mildmay Road had been in use as two self-contained flats, for a period in excess of four years, and were thus immune from enforcement action. This application was approved in September 2012.
7. I saw from my site visit that the property still appeared to be used as two flats. Furthermore, the appellant confirms in the final comments at paragraph 11 of their final comments, that the current tenant of the building was formally occupying 19b, only moving out following burst pipes from the flat above. I am therefore satisfied that the property remains subdivided. It is therefore not occupied as a single dwelling. Accordingly, the above rights conveyed by the GPDO do not apply and express planning permission is required for the pergola. The appeal on ground (c) for the pergola is therefore dismissed.

The appeal on ground (a) the deemed application

Main issues

8. I consider that the main issues are:

- The effect of the development on the living conditions of the occupants in terms of internal layout, and amenity space;
- The effect of the development on the character and appearance of the area; and
- The effect of the development on highway safety and car parking provision.

Living conditions

9. My attention has been drawn to the previous 2013 application that was subsequently dismissed on appeal on 15 January 2013. The Council are concerned that the use of the building would result in a cramped layout and poor quality amenity space. The previous appeal differs from the current position in so far as there were no cooking facilities with the occupant reliant on No 19 for all cooking facilities.
10. The appeal site is located in an area which is generally semi-detached properties set within small front gardens. The subject building is located in to the rear of the site. It is divided into three separate rooms, a kitchen/living area, with the usual white goods associated with a kitchen, a separate bedroom and a bathroom with a

boiler/airing cupboard. From my visit it is clear that these rooms are all very small and feel cramped. Its compact nature is further emphasised by the irregular shape of the building. The three windows are all sited in the northern elevation. However, the pergola is also close to this elevation and although relatively open in nature, undoubtably reduces the available light for these windows. This results in inadequate daylight to the living areas of the building. The outlook from the living area and bedroom is into the gap to the rear of the host properties and the parking area. The building does not provide internal accommodation of an appropriate quality for the current and future occupiers.

11. The compact nature of the building is likely to result in greater reliance on the external amenity space. I saw that this is positioned between the building and the rear of the host properties. I recognise that it may be adequate in purely mathematical terms for a residential dwelling of this size and would provide a small useable space. Nonetheless, the siting of the amenity space to the rear of the properties in Mildmay Road means that it would, in my judgement, be significantly overlooked from the rear windows of these dwellings. Given its northern orientation, this space would be unattractive and of poor quality for future occupants. I therefore conclude that the proposal would not provide an adequate level of appropriate and private useable amenity space for the residents of the dwelling.
12. I acknowledge that the pergola has been constructed to improve the levels of privacy from neighbouring residential properties. I also saw that some additional screening had been provided in the form of artificial foliage to the sides of the structure. However, the open nature of the pergola would not negate the overlooking of this space to any significant degree.
13. Overall, I find that the dwelling fails to provide adequate private amenity space of an appropriate quality for current and future occupiers. The development is therefore significantly harmful to the living conditions of the occupiers such that the appeal on ground (a) should be dismissed in this regard. The development is therefore contrary to policy 3.5 of the London Plan The spatial Development strategy for London Consolidated with Alterations Since 2011 (March 2016) (LP) and policies DC4 and DC61 of the Havering Core Strategy and Development Control Policies Development Plan Document (2008) (DPD). These policies in summary seek to ensure that housing development is of the highest quality internally and externally and provide a suitable degree of privacy and private sitting out or amenity space.

Character and appearance

14. The properties in the area are primarily two storey terraced and semi-detached dwellings fronting the road within small front gardens. They are generally sited within large rear gardens, some with outbuildings. No 19 and 19a are located at the end of a small terrace of three properties. At the other end of the terrace is what appears to be a disused shop. The property has been extended at first floor and beneath this there is a vehicular access into the rear of the properties, where the subject building is sited.
15. The rear of the plot is irregular in shape with the boundary set at an angle from the road. The subject building follows the line of the boundary and is itself irregular in shape being narrower to the east. It is accepted that it has been in

place for a number of years, although its use over the years is less clear. The original plot for the whole property is however similar in scale to others in the area.

16. As a result of the development carried out, the building has been provided with an area of defined amenity space, which together with the wooden pergola gives a distinct visual boundary to the building. This has the effect of fragmenting the site both physically and functionally. The pergola adds further built development into the modest space to the rear of the properties giving a cramped and cluttered appearance. This area is highly visible from the rear of the host and the adjoining properties and through the vehicular access by those passing in Mildmay Road.
17. I recognise that the building is currently only occupied by a single person. However, this may not remain the case. I saw that the area around the building is already domestic in nature and the addition of a new dwelling onto the site will undoubtedly increase the levels of activity, over that already generated by the existing flats.
18. I have had regard to the appellant's fallback position, that if the building reverted to its former use, then the pergola would meet the provisions of the GPDO. However as outlined above these rights do not apply where the property is not in use as a single dwellinghouse. The pergola would require planning permission and as I have already identified harm, I give this little weight.
19. In view of the above, I find that the subdivision of the site, the construction of the pergola and the increased activity associated with the additional dwelling, significantly harms the character and appearance of the area. The development is therefore contrary to policies DC4 and DC61 of the DPD. These policies seek to ensure that development does not have an adverse impact on the surrounding area and maintains, enhances or improves the character and appearance of the local area.

Highway safety and parking

20. The inadequate provision of on-site parking provision formed the basis for the Council's final reason for issuing the notice. During the course of the appeal the appellant has however, provided an obligation dated 6 June 2019. This obligation, in summary, restricts the application of the owner or any resident occupying the residential unit from making an application for a parking permit.
21. In response the Council recognises that this might go some way to reducing the levels of on-street parking in the area. However, they remain concerned that the obligation would not prevent residents of the building, or the existing flats, from parking their vehicles in this area. I share those concerns as when I arrived at the site there was a commercial van parked adjacent to the building.
22. The appellant has suggested a condition as an alternative to the obligation. However, the enforcement notice relates to only part of the site and therefore a condition could not be used to control parking of vehicles by residents of the existing flats.
23. The construction of the pergola has significantly reduced the available space for the parking and manoeuvring of vehicles. This means that if vehicles park in this area, they will need to reverse down the narrow passageway, either from, or onto

the highway. The road is one way and narrows just beyond the site before continuing to a sharp right hand bend. This would have the effect of reducing the speed of traffic passing the site. However, the existing on street parking to either side of the main carriageway, reduces the visibility for vehicles both leaving the site and for oncoming users of the highway. Moreover, any vehicles reversing down the passageway, in either direction, would have to cross the pedestrian footpath before reaching the carriageway, prejudicing the safety of pedestrians.

24. For the above reasons, I conclude that the development causes unacceptable harm to pedestrian and highway safety and the submitted obligation does not overcome that harm. It therefore conflicts with Policies DC4 and DC32 of the DPD. These policies in combination seek to ensure that new development or residential conversions, improve safety for all users, and are not detrimental to highway safety.

Other matters

22. It is acknowledged by the parties that the Council are unable to demonstrate a five year supply of housing. However, I have found that the scheme would cause significant harm to the living conditions of existing and future occupiers, and to the character and appearance of the area. Therefore, the significant harm I have identified, would significantly and demonstrably outweigh the limited benefit of providing one additional dwelling.

Ground (f)

23. The appellant considers the steps required by the notice exceed what is necessary to remedy the breach of planning control. When an appeal is made on ground (f) it is essential to understand the purpose of the notice. The purpose of this enforcement notice is to remedy the breach of planning control.
24. The steps are set out in full above, but in summary they require: the use of the building to cease and the pergola to be removed; the internal layout to be returned to the layout that existed and shown on the attached plan; and the material and debris to be removed from the site.
25. In summary Section 173(5) gives power to require the alteration or removal of buildings or works for the purposes of remedying the breach. Therefore, a notice directed at a material change of use may require the removal of works integral to and solely for, the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, so that the land is restored to its condition before the change of use took place.
26. The appellant refers to a pre-existing kitchenette. However, the planning contravention notice dated 8 August 2018 refers to the use of the building as an office and store, including a bathroom. It goes on to state that the office was then converted to a bedroom and a kitchen was subsequently installed. I note that the previous Inspector, in his 2014 decision, referred to the previous use of the building for storage but there is no reference to a kitchenette. He went on to refer to his concern about the lack of cooking and food storage facilities in the building. The Inspector carried out his site visit on 15 January 2014. In their final comments the appellant confirms the tenant moved into the building on or around 13 February 2015. I have no evidence to confirm the date, details of the equipment, or reason why, any kitchenette items were provided between these

dates. Likewise, I have no evidence that the building had been historically subdivided, other than with a separate bathroom.

27. Whilst, the enforcement notice requires reinstatement of the original layout, the attached plan shows that the bathroom together with the toilet and sink can be retained. I therefore find that on the balance of probability the internal wall to provide a separate bedroom and the other internal alterations including the comprehensive kitchen facilities, have been carried out solely to facilitate the residential use of the building. Similarly, on the evidence before me the construction of the pergola to provide privacy for the building, has been built solely to facilitate the residential use.
28. It is the appellant's case that the building could return to a use that is ancillary to the use of the land, and this might include use as a day room, or for eating or sleeping. It is asserted that this means that restoring the internal layout is excessive. I recognise that the building, once restored, could be used for purposes ancillary to the existing flats. However, whether the examples that have been cited, would constitute a material change of use that would require planning permission, would depend on the particular circumstances, and is not a matter before me. Nonetheless, a self-contained or virtually self-contained building that provides all the facilities necessary for independent day to day living, cooking, eating and sleeping, would not normally be considered as incidental or ancillary to a dwelling (including a flat).
29. As outlined above, I have had regard to the previous appeal decision and the paragraphs referred to at 3 and 4 of his decision. My understanding of these paragraphs is, that the use of the residential annex, without kitchen, food storage and cooking facilities, would not be realistic or workable. Consequently, this does not alter my view that the steps required by the notice are the minimum necessary to remedy the breach of planning control.
30. Overall, I find that the steps required by the notice do no more than is required, to remedy the breach of planning control, and lesser steps would not achieve that purpose. Consequently, the appeal on ground (f) is dismissed.

Ground (g)

31. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant has argued in her statement of case, that if the appeal on ground (a) failed, the 3 months given by the notice, would give insufficient time for the building to be vacated and the steps required to be carried out.
32. The appellant states that the building is being let on a periodic (monthly) tenancy. If the appeal is dismissed and the notice upheld, then the appellant will need to give notice to the tenant. It is contended that if the building is not vacated then it will be necessary to commence legal proceedings through the Courts. I accept that such proceedings can be time consuming and the remedial works could not begin until the building has been vacated.
33. I have no evidence about the personal circumstances of the tenant. Nonetheless, the notice, if upheld, will mean that they will lose their home. Accordingly, I consider that a period of 6 months would be a more reasonable timescale for the

building to be vacated, the tenant to find suitable alternative accommodation, and the other requirements of the notice to be complied with.

Conclusion

34. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

Hilary Orr

INSPECTOR