The Planning Inspectorate

Appeal Decision

Site visit made on 10 November 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 13 January 2021

Appeal Ref: APP/B5480/C/20/3250562
220 Elm Park Avenue, Hornchurch RM12 4PQ

- 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 Tejpal Singh Rathor against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 10 March 2020.
- The breach of planning control as alleged in the notice is: Without planning permission, the subdivision of the rear garden area including the insertion of a metal gate in the Woburn Avenue boundary wall, replacement of metal gates with timber gates, and the material change of use of the detached garage and forecourt for the commercial repair and storage of motor vehicles.
- The requirements of the notice are to:
  (i) Cease using the hatched area on the attached plan for the commercial storage, repair and parking of any motor vehicle;
  (ii) Remove from the land all motor vehicles, motor vehicle parts including, but not exclusively, tyres, car parts, body panels, doors, any scrap metal and all hand held or fixed equipment used in connection with the unauthorised use as set out in (i) and remove all debris accumulated as a result of taking steps (i) and (ii) above;
  (iii) Remove the panel fencing shown in the approximate position (indicated with a broken arrowed line) on the plan marked as LBH1 attached to this notice;
  (iv) Remove the metal gate shown in the approximate position (indicated with an arrow and thick black line) on the plan marked as LBH2;
  (v) Brick up the opening to the height of the existing wall, left following the carrying out of step (iv) with bricks and mortar that match in colour and texture that of the existing brick wall;
  (vi) Remove the wooden double gates shown in the approximate position (indicated with an arrow and thick black line) on the attached plan marked as LBH3; AND
  (vii) Remove all debris accumulated as a result of taking steps (iii) through (vi) above.
- The period for compliance with requirements (i) and (ii) is 1 month after the date when this Notice takes effect and, for requirements (iii), (iv), (v), (vi) and (vii) 2 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 the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Formal decision

1. The enforcement notice is corrected by the deletion of Requirements (iv) and (v), and the re-numbering of the remaining requirements, accordingly. Subject to this correction the notice is upheld.

2. The appeal is allowed, and planning permission is granted, on the application deemed to have been made under section 177(5) of the 1990 Act as amended

insofar as it relates to the installation of the metal gate within the brick wall, and thereby the requirement to brick-up the resultant break in the wall becomes unnecessary.

3. The appeal is dismissed and the enforcement notice is upheld, and planning permission is refused in respect of the change of use of the detached garage and forecourt for the commercial repair and storage of motor vehicles, the installation of the timber gates fronting the garage and its forecourt, and the installation of panel fencing for the purposes of sub-dividing and bounding the rear garden area.

Preliminary Matters

4. The appellant indicates that the use of the domestic garage and its forecourt for vehicle repairs and associated storage does not constitute a material change of use, yet he has not appealed the enforcement notice on Ground (c) which would have been consistent with his argument that no planning permission was required for this particular element of the breaches identified by the Council. Similarly, although the appellant indicates that the sub-division and demarcation of the rear garden area has already been permitted by previous planning decisions made by the Council, as no Ground (c) appeal has been put forward in this regard, the appellant is, as a consequence, saying that the fencing in situ requires the benefit of planning permission. It also then follows that neither is the appellant claiming that this particular element is covered by Class A ('Minor Operations') of Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). No diagrammatic representations nor details of the fencing panel heights have, though, been provided to illustrate that the fencing complies with such.

5. The site's recent planning history, which has involved the creation of two additional properties, Nos 2C and 2D Woburn Avenue, for use as self-contained residential units has been outlined. However, although various plans/drawings have been submitted by the appellant as an attempt to support his case, it is not clear which of these support the following claims made in his Statement of Case:

   "The plans below clearly show a 2m high boundary wall and the gates in question giving access to the approved rear garage and crossover" (under paragraph 1.2); and

   "The arrows on the photo shows the partition of the individual flats with fence which were approved on the two LDC applications – See Appendix C Approvals and pages 3, 4, 5 & 6 above" (under the photograph below paragraph 5.5).

6. The most detailed of these is a copy of a plan apparently relating to a planning application prepared by Dhiman Design Consultants, for 220 Elm Park Avenue, (drawing no 20-543-P03 Rev B) and labelled 'Proposed ground floor plan.' The appellant suggests that this drawing relates to a planning permission (ref P.1868.01) which was granted in February 2002. The plan, though, being only two-dimensional in form, merely implies the 2m high boundary wall, as is the case with the double gates forward of the garage. However, more importantly, neither this drawing nor any of the other plans put forward show the proposed sub-division of the rear garden with fencing, as is relevant to the enforcement notice at appeal.

7. The appellant then refers to two lawful development certificates (LDC) issued by the Council in November 2019. Similarly, the submitted plans, which are effectively small scale ordnance survey extracts, do not help the appellant's case. Also, and I am not sure what exactly they relate to, a series of drawings for 'Flat 2C', dated 19 February 2020, have been submitted by the appellant in support of the appeal. Again, these do not assist in the manner desired.

8. It is open to me to interpret what I might consider as 'hidden grounds' in the appellant's representations. However, as the extent of the evidence provided does not suggest to me that the sub-division of the garden and erection of panel fencing is already permitted by means of a previous planning permission or the entitlements under the GPDO, I must consider that this development requires the benefit of planning permission.

9. As regards the car repairs and associated storage of vehicles and their parts the materiality of such an unrestricted operation in a residential area would go significantly beyond the scope of what could be considered a hobby or an activity incidental to the use of the dwellinghouse, and would thereby also require the benefit of planning permission.

10. In the circumstances I shall assess both of the above developments in accordance with their planning merits and/or impacts under the Ground (a) appeal lodged, along with the other breaches alleged in the enforcement notice.

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

Main Issues

11. These are:

    1) the development's effect on the living conditions of local occupiers, with particular regard to any noise and disturbance and vehicular movement arising; and

    2) whether the development provides for a satisfactory standard of accommodation for the occupiers of the site's residential units, with particular regard to external amenity space.

Reasons

Living conditions

12. Although I noted at my site visit that the garage and forecourt had been fully cleared the appeal requires me to assess the use not on what I witnessed but, instead, on the effects that would be felt by granting planning permission for the use, as enforced against. This is, indeed, the purpose of a DPA.

13. In gauging the scale of the vehicle repair use and its associated activity at the site I have had regard to the representations received from interested parties, and it would appear that it previously gave rise to significant noise nuisance. I note the appellant's comment that the appeal premises is located off a busy street, and local residents should here expect higher levels of noise and disturbance. However, whilst Elm Park Avenue might be a busy through route that is not the case with Woburn Avenue, off which the garage is located. This is, instead, a residential side road which I noted was significantly quieter than

Elm Park Avenue. Further, the said objections have been received from neighbouring residential occupiers from Woburn Avenue.

14. With reference to the photographs provided by the Council, and the vehicles shown being stored at the site, presumably awaiting repair or collection, it depicts an intensity of use which goes beyond what might be witnessed from that of a hobby. Although the appellant disputes the Council's claim that it was a commercial use, due to the numbers of vehicles evident from the photographs, I am not convinced that the operation was not for financial or commercial gain.

15. Granting planning permission for such a use would realistically provide the appellant with a considerable degree of latitude as to the scope of the activity and the manner in which such an unneighbourly use in a location of residential character could be run. The imposition of necessary and reasonable conditions in an attempt to regulate this would be problematic as to both the precision of wording and their enforceability. In terms of numbers of vehicles at the site the use would almost certainly require constant monitoring. Such difficulties are indicative of the fact that the nature of vehicle repairs means that the use does not fall within the B1 (light industrial) use class but, instead, is more akin to a sui generis use. This could even stray into a Class B2 (general industrial) use should power tools be employed, although I accept that a condition imposed to bar the operation of such might be easier to enforce.

16. To compound matters, though, the large, double, timber-gates which open across the footway are potentially hazardous to both pedestrian and vehicular safety. The appellant makes the point that the dimensions of the drive fronting the garage do not allow for vehicles to both enter and leave the site in forward gears. That said, this arrangement, whilst not uncommon in residential settings, and if used solely for domestic garaging or storage purposes, would generate only a tiny fraction of vehicular movements compared to that arising from a potential steady stream of cars being brought onto the site for the purposes of undergoing repair and, later, moving off.

17. I am also mindful that the proposed use of the forecourt and garage for vehicle repairs precludes what would be their expected use for off-street parking for the benefit of residential occupiers. If used instead in connection with the repair use the gates would be opened and shut far more frequently than would be normally the case. I am also concerned as to the potential presence of large, attendant vehicles such as pick-up trucks which are often required in connection with vehicle repair uses.

18. However, there is a clear difference between the above gates and the installation of the small, metal gate within the side boundary wall. The enforcement notice requires also for this pedestrian gate to be removed, as it allows access to a residential unit via the rear garden area. The configuration here is a concern to the Council. That, though, is a different issue and I consider it would be unfair to require for this gate's removal as, in itself, it has created no material harm and does provide security on the existing layout. Nonetheless, the other elements of the unauthorised development referred to are, for the above reasons, unacceptable.

19. On this main issue, my findings on the metal gate aside, I conclude that the use of the garage and forecourt for car repairs, their associated storage and of their parts, and the installation of the wooden gates, are all harmful to the

living conditions of neighbouring residential occupiers, and are in material conflict with the objectives of policies DC55, DC36, DC33 and DC61 of the Havering Core Strategy and Development Control Policies document (CS), policies 7.4, 7.6 and 6.13 of the London Plan (LP) and relevant advice within the Council's 'Residential Design' Supplementary Planning Document (SPD).

Standard of accommodation

20. The enforcement notice seeks the removal of the panel fencing which sub-divides and bounds what was originally the rear garden pertaining to No 220. As I have mentioned there is no clear indication that the location and form of the divides that now exist have been permitted as part of the use of the flat units (C & D) created which, it appears, benefit from lawful development certificates issued in 2019. Besides, in taking the approach that the breaches of planning control relate to the land which originally, in its entirety, related to No 220, I must take it that the number and extent of the breaches identified by the Council at the time the notice was issued, represented the totality of these.

21. In the circumstances, in identifying that the division leaves little external garden area for flats A & B it would appear that the Council is aiming for a comprehensive solution to the arrangement. The appellant's argument that this has been carried out in the interests of security might have been a consideration but does not demonstrate that the division represents an equitable split between the flats. The photographs provided of other fencing in the locality are not comparable to the nature of that erected in this particular instance. Each case must be decided on the individual issues involved and the planning merits and/or impacts arising in each particular instance. As the fencing has been seemingly put up at whim I must agree with the Council that proper consideration should be given to the split in the interests of all the flats' occupiers.

22. I therefore conclude that the development, in the above regard, does not allow for a satisfactory standard of living conditions for the occupiers of the site's residential units, and is in contrary, in particular, to the objectives of CS policies CP17, DC3 and DC61, LP policies 7.4 and 7.6 and relevant advice within the Council's SPDs 'Residential Design' and 'Residential Extensions'.

Conclusions on the DPA

23. I have found harm on both main issues, which is compelling. For the above reasons, and having had regard to all matters raised, the appeal on ground (a) is partly allowed, but only in respect of the metal gate installed, and planning permission is hereby granted for such on the application deemed to have been made under section 177(5) of the 1990 Act as amended. However, the appeal is dismissed for the car repairs, the associated storage of vehicles and parts, the timber gates, and the panel fencing installed, and planning permission is refused in these respects on the DPA.

The Appeal on Ground (f)

24. 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 land to its condition prior to the current breach.

25. Under the DPA I have found that planning permission should not be granted for the majority of the unauthorised development and, on this ground, the appellant refers only to the removal of the "fence and gate" as excessive with regard to security measures. However, as the metal gate can now be retained this should negate the security argument whilst a comprehensive solution can be found to the matter of the garden subdivision.

26. The Council may have chosen not to enter into negotiation with the Council as regards the above issue. However, with the appellant being of the opinion that the garden subdivision and facilitative fencing are already permitted in planning terms - for which I have found otherwise - I cannot envisage that any mutually acceptable solution might have proved possible prior to the enforcement notice's issue.

27. Given the circumstances, I find that the notice's stated requirements are not excessive for the purposes of remedying the breaches of planning control.

28. The appeal on ground (f), therefore, fails.

The Appeal on Ground (g)

29. The appeal on ground (g) is that the stated time period for compliance falls short of what is reasonable in the circumstances. The appellant indicates that the stipulated periods should, in the current circumstances, be extended to between 9 and 12 months, which he considers would be a more realistic period within which to plan and undertake the necessary work.

30. The car repairs and associated storage use has, however ceased, and the garage and forecourt cleared of such. Only the wooden gates and the fencing panels now need to be removed, for which a period of two months has been allowed. The gates could potentially be replaced by something akin to those shown on the bottom photographs on pages 20 and 21 of the appellant's Statement of Case.

31. If not satisfying the GPDO's Schedule 2, Part 2, Class A, and planning permission was required for such then it would be open to the Council, should it see fit, to vary notice and extend the compliance period in this regard. However, that must remain a matter between the two main parties. Whatever, new gates could be hung and the fencing removed in a matter of hours. Accordingly, I am satisfied that the stated compliance periods are adequate to make the necessary arrangements and achieve compliance.

32. On this basis the appeal on ground (g) fails.

Overall Conclusion

33. 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. That is the case here with the metal gate in situ.

34. In this instance the enforcement notice is corrected as set out in the formal decision. Subject to that correction, the appeals are dismissed and the notice is upheld.

Timothy C King

INSPECTOR