The Planning Inspectorate

Appeal Decisions

Site visit made on 2 August 2022

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2022

Appeal A Ref: APP/B5480/C/21/3272091
Appeal B Ref: APP/B5480/C/21/3272092
The land known as 79A Collier Row Road, Romford RM5 2AU

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended ('the Act') and are made by Mr Danny Sharp (Appeal A) and Mrs Victoria Sharp (appeal B) against an enforcement notice issued by the Council of the London Borough of Havering.
- The notice, numbered ENF/510/16, was issued on 3 March 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of an outbuilding into a self-contained dwelling.
- The requirements of the notice are to: (i) Cease the use of the building as a self-contained dwelling; (ii) Remove all amenities which facilitate the use of the building as a separate dwelling unit including the removal of all cooking facilities, counter tops and food storage cupboards; remove all beds, sofa beds, bathing/showering facilities, toilet facilities and all residential paraphernalia including appliances (including washing machines and any other kitchen appliances) associated with the use of the building as a separate dwelling; and (iii) remove all other debris, rubbish or other materials accumulated as a result of taking steps (i) to (ii).
- The periods for compliance with the requirements are: (i) 3 months; (ii) and (iii) 4 months after the date the notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (c) of the Act. 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.
- Appeal B is proceeding on the ground set out in section 174(2)(c) of the Act. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Summary of decisions: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision. Appeal B is dismissed.

Preliminary matter

1. The development plan has changed since the notice was issued, with the publication of the London Plan ('the LP') in March 2021. In addition, the National Planning Policy Framework was revised in July 2021. The parties were invited to comment on these changes.

Appeals A and B - the appeals on ground (c)

2. For the appeals to succeed on this ground, the appellants need to demonstrate that the material change of use of the outbuilding into a self-contained dwelling is not development, or does not require planning permission, and so is not a breach of planning control.

3. The appellants' evidence relates to the construction of the outbuilding when it was within the curtilage of the dwellinghouse at 79 Collier Row Road. However, the notice does not allege the building is unauthorised or require it to be demolished but is instead concerned with its use as a self-contained dwelling. If the notice were complied with, including the removal of all amenities which facilitate the use as a separate dwelling unit, the building would remain.

4. The appellants' son occupied the building as an annexe for 3 years, before it was separated from No. 79. It is not clear from the evidence provided whether that might have amounted to use as a self-contained dwelling; however, if it did, there is no evidence that it was not development or did not require planning permission.

5. For these reasons it has not been demonstrated that the change of use of the outbuilding into a self-contained dwelling is not development or does not require planning permission. Accordingly, the appeals on ground (c) must fail.

Appeal A – the appeal on ground (a)

6. The main issues are the effects of the change of use on (i) the character and appearance of the area; and (ii) the living conditions of the occupiers of the dwelling and those living nearby.

Reasons

Character and appearance

7. The notice states the change of use is visually intrusive to the character of the surrounding area and an incongruous, awkward feature within the setting. Such matters are more easily understood in terms of the construction or alteration of a building than its use. It is not clear how the change of use of the building could be expected to respond to distinctive local building forms and patterns of development or respect the scale, massing and height of the surrounding context.

8. The change of use probably involved some alterations to the external appearance of the building. However, there is no information to show what changes were made and the alleged breach of planning control excludes any operational development. Features within the garden areas associated with residential occupation of the appeal site have a domestic character, although it is unclear whether any were already present when the change of use occurred. However, there is nothing that would have been out of the ordinary if the outbuilding had remained incidental to No. 79, nor anything that appears inappropriate to the surrounding area.

9. The character and appearance of the local area is therefore maintained and not adversely affected. Accordingly, I find no conflict with policies DC4 and DC61 of the Havering Core Strategy and Development Control Policies Development Plan Document ('the DPD') or policy D4 of the LP.

10. The Residential Extensions and Alterations Supplementary Planning Document ('the SPD') indicates that separate accommodation in an outbuilding will only be permitted in exceptional circumstances. However, the SPD does not expand upon, or add to, the assessment criteria of development plan policies relevant to this issue, so it is not possible to find conflict with it.

Living conditions

11. Policy D6 of the LP requires development to maximise the usability of outside amenity space. The dwelling's amenity space is in 2 areas and while the Council describes it as cramped and enclosed, it exceeds the policy's minimum requirement of 5 sqm of private outdoor space for a 2-person dwelling.

12. The rear amenity area is small and enclosed by the dwelling, an outbuilding and boundary fences. The front amenity area is more open but reasonably private. These 2 areas provide adequate amenity space, in terms of quantity and quality, for a modest 2-person dwelling. While the Council refers to the SPD in this regard, I am not convinced that it can be applied to the formation of a new dwelling. In any event, the garden size is not unusable, which is the criterion adopted by the SPD for judging the effect of extensions or outbuildings.

13. There is no evidence that any neighbour has experienced unacceptable or significantly greater noise and disturbance because of the change of use, so I find no conflict with policies DC4, DC55 or DC61 of the DPD in that regard. The Council also refers to LP policy D4 in terms of living conditions; however, I find that policy to be concerned with achieving good design, which I have already considered in respect of character and appearance.

14. Policy D6 of the LP also requires a one-bedroom, 2-person unit to have a minimum gross internal floor area of 50 square metres ('sqm'), plus 1.5 sqm built-in storage. The dwelling is smaller than this, having a total internal floor area of 38 sqm.

15. This conflict with the development plan must be considered in the context of the planning permission being sought. The appellant seeks permission for himself and his wife, and no other person, to occupy the building as a self-contained dwelling, stating, "I am only looking to see out our final days at 79A Collier Row Road".

16. While the Council is not convinced the dwelling provides suitable living conditions for individuals with a potentially restricted range of movement and hampered manoeuvrability, I have only been presented with evidence in terms of the gross internal floor area of the building. However, the Council's view is consistent with its earlier decision to grant a personal permission for a temporary period of 2 years, in the expectation that suitable alternative accommodation would be found.

17. The limited internal space provided by the dwelling is unacceptable as a permanent addition to the housing stock, as it would not meet the needs of all Londoners. However, there will be instances where individuals do not want, or even need, the amount of space that is set by policy. In this case, the appellant and his wife have chosen to occupy the dwelling in full knowledge of the quality of accommodation it provides and of their personal needs.

18. In view of this, a permission that is personal to the appellant and his wife would meet their stated needs and would avoid prejudice to the broader policy objective of securing a quality of housing to meet the needs of all Londoners. It would effectively remove the dwelling from the capital's general housing stock. I shall therefore grant planning permission, subject to a condition to restrict the occupation of the dwelling to the appellant and his wife.

Conditions

19. The Council suggests 2 conditions, the first of which would restrict the occupation of the dwelling to the appellant and his wife. I have already accepted this as necessary to avoid the permanent addition of a dwelling with such limited internal space to the housing stock.

20. The second condition would require the use as a dwelling to cease, all materials and equipment brought on to the premises in connection with it to be removed, and the land restored to its former condition as a garage when the appellant and his wife cease occupation.

21. Both suggested conditions would also require the use of the dwelling to cease at the end of 12 months if the appellant and his wife have not already stopped living there. This additional limitation would be inconsistent with the terms of the personal permission I intend to grant in recognition of the appellant's and his wife's circumstances.

22. The effect of the first condition would be that residential use ends when the appellant and his wife stop occupying the dwelling, so it is unnecessary to require it to cease in the same circumstances in a second condition.

23. The second condition would also require all materials and equipment brought on to the premises in connection with the use to be removed. This would equate to the notice's requirement (ii) and would be a reasonable measure to achieve appropriate restoration, if phrased as precisely as in the notice.

24. Finally, the second condition would require the land to be restored to its former condition as a garage. However, that would appear to include alterations to the exterior of the building. Without evidence of the building's former appearance, I cannot be confident a future owner would know what needed to be done to restore the land to its previous condition. Consequently, I shall exclude that aspect of the condition.

Conclusion on ground (a)

25. The residential occupation of the dwelling does not cause harm to the character and appearance of the area or the living conditions of any neighbour. While the amenity space is adequate, the internal floor area is significantly below the amount required by policy D6 of the LP for an addition to London's housing stock, so there is conflict with the development plan. However, a permission granted solely for the benefit of the appellant and his wife would not cause a permanent change in the housing stock and the policy conflict would not affect any other person. For these reasons, the requested limited exception to the normal policy approach is acceptable and I shall grant permission accordingly.

Appeals A and B - conclusions

26. For the reasons given above, I conclude that the appeals on ground (c) should not succeed, and that Appeal A should succeed on ground (a). I shall grant planning permission for the use as described in the notice subject to conditions.

Appeal A – Formal Decision

27. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the development already carried out, namely the material change of use of an outbuilding into a self-contained dwelling at the land known as 79A Collier Row Road, Romford RM5 2AU as shown on the plan attached to the notice and subject to the following conditions:

    1) The use as a self-contained dwelling hereby permitted shall only be carried out by Mr Danny Sharp and/or Mrs Victoria Sharp and by no other person.

    2) Within 4 months of the premises ceasing to be occupied by both Mr Danny Sharp and Mrs Victoria Sharp, all amenities which facilitate the use of the building as a separate dwelling unit including all cooking facilities, counter tops and food storage cupboards, all beds, sofa beds, bathing/showering facilities, toilet facilities and all residential paraphernalia including appliances (including washing machines and any other kitchen appliances) associated with the use of the building as a separate dwelling shall be removed from the land.

Appeal B – Formal Decision

28. The appeal is dismissed.

Mark Harbottle

INSPECTOR

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/B5480/C/21/3272091	Mr Danny Sharp
Appeal B	APP/B5480/C/21/3272092	Mrs Victoria Sharp