

Committee Report

Planning Committee on 16 December, 2009 Case No. 09/2119

RECEIVED: 17 September, 2009

WARD: Wembley Central

PLANNING AREA: Wembley Consultative Forum

LOCATION: 62 Station Grove, Wembley, HA0 4AN

PROPOSAL: Retention of ancillary outbuilding, with proposed internal alterations, in rear garden of dwellinghouse

APPLICANT: Mr Inayat Sardar

CONTACT: Kingsley Smith Solicitors LLP

PLAN NO'S: Site Plan
Floor Plan Proposed (revised)
Elevations Proposed

RECOMMENDATION

Refuse

EXISTING

The subject site is a two storey end of terrace dwellinghouse located on Station Grove, Wembley. A pedestrian alley way runs down one side of the property linking Station Grove with Lyon Park Avenue. Wembley Brook a narrow canalised waterway runs along the bottom of the rear garden. An electricity substation is located on the opposite side of the brook adjacent to the application site.

The application relates to an existing outbuilding located at the bottom of the rear garden.

The surrounding area is predominantly residential in character. The property is not within a Conservation Area, nor is it a listed building.

PROPOSAL

Retention of ancillary outbuilding, with proposed internal alterations, in rear garden of dwellinghouse

HISTORY

- 05/02/2008 Enforcement investigation instigated against the erection without planning permission, of an outbuilding in the rear garden of the dwellinghouse. This resulted in the issuing of an enforcement notice requiring the buildings removal. An appeal against the enforcement notice was dismissed on 08/05/2009 and the enforcement notice upheld. (Council Reference: E/08/0094)
- 23/11/2007 Certificate of lawfulness issued for the erection of a single-storey detached building in rear garden of dwellinghouse. (Council Reference: 07/2968)

POLICY CONSIDERATIONS

Brent UDP 2004

BE2 – Townscape: Local Context & Character

BE9 – Architectural Quality

SPG

SPG 5 – Altering and extending your home

- Respect for design, scale and character of existing building and surrounding streetscene.
- Respect for the amenity, privacy, outlook, daylight and sunlight of neighbouring properties.

CONSULTATION

Consultation period: 23/09/2009 – 14/10/2009. 7 neighbouring properties were notified.

One letter of objection from a neighbouring property has been received. The issues raised are summarised as follows:

- The outbuilding is being used as a separate dwelling which should not be permitted
- The land on which the building has been erected is liable to flooding
- The erection of the outbuilding has resulted in the oak tree on the property going into decline. It is believed that this tree is the subject of a preservation order
- The objector is generally disheartened by the whole planning and enforcement process
- Would like to know what implications the planning application has on the enforcement action.

REMARKS

Background

A Certificate of Lawfulness was issued by the Council in 2007 for the erection of an outbuilding in the rear garden of this property. No use was indicated for this proposed outbuilding with the plans simply showing one large un-subdivided space. This Certificate was assessed under the provisions of the Town & Country Planning (General Permitted Development) Order 1995 as amended. This Order sets out the types and size of development that can be carried out without planning permission. At the time the Certificate was issued in November 2007 the Order allowed the erection of outbuildings within the curtilage of dwellinghouses provided that they fell within certain limits relating to their size, height, location and use. The restriction on the use of outbuildings requires that they be incidental to the enjoyment of the dwellinghouse.

When the Certificate was issued the proposed outbuilding was considered to comply with the requirements of the Order. However officers now consider this Certificate to have been issued in error due to the proposed outbuilding being sited closer to a highway than the original house (in this case the public footpath running between Station Grove and Lyon Park Avenue). At the time of the outbuildings construction this was one of the restrictions imposed by the Order. In any case the outbuilding that is the subject of this application and erected in 2008 differs in a number of ways from the one indicated in the certificate - it was subdivided internally, it was connected to the mains sewers and other services, it was equipped with a bathroom, kitchen and was clearly built in order to provide separate self-contained living accommodation. The Council was alerted to this situation and commenced an enforcement investigation. This revealed that the outbuilding had indeed been built as a dwelling and was being used as such. An enforcement notice was issued on 13 August 2008, to take effect on 22nd September 2008. The applicants appealed this enforcement notice, and the appeal was dismissed on 8th May 2009, as the Inspector determined that a breach in

planning control had occurred due to the use of the building not being incidental to the main house, having been used as separate living accommodation. The enforcement notice was therefore upheld, and took effect on 8th November 2009. This required the removal of the outbuilding. However, further enforcement action has been halted pending the outcome of this current planning application.

The Proposal

The existing outbuilding, the subject of this application, is located at the end of the rear garden of 62 Station Grove, approximately 1.0 metres from the rear boundary and 0.1 metres from the shared boundary with the neighbour at no 64. The dimensions of the building are 6.0 metres by 6.5 metres, giving a floor area of 39m², with a height of approximately 2.7 metres to the eaves, and 4.0 metres to the ridge. There are two doors for access into/out of the building; one within the front elevation and one within the rear elevation of the building. Also there are 2 windows in the front elevation and 2 windows in the rear elevation. The property has the appearance of a separate dwelling unit.

Between the outbuilding and rear boundary of the property, there is an oak tree located on the corner of the site where adjacent to the footpath. This tree has an application made for a tree preservation order, as it is considered by the Council to be an important tree which should be preserved. However at the time of writing this report the TPO was still waiting to be confirmed. In any case, the tree is considered to be an important tree which should be protected, regardless of whether it is protected by a preservation order.

The existing boundary fence along the public footpath also has a gate, which provides access into the rear garden of 62 Station Grove where the rear of the outbuilding is located. There is also a gated access in this same fence from the footpath into the rear garden of 62 Station Grove, located closer to the main dwellinghouse.

A site visit was made to the property, (19th October 2009) and an internal inspection made of the outbuilding. At the time of the visit, the outbuilding was subdivided into 5 separate rooms. The room on entering the building had a desk with a personal computer and also a television. Also noted was the existence of 2 central heating radiators in this room, a fuse-box and a loft access door. In another room a domestic boiler had been installed. This room also appeared as though it had previously been used as a kitchen area, as there were some tiled walls and kitchen units in the room, although there was no cooker. Since the enforcement notice was issued, the kitchen facilities have been removed within the outbuilding, although plumbing and electrical sockets in the previously used kitchen remain, as noted by the Inspector on his site visit at the time of the enforcement appeal. This was also noted at the time of the site visit made as part of the process to determine this current planning application, on Monday 19th October 2009.

Other rooms, at the time of the site visit, included a shower/wc; a room containing gym equipment, a television, a fitted wardrobe unit, and a central heating radiator; and a room containing a children's drawing board, chair, a wardrobe and a radiator.

The applicants are seeking full planning permission to retain the outbuilding as built but to modify its use from a self contained dwelling. The internal subdivision is to remain with the various rooms within the outbuilding to be used as a gym, store room, children's play/study room, and a toilet and shower room. The applicants have stated in a design statement, submitted with the planning application documents, that the application is for an outbuilding 'solely only for ancillary use to the dwelling i.e. No 62, such not containing the legally recognised attributes necessary for it to constitute a "dwellinghouse".'

Proposed Use

One of the tests as to whether or not an outbuilding can be considered permitted development is that its use must be incidental to the enjoyment of the dwellinghouse. It has been the view of the Secretary of State since the 1980s that a permission is not given by Class E if the accommodation to be provided in a new garden building is of the sort which would normally be considered as integral to the everyday requirements of a house. Thus, a building which was to contain facilities, such as a living room, bedroom, a kitchen or a bathroom, has not been considered to be incidental to the enjoyment of the dwellinghouse. The Secretary of State's interpretation has been that to be incidental, the function of the space provided must be subordinate to the basic or primary accommodation to be expected at a dwellinghouse, rather than being an incident of that main use. Thus, as the SOS would have it, to qualify as PD, accommodation must be of a type which would be needed for activities such as leisure pursuits, hobbies, playrooms, gardening, storage etc. Even use as a study has been ruled out in this scenario

As the application is for full planning permission to retain the outbuilding it cannot formally be considered whether the outbuilding is 'incidental to the enjoyment of the dwellinghouse' as defined in the *Town and Country Planning (General Permitted Development) Order 1995 as amended*. However, it can be considered whether the outbuilding is ancillary to the main dwellinghouse. In this particular case it is considered that the size of the outbuilding, the nature and combination of uses, the internal subdivision and layout of rooms that the proposed use of the outbuilding exceeds what can be considered ancillary use of the building to the main dwellinghouse. Although the outbuilding is not currently being used as self contained residence and some of the kitchen facilities have been removed, the appearance, size and the subdivision of the outbuilding means it still has the character of a separate self contained dwelling.

Impact

The excessive size of the building has a detrimental impact on the visual amenities of the neighbouring dwelling at no 64 Station Grove. It presents a large 4 metre high gable ended elevation to this neighbouring properties rear garden. Due to its size, height and proximity to the boundary the outbuilding appears as an overbearing and intrusive form of development when viewed from the neighbouring garden at 64 Station Grove.

The outbuilding is partly screened from being viewed from the adjoining public footpath by an overly high fence that itself is in breach of planning controls. Even with this excessively high fence partly screening it, the outbuilding is considered by reason of its size, height and appearance to appear as an obtrusive and incongruous addition to the street scene and detrimental to local visual amenities and the character of the area.

The view of the Council's tree officer is that while the outbuilding has had a detrimental impact on the large oak tree located behind it, the long term future of the tree had already been compromised by earlier damage probably dating from over a decade ago. While the tree probably has damage, its removal would not necessarily improve the situation.

Fall back position

The implication of refusing this application is that the existing enforcement notice requiring the buildings removal will be pursued. The applicants do have the fall back position of being able to erect a replacement outbuilding providing it complies with the requirements of the Order.

The Order was amended in Oct 2008 and various changes made to the permitted development rights of householders. In regard to outbuildings the changes impose a height limit of 2.5 metres on any part of an outbuilding within 2 metres of a boundary and restricts the eaves height of any pitched roof building to 2.5 metres. The previous requirement that an outbuilding be located no nearer to a highway than the original dwelling house now only applies to the principle frontage of the property and therefore no longer applies to roads or footpaths running down the side or to the

rear of a property. However the changes to the order will have a much reduced impact when viewed from neighbouring properties and from the adjoining public footpath.

Conclusion

The retention of this unauthorised outbuilding cannot be supported due to its detrimental impact on the amenities of neighbouring occupiers and its visual impact on the character of the area.

RECOMMENDATION: Refuse Consent

CONDITIONS/REASONS:

- (1) The existing outbuilding, by virtue of its excessive size and height, and proximity to the neighbouring boundary with no 64 Station Grove, appears over bearing and obtrusive form of development harmful to the amenities of occupiers of neighbouring properties and their enjoyment of their garden, and out of keeping with the character of the surrounding area, and is therefore contrary to policies BE2 and BE9 of the London Borough of Brent's adopted Unitary Development Plan 2004.
- (2) The size and proposed layout of the existing outbuilding cannot be considered ancillary to the main dwellinghouse and as such the nature and intensity of the use of the proposed development, and its size and appearance as a separate residential dwelling is considered to be out of character in this area of small domestic rear gardens and is therefore contrary to policies BE2 and BE9 of the London Borough of Brent's adopted Unitary Development Plan 2004.

INFORMATIVES:

None Specified

REFERENCE DOCUMENTS:

Planning application papers ref 09/2119

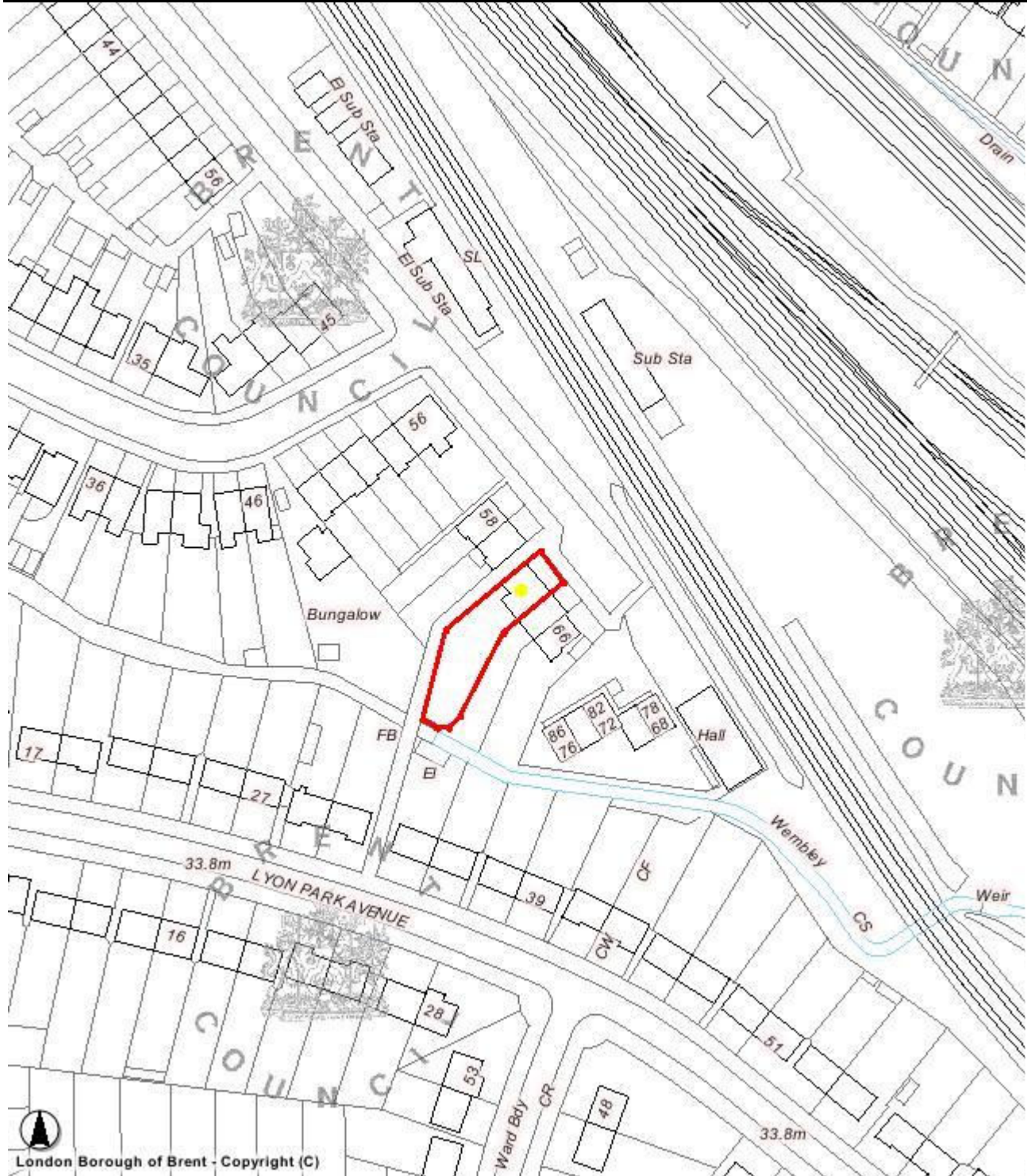
Any person wishing to inspect the above papers should contact Avani Raven, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ, Tel. No. 020 8937 5016



Planning Committee Map

Site address: 62 Station Grove, Wembley, HA0 4AN

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