

## Committee Report

Planning Committee on 16 December, 2009

Case No.

09/3143

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**RECEIVED:** 24 September, 2009

**WARD:** Tokyngton

**PLANNING AREA:** Wembley Consultative Forum

**LOCATION:** 22 Wembley Park Drive, Wembley, HA9 8HA

**PROPOSAL:** Retention of detached outbuilding in rear garden

**APPLICANT:** Mr Jignesh Patel

**CONTACT:** Mr C H Mckenzie

**PLAN NO'S:** -CHM/2855/A1 - Proposed Floor and Elevation Plans for the Detached Building in the Rear Garden

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### RECOMMENDATION

Refusal

### EXISTING

The proposal relates to two-storey semi-detached dwellinghouse with a detached side garage and an outbuilding at the bottom of the rear garden area situated on the south side of Wembley Park Drive.

### PROPOSAL

The proposal is for the retention of an existing single storey flat roofed outbuilding located at the bottom of the rear garden area of the dwellinghouse.

### HISTORY

The following planning history is most relevant to the proposal:

- 27/05/2009 Enforcement Notice is issued in respect of the erection of a dwelling in the rear garden and the material change of use of the main house into a House in Multiple Occupation. Compliance date was 6/10/2009. However, no appeal against the enforcement notice has been received (ref: E/09/0091).
- 01/08/2008 Demolition of existing detached garage to side and erection of single and 2 storey side extension to dwellinghouse - Approved (ref: 08/1723)
- 23/07/2008 Certificate of lawfulness for a proposed single storey detached building in rear garden of dwellinghouse - Approved (ref: 08/1634)
- 16/11/1981 Garage & Car-Port with internal alterations - Approved (ref: M9939 811315)
- 23/02/1981 Erection of single storey side extension - Approved (ref: M8065 802190)

## **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**

The following have been consulted on the proposal:

-Nos. 46, 48 & 50 Park Chase

-Nos. 20 & 24 Wembley Park Drive

-Ward Councillors

A letter has been received from neighbouring property No. 24 Wembley Park Drive raising objections to the proposal on the grounds that it was constructed for an illegal use.

## **REMARKS**

### Background

This application is submitted as a result of the Enforcement Notice issued against the erection of a dwelling in the rear garden and the material change of use of the main house into a House in Multiple Occupation. Currently, there is no appeal against the enforcement notice issued on 27/05/2009. The compliance date for the Enforcement Notice was on 6/10/2009.

The application is for the retention of single storey flat roofed detached building in the rear garden. The plan submitted with the application shows that the proposed outbuilding is 7.2m wide x 8m deep x 2.9m high. The outbuilding is set-in 0.5m from the side boundary adjoining no. 20 Wembley Hill Road, between 0.9m and 1.3m from the side boundary adjoining No. 24 Wembley Hill Road and between 0.45m and 1m from the rear boundary of the site. The property has a very long rear garden of approximately 40m. The outbuilding is positioned towards the end of the garden. The rear garden slopes away from the house with the highest part of the garden being towards the rear boundary of the site. The outbuilding is therefore positioned on the highest part of the rear garden.

A Certificate of Lawfulness was issued by the Council in 2008 for the erection of an outbuilding in the rear garden of this property. 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 2008 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.

## Proposal

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 three of the rooms within the outbuilding to be used for storage, one to be used as a gym and for the toilet and shower room to be retained. This arrangement complies with the Certificate of Lawfulness as granted in 2008.

In mitigation the applicants are claiming that the main dwelling was let out shortly after the outbuilding was constructed and that their tenants unbeknown to them had installed a kitchen and sublet the outbuilding as a separate dwelling.

## Use

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 results in the proposed use of the outbuilding exceeding what can be considered ancillary to the main dwellinghouse. Although the outbuilding is not currently being used as a 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.

The proposal to retain 3 of the internal rooms as storage would provide approximately 42 square metres of storage. This is considered too large to be able to be considered an ancillary use to the main dwelling.

## Impact

The excessive size of the building at approximately 56 square metres together with the nature and form of its proposed subdivision is considered to result in an intensity of use and form of development incongruous to the character of the area and detrimental to the amenities of neighbouring occupiers. The building is also considered to be too large for it to be considered ancillary to the main dwelling. Officers consider that to service such a large building through the back garden of the main dwelling would result in an unacceptable level of nuisance and disturbance to neighbouring occupiers.

The buildings height at nearly 3 metres high and its proximity to the boundaries with neighbouring properties results in an obtrusive and uneighbourly form of development to the detriment of the visual amenities of adjoining occupiers.

## Fallback 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 restrict the eaves height of any pitched roof building to 2.5 metres. Any replacement outbuilding would therefore either have to be lower or be set further in from the boundary and would therefore have a much reduced visual impact.

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. The Council was therefore incorrect to issue a Certificate of Lawfulness for a building that includes a shower and toilet.

Furthermore case law argues that when an outbuilding is disproportionately large compared to the existing accommodation this may have a bearing on whether or not it can be considered lawful. Its the Council's current position that an outbuilding of the size of the one in this application is unlikely to be considered incidental unless it can be demonstrated that the intended incidental use requires a building of the size indicated. In other words the likely fall back position is a building not only set further from the properties boundaries and or lower in height but also one with a considerably smaller footprint.

### 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:**

1. Adopted Unitary Development Plan 2004
- 2.

Any person wishing to inspect the above papers should contact Mumtaz Patel, The Planning Service, Brent House, 349 High Road, Wembley, Middlesex, HA9 6BZ, Tel. No. 020 8937 5244



# Planning Committee Map

Site address: 22 Wembley Park Drive, Wembley, HA9 8HA

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