

**Committee Report
Planning Committee on 20 July, 2010**

Item No. 0/01
Case No. 10/0054

RECEIVED: 12 January, 2010

WARD: Tokyngton

PLANNING AREA: Wembley Consultative Forum

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

PROPOSAL: Retrospective application for a single storey outbuilding and proposed reduction in height to outbuilding in rear garden of dwellinghouse

APPLICANT: Mr Patel

CONTACT: Construct 360 Ltd

PLAN NO'S: Site location plans WPD22_01

This application was deferred at the 30th June Committee in order to allow members to undertake a site visit.

RECOMMENDATION

Refusal

EXISTING

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

PROPOSAL

This application relates to the existing unauthorised outbuilding located at the bottom of the applicants garden. Planning permission is sought for the retention of the outbuilding at a reduced height.

HISTORY

The following planning history is most relevant to the proposal:

- 16/12/2009 Planning permission refused for the retention of detached outbuilding in rear garden (ref:09/3143).
- 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).

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

Members attention is drawn to the planning application for the retention of an outbuilding at 41 Littleton Road that is also on this Committee's agenda. Members will note that proposal is recommended for approval, however that outbuilding has a foot print of only 12 square metres and is of a more appropriate scale and appearance to its domestic back garden setting than is the case for the outbuilding at 22 Wembley Park Drive.

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.

An earlier application for the retention of the outbuilding without any modification was refused by the Planning Committee at the end of last year. At the time some members indicated that they may be prepared to support a revised application that reduced the height of the building. This application proposes to reduce the height of the outbuilding to 2.5 metres and remove the internal walls that sub-divide it, however its foot print will remain unchanged - approximately 57 square metres.

The plan submitted with the application shows that the proposed outbuilding is 7.2m wide x 8m deep x 2.5m 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 but with its height reduced to from 2.9 metres to 2.5 metres. The internal subdivisions will be removed along with the toilet s and shower.

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 exceeds what can be considered ancillary to the main dwellinghouse. Although the outbuilding is not currently being used as a self contained residence and it is proposed to reduce its height, the appearance and size of the outbuilding means it still has the character of a separate self contained dwelling.

Its size is considered too large to be able to be considered an ancillary to the main dwelling.

Impact

The excessive size of the building at approximately 57 square metres 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 proximity to the boundaries with neighbouring properties results in an obtrusive and unneighbourly 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 restricts 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. It is 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 reduction in the height of this unauthorised outbuilding does overcome previous concerns raised by officers.

The outbuilding, by virtue of its excessive size and proximity to the neighbouring boundary with nos 20 and 24 Wembley Park Drive, appears an 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.

RECOMMENDATION: Refuse Consent

CONDITIONS/REASONS:

- (1) The outbuilding, by virtue of its excessive size and design, would appear as an unattractive and incongruous form of development, out of keeping with the character of the surrounding area, to the detriment of local visual amenity and contrary to policies BE2 and BE9 of the London Borough of Brent's adopted Unitary Development Plan 2004.

INFORMATIVES:

None Specified

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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