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 Richard Schwartz against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.

The enforcement notice was issued on 4 October 2016.

The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of an independent residential unit at the rear of the property.

The requirements of the notice are:
- Remove the unauthorised independent residential unit at the rear of the property;
- Remove all alterations and fixtures related to the independent residential unit at the rear of the property; and
- Remove all subsequent waste material from the independent unit at the rear of the property.

The period for compliance with the requirements is three months.

The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected by: the deletion of the third reason for refusal, the deletion of the reference to Policy 3.8 in the fifth reason for refusal and its replacement with Policy 3.5; and varied by the insertion of ‘arising’ after ‘material’ and ‘demolition of the’ after ‘the’ in the third step. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matter

2. A site visit was arranged for 12.40am on Tuesday 21 February 2017. The appellant’s agent was informed about this on 12 January 2017 and the letter setting out the details of the site visit was sent by email, as the agent had indicated on the appeal form that this was her preferred method of contact. The letter set out that it was important that the agent make arrangements for the Inspector to be met at the site to enable the inspection to be made. If the agent could not attend then she was to arrange for someone else to take her place and if that was not possible she was to inform the Planning Inspectorate.

3. On the day of the site visit neither the agent nor another representative met the Inspector at the site and the Inspector had not been advised of any other arrangements. The Inspector had been met at the site by a representative
from the Council who knocked at the front door of the premises and spoke to a tenant. He advised that there were tenants in the building at the bottom of the garden and that it was possible to knock at the door of the building by walking along the pathway that ran along the rear of the properties in the terrace. Both tenants opened the door, in turn, after being roused, but knew nothing about the visit. The Council officer telephoned the agent but it appeared she was unable to contact the tenants who declined to permit the Inspector to enter the building. The visit was then aborted.

4. Paragraph B.9 onwards of the Procedural Guide: Enforcement Notice Appeals, England\(^1\) states that visits to the appeal site are normally carried out to enable the Inspector to assess the impact of the development on its surroundings. In this case the appeal has been made solely on ground (a) and the Procedural Regulations\(^2\) permit a decision being made taking into account only such written representations as have been submitted within the time limits. Having looked at the building and its surroundings from the public domain, I am satisfied that it is not necessary to arrange a second visit and I am content that I have all of the evidence to enable me to make a decision taking into account only the written representations.

The Notice

5. An enforcement notice must enable every person who receives a copy to know what constitutes the breach of planning control, the reasons for issuing it and what they must do to put it right. In this case the third reason for issuing the notice refers to the negative impact of the ‘industrial’ use on present and future occupants of the property. As the allegation relates to the erection of a detached building used for residential purposes it appears this reason is at variance with the other stated reasons.

6. It is open to me to correct the notice, in the interests of clarity, but this can only be done provided there is no injustice to either party. I believe this would not occur for the following reasons. Reference to noise and disturbance in the third reason is covered in the second reason for issuing the notice and so the Council’s case is not diminished. The appellant’s grounds address all the relevant matters raised in the reasons for issuing the notice, including the matter of noise and disturbance. I will therefore direct that the notice be corrected by the deletion of the third reason.

7. The notice refers to Policy 3.8, Housing Choice, of The London Plan (TLP). However, it is apparent from the Council’ Statement of Case (SoC) that they are relying on Policy 3.5, Quality and Design of Housing Developments. This is because Policy 3.5 is quoted in their SoC and they refer to minimum space standards from the table accompanying the policy. As the appellant is also aware of the minimum space standards and refers to TLP there would be no injustice caused if I were to direct that the notice be corrected accordingly.

8. The requirements of the notice are not clear as the third step is ambiguous. I will therefore vary the notice to remove this ambiguity. There would be no injustice or prejudice to either party if I were to do this as the requirement remains and it is no more onerous for the appellant.

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\(^1\) Published 23 March 2016
The ground (a) appeal and the deemed planning application

Main Issues

9. The main issues are the effect of the development on i) the character and appearance of the host dwelling and the surrounding area; ii) the living conditions of neighbouring occupiers, having regard to noise and disturbance; and iii) the living conditions of occupiers of the building, having regard to the standard of accommodation provided.

Reasons

Character and appearance

10. The appeal concerns a two storey, mid terrace, Victorian house which is situated in a residential area. Salisbury Avenue and surrounding roads are laid out in a grid pattern and contain similar properties. Rear gardens are shallow in depth and some are accessed from narrow pathways found at the end of each terrace of houses. Properties situated on the corner of a road often have a garage erected in the rear garden accessed from the adjacent road. Otherwise detached buildings, as has been built at the appeal site, are not generally prevalent in the area. Many of the houses have undergone changes over time with the replacement of doors and windows and the erection of small extensions. The homogeneity of the area though largely remains and this contributes towards the agreeable appearance of the surroundings.

11. The Council allege that the appellant has erected a detached outbuilding at the rear of the garden which is used as an independent residential unit. The appellant however states that a certificate of lawfulness was first granted for the erection of the outbuilding and the plans show that this was to be for a gym/studio with a shower, basin and toilet. This had a doorway opening on to the rear access path and a doorway and windows opening onto the garden. After it was built the appellant states that it was converted into residential use with a kitchen/living/dining area, one bedroom and a bathroom and includes a plan of the layout with his appeal. As no appeals have been submitted on any other grounds I will determine the ground (a) appeal and the deemed planning application based on the description of development as set out in the notice.

12. The outbuilding is finished in brick and has a flat roof. It occupies the full width of the plot and a significant proportion of the rear garden, leaving 45 sq m for use as a garden as agreed between the parties. The appellant states that the footprint of the outbuilding is 31.9 sq m and that it has a height of 2.5m. The Council do not disagree. The PVCu doorway opening onto the narrow, rear access path is half glazed with obscure glass and the adjacent PVCu windows either side of it, of which one serves a bathroom, are also obscure glazed. The outbuilding has no street frontage and is sited towards the end of the rear access path that skirts alongside No 1 Rosslyn Road and which serves a number of other properties.

13. I find the siting of the appellant’s development causes harm as it is at odds with the surrounding residential layout. This is because there is a clear distinction between main elevations overlooking the public realm and secondary elevations enclosing a private realm. As well as intruding into the private realm, the building also occupies a significant proportion of the rear
garden, due to its size. This results in a loss of openness along the rear of this particular row of properties where gardens are already restricted in size due to the layout of the houses. Whilst some nearby properties also have outbuildings, such as those at Nos 67 and 69 Salisbury Avenue, which are each on the corner of Rosslyn Road, they generally do not occupy the same depth of garden and they appear to have smaller footprints.

14. The development also results in an over intensive use of the site which is out of scale and character with the prevailing pattern of development in the area. This is because outbuildings, where they exist, seem to be used for purposes incidental to the enjoyment of the dwelling house.

15. For these reasons I conclude that the development has an adverse effect on the character and appearance of the host dwelling and the surrounding area. The development therefore does not accord with Policy BP8 of the Council’s Boroughwide Development Policies Development Plan Document, adopted March 2011 (DPD). This policy expects all development to have regard to the local character of the area and I give it weight as it is consistent with the National Planning Policy Framework’s (the Framework) requirement for good design.

Living conditions, noise and disturbance

16. The Council are concerned that, having regard to the siting of the building, the residential use causes unacceptable levels of disturbance. This has an adverse effect on the living conditions of the occupiers of the main dwelling and neighbouring properties, which are in close proximity. Residents access the building from the rear access path, passing along the rear of a number of properties. I find that there is a difference in the character of the occupation of the building when it is used on a permanent residential basis, which is far more intense, especially in a small garden, from that when used for incidental purposes. This has not gone unnoticed, even though the appellant states that there has been no noise disturbance, and has resulted in the issue of the notice.

17. For these reasons I conclude that the development has an adverse effect on the living conditions of neighbouring occupiers, having regard to noise and disturbance. The development therefore does not accord with Policy BP8 of the DPD which expects existing occupiers not to be exposed to unacceptable levels of noise and general disturbance. This element of the policy is consistent with the Framework’s requirement for a good standard of amenity for all existing and future occupants of land and buildings.

Living conditions, standards of accommodation

18. I consider the main limitations on the suitability of the building for residential use are its size, layout and access to any private outdoor space. It appears that the outbuilding is rented out to two people. Based on the size of the bedroom, the Council state that the minimum gross internal area (GIA) should be at least 50 sq m for a one bedroom self-contained unit. The appellant does not disagree but suggests the accommodation could be improved by converting it into a studio.
19. TLP was updated prior to the issue of the notice. The relevant required living space standard is either 39 sq m for a one person/one bedroom dwelling or 50 sq m for a two person/two bedroom dwelling. There is no standard for studio housing. The supporting text to Policy 3.5 of TLP sets out that these are minimum standards which developers are encouraged to exceed. In this case I find that there is a significant shortfall between what is provided and the relevant minimum standard which is aimed at ensuring that new residential development is designed and built to provide a suitable environment that will promote healthy living.

20. In particular, the layout is extremely cramped with all rooms being accessed from the narrow kitchen and there is no dedicated internal storage space as required by Policy 3.5. Ceiling heights are low as the overall height of the building is 2.5m and the table accompanying Policy 3.5 states that a minimum ceiling height of 2.5m is encouraged for at least 75% of the GIA. This is so that new housing is of adequate quality, especially in terms of light, ventilation and sense of space. Obscure glazing is used to light one habitable room from which the outlook towards the narrow rear access path is onto a high garden wall where there is little privacy due to there being no set back from the boundary of the property. The other habitable room is directly overlooked by the occupiers of the main house due to the shallow depth of the remaining garden.

21. The poor level of internal accommodation in the building is compounded by the seemingly total lack of private outdoor space for activities such as drying washing, storage of refuse and relaxing outside in good weather. The appellant suggests that this could be remedied by subdividing the remaining garden but the Council state that the proposed 10 sq m space for the outbuilding shown on the appellant's plan would be inadequate. I agree as the space would amount to little more than a yard and would be insufficient to enable outdoor activities to take place. Furthermore the area left as a garden for the main dwelling on the site would be seriously diminished, adversely affecting the space needed for the activities carried out by the occupiers of that building. The appellant submits that there is a need for residential accommodation in the borough but I consider that this does not outweigh the provision of such a low standard of accommodation.

22. The Council are also concerned that the quality of the construction does not meet a high standard of sustainable design, lifetime home standards or the future changing needs of occupiers. The appellant states that the outbuilding not only has cavity walls, double glazing and achieves the U-values required by building regulations but it also has a completion certificate. The appellant could also obtain a sustainability report to demonstrate its sustainability credentials.

23. However, the Council state that the completion certificate is for an outbuilding for non habitable use and the design of the outbuilding shown on the plans deposited with building control was not considered to be fit for human habitation. I have also not been provided with a copy of a sustainability report. Whilst the property could possibly be adapted internally to meet the future changing needs of occupiers, this would not overcome the other identified serious shortfalls in the overall standard of the accommodation.

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3 Housing Standards Minor Alterations to the London Plan March 2016, these reflect the adoption of the Technical Housing Standards: National described space standard, introduced by DCLG in 2015
24. In their SoC the Council also refer to the increased demand for on street parking created by the development but as this was not stated as being a reason for issuing the notice I am unable to consider it without causing injustice to the appellant.

25. For the reasons given I conclude that the standard of accommodation provided is severely inadequate and thereby harmful for occupiers of the building. The development therefore does not accord with Policies BR1 and BC2 of the DPD and Policy 3.5 of TLP. These require, amongst other matters, that all developments are expected to meet high standards of sustainable design and that homes should be accessible and adaptable.

26. The Council also submit that the appellant sought to conceal his development. They allege he deliberately applied for a certificate of lawfulness and subsequent building regulation approval for the general erection of a building when his intention was to use it for something else. They also state his agent confirmed that he knew planning permission would be required for the development if it was to be used for residential purposes. However, in order to succeed in this respect the Council would need to demonstrate that the appellant had acted in such a way as to positively deceive the Council. Based on the evidence I consider his behaviour appears to have been deceitful and he may have taken a calculated risk but he did not attempt to hide the building from public view. As such, I consider his actions cannot be described as resulting in ‘intentional unauthorised development’.

27. It follows from my conclusions on the main issues that the appeal on ground (a) fails and that planning permission will not be granted.

**Conclusion**

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and variations and refuse to grant planning permission on the deemed application.

*D Fleming*

INSPECTOR