The Planning Inspectorate

Appeal Decisions

Site visit made on 25 April 2017

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 04 May 2017

Appeal A Ref: APP/G5750/C/17/3167130
Land at 73 Altmore Avenue, East Ham, London E6 2BX

- 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 Ms Seenithamby Kiritharan against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice was issued on 16 December 2016.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of an outbuilding.
- The requirements of the notice are:
  1. Demolish the outbuilding.
  2. Remove from the site all debris arising from compliance with the above step.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/G5750/D/17/3167138
73 Altmore Avenue, East Ham, London E6 2BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms Seenithamby Kiritharan against the decision of the Council of the London Borough of Newham.
- The application Ref 16/03230/HH, dated 11 October 2016, was refused by notice dated 8 December 2016.
- The development proposed is described as regularising rear outbuilding.

Summary Decisions: Appeal A is dismissed and the enforcement notice upheld as varied. Appeal B is dismissed.

Procedural Matters

1. As originally submitted, Appeal A included an appeal made on ground (d) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. However, the appeal on ground (d) has subsequently been conceded and I have taken no further action on it.

2. The development proposed in the planning application now subject to Appeal B is described as 'regularising rear outbuilding'. The term 'regularising' is not a form of development. Had I been minded to allow the appeal I would have deleted that word from the description but, since the appeal is to be dismissed, that is not necessary. The outbuilding referred to in that description is the same outbuilding to which the enforcement notice subject to Appeal A relates. Consequently, it is convenient to consider these appeals together.

Appeal A: The appeal on ground (a) and Appeal B

3. The ground of appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The Council has stated one substantive reason for issuing the enforcement notice subject to Appeal A, from which the main issues raised are the effect of the outbuilding on:

    - the character and appearance of the host property and the visual amenity of the streets scene, and
    - the living conditions of the occupiers of the adjoining residential properties, specifically in relation to outlook.

    The reason for refusal of the planning application subject to Appeal B raises the same main issues.

    Character and appearance

4. The appeal property is a two-storey end of terrace house located at the junction of Altmore Avenue with Kempton Road. The front elevation of the house fronts onto Altmore Avenue, with the outbuilding being located towards the rear of the plot, where it effectively forms the boundary with the No 101 Kempton Road. The outbuilding occupies practically the full width of the plot, such that it extends to the edge of the pavement and beyond the front elevation of No 101 Kempton Road.

5. Although outbuildings are a characteristic of the surrounding area, by reason of its size and prominent position close to the highway, the existing outbuilding is an unduly dominant and visually intrusive feature in the street scene. The prominence of the outbuilding is exacerbated by its poor design, particularly the incorporation of the roller shutter in the side elevation. The latter is an incongruous feature in the context of this residential property not least because, unlike a conventional garage, the roller shutter does not extend to ground level and has no clear purpose.

6. I conclude that the outbuilding unacceptably harms the character and appearance of the host property and the visual amenity of the streets scene. The development is therefore contrary to Policies 7.1, 7.4, 7.5 and 7.6 of The London Plan; Policies S1, S6, SP1, SP2 and SP3 of the London Borough of Newham Core Strategy; and Policy SP8 of the London Borough of Newham Detailed Sites and Policies Development Plan Document. These policies require, amongst other things, that buildings should be of the highest architectural quality and comprise details that complement the local architectural character. The development also fails to accord with the importance attached to good design in the National Planning Policy Framework (Framework).

    Living conditions

7. The adjoining house to the west, No 101 Kempton Road, features a bay window on the front elevation. By reason of its height, bulk, forward projection and proximity to the boundary, the outbuilding is intrusive and overbearing when viewed from the bay window of No101 Kempton Road.

8. The adjoining property to the north, No 75 Altmore Avenue, does not contain an outbuilding in the rear garden. By reason of its height and consequent projection above the existing boundary treatment, the outbuilding is visually intrusive when viewed form No 75, particularly so from the rear garden. The presence of the outbuilding therefore detracts from the amenity value of that garden space.

9. I conclude that the outbuilding unacceptably harms the living conditions of the occupiers of the adjoining residential properties, specifically in relation to outlook. The development is therefore contrary to Policy 7.6 of The London Plan; Policies S1 and SP3 of the London Borough of Newham Core Strategy; and Policy SP8 of the London Borough of Newham Detailed Sites and Policies Development Plan Document. These policies indicate, amongst other things, that all development is expected to achieve neighbourliness and does not cause unacceptable harm to the amenity of surrounding buildings. The development also fails to accord with the core principle set out in the Framework that planning should always seek to secure a good standard of amenity for all existing occupants of buildings.

Other matters

10. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the outbuilding fails to accord with the development plan. It is therefore necessary for me to consider whether there are any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan.

11. The appellant points out that an outbuilding of similar proportions and in the same position could be constructed as permitted development under the provisions of Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO). The Council notes that permitted development cannot be gained retrospectively but, on my reading, that is not the point being made by the appellant. As I read it, the appellant is pointing out that an outbuilding of similar proportions could have been erected if the provisions of the GPDO had been correctly applied and that the difference between that structure and the outbuilding as erected is not sufficient to justify the refusal of planning permission and the issue of the enforcement notice.

12. I do not agree. The outbuilding as existing extends to the back edge of the pavement and is set forward of the building line established by the properties in Kempton Road. Although an outbuilding constructed as permitted development could still have extended to the back edge of the pavement and could be up to 2.5 metres in height, it would be some 0.5 metres lower than the existing structure at its highest point. Importantly, the highest point of the existing outbuilding forms the boundary between the appeal site and No 101 Kempton Road, where it is not only prominent in the street scene but also adversely affects the living conditions of the occupiers of that property. An outbuilding constructed in accordance with Article 3, Schedule 2, Part 1, Class E of the GPDO would be at least 0.5 metres lower at this point, and throughout the length of the flank elevation adjoining No 101 Kempton Road.

13. The structure as existing therefore has a materially different, and more onerous, effect in terms of its prominence in the street scene and the effect on the living conditions of the adjoining occupiers than would a building constructed in accordance with permitted development rights. It follows that the possibility that an outbuilding of similar overall proportions to that existing could have been erected as permitted development does not justify planning permission being granted for the outbuilding as existing.

14. The appellant considers that, in comparison with the larger building of the convenience store at the junction of Kempton Road and Latimer Avenue, the smaller scale of the outbuilding is more in accordance with the residential character of the surrounding area. However, in my view, that is not a valid comparison. The convenience store is of an entirely different character that reflects its purpose and, whilst set in the context of residential development, does not serve as an indicator of the size or design of residential outbuildings that are appropriate in that residential area.

Conclusion on the ground (a) appeal and Appeal B

15. Having regard to the above, I find that the outbuilding is contrary to policies in the development plan and that there are no material considerations of sufficient weight to indicate that the deemed planning application should be determined otherwise than in accordance with it. I therefore conclude that planning permission ought not to be granted. Accordingly, the appeal on ground (a) fails and Appeal B will be dismissed.

Appeal A: The appeal on ground (f)

16. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or (b) remedying any injury to amenity which has been caused by the breach. In this case, the requirements of notice are to demolish the outbuilding. The purpose of the notice must therefore be to remedy the breach.

17. The appellant has submitted an alternative proposal to the demolition of the entire outbuilding, in which the outbuilding would be amended such that it accords with the limitations and conditions set out at Article 3, Schedule 2, Part 1, Class E of the GPDO. This alternative proposal is set out on Drawing No 004.R1 dated 19 October 2016, which is both to scale and fully dimensioned. I am therefore satisfied that the proposed alterations are set out with sufficient precision.

18. The proposal would retain substantial parts of the existing outbuilding, the matter alleged in the notice. Although it is established case law that failure to meet permitted development specifications deprives the whole structure of permitted development status[1], as the appellant points out, this does not necessarily mean that the entire building has to be removed. I must therefore consider whether the proposed alternative would overcome the planning

[1] *Garland v Minister of Housing and Local Government* [1968] 20 P & R 93

difficulties that I have identified above at less cost and disruption to the appellant than the steps required by the notice.

19. The proposed alternative would not achieve the purpose of the notice, in that it would not remedy the breach of planning control that has occurred. Nevertheless, in the event that the outbuilding was demolished in its entirety and the notice fully complied with, it would be open to the appellant to immediately construct a new outbuilding that accorded with the limitations and conditions set out at Article 3, Schedule 2, Part 1, Class E of the GPDO. Indeed, the appellant has indicated that it would be his intention to do so and I have no reason to believe that this would not be the case. Such an outbuilding could be identical to, or resemble very closely, that resulting from the alternative proposal put forward by the appellant.

20. The enforcement of planning control is intended to be remedial rather than punitive. Moreover, requiring the outbuilding to be demolished in its entirety, only for a similar building to be constructed in its place under the provisions of the GPDO, would result in wasted materials and energy consumption. This would not accord with the sustainability principles enshrined in the Framework. Consequently, although the alternative proposal put forward by the appellant would still incur planning harm, there would be no wider public benefit in requiring the existing building to be demolished in its entirety. There is, however, merit in minimising that harm to the extent that is reasonably practical and for that reason the outbuilding should not remain as existing: it should be amended to that now proposed by the appellant or, at least, the appellant should have that option as an alternative to it being demolished in its entirety.

21. Accordingly, the appeal on ground (f) succeeds to that extent.

Conclusion

22. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice, and refuse to grant planning permission on the deemed application and that made under section 78.

Formal Decisions

Appeal A

23. It is directed that the notice is varied by adding the words "or, amend the outbuilding to accord with that shown in Drawing No 004.R1 dated 19 October 2016" at paragraph 5.1. Subject to that variation, 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.

Appeal B

24. The appeal is dismissed.

Paul Freer

INSPECTOR