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## Appeal Decision

Site visit made on 10 July 2017

**by K R Saward Solicitor**

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

**Decision date: 13 July 2017**

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**Appeal Ref: APP/G5750/C/16/3166121**

**12 Heathfield Close, West Beckton, London E16 3SS**

- 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 Mrs Fatema Khanom Choklader 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 (as shown edge blue on the plan attached to the notice, and as shown edged in yellow on the photograph appended to the notice).
  2. Remove from the site all debris arising from compliance with the above step.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(f)&(g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

**Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.**

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### **The appeal on ground (a) and the deemed planning application**

1. The appeal concerns a single storey outbuilding constructed in the rear garden of No 12 which is a reasonably modern two storey end of terrace dwelling of simple architectural design. It is located on a housing estate.
2. During the course of the appeal, the appellant submitted drawings with proposals for modification of the outbuilding. The deemed planning application refers to what has been built and alleged and that is the starting point for my consideration of the ground (a) appeal.

### *Main Issues*

3. The main issues arising from the notice are the effect of the development on the character and appearance of the surrounding area and on the living conditions of existing and future occupants of the appeal property in terms of garden space provision.

## Reasons

### *Character and appearance*

4. According to the Council the outbuilding measures approximately 2.65m in height at the front and 2.5m at the rear, 3.40m wide and 2.80m in depth. Those figures are not contested by the appellant. The outbuilding has been constructed in what the Council describes as crudely rendered block, with a UPVC door and window and a sloped wooden roof covered with roofing felt. By the time of my site visit the roof had been removed. The parties confirmed that the outbuilding was otherwise as built originally. There remained an opening at the side where no door was fitted.
5. The appellant does not seek to defend the poor quality of the construction. The outbuilding has a somewhat temporary appearance exacerbated by its blockish form and choice of materials. In consequence, the outbuilding fails to respond satisfactorily to the terrace and has a negative impact on its surroundings.
6. There is no suggestion that the outbuilding overshadows neighbouring property or causes unreasonable interference in terms of overlooking.
7. Even though the outbuilding cannot be seen from the public domain, it is visible from neighbouring gardens. Given its position at the end of the garden where the surroundings are relatively open, the outbuilding appears as a bulky discordant feature.
8. Therefore, the outbuilding as built and enforced against has a significant detrimental effect on the character and appearance of the surroundings. This is contrary to Policies SP1, SP3 and H1 of the Council's Core Strategy (CS)<sup>1</sup> and Policies 7.1, 7.4 and 7.6 of the London Plan, 2016 all of which seek high quality design along with the similar aims of paragraphs 17, 56 and 58 of the National Planning Policy Framework. It is unclear how the aim for neighbourly development in Policy SP8 of the Council's Development Plan Document (DPD), 2016<sup>2</sup> is offended in this case and I find no conflict accordingly. The Council further cites CS Policy S6, but it is unclear how this is engaged also.

### *Garden space*

9. The Council has not made any submissions to defend its reasons regarding the impact of the reduced garden space on the living conditions for occupiers. It is not for me to surmise over the basis for those concerns. From my own observations, whilst the remaining garden is not very large there is enough space for a patio area, lawn and border. It suffices to provide a reasonable amount of outdoor space to undertake everyday activities such as sitting out, hanging washing and for children's play.
10. The position is no worse than if an outbuilding of similar footprint been constructed under permitted development rights.
11. Therefore, I find no conflict in this regard with CS Policy SP2 which, amongst other things, seeks to create healthier neighbourhoods or CS Policy SP3 insofar as it promotes high quality living conditions for all. Nor do I find conflict with the core planning principle in paragraph 17 of the Framework which promotes a

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<sup>1</sup> Titled 'Newham 2027, Newham's Local Plan – The Core Strategy', adopted January 2012

<sup>2</sup> Newham's Local Plan, Detailed Sites and Policies Development Plan Document (DPD), 2016.

good standard of amenity for all existing and future occupants of land and buildings.

### *Conclusion*

12. Although I have found no harm with regard to the effect of the outbuilding on the living conditions of the existing and future occupiers in terms of garden space provision this does not alter the fact that the development as originally built is nevertheless harmful with regard to its effect on the character and appearance of the surroundings. For the reasons given and, having had regard to all other matters raised, I conclude that the appeal for the development as built should not succeed on ground (a) and the application for deemed planning permission should fail.

### *Alternative plans*

13. The alternative plans submitted by the appellant under ground (f) involve reducing the outbuilding to a maximum height of 2.5m with a more substantial flat roof with slight overhang and different materials, identified on the plan as a smooth render finish. An external door would be fitted where there is currently a gap. The windows and doors are shown as double glazed.
14. Section 177(1)(a) gives me power to grant planning permission for the matters alleged in respect of any part of those matters.
15. The form of development would remain substantially the same. The reduction in height would be relatively small. The changes to the external materials would not alter the substance of the development as identified in the notice. In my planning judgement, the proposal can properly be regarded as part of the development as built and enforced against.
16. The Council accepts that the revisions sufficiently address its concerns as outlined in the notice to be policy compliant and an acceptable development. It observes that a structure of identical proportions could be constructed as permitted development once the notice has been complied with. As such, the Council sees no reason to refuse planning permission in this instance.
17. It seems to me that the overall quality of the outbuilding will be improved significantly by the application of a smooth rendered finish and flat roof of greater depth giving a more permanent appearance. The reduction in height is not dramatic, but will lessen its visual impact. The improved appearance and lesser height will overcome the planning objections raised by the Council to a satisfactory degree. Given the difficulties in defining part only of the development, the most appropriate approach in this instance is for me to considering varying the notice under ground (f).

### *Overall conclusion on ground (a) and the deemed planning application*

18. The development as originally built is unacceptable for the reasons given above. I conclude that the appeal on ground (a) and the application for deemed planning permission should fail for the development as built.
19. An alternative scheme has been submitted which I am satisfied is part of the development attacked by the notice. If those modifications are undertaken, there will be no material harm to the character and appearance of the area. I

will return to the alternative scheme under ground (f) and consider whether to vary the notice.

### **The appeal on ground (f)**

20. The ground of appeal is that the steps required by the notice to be taken are excessive.
21. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).
22. In seeking to restore the land to its previous condition through demolition of the outbuilding, it is clear that the Council seeks to remedy the breach. In addition, its reasons for issuing the notice concern the impact of the development on the character of the area and reduction in garden space. Those reasons are consistent with remedying injury to amenity. The notice is therefore directed at both purposes.
23. Remedy of the breach could only be achieved by demolition to restore the land to its condition prior to the breach taking place. However, the appellant has put forward a worked out alternative scheme, the planning merits of which I have considered under ground (a).
24. Given the Council's views that planning permission should be granted for the outbuilding as modified, and that I accept the identified harm will be overcome, I will take a pragmatic approach and vary the notice under ground (f).
25. The variation will give the appellant the option of either demolishing the outbuilding or making modifications to comply with the submitted plans. It is also necessary to retain the provision for demolition in case the modifications are not undertaken. Under section 173(11) of the Act, once the modifications have been completed in compliance with the requirements of the notice then planning permission shall be treated as having been granted for the modified outbuilding by virtue of section 73A.
26. The appeal on ground (f) succeeds to that extent.

### **The appeal on ground (g)**

27. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed.
28. The effect of the appeal is to stop the clock. The notice only takes effect on the date of this appeal decision. The appellant considers that 3 months is insufficient due to financial constraints and the amount of work required. It is suggested that a builder cannot be procured within that period.
29. No alternative period has been suggested. Nor has the appellant elaborated upon why it would be 'impossible' to finance the works.
30. If the appellant chooses to demolish the outbuilding then those works should be straightforward and capable of being achieved within 3 months. On the other hand, if the appellant chooses to make the modifications in accordance

with the submitted plans, then 3 months will not be very long to secure quotes, arrange the works and for their completion.

31. Without further details to justify the financial constraints said to inhibit the works, I consider that 4 months would be a more reasonable period to allow for the modifications.

32. The appeal on ground (g) succeeds to that extent.

**Formal Decision**

33. It is directed that the enforcement notice be varied by:

(a) deleting the steps in paragraph 5. in their entirety and inserting

“EITHER

1. Demolish the outbuilding (as shown edge blue on the attached plan and as shown edged in yellow on the photograph at Appendix 1).

OR

2. Modify the outbuilding in accordance with drawing nos. 161204 L 001 (location plan as existing) and 161204 L 002 (plan and elevations as existing & proposed), including the materials identified thereon.

AND

3. Remove from the site all debris arising from compliance with the above steps.”

(b) substituting 4 months as the time for compliance.

34. Subject to these variations, 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.

*KR Seward*

INSPECTOR