
Appeal Decision

Hearing Held on 24 November 2020

Site visit made on 25 November 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2021

Appeal Ref: APP/W5780/C/19/3242511

Land at 27 Buntingbridge Road, Barkingside, Ilford IG2 7LW

- 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 Yamin Mustafa against an enforcement notice issued by the Council of the London Borough of Redbridge.
 - The enforcement notice, numbered E0495/19, was issued on 9 December 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a two storey dwelling.
 - The requirements of the notice are:
 - i. Remove dwelling in its entirety and
 - ii. Clear all debris arising from above requirements.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (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 section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by:
 - Deleting '6' and replacing it with '9' in the period for compliance with the requirements.
2. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Procedural Matters

3. Planning permission¹ was granted for 2 no. three bedroom houses (semi-detached) in 2014. However, the dwellings were not built in accordance with the approved drawings, and a variation of Condition 2 of application ref. 1332/14 was approved², allowing an increase in the footprint of the dwellings by 380mm and fenestration alterations. However, the approved plans did not accurately reflect the built development at No 27 and the enforcement notice was served.

¹ Ref 1332/14

² Ref 3154/18

4. A set of floor plans was provided with the appeal, purporting to show the dwelling 'as built'. Following a site visit undertaken by the Council and the appellant when measurements were taken, it is clear that the floor plans are not entirely accurate. I have determined the appeal on the basis of the development as it stood at the time when the enforcement notice was served. This includes a single storey rear canopy extension, which is open sided with a plastic roof.

The ground (a) appeal and the deemed application

5. In view of the reasons for issuing the notice, the main issue is the effect of the development on the living conditions of the occupiers of No 29 Buntingbridge Road, with regard to light and outlook.

Light

6. The dwelling at No 27 is arranged over three floors, with the upper floor being partially located within the roof space. It has a 'dog leg' arrangement to the rear, where the upper floors project beyond the main rear elevation, so that there is an inset from the side of the building at first floor level and above. The ground floor wraps around the side and rear of the building. The ground level is slightly lower than the neighbouring property at No 29.
7. The dwelling at No 27 is built close to the side boundary with No 29, leaving a narrow gap between the two buildings as No 29 is built right up to its side boundary. The main part of the house at No 27 is set further back than the main part of No 29.
8. The parties agree that the room in No 29 that has been adversely affected by the development is the dining room at the rear of the ground floor and I have no reason to disagree. The occupier of No 29 advised that it is also used by his children as a study area for homework. It has one window on its rear elevation, which is north east facing. The window is not centrally located in the rear wall of the room, but is within the part of the wall closest to the side boundary of the property with No 27. The side boundary is enclosed by a close boarded fence. No 29 has a single storey rear element which extends beyond the rear wall of the dining room, close to the other side of the dining room window. It provides a kitchen and is accessed directly from the dining room.
9. I saw on my site visit, which was mid-afternoon on an overcast day, that the dining room was gloomy and reliant on artificial light. I appreciate that this was only a snapshot in time, and I observed that the living room at the front of the house was also dull, despite being south facing and having a bay window. Although it would be reasonable to assume that on a brighter day the dining room would have a better level of daylight, it was clear to me that daylight reaching the room is restricted.
10. The amount of daylight reaching the dining room is restricted for several reasons, including its orientation, and the position of the window close to the boundary fence and the external side wall of the kitchen. However, the new dwelling has significantly reduced the amount of daylight reaching the dining room, due to its scale and position, extending well beyond the dining room window. As a result, the dining room is poorly lit and reliant on artificial light, creating poor living conditions for the occupiers.

11. The appellant has provided a Daylight and Sunlight Study³ which is based on the various tests set out in the relevant BRE guide⁴. It demonstrates that the room passes the Daylight Distribution test, but not the Vertical Sky Component test, based on the 'as built' drawings. I note that there was concern that the 'as built' drawings are incorrect and that this undermines the credibility of its conclusions. However, these are guides that can assist in reaching a judgement, rather than leading to an inevitable conclusion.

Outlook

12. A substantial portion of the side elevation of No 27 is visible from the dining room window. Although the view is at an oblique angle, the flank elevation dominates the outlook from the dining room window. There is a clear view from the window down the length of the garden, but the presence of the side elevation of No 27 results in a sense of enclosure that is harmful to the living conditions for occupiers.
13. In terms of the impact on the garden itself, the house only encloses the small strip of garden outside the dining room window. The rest of the garden, which is large and contains a patio, is not enclosed by the building. I do not therefore agree that the development is harmful to the outlook from the garden of No 29.
14. I am mindful that permission has previously been granted for a dwelling at No 27. The permitted dwelling would also have restricted daylight and outlook to the dining room window, and such a dwelling could still be constructed. However, the dwelling that has been built extends further to the rear and therefore has a greater impact on the light and outlook to the dining room.
15. I am aware that planning permission has been granted for a rear extension to No 29, but this has not been built and does not have any bearing on my decision, as it may or may not be implemented.
16. The appellant has put forward two suggested amendments to the house to overcome the harm, which he considers could be secured through a condition requiring revised plans to be submitted to the Council, and the works to then be undertaken. One would be to cut back the upper floors of the house so that it accords more closely with the rear extent of the house permitted in 2018. The other suggestion is to 'chamfer' the rear corner of the house, so that there would be no obstruction within a 45 degree angle of view from the dining room window of No 29.
17. However, it has not been demonstrated to me how such amendments could be achieved, and what their implications would be for the rest of the building, in terms of its layout and appearance. I cannot therefore be certain that they would overcome the harm caused, nor that they would result in a form of development that would be acceptable in other respects.

Conclusion

18. For the reasons set out above, the development is harmful to the living conditions of No 29, with regard to light and outlook. It is therefore in conflict

³ Daylight and Sunlight Study 22 January 2020 by Right of Light Consulting

⁴ Building Research Establishment (BRE) guide 'Site Layout Planning for Daylight and Sunlight: a guide to good practice, 2nd Edition by P J Littlefair 2011

with Redbridge Local Plan 2018 Policies LP26 and LP30, insofar as they require that new development does not result in adverse impacts upon the amenity of neighbouring occupiers in relation to daylight and outlook. Policy LP30 relates to householder development and is therefore less directly relevant, but nonetheless sets out the detailed considerations that apply when considering the effect of development on neighbouring occupiers. It is also contrary to the guidance in the Redbridge Housing Design Guide Supplementary Planning Document 2019. I conclude that the appeal on ground (a) should fail and the deemed application should be refused.

The appeal on ground (f)

19. The ground of appeal is that the steps required by the notice to be taken, exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by any such breach.
20. The requirement of the notice is to demolish the dwelling in its entirety, and therefore the purpose of the notice is to remedy the breach of planning control. Lesser steps could not remedy the breach. Therefore, cutting back the entire rear elevation at upper floor level, or the rear corner of the house as suggested by the appellant, in order to allow more light to reach No 27, would not remedy the breach.
21. The appellant has suggested that, rather than demolishing the house, an alternative requirement would be to alter it so that it complies with the plans approved by permission reference 3154/18, by removing the rear part of the building that extends beyond the approved extent of the building. While this could be an obvious alternative to the complete demolition of the building, it is not clear to me that the building is capable of being amended to accord with the approved plans, without it being demolished and rebuilt. I do not therefore agree that this is an obvious alternative. The appeal on ground (f) fails.

The appeal on ground (g)

22. The ground of appeal is that the period for compliance falls short of what should reasonably be allowed. The period for compliance is six months. The appellant initially requested a period for 12 months, but has subsequently agreed with the Council that 9 months would be appropriate.
23. The reasons given are to allow for notice to be given to tenants, and to then be able to carry out the required works. I consider that 9 months would strike a reasonable balance between the need to bring the identified harm to an end without unnecessary delay, and the interests of the appellant. To this limited extent, the appeal on ground (g) succeeds and the enforcement notice will be varied accordingly.

N Thomas

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Graham Murdoch (agent)
Yamin Mustafa (appellant)
Jonathan Ray of Rights of Light Consulting

FOR THE LOCAL PLANNING AUTHORITY:

Tom Wicks	London Borough of Redbridge
Kathy Schuh	London Borough of Redbridge
Simon Cullen	London Borough of Redbridge

INTERESTED PARTY:

Sivasankar Sangarappillai

DOCUMENT submitted at the hearing by the appellant:

Appellant's suggested conditions