
Appeal Decisions

Site visit made on 19 October 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 November 2021

Appeal A Ref: APP/Z5060/C/21/3276420

41 Beccles Drive, Barking IG11 9HX

- 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 Elton Kola against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 4 May 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of an outbuilding in the rear garden.
 - The requirements of the notice are:
 - Remove the unauthorised outbuilding in its entirety or lower the outbuilding to 2.5m in overall height.
 - Remove all subsequent waste material from the property.
 - The period for compliance with the requirements is 3 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. 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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Appeal B Ref: APP/Z5060/D/21/3273777

41 Beccles Drive, Barking IG11 9HX

- 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 Mr Elton Kola against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 21/00308/HSE, dated 19 February 2021, was refused by notice dated 14 April 2021.
 - The development proposed is a retrospective planning application for the retention of a rear outbuilding.
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Decisions

Appeal A:

1. 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:

2. The appeal is dismissed.

Procedural Matters

3. Further revisions have been made to the National Planning Policy Framework during the course of my consideration of the appeal and a revised version was published in July 2021 (the Framework). I have invited the main parties to comment on the Framework and have taken account of any responses from them in my determination of the appeal.
4. As set out above there are two appeals on this site. The appeal on Ground (a) is that planning permission should be granted for the matters stated in the notice. Since the planning appeal is against refusal of permission for the identical development, the considerations in that appeal are the same, and I have treated both cases together to avoid duplication, except where otherwise indicated.
5. The appeal form states that the appellant has submitted drawings which shows that they have lowered the highest part of the outbuilding to be 2.5m from natural ground level, and thus complied with the enforcement notice. However, the deemed planning application (DPA) is based on the unauthorised building as originally erected. I have therefore determined Appeals A and B based on the building as originally built, and the drawings submitted with the planning application Ref 21/00308/HSE.

Appeal A on ground (a), the deemed planning application and Appeal B

Main Issues

6. Whilst the enforcement doesn't refer to concerns regarding character and appearance, this is included within the reasons of refusal of the planning application. As this is clearly a material consideration, I have determined the appeal on the basis. Therefore, the main issues are the effect of the development on:
 - The living conditions for the occupiers of 43 Beccles Drive, with particular regard to outlook; and
 - The effect of the development on the character and appearance of the host building and area.

Reasons

Living conditions for the occupiers of 43 Beccles Drive, with regard to outlook

7. The appeal development, the subject of both appeals A and B, comprise a single storey outbuilding with a sloping roof, made of metal with a dark colour finish, which has been erected at the rear of the property. The excessive height, scale, and size of the outbuilding results in a visually intrusive, dominant, and unneighbourly form of development, built close to the boundary with the neighbouring residential property at No 43. This results in harm to the living conditions for the occupiers of this neighbouring property, with regards to outlook.
8. Therefore, the development fails to provide acceptable living conditions for occupiers of No 43, with regards to outlook. Accordingly, the development is contrary to policies BP8 and BP11 of the London Borough of Barking and Dagenham Borough Wide Development Policies Development Plan Document,

2011 (DPD). Amongst other things, these require that all developments are expected to.... not lead to significant overlooking (loss of privacy and immediate outlook) and that the design of buildings and layout of new development should..... maintain residential amenity.

Character and appearance

9. The appeal site is in a residential area characterised predominantly by two storey residential properties, a number of which contain outbuildings. The appeal property is a semi-detached which has been added to with a two side extension, a single storey rear extension, and a rear dormer and loft extension which extends above both the original main property and the two storey side extension.
10. With regard to outbuildings, The London Borough of Barking and Dagenham Residential Extensions and Alterations Supplementary Planning Document, 2012 (SPD) states that *"Its use must be ancillary or related to the use of your property as a dwelling. Any unrelated use will normally be refused"*. The appeal outbuilding is of a substantial size, extending the full width of the rear garden and appears to be in use as a garage. At the time of my site visit I observed that the outbuilding contained four motor cars in addition to shelving units for storage of tools and wood. There was also some health and fitness equipment stored within the outbuilding. Vehicular access to the outbuilding is provided via the existing garage to the house, and the section of the rear garden behind the side garage is separated off from the remainder of the rear garden and house.
11. Given the excessive height, size and scale of the outbuilding, and its separate access through the side garage, independent from the main dwelling, it is unclear whether the outbuilding is ancillary or related to the use of the main dwelling. Whilst there a number of outbuildings visible in the surrounding area, none appear to be of a similar size, scale, and bulk as the current development before me. Furthermore, no reasoning has been provided to explain why the outbuilding of this size is required to be ancillary or related to the use of the main dwelling.
12. In addition, the large expanse of metal material used in the construction of the development, results in a building with a more industrial appearance, at odds with the residential character of the host building and area. I note that the development is not widely visible within the wider public realm, however, its presence is clearly apparent and in close proximity of the surrounding residential properties.
13. I therefore conclude that the development harms the character and appearance of the host building and the area, in conflict with Policy CP3 of the London Borough of Barking and Dagenham Core Strategy, 2010 (CS), Policy BP11 of the DPD, and Policy D4 of the London Plan, 2021 (London Plan). Amongst other things, these seek to ensure that development delivers good design, should respect and strengthen local character and history, and should protect or enhance the character and amenity of the area.
14. Furthermore, the development does not meet the aims of part 12 of the Framework, which requires development to be sympathetic to local character and history.

15. The Council have referred to policies SP2, SP4, DMD1 and DMD6 of the London Borough of Barking and Dagenham Draft Local Plan. However, as these policies have yet to be adopted, and there is no evidence before me which allows me to make any judgement regarding the extent of unresolved objections, I cannot give them full weight at this time save to acknowledge that they appear not to significantly alter the policies referred to in the extant CS and DPD.
16. The Council have also referred to Policies D1 and D8 of the London Plan. However, these policies refer to guidance for the preparation of local plans and development which affects the public realm and therefore are not directly relevant for the current development.

Conclusion on Ground (a) and the Deemed Planning Application and Appeal B

17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to harm to the living conditions for the neighbouring occupiers of No 43 Beccles Drive, and harm to the character and appearance of the host building and area. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
18. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) and the deemed planning application should fail, and Appeal B should be dismissed.

Appeal A on ground (f)

19. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
20. The enforcement notice requires the removal of the unauthorised development or, in an acknowledgement of permitted development rights, to reduce its overall height to 2.5m. Therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
21. The appellant states that the requirement to remove the entire outbuilding is excessive given that they have already lowered its overall height. However, the requirements of the notice provide two options, with one of the options allowing a modified outbuilding to remain with a reduced height. As the notice does no more than seek remedy of the breach, it is not excessive. In this respect the appeal on ground (f) is misconceived.
22. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
23. On this basis, the Ground (f) appeal fails.

Conclusions

24. **Appeal A:** For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.
25. **Appeal B:** For the reasons given above, and having regard to all other matters raised, I conclude that Appeal B should be dismissed.

R Satheesan

INSPECTOR