



Appeal Decision

Site visit made on 30 November 2021

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2022

Appeal Ref: APP/Z5060/C/20/3256125 180 Wood Lane, Dagenham RM9 5SS

- 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 Roman Taburceanu against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 17 June 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a side and rear extension.
 - The requirements of the notice are:
 - Remove the unauthorised rear and side extension in its entirety.
 - Remove all subsequent waste material from the premises.
 - 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) 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 be:
 - Varied by the deleting the first requirement under section 5 (What you are required to do), and its replacement with "Remove in their entirety the unauthorised elements of the side and rear extension, leaving only those elements permitted by Planning Permission ref: 84/00478/TP."
 - Varied by deleting the words "3 months" within section 6 (Time for Compliance) and its replacement with "6 months".
2. Subject to the 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.

Preliminary 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. Furthermore, during the course of this appeal, the London Plan, 2016, and policies contained within it, has been replaced with the London Plan 2021

(London Plan), which was adopted on 2 March 2021. This must now be given full weight in the decision making process. Both parties have been given the opportunity to comment on the new London Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded London Plan 2016.

5. Under their ground (a) appeal, the appellant states that they are seeking planning permission for a modified design, to the as built development. I shall deal with this below, after considering the 'as built development' which was before the Council when the notice was served.

Appeal on ground (a), the deemed planning application

Main Issues

6. The main issues are the effect of the development upon:
 - the living conditions for the neighbouring occupiers of No 178 Wood Lane with particular regard to daylight and outlook; and
 - the character and appearance of the host building and area.

Reasons

Living conditions for the neighbouring occupiers of No 178 Wood Lane – outlook and daylight

7. The Council's Residential Extensions and Alterations Supplementary Planning Document, 2012 (SPD) advises that "the depth of the extension should not normally exceed 3.65 metres as measured from the original rear wall of the house to ensure that there is no material loss of daylight and outlook to neighbouring properties (figure 2). In exceptional circumstances, where an extension has a greater depth, that part of the extension which exceeds 3.65 metres must be within a 45 degree angle as measured from the corner of adjacent dwellings (figure 3)". However, contrary to the above guidance the unauthorised extension as built, exceeds this maximum depth and is not within a 45 degree angle as measured from the corner of adjacent dwellings
8. With regards to daylight, neither party has provided any detailed technical evidence to demonstrate that the development does not result in any loss daylight to the neighbouring occupiers of No 178 (for instance, no daylight tests in accordance with the BRE guidance for daylight and sunlight has been submitted).
9. The unauthorised additional rear extension results in a large expanse of the flank wall of the extension, built close to the boundary with No 178. As a result, the unauthorised extension appears as a dominant feature in the outlook from windows in the rear elevation of this property at ground floor level and from the garden itself. Furthermore, the extension rises above the existing boundary treatment, and therefore results in greater harm. In this respect the unauthorised single storey rear creates an increased sense of enclosure, and a reduction in daylight to neighbouring occupiers of No 178, which harms their living conditions.
10. Therefore, in relation to the first main issue I find that the development fails to provide acceptable living conditions for occupiers of No 178, with regards to daylight and outlook. Accordingly, the development is contrary to Policies BP8

and BP11 of The London Borough of Barking Borough Wide Development Policies Development Plan Document, 2011 (DPD), which amongst other things states that all developments are expected to.... not lead to significant overlooking (loss of privacy and immediate outlook) or overshadowing (loss of daylight and sunlight) and should protect or enhance the character and amenity of the area.

11. The development is also contrary to paragraph 130 of the Framework which seeks to ensure all developments creates places with a high standard of amenity for existing and future user.

Character and appearance

12. The appeal property is a two-storey end of terrace dwelling, situated in a residential area within the Becontree Estate (BE). The DPD explains that the BE is a good example of open spaces of heritage value that contribute to the distinctiveness of an area. The BE was built by the then London County Council between 1921 and 1934 and is of historic importance because it was the largest public housing scheme ever undertaken in Britain and, at the time of its planning, the world. The character of the BE is distinctive in terms of its layout, form, scale and building designs. From my observations at the site visit, I noted that there is a degree of symmetry and balance to these small groups of terraces. Together, these distinctive characteristics and the openness of the estate make a positive contribution to the BE.
13. For side extensions, the Council's SPD advises that the design of side extensions should reflect the type of house and the type of plot, and that they should be particularly sympathetic in terms of their form, roof treatment, detailing and materials. Whilst the SPD is guidance only, its emphasis on good design is consistent with the Framework.
14. The appeal property has been previously added to with a rear dormer loft extension and a single storey rear and side extension. The unauthorised works, the subject of this enforcement notice, comprise an additional extension, to the pre-existing single storey rear and side extension, together with the formation of a sloping roof.
15. Properties in the BE generally benefit from relatively large rear gardens. However, being an end of terrace property, the appeal site benefits from an even larger rear and side garden than most, and in this respect the development does not appear unduly dominant, nor harm the openness of the appeal site and BE. Once completed, the proposed plans submitted illustrate that the materials would match those of the existing dwelling and owing to its position to the rear of the property, ensures that the development is not harmful to the street scene.
16. I therefore conclude that the unauthorised development preserves the character and appearance of the host building and area. It would therefore be in accordance with policies BP2 and BP11 of the DPD, Policy CP3 of the London Borough of Barking and Dagenham Core Strategy, 2010 (CS), and policy D4 of the London Plan. Amongst other things, these seek to deliver good design and states that the development proposals will be expected to achieve high quality standards in relation to the design and layout of new buildings and spaces, should protect or enhance the character and amenity of the area, and that

development within or affecting any heritage feature should respect its local context and avoid materially detracting from its significance.

17. The Council have also referred to policies SP4, DM11, DM14 and DM16 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 DPD.

Other considerations

18. Section 177(1) of the Act allows me to grant planning permission in respect of the matters stated in the Notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the Notice relates. The appellant has submitted a further revised drawing which he considers would overcome the harm to the neighbouring occupiers at No 178. This alternative drawing shows the modified rear extension with a reduction in height to 3m closest to the boundary with No 178¹. I consider that this revised development, which involves only relatively minor revisions to the roof of the extension could still be considered as the development as built.

19. Whilst I appreciate that the changes proposed to reduce the height of the rear extension would assist in improving the relationship with the adjoining property at No 178, I am not convinced that these changes would be sufficient to overcome the harm identified above, since it is the combined height, depth, and bulk of the extension in close proximity to the boundary with No 178, which is excessive and harmful to the living conditions of No 178. Therefore, in my judgement, the revised proposal would also be harmful to the living conditions of neighbouring occupiers of No 178.

Conclusion on Ground (a) and the Deemed Planning Application

20. 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 living conditions to neighbouring occupiers. Lack of harm in respect of character and appearance of the host building and area does not justify the harm I have identified above under the first main issue. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
21. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed planning application should be refused.

The appeal on Ground (f)

22. 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".

¹ Appendix 2- proposed ground a plans of the appellant's appeal statement.

23. The enforcement notice requires the removal of the unauthorised development, and therefore, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
24. The appellant states that the proposed modified design of the extension would address the concerns on the living conditions for the neighbouring occupiers of No 178. However, I have already considered this under the ground (a) appeal and have found that the proposed design would not be sufficient to overcome the harm identified and would not remedy the breach which is the purpose of the notice.
25. The appellant also states that the requirements are excessive as there was already a lawful existing extension constructed in 1984 which could be retained as a fallback position, and therefore the removal of the entire side and rear extension is excessive. During the Course of the appeal, the Council clarified that there was indeed a pre-existing flat roof rear and side extension permitted under Council ref: 84/00478/TP, and therefore they are only seeking the removal of the recent additions, which relate specifically to the recent additional rear and side extension including the recently formed sloping roof.
26. As such, the first requirement seeking the removal of the unauthorised rear and side extension in its entirety is excessive to remedy the breach of planning control. The breach of planning control could be addressed through compliance with an alternative requirement which requires the removal of the unauthorised elements of the side and rear extension, leaving only those elements permitted by Planning Permission Council ref: 84/00478/TP. This would achieve the purpose of the notice which is to remedy the breach. Therefore, the first requirement/bullet point on the notice clearly goes beyond what is necessary to remedy the breach of planning control.
27. The appeal on ground (f) succeeds to that extent only, and I will vary the notice to remove this excessive requirement.

The appeal on Ground (g)

28. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 3 months to at least 6 months in order to provide sufficient time to carry out the works required, especially given the Covid-19 pandemic and restrictions on social distancing.
29. In my view 6 months would strike a more reasonable and proportionate balance in this instance. I shall therefore extend the period from 3 to 6 months for compliance with the notice.
30. The appeal succeeds on ground (g), and I shall vary the notice accordingly.

Conclusion

31. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

R Satheesan INSPECTOR