
Appeal Decision

Site visit made on 1 February 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2022

Appeal Ref: APP/Z5060/C/21/3276097

18 Upney Lane, Barking, IG11 9LW

- 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 M Ahmad 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 unauthorised extension of a ground and first floor rear extension; and the unauthorised addition of a rear balcony at roof level.
 - The requirements of the notice are:
 - Remove the unauthorised ground, first floor and roof level rear extensions and additions in their entirety.
 - Remove all subsequent waste material from the property.
 - The period for compliance with the requirements is 6 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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Decision

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.

2. **Appeal on ground (a), the deemed planning application**

Main Issues

3. The main issues are the effect of the development on:
 - The living conditions for the occupiers of 16 and 18 Upney Lane, with particular regard to outlook; and
 - the character and appearance of the host building and area.

Reasons

Living conditions for the neighbouring occupiers of No 16 and 18 Upney Lane – outlook

4. The Council's Residential Extensions and Alterations Supplementary Planning Document, 2012 (SPD) advises that "a) Double storey extensions have the potential to significantly impact upon your neighbour's property due to their

scale. As such, they will only be considered acceptable if there is no material impact on neighbouring amenity. b) The depth of any proposed first floor extension as measured from the main rear wall should not exceed the distance from the proposed extension to the corner of the adjacent property. Where the adjacent property has a solid roof extension, the distance shall be taken from the corner of the extended part. As such, no part of the proposed extension should extend beyond a 45 degree angle as taken from the corner of the adjoining property (or the adjoining extension) (see Figure 3)". However, contrary to the above guidance the unauthorised extension as built, is not within a 45 degree angle as measured from the corner of adjacent dwellings.

5. With regard to No 16 Upney Lane, the unauthorised double storey rear extension results in a large expanse of the flank wall of the extension, built close to the boundary with No 16. 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. In this respect the unauthorised double storey rear extension creates an increased sense of enclosure to the neighbouring occupiers of No 16, which harms their living conditions.
6. No 20 Upney Lane, however, has an existing ground floor L-shaped rear extension, built along the boundary with No 18. Furthermore, No 20 has planning permission for their own double storey rear extension¹ which will be built along the boundary with No 18, and there is no evidence before me to suggest that this permission would not be implemented. As such, I am satisfied that the unauthorised development, does not result in any demonstrable loss of outlook or an increased sense of enclosure to the neighbouring occupiers of No 20.
7. Therefore, in relation to the first main issue, whilst I find that the development provides acceptable living conditions for the occupiers of No 20, the development fails to provide acceptable living conditions for occupiers of No 16, with regards to 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.

Character and appearance

8. The appeal site is in a residential area characterised predominantly by semi-detached properties and relatively large rear gardens. The unauthorised works, the subject of this enforcement notice, relates to a rear extension at ground and first floor level and the addition of a rear balcony at roof level. For double storey extensions, the Council's SPD advises that it is important that the design of your extension is sympathetic towards the original house. Whilst the Council's SPD is guidance only, its emphasis on good design is consistent with the Framework.
9. The double storey rear extension, and balcony extends the building considerably, such that the rear additions are no longer a sub-ordinate to the

¹ Council re: 20/01153/HSE approved on 30.07.2020.

original building. The excessive depth, scale and bulk of the extensions has unbalanced the appearance of the pair of semi-detached houses and has removed the sense of symmetry. In this regard, the design, bulk, and height of the rear extension and balcony introduces an overly dominant and visually discordant feature, which fails to harmonise with the host building and its surroundings.

10. Therefore, the development has a harmful effect upon the character and appearance of the host building and the area. 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 have regard to the local character of the area and that the design of buildings and layout of new development should protect or enhance the character and amenity of the area.

Other Matters

11. I note that a two storey rear extension was previously approved at this site and also that there is other two storey extensions in the area. However, from the evidence submitted and my observations during my site visit the 'as built' development is larger and 'bulkier' than these and thus results in more harm to the character and appearance of the area and to the living conditions of the neighbouring occupiers at No 16.
12. 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 the neighbouring occupiers and 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.

Conclusion on Ground (a) and the Deemed Planning Application

13. 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)

14. 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".
15. The enforcement notice requires the removal of the unauthorised development, and as such, the purpose of the notice is to remedy the breach of planning control rather than only remedy any injury to amenity.
16. The appellant states that the breach is for 45cm of extended extensions and the way to overcome this would be through an application as the demolition of the existing structure is excessive. However, I have already found under the ground (a) appeal, that the unauthorised development results in harm to both the living conditions of neighbouring occupiers and to the character and

appearance of the host building and area, Thus, this would not remedy the breach. It is not therefore possible to vary the notice in the ways suggested by the appellant whilst achieving the purpose of the notice.

17. There are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.

18. On this basis, the Ground (f) appeal fails.

Conclusion

19. 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.

R Satheesan

INSPECTOR