



Appeal Decision

Site visit made on 5 April 2022

by Stewart Glassar BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2022

Appeal Ref: APP/Z5060/W/21/3282938

18 Stockdale Road, Dagenham RM8 3PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Bharadia against the decision of the Council of the London Borough of Barking and Dagenham.
- The application Ref 21/01190/FULL, dated 22 June 2021, was approved on 12 August 2021 and planning permission was granted subject to conditions.
- The development permitted is for the demolition of existing garage and the construction of a two storey, 1x bedroom dwelling.
- The conditions in dispute are:
 - No.5 which states:

No development shall commence until: (a) an investigation and risk assessment, in addition to any assessment provided with the planning application, has been completed in accordance with a scheme to assess the nature and extent of any contamination on the site, whether or not it originates on the site. The contents of the scheme are subject to the approval in writing of the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

 - i. a survey of the extent, scale and nature of contamination;*
 - ii. an assessment of the potential risks to human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; groundwaters and surface waters; ecological systems; archaeological sites and ancient monuments; and*
 - iii. an appraisal of remedial options, and proposal of the preferred option(s). This must be conducted in accordance with DEFRA and the Environment Agency's 'Land Contamination Risk Management (LCRM)'; and*

(b) a detailed remediation scheme, to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural and historical environment, has been prepared and submitted to the Local Planning Authority for approval in writing. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(c) The approved remediation scheme must be carried out in accordance with its terms prior to commencement of the development, other than that required to carry out remediation, unless otherwise agreed in writing by the Local Planning Authority. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works.

Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the approval in writing of the Local Planning

Authority. The report shall include results of sampling and monitoring carried out to demonstrate that the site remediation criteria have been met.

(d) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with the requirements of (a), and where remediation is necessary a remediation scheme must be prepared in accordance with the requirements of (b), which is subject to the approval in writing of the Local Planning Authority. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority.

- No.6 which states:
Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development falling within Part 1 of Schedule 2 to that Order shall be carried out without the prior written permission of the Local Planning Authority.
 - The reasons given for the conditions are:
 - No.5: *Contamination must be identified prior to commencement of development to ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, together with those to controlled waters, property and ecological systems, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other off-site receptors in accordance with policy BR5 of the Borough Wide Development Policies Development Plan Document.*
 - No.6: *In the interest of the character and amenities of the local area.*
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Decision

1. The appeal is allowed and the planning permission Ref 21/01190/FULL for the demolition of existing garage and the construction of a two storey, 1x bedroom dwelling at 18 Stockdale Road, Dagenham RM8 3PS granted on 12 August 2021 by the Council of the London Borough of Barking and Dagenham, is varied by deleting conditions 5 and 6 and substituting for them the following condition:
 - 5) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development falling within Part 1, Classes A, B, C, D, E, G and H of Schedule 2 to that Order shall be carried out to the dwelling hereby permitted.

Preliminary Matters

2. The Council's statement refers to the application having been refused. It is clear from the decision notice and subsequent appeal submissions that the proposal was approved, subject to a series of conditions. This appeal seeks the removal of conditions 5 and 6 which relate to land contamination and permitted development rights. Section 79(1) of the Town and Country Planning Act 1990 allows me to allow or dismiss the appeal or reverse or vary any part of the decision (whether the appeal relates to that part or not) and I may deal with the proposal as if it had been made to me in the first instance.

Main Issue

3. The main issue is whether the conditions are reasonable and necessary having regard to:
 - (i) risks from contamination of the land; and
 - (ii) the character and appearance of the area.

Reasons

Land Contamination

4. During the consideration of the planning application, the views of the Council's Environmental Protection Officer (EPO) were sought, and no objection was raised subject to the imposition of an extensive condition relating to the assessment and remediation of potential land contamination. This condition was considered necessary by the EPO given the absence of information on how the garage had previously been used. This recommendation was accepted by the Case Officer and the wording of condition 5 followed this internal advice.
5. However, there is no evidence before me of a history of contamination or previous use that could have given rise to such concerns. An internal examination of the garage clearly shows it to be of breeze block construction. There is one double power socket on the rear internal wall but there are no shelves or any signs that the garage might have been used for any sort of repairs to vehicles or as a more general workshop.
6. A large piece of carpet covered the central part of the garage floor. When pulled back, the lighter shading of the concrete floor beneath the carpet suggested that it had been there for quite some time. There were no indications that the carpet was trying to hide any signs of contamination. The garage only contained the general detritus that might be expected on a domestic garage concrete floor.
7. Accordingly, I am unable to identify a clear risk of contamination which would arise from the construction works and thus indicate condition 5 to be reasonable or necessary.
8. Without this condition the proposed development would be consistent with the requirements of Policy BR5 of the Borough Wide Development Policies Development Plan Document March 2011 (DPD). This policy seeks, amongst other things, to adopt a risk-based approach to land contamination and ensure that development which would give rise to such problems does not proceed.

Permitted Development Rights

9. Paragraph 56 of the National Planning Policy Framework (the Framework) states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. Paragraph 54 of the Framework states that conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. The Planning Practice Guidance (PPG) advises that blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of

reasonableness and necessity. Therefore, the removal of permitted development rights needs to be supported by a clear justification.

10. The appeal site is a two-storey end of terrace dwelling located close to the junction with Bentry Road. Houses in Stockdale Road and Bentry Road are generally of uniform appearance and set back from their site frontages, giving the area around the appeal site a pleasant and spacious context. This spaciousness is enhanced by the open, grassed areas on all four corners of the Stockdale/Bentry Road junction.
11. The proposal would form a subservient addition to the existing property, with the roof replicating the shape and pitch of the rest of the terrace. Given the existing street scene together with the appeal site's position and prominence, I am satisfied that additional works that would increase the size, bulk or profile of the built form, could lead to harmful consequences in terms of the character and appearance of the wider area.
12. In addition to extensions and works to the roof, the restriction should also include works involving a porch, outbuildings, microwave antenna or chimneys, flues etc. Such works could have harmful consequences for the size, bulk or profile of the house and thus the wider area. The removal of all these permitted development rights is therefore justified.
13. In considering the scheme, the Council had regard to the recent appeal decision¹ for No.237 Grafton Road (No.237). I visited Grafton Road and observed that site. Both Grafton and Stockdale Roads are characterised by houses of similar size and appearance with hipped roofs of similar pitch. Both roads appear to be part of the wider Becontree Estate. Where extensions are evident, they are subservient to the main dwelling and generally the roofscape in the vicinity of both sites has been subject to minimal disruption.
14. I note that the Inspector who considered the Grafton Road appeal did not restrict permitted development rights. Whilst there are clear similarities between the two sites and the schemes, I observed some differences in context. The appeal site is highly visible when turning into Stockdale Road from Becontree Avenue. To my mind, the alignment of the houses in Grafton Road tend to obscure views of the side of No.237 to a far greater extent when approaching from Turnage Lane, than the houses in Stockdale Road do when approaching the appeal site from Becontree Avenue. I also note from the appeal decision that permitted development was not an issue directly raised for the Inspector to consider.
15. The appellant is also concerned that the existing dwelling would be deprived of its permitted development rights. Having read the Officer Report (OR), the Council's decision and their appeal statement, they do not suggest to me that the Council's concerns regarding permitted development were in relation to the existing dwelling. The Council do not appear to make any comments in this regard.
16. Without good reason, permitted development rights should not normally be removed from an existing dwelling. I note that the existing dwelling would lose some floorspace but the building-to-plot ratio would not be diminished for the worse. Given the position of the boundary between the existing and proposed

¹ APP/Z5060/W/20/3260545

dwelling, a rear extension under permitted development would be set away from the rear elevation of the new dwelling and to the north of it. The situation in relation to the rear roof would remain unchanged. As such, there does not appear to be any sound planning reasons to remove permitted development rights from the existing dwelling.

17. However, I shall attach an amended condition, to make clear that removal of permitted development rights relates only to the proposed dwelling and not the existing one.
18. Although no policies were cited in the reason for the condition, I note that Policy CP2 of the Core Strategy as well as Policy BP2 of the Borough Wide DPD were referenced in the OR when considering the design and appearance of the proposal and its wider visual effects. In finding that additional works to the proposed dwelling as permitted development could have harmful consequences for the character and appearance of the area, I consider a condition removing such rights would accord with the above-mentioned policies which, amongst other things, seek to preserve and protect the character of the Becontree Estate.

Other Matters

19. As I am deleting condition 5 (a pre-commencement condition), it has not been necessary for me to address the issue of securing the appellant's agreement to the wording.
20. Interested parties have highlighted concerns with regard to the proposal creating additional demand for vehicle parking in the area. However, the Council's Transport Officer has noted that the proposal is to retain 1 off-street parking space for the new property and that this is acceptable. I have no substantive evidence before me to come to a different conclusion.
21. Representations have been made regarding the possible loss of light and privacy to neighbours and that the development could create additional noise. Notwithstanding the lack of any substantive evidence, given the size and design of the proposed dwelling, together with its position relative to neighbouring dwellings, the living conditions of neighbours would not be adversely affected.
22. Concerns regarding repairs to the boundary fence between Nos. 18 and 20 Stockdale Road are outside the scope of this appeal.

Conclusion

23. I have deleted conditions 5 and 6. For consistency of numbering, I am imposing a new condition 5, to remove permitted development rights to the proposed dwelling, which is necessary in order to protect the character and appearance of the wider area. All other aspects of planning permission 21/01190/FULL remain unaltered.
24. For the reasons given above, having considered the development plan as a whole, and all other relevant material considerations, I conclude that the appeal should succeed.

Stewart Glassar

INSPECTOR