
Appeal Decisions

Site visit made on 26 July 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2022

Appeal A Ref: APP/Z5060/W/21/3289437 42 Buller Road, Barking IG11 9UA

- 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 Abdul Khadir against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 21/01459/HSE, dated 31 July 2021, was refused by notice dated 05 November 2021.
 - The development proposed is described as a "3 metre additional extension for conservatory".
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Appeal B Ref APP/Z5060/C/21/3289919 & Appeal C Ref APP/Z5060/C/21/3289920 42 Buller Road, Barking IG11 9UA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Abdul Khadir (Appeal B) and Mrs Halima Begum (Appeal C) against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 14 December 2021.
 - The breach of planning control as alleged in the notice is without of planning permission, erection of an unauthorised rear extension
 - The requirements of the notice are:
 - Remove the unauthorised extension in its entirety.
 - Remove all subsequent waste material from the property.
 - The period for compliance with the requirements is 3 months.
 - The appeals are proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

Appeal A:

1. The appeal is dismissed.

Appeals B and C

2. It is directed that the enforcement notice is:
 - varied by deleting the words "3 month" within section 6 (time for compliance) and its replacement with "5 months".

3. Subject to this variation, the appeals are dismissed, and the enforcement notice is upheld.

Procedural Matters

4. For appeal A, the description of development given above is taken from the application form. Whilst the Council's decision notice describes the development as "Retrospective" the appellant states that they seek planning permission for the development set out in the submitted plans and not the partially as-built extension on the site. I shall therefore determine appeal A and the application for planning permission on the basis of the plans referred to on the decision notice Ref 21/01459/HSE. Since these drawings were before the Council when they made their decision, I am satisfied that there would be no injustice in doing so. However, I have determined appeals B and C (relating to the notice) on the basis of the partially built extension on site.

Appeal A

Main Issues

5. The main issues are the effect of the development upon:
- The character and appearance of the host building and area; and
 - The living conditions for the occupiers of 44 Buller Road, with particular regard to outlook and daylight.

Reasons

Character and appearance

6. The appeal site relates to a two storey mid terraced dwelling located within a predominantly residential area. The property has been previously extended with a rear dormer loft extension and a ground floor extension. The appeal development relates to a proposed additional conservatory extension to the rear of the existing single storey rear extension. The appeal site benefits from access to an unusually large rear garden.
7. For rear extensions the London Borough of Barking and Dagenham Residential Extensions and Alterations Supplementary Planning Document, 2012 (SPD) states "*where a conservatory is proposed in addition to an extension, a maximum depth of 6 metres as measured from the original rear wall of the house will be allowed*". Whilst the Council's SPD is guidance only, its emphasis on good design is consistent with the Framework.
8. However, contrary to the above guidance the cumulative depth of the existing and proposed extensions is 9m¹. The addition of the proposal would extend the building considerably, such that the rear additions would no longer be subordinate to the original building. None of the other properties in the subject terrace contain extensions of a similar overall depth. The excessive depth and scale of the extensions combined would introduce an overly dominant and visually discordant feature, which fails to harmonise with the host building and its surroundings. The presence of outbuildings at neighbouring properties and the large rear garden of the appeal site does not justify this harm.

¹ Measurement taken from the appellant's appeal statement.

9. Therefore, the development would have 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 and Dagenham Borough Wide Development Policies Development Plan Document, 2011 (DPD), Policy CP3 of the London Borough of Barking and Dagenham Core Strategy, 2010 (CS), and Policy D4 of the London Plan (2021). 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, and 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.
10. Finally, the development would not meet the aims of the National Planning Policy Framework, 2021 (the Framework), which requires development to be sympathetic to local character and history.

Living conditions for the occupiers of 44 Buller Road - outlook and daylight

11. The Council's 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 proposal exceeds this maximum depth and is not within a 45 degree angle as measured from the corner of adjacent dwellings.
12. With specific regard to outlook, despite the use of glazing on the side elevations, the proposed scale and size of the conservatory, in combination with the existing brick built extension, which would rise above the existing shared boundary fence, would result in a visually intrusive and unneighbourly form of development. This would result in harm to the living conditions for the occupiers of No 44, with regard to outlook.
13. Turning to daylight, I acknowledge that the proposed conservatory extension would fail the 45 degrees angle test stated within the Council's SPD above. However, the proposed extension, with the use of glazing on the roof and side elevations would permit light to pass through. As such, the proposal would not result in any demonstrable loss of light nor overshadowing to neighbouring occupiers of No 44.
14. Therefore, whilst I find no harm in relation to daylight, I consider that the development would fail to provide acceptable living conditions for occupiers of No 44, with regard to outlook. Accordingly, the development is contrary to Policies BP8 and BP11 of the 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.
15. 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.

16. The Council have also referred to Policy CP3 of the CS and Policy D4 of the London Plan. However, as these policies refer to delivering good design and a high quality built environment, they do not appear relevant to this main issue.

Other matters

17. The Council have referred to policies SP4, DM11 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 development plan policies mentioned above.
18. 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 Appeal A

19. For the reasons given and with regard to all other matters raised, I conclude that the appeal A should be dismissed.

Appeals B and C

The appeals on Ground (g)

20. This ground of appeal is that the time given to comply with the notice is too short. The appellants asks that the time for compliance is extended from 3 to 6 months to carry out the remedial work.
21. The Notice states that the unauthorised works results in an increased sense of overbearingness to neighbouring occupiers and harm to the appearance of the appeal property. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. To provide additional time to carry out the necessary works, a 5 month period would strike a more reasonable and proportionate balance to comply with the notice. I shall therefore extend the period from 3 to 5 months for compliance with the notice.
22. The appeals succeed on ground (g), and I shall vary the notice accordingly.

Conclusion on Appeals B and C

23. For the reasons given above, I conclude that appeals B and C should not succeed. I shall uphold the enforcement notice with a variation.

R Satheesan

INSPECTOR