



Appeal Decision

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: 12 August 2022

Appeal Ref: APP/Z5060/C/22/3290680

38 Kings Avenue Romford RM6 6BB

- 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 S O'Grady 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 planning permission, the unauthorised development of an outbuilding.
 - The requirements of the notice are:
 - Remove the unauthorised outbuilding 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) 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:

- corrected by deleting the site plan attached to the enforcement notice and deleting the words "Land and premises at 38 Kings Avenue, Romford, RM6 6BB shown edged blue on the site plan" under section 2 of the enforcement notice (the land to which the notice relates), and their replacement with:

"Outbuilding to the rear of 38 Kings Avenue Romford RM6 6BB, and accessed from 36 Kings Avenue, Romford RM6 6BB".

2. Subject to these corrections, 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. During the site visit I observed that access to the appeal building was from No 36 Kings Avenue, and not No 38, and the appellant's appeal statement also refers to the appeal site as No 36 Kings Avenue. I sought the views of the parties regarding this. The appellant states that he owns both Nos 36 and 38 Kings Avenue, and that part of the former rear garden at No 38, now the specific site of the appeal outbuilding, was annexed into the curtilage of No 36 approximately four and a half years ago. As such, the appellant suggests that

the notice is corrected so that the site address only includes the land of the outbuilding only.

4. The appellant appears to have understood the allegation and understands what building is being described in the notice, and in my opinion, the minor error on the site plan and address does not render the notice unclear. It is therefore necessary to correct the notice by deleting the site plan from the enforcement notice and correcting the address under section 2 of the notice (the land to which the notice relates) to "Outbuilding to the rear of 38 Kings Avenue Romford RM6 6BB, and accessed from 36 Kings Avenue, Romford RM6 6BB". This does not increase the scope of the land affected. Since the appellant owns both properties this would not cause injustice and I can therefore use my powers under the provisions of s176(1)(a) to make this correction.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

5. The main issue is the effect of the unauthorised development on the living conditions for the occupiers of 40 Kings Avenue, with particular regard to outlook.

Reasons

6. The appeal development comprises a single storey outbuilding with a sloping roof, which has been erected to the rear of No 38. For outbuildings the London Borough of Barking and Dagenham Residential Extensions and Alterations Supplementary Planning Document, 2012 (SPD) states *that outbuilding should "be designed and positioned in a manner which restricts its impact upon neighbouring dwellings. Any outbuilding which results in a material loss of light or outlook with respect to neighbouring dwellings will be considered unacceptable."* Whilst the Council's SPD is guidance only, its emphasis on good design is consistent with the Framework.
7. The excessive height 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 40. 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 40, 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.

Other matters

9. With regard to the effect of the development on the living conditions for the occupiers are No 34 Kings Avenue, the appeal development is separated from No 34 by the existing access driveway of No 36. I am therefore satisfied that the appeal development does not result in any harm to the living conditions of the occupiers of No 34 with regard to outlook, daylight, and sunlight.

10. The appellant has referred to policy DMD6 of the London Borough of Barking and Dagenham Draft Local Plan. However, as this policy has 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.
11. 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 the living conditions for neighbouring occupiers. Lack of harm in respect of character and appearance and daylight and sunlight does not justify the harm I have identified above under the 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.

Conclusion

12. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections 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