



Appeal Decision

Site visit made on 5 September 2022

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd September 2022

Appeal A ref: APP/Z5060/C/21/3272386

Land and premises at 7 Trinidad Gardens, Dagenham RM10 9YA

- 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 F Choudhury against an enforcement notice issued by the London Borough of Barking and Dagenham.
- The notice was issued on 5 March 2021.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of the property from a single-family dwelling to two self-contained units of accommodation and an erection of an unauthorised extension and the rear of the property.
- The requirements of the notice are:
 - lower the extension to 3 metres in overall height.
 - cease the use as separate self-contained units of accommodation.
 - revert the property to a single-family dwelling.
 - remove all alterations and fixtures enabling the change of use to separate self-contained units of accommodation.
 - remove all consequent waste material from the land.
- The period for compliance with the requirements is within 6 months after the notice takes effect.
- 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.

Appeal B Ref: APP/Z5060/W/21/3268582

7 Trinidad Gardens, Dagenham RM10 9YA

- 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 Faikul Choudhury against the decision of the London Borough of Barking and Dagenham.
 - The application Ref 19/01831/FUL, dated 29 November 2019, was refused by notice dated 23 November 2020.
 - The development proposed is the erection of single storey side and rear extension, retention of ground floor 3 bedroom flat and 2 bedroom flat, plus amendment to approved single storey extension height.
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Preliminary Matter

1. Planning permission was granted by the Council to extend the appeal property to the rear with a part single part two storey extension. Prior approval was also not required to construct a single storey rear extension 6 metres deep with a maximum height of 3 metres. It is the Council's position that the single storey rear extension as built does not reflect the prior approval scheme. This led to the Council opening an enforcement case and the planning application now the subject of Appeal B. The scheme subject of Appeal B materially differs from the prior approval scheme in terms of the extension's width, depth and height.

The appeal on ground (a)/the deemed application for planning permission and Appeal B

2. Although the reasons for refusing the planning application subject of Appeal B are more extensive than the reasons for issuing the enforcement notice, it is apparent from the evidence before me that the development enforced against and the scheme for which planning permission is sought relate to the same development.
3. Therefore, the main issues in respect of Appeals A and B are the effect of the development on:
 - a) the provision of family sized dwellings in the borough;
 - b) the living conditions of occupants of the ground and first floor flats, with regards to internal and external living space, daylight and natural ventilation;
 - c) the living conditions of the occupants of 5 Trinidad Gardens, with regards to outlook, sunlight, daylight and privacy;
 - d) the character and appearance of the area; and
 - e) the need for, and provision for the storage of bicycles.

Family sized dwellings

4. The semi-detached two storey property lies in a residential cul-de-sac characterised by properties of a similar type and style.
5. Policy BC4 of the Borough Wide Development Policies Development Plan Document (DPD) confirms that the Council is seeking to preserve and increase the stock of family housing in the Borough. Consequently, when planning permission is required, proposals which involve the loss of housing with three bedrooms or more will be resisted. This is to protect and increase the supply of family housing notwithstanding the benefits of subdividing existing housing into flats. The proposal does not protect or increase the stock of family housing or support family living even if the appellant is correct with their assessment of families containing three to four members.
6. The appellant refers to the criteria for other proposals for flat conversions or homes in multiple occupation, but these are not relevant in this case as the property was a family dwelling before it was sub divided.
7. The ground floor of the property would remain a three-bedroom unit and contain the associated facilities of a family dwelling. However, in doing so, this has impacted on the internal living space for the ground and first floor units for reasons that I will come onto. Therefore, even if I were to consider that the subdivision of the property makes best use of the property and that it has not further eroded the borough's stock of family houses, the ground floor unit's standard of accommodation would not preserve that stock to an acceptable habitable standard for its occupants.
8. Hence, I conclude that the proposal harms the provision of family sized dwellings in the borough and conflicts with DPD Policies BP10 and BC4, Policy CM1 of the Core Strategy (CS), Policies GG4 and H9 of The London Plan, Policies SPDG1 and SP3 of the London Borough of Barking and Dagenham Draft Local Plan 2037 Regulation 19 Consultation Version (September 2020) (emerging plan) and the

provisions of the National Planning Policy Framework (the Framework). Jointly, they seek to preserve and increase the stock of family housing in the Borough to meet the needs of new and existing communities.

Living conditions of the ground and first floor flats

Internal living space

9. The 2-bedroom, 4 person, 1 storey first floor flat would not provide the minimum 70m² gross internal area required by the Technical housing standards – nationally described space standard (THS). This unit is significantly below the minimum standard, which means that the occupants do not have an adequately sized home. This is to the detriment of their living conditions. There is also not enough built-in storage space. There is no storage space above the staircase within the landing area and the storage space within the kitchen is modest and below that of the minimum standard.
10. The ground floor flat would also not provide the minimum level of built-in storage for the type of unit. However, the gross internal area of this flat is above the minimum standard and therefore built-in storage could be provided without making that flat sub-standard. As such, no harm would be caused.

Daylight and natural ventilation

11. The kitchen and dining room sit in the centre of the extended ground floor flat. They are enclosed by other rooms to the front and rear. The kitchen has a high-level slot window which faces out towards the flank elevation of the property. The dining room does not have any windows, so it is not well-lit or served by natural ventilation. Lighting in this room would need to be artificial to provide occupants with a liveable space even during summer months. I recognise that the dining room is a through room to the kitchen, but this is also poorly lit and not well-ventilated, especially given its function.

External amenity space

12. The property has an ample quantity of external amenity space for both flats that is usable, functional, accessible and safe and in accordance with Policy BP5 if used communally. I am satisfied that access can be gained directly from the ground floor flat, whilst occupants of the first floor flat can use the path from the front door to the side access. While the space could also potentially be subdivided, each garden would not likely be the minimum depth of 12 metres as sought by Policy BP5. Also, by sub-dividing the garden, it would mean that the occupants of each flat would not be able to call upon a useable and functional space as they would do if the garden was to be used communally. Therefore, the occupants of the flats would enjoy an acceptable standard of living only if the external amenity space was used communally.

Conclusion on this main issue

13. Although both flats would benefit from adequate communal external amenity space in accordance with DPD Policy BP5, this does not alter or outweigh my conclusion that the development would not provide an acceptable standard of accommodation for the flats' occupiers, with regard to the internal living space of the first floor flat, and daylight and natural ventilation in the ground floor flat. Consequently, the development is detrimental to their living conditions. and in conflict with London Plan Policies CG3, D4, D5 and D6, the THS and Framework

paragraph 130 f). These jointly seek the highest standard of design to provide high quality people focussed spaces that are adequately sized, fit for purpose and sufficiently ventilated so that occupants have a high standard of amenity and avoid the health problems associated with damp, heat and cold.

14. The Council refer to emerging plan Policies DMNE 1 and DMH 3 in respect of this issue, but neither are relevant as they are concerned with parks, open spaces and play space or specialist housing respectively.

Living conditions of No. 5

15. The adjoining property in the semi-detached pairing has a front and rear outlook with habitable room windows on the ground and first floors.
16. The prior approval extension was to sit within the centre of the host dwelling's rear elevation and have a wider element to the rear, whereas the extension built runs close to the party boundary with No. 5 and across the full width of the extended host dwelling. It has a rectangular form with a flat roof. The windows in the rear elevation of No. 5 are set back from the six metre extension beneath a canopy which covers a terraced area to the rear of No. 5. To some extent, the canopy reduces the harm that the proposal causes to outlook, sunlight and daylight received by the occupants of No. 5. However, due to the orientation of the properties and the scale, height and depth of the extension as built, it is harmful to the living conditions of No. 5 in terms of outlook, sunlight and daylight. Given the scale, height and depth of the extension, the provision of tall boundary treatment would not mitigate the impact caused.
17. No privacy effect would be created by the proposal as its openings are to the rear and the bathroom window could be obscure glazed to protect the living conditions of No. 5. However, this does not alter my conclusion about the proposal's conflict with DPD Policies BP8 and BL11 and the Residential Extensions and Alterations Supplementary Planning Document. These seek all new development not to lead to significant overshadowing (loss of daylight and sunlight) or a loss of immediate outlook.

Character and appearance

18. The rear extension has created a disproportionately large addition to the rear of the host property. Whilst its flat roof design is similar to the prior approval scheme, it is far more extensive than this scheme and it does not mimic the design of the host property or the semi-detaching pairing that it forms part of. I recognise that the extension squares off the rear part of the property, but in doing so, it would not be a subservient addition despite its height being below that the two-storey host building. The height and design of the extension would also uncomfortably jar with the single storey side element, emphasising its unacceptable relationship with the host building, the semi-detached-pairing and the surrounding area which is characterised by two storey semi-detached properties with gaps between them and modest sized additions. This is evident from the road and the turning head.
19. I conclude that the rear extension has a harmful effect on the character and appearance of the area and conflicts with DPD Policy BP11, CS Policy CP3, London Plan Policy D4 and emerging plan Policy DMD 1. Jointly, these policies, among other things, seek development proposals to make a positive contribution to the character of the surrounding area using high quality design to provide a sense of place.

Need for and provision of bicycles

20. Table 10.2 of London Plan Policy T5 confirms that properties with two or more bedrooms should provide at least two cycle storage spaces per dwelling. Therefore, at least four cycle storage spaces are required for both units on site.
21. A single cycle storage space is on site to the front, but space exists on the site to increase the level of provision to at least four which are fit for purpose, secure and well-located. As they could be secured through a planning condition, I conclude on this issue that adequate provision could be made for the storage of bicycles in accordance with London Plan Policy T5 and emerging plan Policy DMT3 which together seek to secure the provision of appropriate levels of cycle parking which should be fit for purpose, secure and well-located in accordance with the minimum standards for the development proposed.

Conclusion on Appeal B

22. I have found that the appeal scheme is harmful for various reasons and does not accord with the development plan. My findings in respect of the external amenity space, privacy and the storage of bicycles do not alter or outweigh this, and there are no material considerations that indicate I should take a decision other than in accordance with the development plan.

Conclusion on ground (a)

23. Save for the storage of bicycles, I have found that Appeal A should fail in respect of ground (a) due to the harm identified.
24. However, the enforcement notice, subject of Appeal A, requires that the rear extension is reduced in height to three metres. This requirement is not disputed by the appellant. By lowering the height of the extension, the harm to the character and appearance of the area would be minimised. Moreover, the living conditions of the occupants of No. 5 would not be affected by significant overshadowing (loss of daylight and sunlight) or an immediate loss of outlook due to the lower height of the extension. Nevertheless, this does not change the other harm that I have identified because of the development.

The appeal on ground (f)

25. For the appeal to succeed on this ground, I need to be satisfied that the steps required to comply with the requirements of the notice are excessive and lesser steps could overcome the breach of planning control or, as the case may be, the injury to amenity.
26. It is clear from the requirements of the notice that its purpose was to remedy the breach of planning control. The appellant considers that the steps required by the notice to return the property to a single occupancy dwelling are excessive given that a three-bedroom family unit is already provided on the ground floor. However, this lesser step would not remedy the breach of planning control that has occurred as it would see the occupants living in sub-standard accommodation that is poorly lit and not well-ventilated. Furthermore, to remedy the breach of planning control, it is not excessive to require the use of the self-contained units of accommodation to cease, all the alterations and fixtures enabling that use to be removed and all consequential waste material removed from the land. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on ground (g)

27. The appellant has referred to a compliance period of two months, but this is incorrect as the notice requires that the remedial steps be carried out within six months. I consider this to be an appropriate period of time to find and secure the services of reputable builder and for them to carry out the works, and if necessary, for the appellant and his family to source alternative accommodation. Accordingly, the appeal fails on ground (g).
28. Points made by the appellant about being able to carry out the works whilst adhering to Government guidelines in response to the pandemic are noted but are now irrelevant given that there are no longer any guidelines that would affect the appellant's ability to carry out remedial works.

Formal Decisions

29. I have found that the scheme subject of Appeal B is harmful for several reasons and does not accord with the development plan, and there are no material considerations that indicate I should take a decision other than in accordance with this. Therefore, I conclude that Appeal B is dismissed.
30. I conclude, in respect of Appeal A that the appeal is dismissed, 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.

Andrew McGlone

INSPECTOR