



Appeal Decisions

Site visit made on 15 November 2022

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1ST DECEMBER 2022

Appeal A Ref: APP/U5930/C/21/3283017

Appeal B Ref: APP/U5930/C/21/3283018

Land at 80b Mornington Road, Chingford, London E4 7DT

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Artur Alia (Appeal A) and Mrs Renada Alia (Appeal B) against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
 - The notice was issued on 20 August 2021.
 - The breaches of planning control as alleged in the notice are 1. Without planning permission, the erection of a single storey outbuilding. 2. Without planning permission, the erection of a single storey rear extension.
 - The requirements of the notice are: 1) Reduce the height and depth dimensions of the single storey rear extension so that it fully accords with the conditions and limitations of Schedule 2: Part 1: Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. 2) Reduce the height dimension of the single storey outbuilding so that it fully accords with all the conditions and limitations of Schedule 2: Part 1: Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015. 3) Remove all resulting materials, rubble and general detritus from the Land following compliance with step (*sic*) above.
 - The period for compliance with the requirements is six months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (c) 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. Appeal B is proceeding on the grounds set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees for Appeal B 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 have lapsed.
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Decisions

1. Appeals A and B-It is directed that the enforcement notice be corrected by:

- Deleting point 2 in paragraph 3 "without planning permission, the erection of a single storey rear extension".
- Deleting step 1 in paragraph 5, with the consequential renumbering of steps 2 and 3 to steps 1 and 2.
- In the new step 2 at paragraph 5, inserting "1" between "step" and "above".

Subject to these corrections the appeals are dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made in Appeal A under section 177(5) of the 1990 Act as amended.

Preliminary Matter

2. In paragraph 5 of the enforcement notice the reference in the final step to other steps has been omitted. This is clearly a minor clerical error. The appellants can have been in no real doubt about what they are required to do to comply with the final step. Therefore, I shall use my powers in s176(1)(a) of the Act to correct the notice by inserting the relevant text. There would be no injustice to the appellants or the Council in doing so.

Appeals A and B-Ground (c) appeals

3. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. It is for the appellants to show why their appeals on this ground should succeed, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains a modern detached two-storey dwelling. The dwelling sits on ground which is higher than the ground level of an adjoining residential property, 80a Mornington Road. A single storey extension has been erected at the rear of the dwelling, whilst a detached residential outbuilding has been erected towards the end of the rear garden. Erecting these structures has involved the undertaking of building operations and therefore amounts to 'development' as defined in s55(1) of the Act. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act.
5. The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) at Article 3, Schedule 2, Part 1, grants planning permission for certain development within the curtilage of a dwelling, provided the limitations and conditions applicable to the relevant class of development are satisfied. Class A of Part 1 grants permission for the enlargement, improvement or other alteration of a dwelling where the relevant size and locational limitations in paragraph A.1 and the conditions in paragraph A.3 are satisfied. At Class E, Part 1 grants permission for the provision within the curtilage of a dwelling of an incidental outbuilding where the size and locational limitations at paragraph E.1 are satisfied.
6. The Council granted a Lawful Development Certificate (LDC) for a proposed single storey rear extension to the dwelling, in March 2021¹. The drawings accompanying the LDC application show an extension which would meet the relevant limitations and conditions in Class A. In particular, the depth of the proposed extension would not exceed the limit of 4 m from the rear wall of the original dwelling in Class A at paragraph A.1(f)(i) and its overall height would not exceed the 4 m limit at paragraph A.1(f)(ii). In addition, given that the extension is less than 2 m from the boundaries with adjoining property, the height to the eaves line would not exceed the 3 m limit in paragraph A.1(i).
7. I ascertained that as built, the depth of the extension, its height to the eaves and overall height do not exceed any of the above limits. The height to eaves and overall height were ascertained by reference to the ground level as defined in the GPDO at Article 2(2) i.e., the level of the surface of the ground immediately adjacent to that building or, where the level of the surface of the ground on which it is situated is not uniform, the level of the highest part of the

¹ Council Ref: 203342.

surface of the ground adjacent to it. The ground level following completion of the development is generally acknowledged to be the starting point in this respect. Although a patio has been laid alongside the extension, having regard to the level of the ground in the rear garden it is unlikely that the patio surface is raised significantly above the level of the highest part of the ground adjacent to the extension.

8. There was no dispute that any of the other relevant limitations and conditions in Class A were not satisfied and I can find no sound reason to conclude otherwise. Therefore, the GPDO grants planning permission for the extension and its erection has not been in breach of planning control.
9. I ascertained that the outbuilding has a height between the ground level and the eaves of just under 2.5 m, with an overall height of around just under 4 m. The outbuilding is situated within 2 m of the boundaries with adjoining property. Therefore, whilst the height of the outbuilding to the eaves line does not exceed the limit at paragraph E.1(f), the overall height exceeds the 2.5 m limit in Class E at paragraph E.1(e)(ii). It follows that although the other relevant limitations in Class E might be satisfied, the GPDO does not grant planning permission for the outbuilding.
10. An LDC for a proposed outbuilding in the rear garden of the property was granted in July 2020². However, the Council accepted that their decision was in error, as the overall height of the outbuilding would have exceeded the limitation at paragraph E.1(e)(ii). An LDC is not the equivalent in law of a grant of planning permission and cannot be relied on as authority when, as in this case, the development is clearly not lawful. The Act at s193(5) states that an LDC shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate. The Courts have confirmed that for development to be granted planning permission by the GPDO it must come fully within the relevant description of the permitted development provided for within each Class³. In any event, as built the external appearance and footprint of the outbuilding differ markedly from what is shown on the drawings accompanying the LDC application.
11. Development that exceeds the relevant limitations within the applicable Class of Part 1 of the GPDO is entirely without planning permission. No grant of express planning permission following the submission of a planning application for the outbuilding was drawn to my attention. At s171A(1)(a), the Act defines a breach of planning control as carrying out development without the required planning permission.
12. As a consequence of my findings set out above the ground (c) appeals succeed in part only, i.e., that part relating to the extension. As the appellants have been unable to show to the relevant standard that the outbuilding was not erected in breach of planning control, the appeals fail in that respect. Therefore, it is also necessary to correct the notice by deleting point 2 from the alleged breach of planning control which relates to the erection of a single storey rear extension. As part of this correction, it is subsequently necessary to delete and revise the requirements of the notice accordingly. The effect of these actions is that the alleged breach of planning control is narrowed down to

² Council Ref: 202079.

³ *Keenan v SSCLG & Woking BC* [2017] EWCA Civ 438.

the outbuilding, the planning merits of which are considered in the ground (a) appeal arising from Appeal A. This also means that the planning merits of the extension do not fall to be considered.

Appeal A-Ground (a) appeal

Main Issues

13. The main issues in this ground of appeal are:

- The effect of the outbuilding on the character and appearance of the area.
- The effect on the living conditions of the occupiers of adjoining residential property, having regard to outlook.

Reasons

Character and appearance

14. The property is located in an established residential area in which the dwellings vary in terms of their architectural style and external finishes, as well as in age. The dwellings are generally two storey and are mostly arranged in neat rows, either in pairs or otherwise grouped close together. By and large, the dwellings occupy good-sized rectilinear plots. Residential outbuildings in the vicinity are generally modest in scale and they occupy relatively limited portions of the rear gardens. The above factors all contribute to the pleasantly spacious, suburban residential character and appearance of the surrounding area.
15. The outbuilding is sited adjacent to the back edge of a parking forecourt, alongside a residential cul-de-sac. The rear gardens of a number of the adjoining properties contain similarly-sited detached structures adjacent to the forecourt. However, the outbuilding spans almost the full width of the property. The eaves line sits above the height of adjacent boundary treatments, whilst the highest part of the pitched roof is considerably taller again. Therefore, the outbuilding has a significant overall size, bulk and height. The outbuilding is significantly larger than the reasonably modest proportions and low profiles of the structures in adjacent rear gardens. The apparent scale of the outbuilding is further accentuated by the lower ground levels at the rear of the property and in some adjoining rear gardens.
16. As a result, the outbuilding is viewed as an alien feature in its surroundings, significantly eroding the sense of spaciousness, creating an appreciably more built-up feel in the vicinity and causing unacceptable harm to the character and appearance of the locality. These factors do not take sufficient account of the advice on the design of outbuildings or the general design principles set out in the Council's Residential Extensions and Alterations Supplementary Planning Document (SPD).
17. By failing to respect the street scene and character of the area, the outbuilding does not accord with criterion in Policy DM4 of the Council's Development Management Policies Local Plan (LP), whilst by not reinforcing local character and distinctiveness there is also failure to accord with criterion in LP Policy DM29. By not responding positively to the local context and character, the outbuilding does not accord with criterion in Policy CS15 of the Council's Core Strategy. There is no failure to accord with Policy D4 of the London Plan, which

sets out the overall strategy for delivering good design in the capital. Nevertheless, by not achieving a well-designed place, the outbuilding is also inconsistent with chapter 12 of the National Planning Policy Framework (the Framework).

Living conditions

18. The outbuilding has had a limited effect in terms of eroding the level of outlook previously enjoyed by the occupiers of adjoining residential property, its substantial overall size, bulk and height as perceived from such property notwithstanding. This is largely due to the location towards the end of the rear garden and the significant separation from adjacent dwellings.
19. Consequently, there is no unacceptable erosion in the levels of outlook previously enjoyed by the occupiers of adjoining residential property and no unacceptable harm to their living conditions. This accords with other criterion in LP Policy DM4, as the occupiers of nearby property are protected from an excessive loss of residential amenity. It also accords with criterion in LP Policy DM29 and LP Policy DM32, as outlook is maintained for neighbouring occupiers in their homes and gardens. Additionally, by providing a high standard of amenity for existing and future users, the outbuilding is consistent with paragraph 130(f) of the Framework.

Other matters

20. A number of other matters were raised by interested local residents. However, as the ground (a) appeal will be dismissed it is not necessary to consider those matters further.

Conclusion-Ground (a) appeal

21. The outbuilding has caused unacceptable harm to the character and appearance of the area. This does not accord with the Development Plan and is inconsistent with the SPD as well as the Framework.

Appeals A and B-Overall Conclusions

22. For the above reasons I conclude that Appeals A and B should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application in Appeal A.

Stephen Hawkins

INSPECTOR