



---

## Appeal Decision

Site visit made on 5 May 2023

**by L Perkins BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 May 2023**

---

**Appeal Ref: APP/U5930/C/22/3301410**

**Land at 64a Coolgardie Avenue, Chingford, London E4 9HP**

- 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 Richard Jew against an enforcement notice issued by the Council of the London Borough of Waltham Forest.
  - The enforcement notice was issued on 1 June 2022.
  - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a two-storey structure – for identification purposes refer to Appendix A.
  - The requirements of the notice are:
    - 1) Demolish and remove the two storey structure as shown in Appendix A from the Land.
    - 2) Remove and clear from the Land all resultant debris as a result of complying with the above requirement.
  - The period for compliance with the requirements is eight (8) weeks.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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.
- 

### Decision

1. 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.

### Reasons

#### Ground (c)

2. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. In a ground (c) appeal the onus is on the appellant to make out their case to the standard of the balance of probabilities.
3. The appellant has indicated their view that the appeal development falls within permitted development rights under 'residential rules' and that the size and scope are 'within the limitations'. But the appellant's case is not further substantiated in this regard and on the appellant's own case, the use of the appeal site is as a builder's store. So that being the case, it cannot benefit from any permitted development rights relating to a residential property, as has been suggested. There is no evidence of any other permitted development rights being applicable in this case. As such, the appeal on ground (c) fails.

### Ground (a)

4. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice. Based on the reasons for issuing the notice, the main issues in the ground (a) appeal are:
- the effect of the appeal development on the character and appearance of the area;
  - and
  - the effect of the appeal development on the living conditions of neighbouring occupiers, with particular regard to the outlook for the occupants of 62 and 64 Coolgardie Avenue.

### *Character and Appearance*

5. The area is characterised by rows of 2 storey terraced houses with a consistent front building line. They are set back from the road by small front yards and have pitched roofs with a ridgeline running parallel to the street. They are constructed of brick, with full height rendered bay windows topped with front gables. Some of the gaps between houses are interspersed with simple single storey garage structures, such as those seen at the side of No 62 and 64.
6. The appeal development is a rudimentary 2 storey timber structure. It sits on a plot of land between the houses at No 62 and 64. It is shorter than the houses either side and sits forward of their front building line. At the time of my site visit it had a large section of flat roof and steeply sloping side roof pitches perpendicular to the street, giving its roof a broadly mansard shape. Its front elevation is clad in timber boarding but its upper level is open to the street.
7. The appeal development does not reflect any other development seen in this area, including any other garage or storage structures. In this context it appears utterly incongruous and out of character. I have taken into account the appellant's view that it is a temporary structure. Be that as it may, this does not justify its appearance, size or shape.
8. The appellant states that the previous structure was untidy, unsightly and falling down. But there is no evidence this was the case, particularly taking into account photographs of the previous structure, provided in representations received.
9. I conclude that the appeal development harms the character and appearance of the area. In this regard, it does not comply with Policy CS15 of the Waltham Forest Local Plan Core Strategy 2012 or Policy DM29 of the Waltham Forest Development Management Policies Local Plan 2013 (the Local Plan) or the design policies of the National Planning Policy Framework (the Framework).

### *Living Conditions*

10. No 62 and 64 each have a flank window at first floor level, looking over the appeal site. The appeal development fills the width and most of the depth of the appeal site. The maximum height of the structure is broadly level with the soffit of the flank windows on No 62 and 64. As a result of this arrangement, the appeal development presents a solid flank wall at close proximity to each flank window on No 62 and 64.

11. Whilst access was not available to No 62 nor No 64 during my site visit, it was clear when viewing the appeal development from the street that it has a significant harmful effect on the outlook from these flank windows, particularly when compared to the previous arrangement, where these windows had an unobstructed view across the appeal site to the next house.
12. As a matter of my planning judgement, as a result of the appeal development, the occupants of No 62 and 64 now experience a sense of enclosure when looking out of these windows and this effect is overbearing. No evidence has been made available to lead me to a different conclusion in this regard.
13. The Council has also indicated that the structure affects the outlook from the rear gardens of No 62 and 64. Based on the information provided, I have no reason to believe this is not the case, particularly taking into account that the structure is 2 stories high and built hard-up to the rear and side boundaries of the appeal site.
14. I conclude the appeal development harms the living conditions of neighbouring occupiers, with particular regard to the outlook for the occupants of No 62 and 64. In this regard, it does not comply with Policy DM29 or Policy DM32 of the Local Plan or the design policies of the Framework, insofar as they relate to amenity.

#### *Other Matters*

15. The appellant has referred to planning applications which are said to have been submitted for the appeal development with no response from the Council. But these applications are not before me and in any event, they make no difference to my findings on the main issues in this case.
16. My attention has been drawn to Policy D4 of the London Plan 2021 and the Residential Extensions and Alterations Supplementary Planning Document 2010. But it has not been explained how these are directly relevant to the main issues in this appeal and so I consider they weigh neither in favour of nor against the appeal development.

#### *Conclusion on Ground (a)*

17. Taking all of the above into account, I conclude the appeal on ground (a) fails.

#### *Ground (f)*

18. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
19. Under section 173(4) of the 1990 Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.

20. Based on the requirements of the notice, the purpose of the notice is to remedy the breach. This is consistent with the Council's submissions.
21. The appellant's case on ground (f) is that the size and scope of the replacement garage structure would be smaller in height than the demolished structure. It is not clear whether this comment is in respect of what has been constructed or what may be constructed in the future. But what is before me in this appeal is what is identified by the notice and from the information provided this is clearly larger than the demolished structure which had a single storey.
22. I conclude no lesser steps have been suggested which would achieve the purpose of the notice. As such, the appeal on ground (f) fails.

### **Conclusion**

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

*L Perkins*

INSPECTOR