



Appeal Decision

Site visit made on 25 April 2023

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 July 2023

Appeal Ref: APP/Z5060/C/22/3297690

Land and premises at 12 Torrington Road, Dagenham RM8 1ND

- 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 Taiwo Lasile against an enforcement notice issued by the Council of the London Borough of Barking and Dagenham.
 - The enforcement notice was issued on 7 April 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of an outbuilding.
 - The requirements of the notice are to:
 - (i) Remove the unauthorised outbuilding in its entirety.
 - (ii) Remove all subsequent waste material from the premises.
 - The period for compliance is six months to comply with both requirements after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended.
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Formal decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the erection of an outbuilding on land at 12 Torrington Road, Dagenham RM8 1ND, as referred to in the notice.

Background

2. The appeal property is an end-of-terrace two-storey dwellinghouse. A number of the residential properties in the locality, including nos 8 and 10 Torrington Road, have full-width, single-storey outbuildings situated at the end of the rear garden, abutting a narrow alleyway behind. It is unclear from the evidence whether the appeal property had a similar such outbuilding before the current L-shaped rendered building was erected, and might therefore be a part replacement. Nonetheless, the rear section of the new building runs the full width of the garden whilst the significantly narrower section, at less than half the garden's width, runs alongside the boundary with the side alleyway, and extends a short distance into the rear garden area.
3. The building's rear section accommodates a small gym and shower, and a small office and separate store-room are accommodated within the narrower projection. Internal doors allow ease of passage between all three rooms. The office and store both benefit from natural ventilation, although the gym has no outside windows.

4. All the facilities are solely for the benefit of the occupiers of no 12 Torrington Road.
5. Planning permission was applied, retrospectively, for the development, but the application was refused in January 2022. The Council then saw it expedient to issue an enforcement notice in an attempt to regularise the planning position.

The Appeal on ground (b)

6. The appeal on ground (b) is that breach alleged has not occurred as a matter of fact. In this particular instance a building, as is defined in s336 of the 1990 Act, has been erected which constitutes development under s55(1) of the 1990 Act.
7. S.55(2) itemises a number of operations, and uses of land, which shall not be taken to involve development. These include "the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building". I mention this because the appellant has not provided a written statement and the Council's representations do not discuss the site's history in terms of whether an outbuilding existed previously or has been renovated as part of the development.
8. That said, even if the current L-shaped building had resulted from the refurbishment and extension of a smaller outbuilding such as those along the terrace I am satisfied that the element of new-build would constitute a clear change in its physical appearance to the extent that significant materiality is involved. Accordingly, I am satisfied that the development built goes considerably beyond an operation that would fall under s55(2).
9. I must therefore conclude that, at the date the enforcement notice was issued, the alleged breach, which involved unauthorised operational development had occurred as a matter of fact.
10. Accordingly, the appeal on ground (b) fails.

The Appeal on ground (a); the deemed planning application (DPA)

11. Firstly, neither of the two main parties have made the point that the outbuilding itself could be built under permitted development rights. No appeal on ground (c) has been lodged, and the fact that the appellant applied for retrospective permission for the development only reinforces this view. The need for planning permission may be a consequence of the dual pitched roof overlying the building's rear section which is markedly higher than the flat-roofed section.

Main Issues

12. The Council appears to consider that the outbuilding is unacceptable on two counts; firstly, due to its view that it is of an incongruous built form which is harmful to both the appearance of the dwellinghouse at no 12 Torrington Road and the character of the surrounding area; and secondly, that it is an unneighbourly form of development which is considered overbearing due to its size.

13. A further point highlighted by the Council is the consideration that the outbuilding is not ancillary to the dwelling due to its siting, size, design and use. I shall discuss this under the character/appearance assessment.
14. The main issues in this appeal are, therefore, the effect of the development on both the character and appearance of the dwelling along with any impact on the surrounding area, and also the effect on the living conditions of neighbouring occupiers.

Reasons

Character and appearance

15. S55(2)(f) of the 1990 Act allows for all or any part of the planning unit comprising the dwelling and any other existing buildings within that planning unit, together with any other land occupied as part of that planning unit within Use Class C3, to be used for incidental domestic purposes, provided that the planning unit remains a single private dwellinghouse, without any part of it being hived off as a separate dwelling.
16. Accordingly, in a nutshell, providing an outbuilding is acceptable in all other respects, it can be used for purposes incidental to the enjoyment of the dwellinghouse. Here, the facilities within the outbuilding are modest in terms of floorspace. Although no 12 is not a large dwelling I must make the point that the size of an outbuilding relative to its host dwelling is not necessarily a determinative factor as to what can be seen as incidental thereto.
17. A further point is that the outbuilding is noticeably distanced from the house, and a significant area of rear garden remains, potentially, for amenity purposes. I am also satisfied in this instance that the additional living accommodation being provided is reasonably incidental and, moreover, is not part of the primary residential use of the dwellinghouse.
18. As mentioned, a full width outbuilding bounding the property's rear boundary is a common feature in the locality; the only difference being that this is new build and a pitched roof has been created. However, it would be unreasonable to find against the development based on the roof treatment given that the building is separated from the properties to the rear by a rear alley, albeit narrow in width.
19. The building's flat-roofed section, of lesser height, adjoins the rear section at eaves level and is also separated from the nearest property, no 14, by an alleyway divide.
20. In the circumstances I am satisfied that the outbuilding is suitably sited, and is itself modest in size. Further, it has a form consistent with its function and has been built for purposes incidental to the enjoyment of the dwellinghouse.
21. There is no material conflict with the aims and requirements of policy BP11 of the Council's Borough Wide Development Plan Policies document (DPP), policy CP3 of the Council's Core Strategy (CS), policies SP2 and DMD1 of the Council's Draft Local Plan (DLP) and policy D4 of the London Plan. Neither is it inconsistent with the guidance in the Council's 'Residential Extensions and Alterations Supplementary Planning Document (SPD), nor relevant advice within paragraph 130 of the National Planning Policy Framework (the Framework).

22. Taking all factors into account, I conclude that the development is neither harmful to the character and appearance of the host dwelling nor the surrounding area.

Living conditions

23. The Council has not expounded on nor substantiated its claim that the outbuilding is overbearing on neighbouring occupiers. The height of the flat-roofed section is only slightly above the property's side boundary enclosure which, as mentioned, backs onto an alleyway, and I fail to see how the building's height or proximity impacts adversely on no 14. Further, neither no 10, nor the properties beyond the rear alleyway are realistically affected by the development.
24. Accordingly, I conclude that the living conditions of neighbouring occupiers are not harmed by the development, and there is no conflict with DPP policy BP8, CS policy CP3, guidance within the Council's SPD, or relevant advice within the Framework.

Other Considerations

25. Some of the policies cited by the Council are of little relevance to, or are somewhat tenuous to, the development at issue, and I have omitted to mention all those referred to in the enforcement notice.
26. There has been little objection to the development from local occupiers. An objector has, however, raised a concern as to maintaining access to the side alleyway, but this is a private matter between the parties involved and is outside the scope of planning legislation.

Conclusion

27. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.
28. In terms of conditions, given that the development is complete, it is not necessary that I attach any conditions as to the building's materials and appearance. As regards its future use neither is it necessary that I impose a condition requiring that the outbuilding remains incidental to the dwellinghouse. Any severance or independent use would almost certainly amount to a material change in planning terms for which planning permission would be needed, and the Council holds remedial powers in this respect.

Timothy C King

INSPECTOR