
Appeal Decisions

Site visit made on 31 October 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2023

Appeal A: Ref: APP/K2230/W/23/3321921
130 Old Road East, Gravesend, Kent DA12 1PF

- 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 Rijvant Thamey against the decision of Gravesham Borough Council.
 - The application Ref: 20230077, dated 27 January 2023, was refused by notice dated 24 March 2023.
 - The development proposed is described as: "Alteration and extension of existing detached garage."
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Appeal B: Ref: APP/K2230/C/22/3312831
130 Old Road East, GRAVESEND, Kent DA12 1PF

- 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 Rijvant Thamey against an enforcement notice issued by Gravesham Borough Council.
 - The enforcement notice was issued on 28 November 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of an outbuilding in rear garden of the Property.
 - The requirements of the notice are:
 - (i) Demolish the outbuilding the subject of this notice in its entirety.
 - (ii) Remove the raised platform on which the outbuilding sits.
 - (iii) Remove all resultant debris and associated materials generated by the unauthorised development and compliance with the above steps from the property.
 - (iv) Restore the land to its former condition.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees 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 as amended have lapsed.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed, and the enforcement notice is upheld.

Appeal A

Main Issues

3. The main issues are the effect of the development on:

- the character and appearance of the area; and
- the living conditions of the occupiers of 132 Old Road East in respect of outlook and privacy.

Reasons

Preliminary

4. My attention has been drawn to two previous appeals on this site (Appeal References 3287841 and Appeal Ref: 3305920) which were dismissed for an outbuilding in the rear garden. In particular, appeal ref: 3287841 related to the unauthorised outbuilding, the subject of Appeal B, which has since been demolished. However, the elevated platform upon which the unauthorised development sat remains in situ and is proposed to be retained under the current appeal development to form a raised patio in front of the outbuilding.

Character and appearance

5. The site relates to a two-storey semi-detached dwelling in a residential area characterised by similar semi-detached properties. Most properties in the street contain garages/outbuildings with vehicular access provided at the rear. The rear gardens generally increase in gradient towards the rear and step up to the north-east. The tree-lined road and the landscaped front and rear gardens gives the area a pleasant open and verdant character.
6. Planning permission has been approved for the existing single storey rear extension. I accept that the overall size of the proposed outbuilding has been reduced, since the two previous dismissed appeals. Nevertheless, the proposed outbuilding and associated raised platform, when combined with the existing rear extension occupies a disproportionate amount of the rear garden. Furthermore, the development, owing to its excessive size and footprint, full width of the garden, would substantially erode the extent of undeveloped space associated with this property, and result in a cramped and an uncomfortable relationship with the host building and neighbouring properties, particularly No 132.
7. In addition, owing to its elevated position, the presence of the outbuilding and the associated raised platform would be clearly apparent and in close proximity to neighbouring residential properties. In this respect the proposal would detract from the open and verdant character of the area.
8. Therefore, despite the use of sympathetic materials, and its position away from any public views, the effect of the development diminishes unacceptably the character and appearance of the host building and the area. The development is therefore contrary to Policy CS19 of the Gravesham Local Plan Core Strategy 2014 (CS). Amongst other things, this requires that new development be visually attractive and integrates well with the surrounding local area. The development also conflicts with paragraph 130 of the National Planning Policy Framework, 2023 (the Framework) which requires development to be sympathetic to local character and history.

Living conditions – outlook and privacy

9. The size of the proposed outbuilding has been reduced in depth since the previous dismissed appeals and the proposal now includes an altered flat roof design, which assists in reducing its overall bulk and mass. Nevertheless, the excessive height of the outbuilding and raised platform results in a visually intrusive, dominant, and unneighbourly form of development, built close to the boundary with the neighbouring residential property at No 132 Old Road East. The height of the outbuilding is further exacerbated by its elevated position, which rises proud above the existing garden level. This results in harm to the living conditions for the occupiers of these neighbouring residential property, with regard to outlook.
10. With regard to privacy, I note that the single access door would be located closer to the high boundary treatment at No 128 and could also be obscure glazed to prevent any direct overlooking to neighbouring properties. I also note that the previous Inspector did not find any harm in relation to loss of privacy with regard to appeal ref: 3305920.
11. However, the proposal now includes a larger area of raised platform in front of the proposed outbuilding which would be in close proximity to the neighbouring property and rear garden of No 132. Whilst some screening in the form of planting is shown on the site layout plan, no such screening is proposed along the side boundary of the raised platform with No 132. Furthermore, it is unclear, given the height of the raised platform, how any harmful overlooking of No 132 could be satisfactorily mitigated without causing further harm in relation to loss of light or outlook to the neighbouring property. Indeed, such screening would need to be of a considerable height, when measured from the ground level of no 132, to be effective.
12. I acknowledge that the appeal site was formerly terraced. However, it is clear that the land has been further increased towards the rear of the garden to facilitate the unauthorised development, the subject of appeal B, and the raised area is proposed to be retained under the current proposal.
13. I therefore find the development results in harm to the living conditions for existing occupiers of No 132, with particular regard to outlook and privacy, contrary to Policy CS19 of the CS, and does not accord with the development plan as a whole. Amongst other things, this states that new development will be located, designed and constructed to safeguard the amenity, including privacy, daylight and sunlight of its occupants and those of neighbouring properties and land. The development also conflicts with paragraph 130 of the Framework which seeks to ensure that development achieve a high standard of amenity for existing and future user.

Other matters

14. During the site visit, the appellant highlighted a number of other outbuildings nearby. However, I do not have the full details of those other developments before me and therefore cannot be certain that the circumstances which led to those developments are directly comparable to the appeal development before me. With regard to the outbuilding at No 126 Old East Road, it appears that the development has retained a larger amount of open space in the rear garden, than the appeal development which has built a rear extension in combination with the proposed outbuilding and raised platform. Similarly, the property at

No 98 Old East Road, has also retained a greater amount of rear garden and thus preserves the openness of the area. As such, these other developments do lend support for the current appeal proposal. In any event, I have assessed the development on its own merit.

15. The appellant also states that permitted development would allow a similar sized outbuilding. Be that as it may, in my view, such an outbuilding would not be as substantial as the scheme before me. Therefore, I give the permitted development fall-back argument little weight.

Conclusion on Appeal A:

16. 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, as a whole, with particular regard to harm to the character and appearance of the area and to the living conditions for nearby occupiers with regard to outlook and privacy. None of the other matters raised, including the improvements to the accommodation provided and the lack of objections from neighbours outweighs these harms identified. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

Appeal B

The Appeal on Ground (f)

17. The appeal on this ground 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 any breach of planning control which may be constituted by those matters (i.e. the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
18. The enforcement notice requires the removal of the unauthorised outbuilding, and the raised platform and restoration of the land to its condition before the breach took place. Therefore, the purpose of the notice is to remedy the breach of planning control.
19. The appellant states that the site is the subject of an appeal for a smaller building (ref: 3305920) which if allowed, would negate the need to demolish the existing outbuilding in its entirety and the raised platform. However, since this appeal was lodged, appeal ref: 3305920 has been dismissed, and therefore neither the outbuilding nor the raised platform has planning permission.
20. The appellant also states that the notice does not specify what the final requirements means as the garden has been re-profiled with the former terraces removed. However, the requirement "to restore the land to its former condition" is quite clear, and the parties should be best placed to know what is needed to fulfil this requisite.
21. Therefore, there are no lesser steps drawn to my attention or any obvious alternative that would remedy the breach of planning control which is the purpose of the notice.
22. On this basis, the Ground (f) appeal fails.

Conclusions

23. **Appeal A:** For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.
24. **Appeal B:** For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

R. Satheesan

INSPECTOR