



Appeal Decisions

Site visit made on 21 September 2023

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 06 February 2024

Appeal A Ref: APP/G5750/C/22/3300004

133 Hampton Road, Forest Gate, London, E7 ORD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the "Act"). The appeal is made by Mr S Miah against an enforcement notice issued by the Council of the London Borough of Newham.
 - The notice, numbered 21/00092/ENFC, was issued on 3 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission the erection of an extension to a rear outbuilding.
 - The requirements of the notice are:
 1. Demolish the extension to the rear of the outbuilding (as shown in the approximate location edged in blue on the attached plan, and as shown edged in yellow on the photograph attached at Appendix 1).
 2. On completion of Step 1 above, remove all materials and debris from the site.
 - The period for compliance with the requirements is: three months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (g) of the Act. 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.
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Appeal B Ref: APP/G5750/W/22/3299922

133 Hampton Road, Forest Gate, Newham, London, E7 ORD

- The appeal is made under section 78 of the Act against a refusal to grant planning permission.
 - The appeal is made by S Miah against the decision of the Council of the London Borough of Newham.
 - The application Ref: 22/00501/HH, dated 1 March 2022, was refused by notice dated 19 April 2022.
 - The development proposed is an outbuilding.
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Decisions

1. Appeal A - 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 Act.
2. Appeal B – The appeal is dismissed.

Preliminary Matters

3. The enforcement Appeal A on ground (a), the deemed planning application, concerns an 'extension to an outbuilding'. Planning Appeal B concerns an 'outbuilding'. Notwithstanding this difference in the description, given the similarities between the appeal under ground (a) and Appeal B, I shall deal with them together.

4. In appeal B, the development is described as 'retention of newly built outbuilding' indicating that the appeal is retrospective. I saw this to be the case at the time of my site visit and I have considered the appeal on this basis. Given that the words '*retention of newly built*' are not an act of development, I have removed this wording from the description of development cited in Appeal B.
5. Since the appeals were made, a revised National Planning Policy Framework (the Framework)(December 2023) has been published. Although paragraph numbers with respect to conserving and enhancing the historic environment have changed, together with footnotes and page numbering within the chapter concerning the conservation and enhancement of the natural environment, the document has not raised any new matters which are determinative to this appeal.

Ground (a) and Appeal B

6. The main issues are:-

- i) whether the development would preserve or enhance the character or appearance of the Woodgrange Conservation Area and the host dwelling; and
- ii) the effect of the development on the biodiversity value of the appeal site.

Whether the development preserves or enhances the conservation area

7. The Woodgrange Conservation Area (CA) is a predominantly residential area that is characterised by two storey double fronted Victorian properties. Dwellings are unified in their scale, high architectural quality and intricate detailing. The consistent use of timber, stock brick and slate materials within the CA provides further uniformity.
8. Properties are predominantly grouped within blocks of terraces with small gaps between terraced rows providing views between buildings to areas of rear gardens. Typically, garden areas to the front and rear of dwellings are green and verdant with areas of planting and some trees which gives the area a leafy, open and spacious character and appearance. As a result, I find that the significance of the CA is derived, in part, from its historic, architectural and aesthetic value.
9. As an end of terrace Victorian property, the host dwelling shares many of the common characteristics of the CA. It therefore makes a positive contribution to the significance of the heritage asset.
10. The host dwelling includes a generously sized rear garden, which I am advised, prior to the unauthorised development, it included a lawned area together with an original outbuilding (the Original Outbuilding), which the parties do not dispute is lawful, and which is positioned along the boundary with the adjoining property. The building forming the subject of the appeals before me is positioned to the side of, and adjoins the Original Outbuilding. However, for clarity, for the purposes of this appeal, my consideration is limited to the effect of the appeal building.

11. The appeal scheme has introduced a single storey outbuilding positioned along the rear boundary which fills the gap between the Original Outbuilding and the shared boundary with the attached neighbouring dwelling at 135 Hampton Road. By reason of its excessive width and depth, it extends across a large part of the rear garden such that when taken together with the space occupied by the Original Outbuilding, the rear boundary is enclosed in its entirety to the detriment of the distinctive spacious and open character of the CA.
12. The Woodgrange Design Guide – Supplementary Planning Guidance (2018)(DG) recognises the importance of protecting the quality of rear gardens as well as the streetscene. It has been put to me that the DG is primarily concerned with the public realm. However, I disagree. The DG notes that rear gardens were laid out to be leafy and spacious and a place for relaxation and to this extent, it is clear that the DG is focussed on public and private spaces. The DG sets out that it is permissive of garden buildings if they are, among other things, '*not too large*' and are constructed of traditional materials.
13. It is the appellant's case that the DG requirement for outbuildings not to be overly large is vague. However, each case must be considered on its own individual circumstances and an assessment made.
14. By reason of its significant width and depth, when combined with the height of the building and the inclusion of a mono-pitched roof, the appeal building appears as a substantial and overly large addition to the garden and the host dwelling. It differs from other garden outbuildings within adjoining gardens and the wider area which are predominantly of a modest scale and include a pitched roof form. The use of uncharacteristic materials including UPVC windows and doors, red roof tiles and render, while similar to the Original Outbuilding, would fail to reflect materials used in the construction of buildings elsewhere within the CA. Furthermore, it would serve to draw further attention to the appeal building which would be viewed as a discordant and inharmonious addition to the rear garden, host dwelling and wider conservation area.
15. Due to the location of the appeal building to the rear of the host dwelling, it is not directly in view from the frontage of the street. However, it can be viewed from the rear of surrounding properties and given the position of the appeal site adjacent to the railway line, it is also readily apparent to commuters on passing trains.
16. The appellant suggests that other key areas of the CA are unaltered by the appeal scheme such as highway alignments and thoroughfares. Whilst I have not found any harm has been caused to these characteristics, this does not overcome the harm that I have found has been caused to other important qualities of the CA.
17. Thus, for the reasons given above, I find the appeal schemes fail to preserve or enhance the character or appearance of the CA. The appeal schemes conflict with policies S6, SP1, SP3, SP5 and SP8 of the Newham Local Plan (2018)(NLP) and policies D1, D3, D4, D8 and HC1 of the London Plan (2021)(LP). Among other things, these policies require a high quality design that responds well to local character and seeks to reinforce or create local distinctiveness. Furthermore, proposals that affect heritage assets are required to conserve their significance by being sympathetic to the assets significance and appreciation within their surroundings. There is also conflict with the guidance of the DG, the requirements of which are set out above.

18. The Council also refer to a conflict with NLP Policy SC3 which concerns flood risk and drainage. However, no specific conflict with this policy has been highlighted within either appeal and therefore, on the evidence before me, the Council have not demonstrated there to be any harm arising from a failure to adhere to the requirements of this policy. This matter is therefore not determinative in my consideration of these appeals.
19. In assessing harm to designated heritage assets, the Framework advises that there are three categories of harm to significance to be considered, namely, 'substantial harm, total loss or less than substantial harm'. Neither the Council nor the appellant have provided their views on this matter however, to my mind, given the scale of the unauthorised building and its position to the rear of the host dwelling, the harm identified amounts to less than substantial harm. In accordance with paragraph 208 of the Framework, this provides for a balancing exercise to be undertaken between less than substantial harm to the designated heritage asset and the public benefits of the proposal.
20. Although the appellant has not put forward any public benefits of the appeal scheme, I am mindful that improvements to living space can improve the quality of housing stock and this could be considered to be a public benefit. Nonetheless, it is a limited benefit and it does not outweigh the harm to the CA I have identified above, to which I attach great weight. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance and therefore, I find that the appeal schemes also fail to comply with the provisions of national planning policy outlined within section 16 of the Framework.

Biodiversity

21. NLP Policies SC1 and SC4 seek to protect and enhance biodiversity with all development contributing to the achievement of net gain, and where compatible, improvements to access to nature. The supporting text to Policy SC4 sets out that despite Newham's urban structure and proximity to central London, it supports a diverse array of wildlife, including species that have adapted their behaviours to urban environments. It goes on to state that development brings opportunities to enhance biodiversity and address past degradation, including that which has arisen from, among other things, the tendency to pave over gardens. Sites not necessarily recognised for their biodiversity offer, such as brownfield land, may include habitats and species of value. LP Policy G6 has similar aims and sets out that development proposals should manage impacts on biodiversity and aim to secure net biodiversity gain.
22. It is the appellant's case that the condition of the appeal site prior to the appeal building being constructed was a domestic garden comprised of mown lawn for which the appellant states it was a '*prime example of low biodiversity*'. Whilst I have had regard to the appellant's photographs these are undated and it is not clear to me when they were taken, save that they were taken at some point prior to the construction of the appeal building. I consider that individual gardens can make an important positive contribution to biodiversity in terms of the plant and animal life that it is capable of supporting. Although the space taken up by the appeal building is substantial, a sizeable garden area is retained and, in my view, it is capable of supporting some limited biodiversity enhancements.

23. It is put to me that the adjoining railway line offers a greater biodiversity value than the appeal site. Nonetheless, the appeal scheme has resulted in the loss of green space, and even being an area of mown lawn, it has the potential to support some enhancements to biodiversity.
24. I consider that an appropriately worded planning condition could be imposed on a grant of planning permission to secure a scheme of landscaping or other works which would deliver the necessary biodiversity enhancements and mitigate against the harm caused by the appeal schemes. Thus, the appeal schemes would accord with policies SC1 and SC4 of the NLP and policy G6 of the LP, the requirements of which are set out above. It would also concur with the expectations of the Framework and the guidance of the DG, which aims to improve biodiversity in and around developments.

Conclusion on Ground (a) and Appeal B

25. For the reasons given above, I find that an appropriately worded planning condition could be used to protect and enhance biodiversity such that it would accord with development plan policies in respect of biodiversity. Nonetheless, the schemes cause harm by reason of failing to preserve or enhance the character or appearance of the CA. There would be conflict with policies of the development plan and national planning policy which seek to conserve and enhance the historic environment. This is a matter to which I attach substantial weight.
26. Whilst the appeal building has enhanced the living conditions of the occupants of the host dwelling and this in turn may be considered as an improvement to housing stock, these are matters which attract limited weight.
27. The appeal schemes fail to accord with the development plan as a whole, and the material considerations in this instance do not justify a decision otherwise than in accordance with the development plan. For the reasons given above, I conclude that the appeal should not succeed on ground (a) nor shall it succeed in respect of Appeal B.

Ground (g)

28. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant suggests a period of twelve months is required to remove and make good the site.
29. The appellant has drawn my attention to his need to have time to raise finance to carry out the works, to identify and appoint contractors to carry out the works and thereafter, time for the appointed contractor to carry out the works.
30. However, having visited the site and inspected the building, in my experience, the demolition of the structure and removal of the debris are not works that are unduly complicated. Whilst a contractor appointed to undertake the works may have a lead in time before they are available to carry out the work, I consider that 3 months would be a sufficient period of time for this type of work.
31. Furthermore, little evidence has been put forward regarding the cost likely to be incurred as a result of the works, nor the financial circumstances of the appellant which would justify an extension of the compliance period.

32. Therefore, I consider that a three month compliance period would be reasonable in the circumstances and it would strike the right balance between the effect of my decision on the appellant and the taking of enforcement action in the wider public interest.

33. Consequently, the appeal under ground (g) fails.

S174 Overall Conclusion

34. 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 Act.

E Brownless

INSPECTOR