



Appeal Decisions

Site visit made on 19 December 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2024

Appeal A Ref: APP/N5090/C/23/3327972

78 Kings Drive, Edgware HA8 8EF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Poppy Pilram against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice, numbered ENF/0876/23, was issued on 26 July 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a rear outbuilding.
 - The requirements of the notice are to:
 - 1 Demolish the rear outbuilding
 - 2 Permanently remove all constituent materials resulting from the works in 1. above from the property
 - The period for compliance with the requirements is: 6 Months.
 - 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.
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Appeal B Ref: APP/N5090/W/23/3326640

78 Kings Drive, Barnet, Edgware HA8 8EF

- 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 Ms Poppy Pilram against the decision of the Council of the London Borough of Barnet.
 - The application Ref 23/0823/RCU, dated 27 February 2023, was refused by notice dated 5 June 2023.
 - The development proposed is Erection of a rear outbuilding (retrospective).
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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 1990 Act as amended.
2. Appeal B: The appeal is dismissed.

Applications for costs

3. Applications for costs were made by Ms Poppy Pilram against the Council of the London Borough of Barnet. These applications are the subject of a separate decision.

Preliminary Matters

4. I have taken the appellant's name for Appeal B in the banner heading above, from the application form. Although the appeal form was submitted in a different name, the appellant has confirmed that she is the appellant and wishes to proceed as such.

5. Since the appeal was made, a revised National Planning Policy Framework (the Framework)(December 2023) has been published. The parties have been given the opportunity to comment on the implication of the revised Framework on the appeal.
6. The Council has previously issued an enforcement notice in respect of the site, which was subject to appeal reference APP/N5090/C/20/3249696. The enforcement notice alleged without planning permission the erection of an outbuilding, not in accordance with the approved plans of lawful development certificate reference 19/2749/192. The notice required the scheme to be modified to match the scheme shown on plan number KD78-01-1001 including but not limited to reducing the height of the outbuilding to 2.5 metres.
7. The appeal was made under ground (g) only and the time for compliance was varied to 6 months. Subject to this variation, the appeal was dismissed and the enforcement notice upheld. The Council has clarified that the outbuilding attacked by that notice is the same as the outbuilding which is the subject of these appeals. However, the Council withdrew that enforcement notice on 17 July 2023, prior to issuing the enforcement notice which is the subject of Appeal A.
8. The Inspector also considered an appeal under section 78 of the Act, reference APP/N5090/W/20/3250137, for the erection of single rear outbuilding. In that case, the Council provided measurements of the outbuilding, with a maximum height of 3.1m, which the Inspector stated were not disputed by the appellant. The appellant advises that the Inspector did not gain entry to the site and relied upon external ground measurements. The appellant did not challenge the appeal decisions under sections 288 or 289 of the Town and Country Planning Act 1990 (as amended)(the Act) and those decisions cannot now be challenged through these appeals.

Appeal A: Ground (c)

9. An appeal under ground (c) is made on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. The main thrust of the appellant's case is that the garage has been built in accordance with a certificate of lawfulness that has previously been granted in respect of the property.

Lawful development certificate

10. The appellant submitted an application for a lawful development certificate (LDC) for an outbuilding at the site, reference 19/2749/192, and a certificate was issued on 17 June 2019. Section 192(4) of the Act sets out that lawfulness of any use or operations for which a certificate is in force shall be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness. There is no suggestion that the LDC has been revoked under section 193(7) of the Act.
11. The Permitted development rights for householders: Technical Guidance (2019) advises references to height is the height measured from ground level. Where ground level (the surface of ground immediately adjacent to the building in

- question) is not uniform, the ground level is the highest part of the surface of the ground next to the building.
12. However, this is intended to assist in interpreting whether something would be permitted by the GPDO. It does not mean that anything which is constructed below the highest part of the surface of ground next to the building does not need to be shown on a plan when seeking an LDC. Development can include works above and below ground and so, where an applicant wishes to rely on an LDC for operations, the plans must accurately show what the appellant is proposing to do.
 13. During my visit, measurements of the outbuilding were taken and agreed with the main parties. At the point nearest the host dwelling, the outbuilding measures around 2.5m above garden level and at the point furthest away, it measures approximately 3.13m above the footway. This is broadly consistent with the plan submitted in support of the appeals.
 14. Although the height of the outbuilding relative to the height of the main dwelling may be similar to the outbuilding shown on the LDC, the outbuilding which has been constructed is taller in absolute terms, measuring up to 3.1m in height, compared to 2.5m, as shown on the LDC plan. Furthermore, the appellant's plans show the 'as-built' outbuilding as measuring 2.59m to 'garden level', whereas the maximum height above ground level is shown on the LDC plan as measuring 2.5m. Thus, the certificate cannot be relied upon, since the outbuilding which has been built does not reflect the development the appellant applied for.
 15. As held by the judge in *Choiceplace Properties Limited vs Secretary of State for Housing Communities and Local Government and another* [2021] EWHC 1070 (Admin), a relationship between a proposed development and the existing height of either adjacent structures or indeed adjacent ground levels is a matter to be accurately depicted on plans accompanying planning permission for good reason.
 16. In support of their case, the appellant has drawn my attention to No 156 Kings Drive, which was granted planning permission, reference 21/0595/HSE for a part single, part two storey rear extension, two storey side extension and refurbishment of existing garage. While the appellant has provided me with a plan showing the approved scheme, I was not able to enter the site to establish internal ground levels.
 17. Although No 156 is bound by a wall, this does not appear to have formed part of the above permission. From the evidence provided, it appears likely that, despite the camber of the road, levels within the site itself would have been generally level. Moreover, whether that development has been lawfully carried out is not a matter for me to determine and does not change my conclusion in respect of the appeal outbuilding.
 18. Nevertheless, there are no prior notification requirements for development granted under Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO) and so, as long as the outbuilding falls within the limitations set out under Class E, it would be granted permission by the GPDO. I shall therefore go on to consider whether the building which has been built would be permitted by the GPDO.

Principal elevation

19. Class E of Part 1 of Schedule 2 to the GPDO permits buildings etc incidental to the enjoyment of a dwellinghouse. E.1 sets out that development is not permitted by Class E if (c) any part of the building...would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse; (e) the height of the building...would exceed (ii) 2.5 metres in the case of a building...within 2 metres of the boundary of the curtilage of the dwellinghouse.
20. No 78 comprises a corner plot, which forms part of a series of semi-detached properties of similar design, Nos 78 to 92. Nos 78 and 92 have been designed with hipped roofs, and project slightly further towards Kings Drive than the other properties. There are windows at ground floor and first floor in the elevation fronting towards No 67 Kings Drive. The porch and front door to the appeal property are located in the elevation fronting towards Nos 51 and 53 Kings Drive.
21. The Permitted development rights for householders: Technical Guidance (2019)(the TG) defines the 'Principal elevation' in most cases as that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.
22. The TG goes on to advise there will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation. The Council suggests that the principal elevation is the elevation which holds the front door.
23. Although there are windows in the elevation facing No 67, the porch is a substantial feature, which provides access to the hallway, off which are a lounge and living room and stairs to the first floor. I consider it likely, therefore, that this elevation (the elevation containing the porch) would be understood to be the front of the house and, in my view, it constitutes the principal elevation of the dwellinghouse.
24. The TG advises development is not permitted anywhere in front of a hypothetical line drawn through the principal elevation to the side boundary of the land surrounding the house. In this case, the hypothetical line would be drawn along the principal elevation and extend to the end of the rear of the garden, bisecting the outbuilding which has been constructed. The outbuilding has been constructed on land forward of the wall forming the principal elevation of the original dwellinghouse and so is not permitted by the GPDO.
25. Thus, for the reasons given above, the appeal under ground (c) fails.

Appeal A: Ground (a) and Appeal B

26. The appeal under ground (a) is made on the basis that planning permission ought to be granted for the matters stated in the notice. The appeal scheme under consideration under Appeal B, the S78 appeal, is for the retention of the rear outbuilding. Given the appeals concern the same building, I shall consider them together.

Main Issues

27. The main issues are the effect of the outbuilding on:

- The character and appearance of the area; and
- The living conditions of the occupants of No 76 Kings Drive, with regard to outlook.

Reasons

Character and appearance

28. The appeal site is located in a generally residential area, which is characterised by semi-detached and terraced properties, which front towards Kings Drive. While dwelling design varies, front gardens are generally open or have vegetation and/or low level boundary treatments, which gives this part of Kings Drive an open character and makes a positive contribution to the character and appearance of the area. Although outbuildings are a common feature of this part of Kings Drive, they are generally located to the rear of properties, or the side, in line with the main dwelling, and so appear subordinate features.
29. Policy CS1 of Barnet's Local Plan (Core Strategy) Development Plan Document (2012)(the CS) seeks the highest standards of urban design and policies D3 of the London Plan (2021)(the LP) and CS5 of the CS both seek development which enhances local context. Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document (2012)(the DMP) seeks development which respects the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.
30. The outbuilding which has been constructed comprises a brick building, with pedestrian access from the rear garden and vehicular access from Kings Drive. The Residential Design Guidance Supplementary Planning Document (2016)(SPD) advises back garden buildings should not be too large, amongst other things. However, the building extends across the full width of the rear garden.
31. Although the outbuilding has been constructed using materials that are similar to those used in construction of the host dwelling, when viewed from Kings Drive, due to its substantial height and bulk and position forward of the main building line, it appears a dominant, incongruous feature, which harms the character and appearance of this part of Kings Drive. This harm would not be adequately mitigated by planting as it has been constructed adjacent to the footway.
32. It has been suggested that the outbuilding is an improvement on the garage it replaced. However, from the appellant's evidence, it seems the garage it replaced was set well back from the highway and was lower in height compared to the outbuilding, in keeping with the pattern of development in the area. I therefore afford this matter limited weight.
33. It is suggested that an approval in 2017 for a brick boundary wall around the site, utilising the same materials which have been used in construction of the outbuilding, sets a precedent here as the Council has already accepted the principle and appropriateness of the development in the most part. However, the boundary wall would be significantly lower in height compared with the

outbuilding, measuring up to around 2.1m in height, with pillars of around 2.4m. The outbuilding, by contrast, measures up to around 3.1m when measured from outside the site.

34. While I saw the outbuilding is a similar height to the outbuilding at No 80, its corner plot location and position forward of the principal elevation means the two buildings are simply not comparable. Views from the public domain of the outbuilding at No 80 are limited, whereas the outbuilding at No 78 is a prominent feature. Moreover, it is likely the outbuilding at No 80 was constructed under permitted development rights.
35. The appellant suggests reducing the outbuilding by 50cm in height would have no difference in its appearance when viewed from the pavement. However, the enforcement notice does not require a reduction in height, it requires the outbuilding to be removed.
36. Although the appellant may be able to construct an outbuilding of a similar height under permitted development rights, in order to comply with E.1(c) of Part 1, Schedule 2 of the GPDO, it would need to be located on land which is not forward of the principal elevation. Consequently, such a building would be set well back from the highway and would not appear such a prominent, dominant feature.
37. The appellant has drawn my attention to an extension which has been granted planning permission at No 156 Kings Drive, reference 21/0595/HSE. However, although No 156 is located on a corner plot, the extension and garage which has been approved extends to the side of the principal elevation, maintaining a consistent building line along this part of Kings Drive. It is therefore not comparable to the outbuilding before me.
38. The appellant has also drawn my attention to 75 Green Lane, reference W03828A/06. While I do not have full details of the construction of the outbuilding before me, the plan provided by the appellant shows a date of 'Oct 05', which together with the reference number, suggest it was approved around 2005/06. The policy context has changed significantly since 2005/06, with local policies now seeking to ensure development respects the pattern of local buildings. Furthermore, although 75 Green Lane is in Edgeware, it does not influence the character of properties along Kings Drive. It does not, therefore, weigh in support of the appeal outbuilding.
39. The appellant has drawn my attention to other properties along Oakleigh Gardens and Green Lane, which have a staggered layout, and Hillersdon Avenue and Purcells Avenue, which have a garage forward of the principal elevation. However, I do not know the circumstances surrounding the erection of the examples cited. A number of the examples cited have been designed to reflect the curvature of the road, respecting the pattern of surrounding buildings. The examples of garages forward of the principal elevation appear to be set well back from highway and so are less prominent than the outbuilding when viewed from the public domain. I do not, therefore, consider they are comparable to the outbuilding before me.
40. Thus, for the reasons set out above, I find the outbuilding harms the character and appearance of the area, contrary to policies CS1 and CS5 of the CS, policy DM01 of the DMP and policy D3 of the LP and the SPD, the requirements of

which are set out above. It is also contrary to the Framework, which seeks well designed places.

Living conditions

41. The outbuilding is located to the rear of the garden of No 78, and extends at a right angle to the principal elevation of No 76, along the full length of the driveway to No 76. There is a substantial bay window located to the front of No 76, and a single garage between the window and the outbuilding.
42. Policy DM01 of the DMP, seeks to protect amenity by ensuring adequate outlook for adjoining users, amongst other things. The SPD advises that back garden buildings should not unduly affect outlook from an adjoining property's habitable rooms or principal garden areas.
43. Although views of the outbuilding from the bay window would be at an angle, due to its substantial length and height, the outbuilding creates a sense of enclosure which users of No 76 are likely to find overbearing and which unacceptably diminishes the outlook from the bay window. While I agree the outbuilding would not unacceptably diminish levels of light entering the bay window of No 76, the effect on outlook significantly harms the living conditions of its occupants.
44. I am mindful that the occupants of No 76 have since stated they do not support the demolition of the building and believe that the outbuilding should be granted planning permission. However, when considering the effect of the outbuilding on occupants, it is both existing and future occupants who should be considered.
45. The appellant asserts that the effect on the outlook from No 76 arising from a boundary wall would be similar to the appeal building. However, as set out above, the boundary wall which could be constructed would be significantly lower than the height of the outbuilding. As a consequence, its effect on occupants of No 76 would be less harmful.
46. Since it is unlikely the appellant would be able to construct the scheme approved under the LDC, this does not constitute a realistic fallback. Although the appellant would be able to construct a building of similar height under permitted development rights, as set out above, it would not project as far towards the highway. As a result, the sense of enclosure it would create would be less and it is therefore unlikely to unacceptably harm outlook.
47. The appellant advises they wanted to replace an old prefabricated concrete garage with a new structure, as their works vehicle had been broken into a number of times. The appeal outbuilding provides the appellant and their family with additional space and the height of the building enables them to securely park their works van. However, I consider it highly unlikely the appeal building is the only means of providing additional space, securing their works van or providing off-road parking. I therefore afford this very limited weight.
48. The appellant suggests the development created employment for local builders and trades people during its construction, as will its maintenance. However, the outbuilding has already been constructed and any on-going benefit to the local economy is likely to be minimal. I therefore afford this matter very limited weight.

49. I saw that a trellis has been attached to the side of the garage. The appellant states their neighbour has some plants they intend to grow up the side of the garage. However, while this may soften the visual effect of the outbuilding, it will not address the concerns I have raised above regarding outlook.
50. The appellant has drawn my attention to a number of other properties in the wider area in support of their case. However, the examples referred to above¹, do not appear to extend as far forward of adjacent windows as the appeal outbuilding, and so are far less likely to harm the living conditions of occupants of the respective dwellings.
51. Furthermore, I have no substantive evidence as to their construction: I do not know whether they have been granted planning permission and if so, what the policy context was at the time they were approved. They do not justify granting planning permission for an outbuilding which is harmful to living conditions.
52. Thus, I find the outbuilding unacceptably harms the living conditions of occupants of No 76 Kings Drive with respect to outlook, contrary to policy DM01 of the DMP and the SPD, the requirements of which are set out above.

Other Matters

53. The appellant suggests they received advice from the local authority, when officers of the Council visited and suggested the building met the requirements of the certificate that had been granted on site. However, it is a fundamental principal that a local planning authority may not fetter its discretion to issue an enforcement notice by any form of agreement. The Act sets out a comprehensive code for an appellant to seek determination as to whether planning permission is required.
54. I appreciate that dealing with matters regarding the outbuilding has been time consuming, costly and has affected the appellant and their family. I also note there is considerable support for the retention of the outbuilding from members of the public and that it has been present at the site now for a number of years. However, it is not suggested that the outbuilding is immune from enforcement action by virtue of the passage of time. The Council has previously taken enforcement action in respect of the outbuilding and, while the enforcement notice which is the subject of Appeal A was only issued in July 2023, given the history of the site, the length of time it has been *in situ* does not, in my view, weigh in support of the appeals.
55. It is suggested the appeal building complies with Building Regulations (BR). However, whether or not the building complies with BR does not weigh in support of the appeal scheme.

Appeal A: Ground (a) & Appeal B Conclusion

56. Thus, for the reasons given above, I find the outbuilding conflicts with the development plan as a whole and there are no material considerations which indicate that the decisions should be taken otherwise in accordance with the development plan.

¹ Properties along Oakleigh Gardens, Green Lane, Hillersdon Avenue and Purcells Avenue

Appeal A: Ground (f)

57. An appeal under ground (f) is made on the basis 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, or as the case may be, to remedy any injury to amenity which has been caused by any such breach. Given the requirements of the notice, it is clear that the purpose of the notice is to remedy the breach of planning control.
58. The previous enforcement notice required the structure to comply with the terms of the Lawful Development Certificate reference 19/2749/192 dated 17 June 2019, by modifying the development to match the scheme shown on plan number KD78-01-1001 including but not limited to reducing the height of the outbuilding to 2.5 metres. However, this enforcement notice has since been withdrawn.
59. While the Council has previously granted a LDC in respect of an outbuilding in this location, from the evidence and from my inspection of the site, it appears unlikely the appellant would be able to construct the building due to land levels outside of the site.
60. Although it would be possible to construct a building which accords with the limitations set out in the GPDO, I have no such alternative before me. It is not possible, therefore, for me to draft a requirement with the necessary precision that the appellant knows what they have to do.
61. The appellant suggests reducing the height of the building by 0.5m as per the original enforcement notice as this would overcome the concerns of the Council. However, a reduction of 0.5m would not remedy the breach.
62. There are no lesser steps that would remedy the breach and no obvious alternative which would achieve the purposes of the enforcement notice with less cost and disruption.
63. Consequently, the appeal under ground (f) must fail.

Appeal A Conclusion

64. 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.

M Savage

INSPECTOR