
Appeal Decision

Site visit made on 18 February 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 March 2025

Appeal Ref: APP/Z5060/C/23/3325048

27 Geneva Gardens, Chadwell Heath RM6 6SP

- 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 Thakorbhai Manibhai against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
 - The enforcement notice was issued on 5 June 2023
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of an outbuilding in the rear garden.
 - The requirements of the notice are:
 - Remove the unauthorised outbuilding in its entirety.
 - Remove all subsequent waste material from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) 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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Decision

1. It is directed that the enforcement notice be:
 - varied by deleting the words "6 months" within section 6 (time for compliance) and its replacement with "7 months".
2. Subject to this variation, the appeal is dismissed, and 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.

Procedural Matters

3. During the course of this appeal, the London Borough of Barking and Dagenham Borough Wide Development Policies Development Plan Document, 2011 (DPD) and policies contained within it, has been replaced with the Barking and Dagenham 2037 Local Plan, which was adopted on 18 September 2024 (LP). This must now be given full weight in the decision-making process. Both parties have been given the opportunity to comment on the new Local Plan, and so have not been prejudiced. I have therefore not assessed the development against the policies of the superseded DPD.

The Appeal on Ground (a) and the Deemed Planning Application

Main Issues

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

- the character and appearance of the area; and
- the living conditions of the existing occupiers of 25 and 29 Geneva Gardens, with particular regard to outlook, privacy, daylight and overshadowing.

Reasons

Character and appearance

5. The site relates to a mid-terraced dwelling in a residential area characterised predominantly by other terraced and semi-detached two storey properties. The outbuilding the subject of this appeal, which incorporates a tall, ridged roof, is used for storage and a home office.
6. I appreciate that the overall footprint of the outbuilding is not excessive for the size and scale of this property and rear garden. Nevertheless, where outbuildings do exist within the terrace, they include either modest flat roofs or sloping roofs, such that they contribute to the overall feeling of space and openness of the rear gardens. However, despite the use of materials which match the host dwelling, the excessive overall height of the outbuilding with its tall, ridged roof, results in an excessively tall and obtrusive feature which significantly erodes the sense of openness and space in this rear garden setting. Indeed, the overall height and bulk of the outbuilding fails to harmonise with the character of the area in a sensitive and coherent way.
7. I therefore conclude that the development harms the character and appearance of the area, in conflict with Policies DMD1 and DMD5 of the LP, and Policy D4 of the London Plan, 2021. Taken together, these seek to deliver good design and state that the Council will support development proposals that make a positive contribution to the character of the surrounding area and that any proposed extension or alteration to a property should be sympathetic and subordinate to the design of the original dwelling with regards to scale, form, materials and detailing.

Living conditions of neighbouring occupiers of 25 and 29 Geneva Gardens - outlook, privacy, daylight and overshadowing

8. The London Borough of Barking and Dagenham Residential Extensions and Alterations Supplementary Planning Document, 2012 (SPD) states that outbuilding should be designed and positioned in a manner which restricts its impact upon neighbouring dwellings. Any outbuilding which results in a material loss of light or outlook with respect to neighbouring dwellings will be considered unacceptable. Whilst the Council's SPD is guidance only, its emphasis on good design is consistent with the National Planning Policy Framework (2024).
9. The excessive overall height of the outbuilding, results in a visually intrusive, dominant, and unneighbourly form of development, built close to the boundary with the neighbouring residential gardens at Nos 25 and 29. The proximity and increase in massing of the development well above the existing boundary fences appears oppressive and overbearing from these neighbouring gardens, resulting in harm to the outlook currently enjoyed by the existing occupiers of Nos 25 and 29.
10. This would be exacerbated by the location of the proposed large window in the front gable which faces towards both neighbouring properties at Nos 25 and

29. Whilst it is acknowledged that this window is positioned in the roof storage space of the outbuilding, nevertheless, the position and size of this window, coupled with its proximity to the neighbouring properties, results in perceived overlooking into the properties at Nos 25 and 29. The perception of overlooking, along with the experience of the overbearing development, causes significant harm to the living conditions of those occupiers. Furthermore, I do not consider that the setback of the building away from both side boundaries, nor its ridged roof, lessens this impact.

11. With regard to overshadowing and daylight, owing to the position of the outbuilding towards the rear section of the garden only, together with the sloping nature of the roof, I am satisfied that the outbuilding does not result in any demonstrable overshadowing of neighbouring gardens or loss of daylight to neighbouring room windows at Nos 25 and 29.
12. Therefore, whilst I find no harm in relation to overshadowing or daylight, the development fails to provide acceptable living conditions for the occupiers of Nos 25 and 29, with regard to outlook and privacy. Accordingly, the development is contrary to Policies DMD1 and DMD5 of the LP. Taken together, these state that all development proposals will be expected to consider the impact on the amenity of neighbouring properties and that the proposals must not significantly impact on quality of life for neighbouring residents.

Other matters

13. In support of the appeal, the appellant has referred to other outbuildings which have been granted permission by the Council. The outbuilding at 661 Longbridge Road is located in Dagenham some distance away from the appeal site, and that property has a considerably longer rear garden than the appeal site. The building at 16 Glencoe Drive is also situated in Dagenham and is situated in a terrace with similar sized outbuildings on either side, thus not resulting in any harm to both the character of the area or to the living conditions of neighbouring occupiers. Similarly, the outbuilding at 62 Cavendish Gardens, is situated some distance away in Barking, and that property has a wider footprint than the appeal site. There also appear to be two outbuildings on either side adjacent to it, which is not the case for the appeal development before me.
14. With regard to the outbuilding at 30 Geneva Gardens, this property relates to a semi-detached property, rather than a mid-terraced property, and therefore that property has a wider garden than the appeal site. Also, that outbuilding has a different design with a crown roof rather than a ridged roof, and was approved some time ago in 2008, when a different local plan was in place (the Unitary Development Plan). The outbuilding at 21 Pemberton Gardens was approved with a maximum height of 3m, and an eaves height of 2m which is lower than the appeal building before me.
15. Furthermore, none of those examples provided have the same design as the appeal before development with a large window in the gable facing towards neighbours. Therefore, the circumstances of those other cases cited are materially different than the appeal development before and do not lend support for the current development.

Conclusion on Ground (a) and the Deemed Planning Application

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. The development harms the character and appearance of the area and the living conditions for the neighbouring occupiers with regard to outlook and privacy in conflict with the development plan taken as a whole. None of the other matters raised by the appellant, including the benefits of providing the storage shed outweighs the 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.
17. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

The Appeal on Ground (g)

18. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant states that as winter is coming, they require more time to carry out the remedial works.
19. The time for completing the requirements should be what is reasonably considered necessary to complete the requirements. In my view, 7 months would strike a more reasonable and proportionate balance to carry out the remedial works and this would coincide with the spring and summer months. This would also provide additional time to agree an alternative acceptable scheme with the Council, since the current notice requires the complete removal of the outbuilding.
20. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

Conclusion

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

R. Satheesan

INSPECTOR