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## 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**

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**Appeal Ref: APP/Z5060/C/23/3332147**

**99 Roycraft Avenue, Barking IG11 0NS**

- 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 Daniel Goosetree against an enforcement notice issued by the Council of the London Borough of Barking & Dagenham.
  - The enforcement notice was issued on 12 October 2023.
  - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a rear extension beyond the authorised rear extension.
  - The requirements of the notice are:
    - Remove the unauthorised rear canopy extension in its entirety.
    - Remove all subsequent waste material from the premises.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (b) and (c) 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 is:

- corrected by deleting the allegation within section 3 of the enforcement notice (the matters which appear to constitute the breach of planning control) and its replacement with:

*"The unauthorised development of a rear extension, extending more than 3 metres in depth beyond the rear wall of the original wall of the dwelling house, without planning permission or prior approval."*

- corrected by deleting the first requirement under section 5 (What you are required to do), and its replacement with:

*"The removal of the unauthorised development of a rear extension, extending more than 3 metres in depth beyond the rear wall of the original wall of the dwelling house".*

2. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### The Notice

3. The allegation in the Enforcement Notice (as outlined in the banner heading above) is poorly worded and imprecise as it does not explicitly state which

parts of the extension are 'authorised' and 'unauthorised.' The parties have been given an opportunity to comment, and the Council has recommended the allegation be corrected to state:

*"The unauthorised development of a rear extension, extending more than 3 metres in depth beyond the rear wall of the original wall of the dwelling house, without planning permission or prior approval."*

4. The appellant appears to have understood the allegation and, in my opinion, the misdescription does not render the notice unclear. It is necessary to correct the allegation. This would not cause injustice, and I can therefore use my powers under the provisions of s176(1)(a) of the Act to make this correction.
5. Furthermore, the first requirement of the notice, is also poorly worded in so far as it refers to the removal of an unauthorised 'rear canopy extension' in its entirety, but there is no rear 'canopy' extension. The parties have been given an opportunity to comment, and the Council state that they are seeking *"the removal of the unauthorised development of a rear extension, extending more than 3 metres in depth beyond the rear wall of the original wall of the dwelling house"*. It is therefore necessary to correct this, and nothing within the appellant's submission indicates to me that it has been misunderstood by them as a result. Therefore, I consider that a correction is necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

### **Procedural Matters**

6. 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 (b)**

7. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
8. This has not been demonstrated. On the contrary, the appellant states that he extended out 3 metres under building control supervision and then incorporated a 3-metre conservatory which falls in line within the regulations. Furthermore, the drawings submitted by the appellant during this appeal also show the unauthorised rear extension. These works are further confirmed by own site inspection. Therefore, the matters as alleged by the notice have occurred as a matter of fact.
9. Accordingly, the appeal on ground (b) must fail.

### **The Appeal on ground (c)**

10. This ground of appeal is that the development enforced against did not constitute a breach of planning control. The burden of providing relevant facts

in this appeal rests with the appellant, and the test of the evidence is the balance of probability.

11. The appellant states that the development constitutes permitted development under Article 3, Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), and as such, planning permission is not required in this instance. However, no further evidence has been submitted in support of the appellants' claim that the development complies with the GPDO.
12. On the contrary, Article 3, Schedule 2, Part 1, A.1 (f)(i) of the GPDO requires that the extension should not extend beyond the rear wall of an original terraced dwellinghouse by more than 3 metres. The rear extension projects well beyond 3m from the rear wall of the original dwellinghouse. Therefore, the rear extension does not accord to the stipulations of Schedule 2 Part 1 Class A of Town and Country Planning (General Permitted Development) (England) order 2015 (as amended).
13. Furthermore, the Council have confirmed that a prior approval application for a 6m deep single storey rear extension was refused (Council ref: 23/00174/PRIEXT).
14. Therefore, on the balance of probability and based on all the evidence before me, the development does not fall within Article 3, Schedule 2, Part 1, A.1 (f)(i) of the GPDO, for there to be deemed planning permission for the development as built. Therefore, planning permission is required for the development, and there is none in place. There has therefore been a breach of planning control, and the appellant has not discharged the onus on them to demonstrate otherwise.
15. Accordingly, the appeal fails on ground (c).

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

### **Main Issue**

16. The main issues are the effect of the development on the living conditions for the existing occupiers of 97 Roycraft Avenue, with particular regard to outlook.

### **Reasons**

*Living conditions for the neighbouring occupiers of No 97 Roycraft Avenue – outlook*

17. The Council's Residential Extensions and Alterations Supplementary Planning Document, 2012 (SPD) advises that "the depth of the extension should not normally exceed 3.65 metres as measured from the original rear wall of the house to ensure that there is no material loss of daylight and outlook to neighbouring properties (figure 2). In exceptional circumstances, where an extension has a greater depth, that part of the extension which exceeds 3.65 metres must be within a 45-degree angle as measured from the corner of adjacent dwellings (figure 3)". However, contrary to the above guidance the unauthorised extension as built, far exceeds this maximum depth and is not within a 45-degree angle as measured from the corner of adjacent dwellings.
18. The unauthorised additional rear extension results in a large expanse of the flank wall of the extension, built close to the boundary with No 97. As a result,

the unauthorised extension appears as a dominant feature in the outlook from windows in the rear elevation of this property at ground floor level and from the garden itself. Furthermore, the extension rises above the existing boundary treatment, and therefore results in greater harm. In this respect the unauthorised single storey rear extension creates an increased sense of enclosure to neighbouring occupiers of No 97, which harms their living conditions.

19. Therefore, in relation to the first main issue, the development fails to provide acceptable living conditions for the occupiers of No 97, with regard to outlook. 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.

### **Conclusion on Ground (a) and the Deemed Planning Application**

20. 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 living conditions of the neighbouring occupiers with regard to outlook in conflict with the development plan taken as a whole. None of the other matters raised by the appellant, including the benefits of upgrading the property, that the development has an acceptable appearance or that the wider area is undergoing massive regeneration outweighs the harm 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.
21. 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.

### **Overall conclusion**

22. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections 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