



## Appeal Decision

Site visit made on 28 August 2019

**by Stephen Hawkins MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 24 September 2019**

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### **Appeal Ref: APP/B5480/C/18/3212946**

### **8 Oxford Avenue, Hornchurch RM11 3ES**

- 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 Mark Lee against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 28 August 2018.
- The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of a building.
- The requirements of the notice are: 1. Demolish the building at the rear of the rear garden of 8 Oxford Avenue, Hornchurch RM11 3ES; 2. Remove all building materials and rubble from the site associated with complying with step 1 above.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal succeeds in part and the enforcement notice upheld as varied in the terms set out below in the Formal Decision.**

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### **Ground (a) appeal**

#### **Main Issues**

1. The main issues in this ground of appeal are:
  - The effect of the building on highway safety conditions.
  - The effect on the character and appearance of the area.
  - The effect on the living conditions of occupiers of adjoining residential property, having regard to outlook, light, overshadowing, privacy, noise and disturbance.

#### **Reasons**

2. The appeal property contains a two storey semi-detached dwelling, situated on the corner of Oxford Avenue and Hampshire Road. A detached single storey flat roofed building has been erected at the end of the property's rear garden. The building measures around 2.9 metres from ground level at the highest point and it occupies almost the entire width of the property's rear garden. The principal external openings face into the property's rear garden. During my site visit, I noted that the building contained accommodation comprising a living and kitchen area, a bathroom and a bedroom.

### *Highway safety*

3. The building immediately adjoins the footway on Hampshire Road. The garage and parking area for the neighbouring property at 2 Hampshire Road (No 2) are alongside the building. Due to the position of the dropped kerb, vehicular access to and egress from No 2 is via part of its parking area closest to the building. The building extends forward of the front elevation of No 2, right up to the back edge of the footway. Consequently, drivers exiting No 2's parking area have a severely restricted view along the footway in front of the building. Being part of a suburban thoroughfare, the footway is likely to be reasonably well used by pedestrians. Whether emerging from the parking area in forward or reverse gear, drivers are likely to be well across the footway before they have an unobstructed view. Therefore, the building presents a significant safety risk to all highway users, particularly pedestrians travelling from the direction of the property, the occupiers of No 2 and their visitors.
4. I acknowledge that in 2015, the Council issued a Certificate of Lawful Development (LDC) under s192 of the Act to the effect that a proposed outbuilding of a similar siting and footprint, albeit with an overall height of no more than 2.5 metres, would be permitted development by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO)<sup>1</sup>. Nevertheless, at Article 3(6) the GPDO provides that Schedule 2 does not permit development where it creates an obstruction to the view of persons using any highway used by vehicular traffic so as to be likely to cause a danger to such persons. An LDC under s192 is not the equivalent in law of a grant of planning permission. Consequently, the LDC is not the starting point for assessing the impact of the building on highway safety.
5. I am also mindful that the building replaced tall, close boarded fencing that was previously adjacent to the footway and the boundary with No 2. However, as that fencing has been removed it has limited relevance in terms of the impact of the building on highway safety.
6. Therefore, the building has caused unacceptable harm to highway safety conditions. The adverse impact on the functioning of the road hierarchy and safety of all road users does not accord with Policy DC32 of the Havering Core Strategy and Development Control Policies Development Plan Document (DPD). The failure to ensure a high quality pedestrian environment does not accord with Policy 6.10 of the London Plan (LP). Since the building has not adversely affected parking objectives, there is no conflict with LP Policy 6.13. However, the unacceptable impact on highway safety is inconsistent with paragraph 109 of the National Planning Policy Framework (the Framework).

### *Character and appearance*

7. The property is located on a planned modern residential estate, the surrounding area largely consisting of regularly spaced pairs of two storey dwellings of similar appearance, set back comparable distances from the street. These factors give the surrounding area a pleasant and cohesive, reasonably spacious suburban character and appearance.

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<sup>1</sup> Council Ref: D0106.15.

8. The building is of relatively modest scale when set against the size of the dwelling and neighbouring properties. There is a reasonable area of rear garden remaining at the property. Therefore, the building does not appear overlarge or dominant in relation to neighbouring gardens. Also, the elevational treatment is not untypical of an ancillary residential building, being similar to that of the outbuilding in the LDC intended for use for a purpose incidental to the enjoyment of the dwelling. Therefore, the building does not have an obvious appearance as a separate dwelling.
9. However, unlike No 2 and other nearby properties in Hampshire Road the building is not set back any appreciable distance from the street. The building is also much closer to the street than any part of the dwelling. The presence of the building adjacent to the street, well forward of any other buildings and alongside No 2's front garden area, has significantly eroded the spacious qualities of the surroundings and created a more built-up, enclosed and urbanised feel in the street scene. Consequently, the building appears as an alien and unduly prominent feature in its surroundings and it is awkwardly related to the dwelling and the adjacent properties. This is entirely at odds with the prevailing pattern of development in the surrounding area identified above.
10. The only specific example of 'similar' development in the locality referred to was a flat roofed garage adjacent to Wiltshire Avenue. In that case, the garage is situated between rear gardens and there is high timber fencing along both sides of the street for a considerable distance. As a result, the visual impact of the garage is not comparable with that of the building in this appeal. Moreover, no details of the planning history of the garage were provided. There were no other obvious examples of structures with a similar visual impact to the building in the locality. For the reasons already identified, the LDC is also of limited assistance in terms of assessing the visual impact of the building. Therefore, the above matters carry limited weight.
11. Consequently, I find that the building has caused unacceptable harm to the character and appearance of the area. This does not accord with the relevant criterion in DPD Policy DC61. The building does not accord with LP Policy 7.4, as a high quality design response has not been provided having regard to the pattern and grain of the existing streets in scale, proportion and mass. Moreover, the building does not accord with LP Policy 7.6, as it is not of the highest architectural quality or of proportions and scale that appropriately define the public realm. Also, by detracting from the character of the area and not being unobtrusively located the building is inconsistent with the Council's design guidance for outbuildings in its Residential Extensions and Alterations Supplementary Planning Document (SPD). The failure to achieve a well-designed place is inconsistent with the Framework Section 12.

### *Living conditions*

12. The building has the facilities required for day-to-day private domestic existence, this being the distinctive characteristic of a dwelling as established by the Courts<sup>2</sup>. Nevertheless, I am given to understand that the building provides living accommodation for the appellant's daughter and grandchild, who both continue to use the facilities of the main dwelling and take meals with the rest of the appellant's family. When I visited, there was no physical

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<sup>2</sup> *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142.

delineation between the building and the rear garden of the main dwelling. Access to the building is via the main dwelling and its garden. I understand that all services are shared with the main dwelling. None of these factors suggest that a separate residential planning unit has been created. Consequently, there is little firm evidence to indicate that the building is in use as a separate self-contained unit of living accommodation. In the event of planning permission being granted, a suitable condition could have been imposed to ensure that the building was not used as a separate unit of accommodation.

13. In any event, the Council did not provide a detailed explanation as to how the building harmed the living conditions of the occupiers of adjoining residential properties. In my own assessment, I found nothing to suggest that the building had caused unacceptable harm in terms of the levels of outlook or light enjoyed by adjoining residential properties, or had caused overshadowing, overlooking or loss of privacy or a significant increase in noise and disturbance.
14. The absence of unacceptable harm to the living conditions of occupiers of adjoining residential properties accords with the relevant criterion in DPD Policy DC61. As the building has not resulted in undue loss of light to neighbouring properties or otherwise adversely affected their living conditions, it is also consistent in this respect with the design guidance for outbuildings in the Council's SPD. The standard of amenity for existing users is consistent with the Framework paragraph 127(f). LP Policy 7.4 concerning local character and Policy 7.6 concerning architecture are of limited relevance.

#### *Other matters*

15. As an alternative to demolition, the appellant proposed that the building be reduced to 2.5 metres in height to accord with the LDC outbuilding and the height limit set out in the GPDO, Schedule 2, Part 1, Class E, paragraph E.1(e) (ii). At s177(1)(a), the Act provides that planning permission may be granted in respect of the whole or part of the breach described in the notice. Therefore, whilst this alternative was advanced on ground (f), it is appropriate to consider whether planning permission should be granted for the building as modified as an alternative scheme under ground (a).
16. However as set out above, the LDC notwithstanding a Class E outbuilding occupying the same footprint with a reduced height of 2.5 metres could not be erected following demolition of the building. Furthermore, the Council issued an LDC for an outbuilding to be used for a purpose incidental to the enjoyment of the dwelling. As is made clear in the Government's Technical Guidance<sup>3</sup>, an 'incidental' purpose does not cover use for primary living accommodation such as a bedroom, bathroom, or kitchen, as in the case of the building in this appeal. Although the appellant suggested that the building had initially been erected as a hobby room, no firm evidence was provided to support that claim.
17. Therefore, in my view there is no reasonable prospect of the building being re-erected as living accommodation shortly after its demolition. As the appellant's solution would not overcome the planning difficulties at less cost and disruption, it does not represent a realistic fall-back position and it is not an obvious alternative to the steps required by the notice.

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<sup>3</sup> Permitted development rights for householders: Technical Guidance DCLG April 2017.

18. Upholding the notice and demolishing the building is likely to result in the appellant's daughter and grandchild having to move away from the property and losing the support of other family members, in the absence of alternative accommodation being available within the dwelling. This would result in their potential homelessness and other adverse effects on family life. Consequently, there would be interference in those individuals' private and family life, home and correspondence of such gravity as to engage Article 8 of the Human Rights Act 1998 (HRA). Additionally, I am conscious of the need to give primary consideration to the best interests of the child, having regard to Article 3(1) of the United Nations Convention on the Rights of the Child and the duty under the Children's Act 2004 to safeguard and promote the welfare of children.
19. The best interests of the appellant's grandchild would be to continue to reside at the property within the continuing support framework offered by their close family. Upholding the notice and refusing to grant planning permission for the building is therefore likely to have an adverse effect on those interests. However, no part of the appellant's case suggested that his daughter or grandchild faced unusual or especially challenging personal circumstances, such as for example, an acute health condition which necessitated close family support at most times. Consequently, the interference in Article 8 rights and adverse effect on the child's welfare is unlikely to be disproportionate if they were required to move home. Moreover, it is likely that the appellant's daughter and grandchild would be prioritised in terms of securing alternative living accommodation if the only other option was them becoming homeless. These are relevant factors when apportioning the weight to be given to the interference in HRA rights and the adverse effects on the best interests of the child set against the other considerations.

#### *Planning Balance*

20. The building unacceptably harms highway safety and the character and appearance of the area. Therefore, whilst there has been no unacceptable harm to the living conditions of occupiers of adjoining residential properties, the building does not accord with policies in the Development Plan and the Framework. It follows that enforcement action is necessary in the public interest, being in pursuance of an important Government function, namely regulating the use and development of land. Steps stopping short of removing the building would not achieve the objectives of the above policies. Consequently, on the balance of considerations and on the basis of the information before me I conclude that whilst there is interference in the occupiers' HRA rights and an adverse effect on the best interests of the appellant's grandchild, the notice is a lawful and proportionate response to the breach of planning control.

#### *Conclusion on ground (a)*

21. For the reasons given above I conclude that the ground (a) appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

#### **Ground (f) appeal**

22. The ground of appeal is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.

23. At s173, the Act sets out two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control that has occurred by making the development comply with the terms of a planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place. The second (s173(4)(b)) is to remedy any injury to amenity caused by the breach.
24. The Council did not specify the purpose it sought to achieve in the notice. However, the notice requires demolition of the building as opposed to lesser steps, such as a reduction in size or ceasing the use as living accommodation. Therefore, the purpose of the notice must be to remedy the breach of planning control by restoring the land to its condition before the breach took place.
25. The alternative to demolition of the building was dealt with on ground (a). In relation to the ground (f) appeal and the requirements of the notice, reducing the height of the building would not remedy the breach as the offending structure would remain. There was no firm evidence to suggest that the building had been erected lawfully. Therefore, the breach can only be remedied by demolition of the building.
26. It follows that the requirements in the notice do not exceed what is necessary to remedy the breach and the ground (f) appeal fails.

### **Ground (g) appeal**

27. The ground of appeal is that the time for compliance is unreasonably short.
28. In practice, the two-month compliance period specified in the notice is likely to mean that the occupiers would have to vacate the building in as little as a few weeks. This is to allow adequate time for a builder to undertake the remedial works within the required period. It was not clear whether the occupiers could practically be accommodated within the dwelling. Therefore, the appellant's daughter and her child would potentially be left with very little time in which to search for and secure suitable alternative living accommodation.
29. Although the Council referred to the time which had elapsed since the notice was issued, that is not a relevant matter in terms of determining the reasonableness of the period for compliance after the notice takes effect. This is because the appellant is entitled to assume that his appeal will have a successful outcome.
30. Therefore, the six-month period requested by the appellant would in my view strike a more appropriate balance between remedying the planning harm identified in the notice, whilst allowing the occupiers a reasonable period of time to find suitable alternative accommodation. It would also ensure that the impacts on the HRA rights of the occupiers and on the best interests and welfare of the appellant's grandchild are minimised as far as practicable. Furthermore, it would give the appellant adequate time to arrange for a suitable builder to undertake and carry out the remedial works once occupation of the building has ceased.
31. For the reasons given above I conclude that the period for compliance falls short of what is reasonable. I shall vary the notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

**Formal Decision**

32. The appeal is allowed on ground (g), and it is directed that the enforcement notice be varied by in paragraph 5 the deletion of 2 months and the substitution of 6 months for the period for compliance. Subject to this variation the enforcement notice is upheld.

*Stephen Hawkins*

INSPECTOR