



PLANNING APPEAL LONDON

Grounds of Appeal Statement on behalf of the Appellant

Address: 26 Copthall Road East, Ickenham, UB10 8SD

Planning consent sought for: **Demolition of timber garage and its replacement by erection of a brick/block garage**

Appellant: Mr Ian Perrett

Prepared and Submitted by Agent [Mr Mohamed Bharadia of Planning Appeal Limited](#) 07960 973529, info@planningappeal.london

14 December 2020

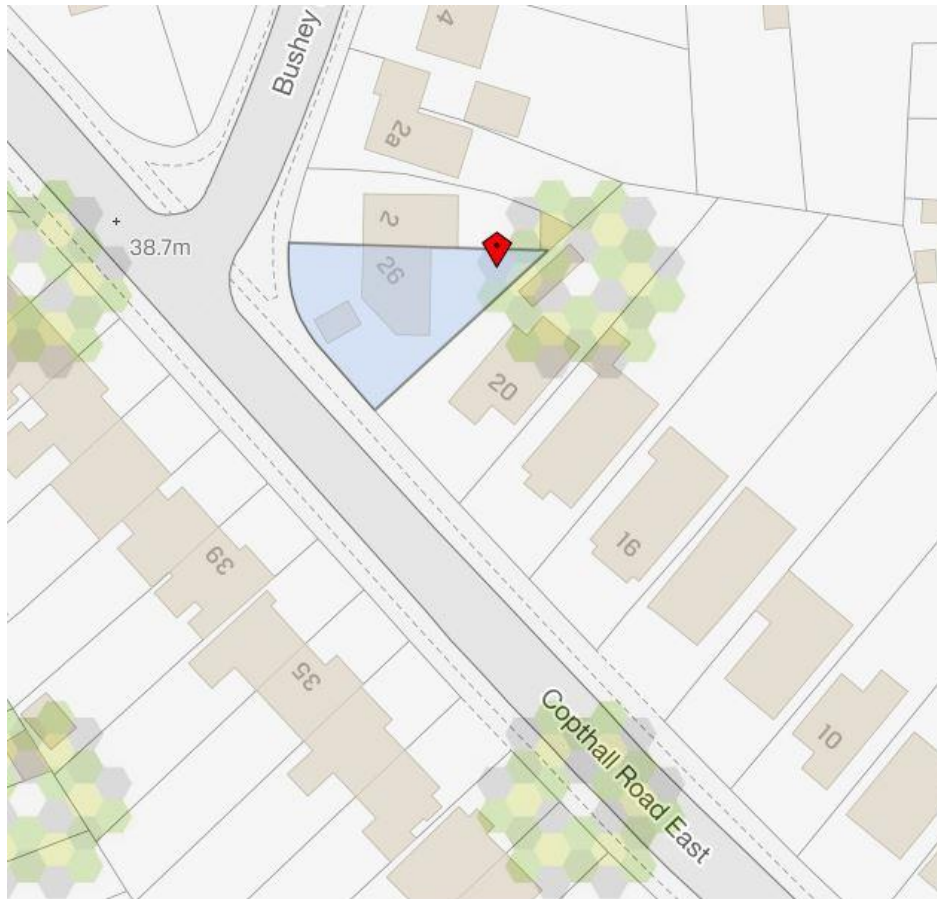
CONTENTS

1	INTRODUCTION.....	2
2	PLANNING HISTORY	6
3	DEVELOPMENT PLAN	6
4	MATERIAL CONSIDERATIONS.....	8
5	REASON FOR REFUSAL AND APPELLANT SUBMISSIONS	10
6	CONCLUSION.....	11
	LIST OF APPENDICES	11

1 INTRODUCTION

- 1.1. The householder application which is the subject of this appeal was refused by the local planning authority ("the LPA") by decision notice dated 27 November 2020. A delegated officer report accompanied the decision notice.
- 1.2. Although the application form stated the description of works as "retrospective single storey garage" it would be complete and accurate to describe it as "demolition of timber garage and its replacement by erection of a brick/block garage." The word retrospective has been omitted as it is not a term of development although the works are substantially complete.
- 1.3. The LPA's description elides the pre-existing timber garage¹ of a similar footprint and its demolition as an element of the development and the Appellant will say it has made an error in law in failing to give consideration in decision making to the pre-existing structure as a material consideration even though its officer report (at paragraph 1.1) acknowledges that fact.
- 1.4. This statement should be read in conjunction with the documentation and plans submitted to the LPA as part of the application together with ALL the evidence and case law now being submitted. This statement and the evidence will seek to address the areas of difference between the parties.
- 1.5. The application site comprises a two storey semi-detached dwelling situated on the south western side of Copthall Road East at the corner with Bushey Road. It sits on a cone/triangular shaped plot which tapers at the rear such that the front/side of the dwellinghouse constitutes a more significant part of the curtilage than the rear. Compared to its neighbours, the rear garden is small and triangular and in practical terms restricts development in the form of an extension or installation of an ancillary use outbuilding; this is a material consideration to the siting, historically and presently, of an outbuilding in the front garden. Sufficient physical and visual separation distances exist with its surrounding neighbours. The property has a rendered finish set beneath a tiled roof. The front boundary has had a wooden fence and a high, dense privet hedge running along it providing a green screen in the street scene. A single storey timber outbuilding garage has been historically present and in use in the front garden for an unknown but significant number of years; its natural wear and tear and unsafe, dilapidated state motivated the Appellant to replace it in the same location with a replacement garage using more modern and sturdy materials.

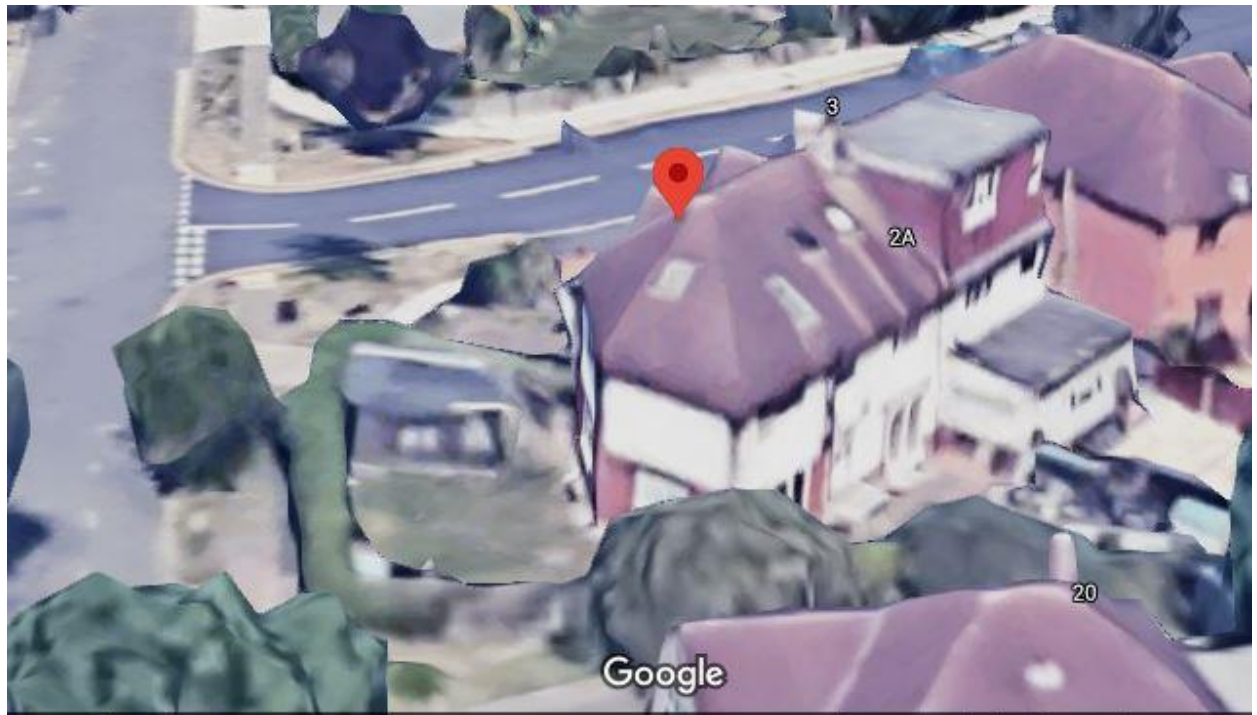
¹ See Photo P3 submitted to LPA as part of application



Land Registry Plan showing the site and its curtilage and evidencing the forward sitting pre-existing outbuilding in the front garden



Pre-existing Front street view



Side aerial view showing detached timber garage in front garden



3-D Aerial view of site showing timber garage



Front view of timber garage and boundary fence and hedge

- 1.6. The proposal effectively substitutes one outbuilding for another in the same front garden location with a modest footprint increase. It is submitted that the proposal complies with the development plan and/or other material considerations support the proposal on balance. In the alternative, given the works have been carried out and those works will not be visible from the public realm, it is a punitive measure, in light of the pre-existing timber garage, to refuse the instant application. The design is sensitive so as not to adversely impact on neighbouring amenities in particular given the separation distances and *de minimis* increase in size. As previously, it will be concealed behind a fence and high privet hedge so as not be visible in the public realm.²
- 1.7. The Appellant's proposal as a replacement is modest and proportionate in size, scale and height as to be respectful to the property to keep in character of the dwelling and area. A suitable condition can secure its screening from street view.
- 1.8. The structure of this statement is as follows: Section 2 will state the planning history of the site and section 3 will highlight the relevant Development Plan policies and supplementary guidance. Section 4 will refer to other material considerations to be taken into account while Section 5 will provide a rebuttal of the LPA's reason for refusal and section 6 will provide concluding remarks. In doing so the Appellant will seek to persuade the inspector of the merits of his case in the overall planning balance based on paragraph 1.10.1 of the Procedural Guide. This paragraph underscores the basis upon which the inspector is to reach his/her judgement.

² See computed generated photos P1 and P2 submitted to LPA as part of application

2 PLANNING HISTORY

- 2.1. As stated within the delegated report. For background context, Appendix 1 to this statement contains a letter dated 8 September 2020 from the Council addressed to the owner and/or occupier alleging a breach of planning control: "OUTBUILDING TO THE FRONT/SIDE OF THE DWELLINGHOUSE."
- 2.2. The Appellant was innocently unaware that planning permission was required to replace the garage outbuilding; he only considered it prudent to check with the Council whether building control involvement was required. The Council building control department confirmed to him that if the replacement structure was unattached and under 30 sqm internally, the development would be exempt from building control.³

3 DEVELOPMENT PLAN

- 3.1. Under section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990, the statutory development plan policies are deserving of primacy with relevant material considerations to be taken into account in the planning balance.
- 3.2. The development plan is tiered and comprises: 1) the regional spatial strategy or the London Plan 2016 together with its Housing Supplementary Planning Guidance, SPG, and 2) the development plan documents making the London Borough of Hillingdon Local Plan ("LP") comprising Local Plan Part 1 adopted 2012 and Local Plan Part 2 adopted January 2020.
- 3.3. Policy BE1 from Part 1 states that (emphasis added) all new development is required "to improve and maintain the quality of the built environment in order to create successful and sustainable neighbourhoods, where people enjoy living and working and that serve the long-term needs of all residents." The replacement garage is of a higher quality design and indeed an improvement from what pre-existed while maintaining the quality and its purpose is to continue to serve the long-term needs of the Appellant and his family. There would be no discernible difference to the identity and context and amenity of the surrounding landscape, the Appellant avers; it does not result in an inappropriate development of the garden given there already was development present there.
- 3.4. Policy DMHB 11 encourages use of high quality design of buildings that are of an appropriate scale and that harmonise with their surroundings while using high

³ See Appendix 2

quality building materials and finishes. The replacement outbuilding seeks to do exactly that and the external rendering will make the structure blend with the render of the dwellinghouse while retaining the screening provided by suitable fencing and hedging. It would not adversely or differentially impact the amenity of neighbouring properties given the baseline for such judgement would fairly have to be based on the pre-existing outbuilding. Hence, the Appellant says that Policy DMHB 11 is not breached.

- 3.5. The LPA has stated policy DMHB 12 but not benchmarked against it and it is not contained within the refusal reason. That is not surprising given that the completed development will not be significantly visible from the public realm.
- 3.6. Policy DMHD 2 relating to outbuildings is criteria based for acceptability: i) "the building must be constructed to a high standard of design without compromising the amenity of neighbouring occupiers, ii) the developed footprint of the proposed building must be proportionate to the footprint of the dwelling house and to the residential curtilage in which it stands, iii) the use shall be for a purpose incidental to the enjoyment of the dwelling house and not capable for use as independent residential accommodation, and iv) primary living accommodation such as a bedroom, bathroom, or kitchen will not be permitted."
- 3.7. At explanatory paragraph A1.33 the LPA is keen to discourage detached outbuildings that are capable of independent occupation or "result in an over dominant and visually obtrusive form of development and as a result have an adverse effect on the character and appearance of the dwelling and the wider locality." At paragraph A1.34 the general guidance is that "an outbuilding should be no greater than 30 square metres and should not significantly reduce private amenity space or the landscape and ecological value of the garden. Outbuildings should respect neighbouring properties and should not result in the excessive loss of residential amenity, privacy, outlook and overshadowing/sunlight."
- 3.8. It is to be noted that nowhere within the wording of Policy DMHD 2 is there is any positive directive that an outbuilding must ONLY be sited in the rear garden part of a dwelling's curtilage; neither is there any prescriptive prohibition that an outbuilding CANNOT be sited in the front garden part of a dwelling's curtilage. Each proposal has to be determined on its own individual merits given the uniqueness of a dwelling's topography, layout, relationship and context with neighbours and street, planning history or extant development, etc. It is not

necessarily the case that a precedent will be set if the site-specific features allow a certain development; in any case the LPA retains control to prevent harmful development on a case by case basis.

- 3.9. It is submitted that in the instant case as explained above at paragraph 1.5, the pre-existing timber outbuilding was located in the front garden as that is where it was best suited and where it established a footprint forming part of the character an appearance of the dwelling and area without being over dominant or visually obtrusive hence not having an adverse effect on character or appearance of the locality. The replacement improved garage, albeit having a modest increased footprint is proportionate in a substantially large front garden, maintains local character and appearance and does not result in excessive loss of residential amenity, the Appellant avers.
- 3.10. Contrary to the LPA's assertion in the officer report, the outbuilding does NOT "essentially comprise a front extension", and location "forward of the existing building" is what prevailed previously and is not necessarily a breach of development plan policies especially when the new building will also be screened by vegetation or fencing.

4 MATERIAL CONSIDERATIONS

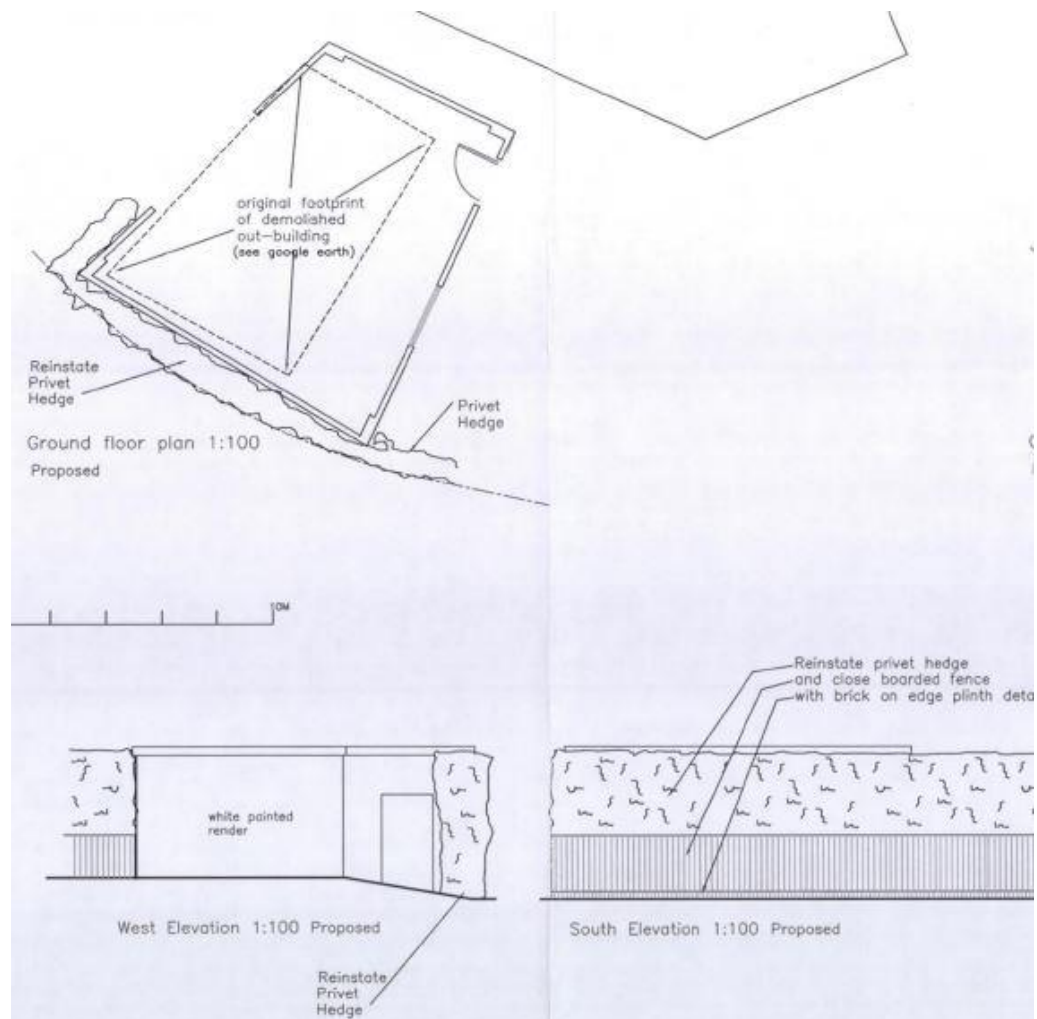
MC1. The National Planning Policy Framework ("NPPF" or "Framework")

- 4.1. The Framework has no force of statute, it is no more than guidance but it and its polices amount to material considerations to be taken into account in the decision making process.
- 4.2. Paragraph 8 stresses the three objectives of sustainable development that the planning system seeks to achieve: economical, social and environmental.
- 4.3. Paragraph 38 encourages positive and creative decision making to achieve sustainable development.
- 4.4. Section 6 entitled Building a strong, competitive economy takes on a renewed and stronger focus as the country starts to re-power the engine of economic growth and development from the grassroots level after the effects of the Covid-19 pandemic on unemployment and the depth and extent of recession become apparent. The wording in paragraph 80 is prescient as to the significant role of planning decision making in the overall planning balance in the support at the small local level in this cumulative rejuvenation effort. Paragraph 81 d) guides on how planning policies need to be flexible to allow for new working practices and to enable a rapid response to changes in economic circumstances.

- 4.5. Section 12 seeks to achieve good design and paragraph 127 c) seeks planning decisions to ensure developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities). (emphasis added).

MC2. Pre-existing demolished outbuilding and case law

- 4.6. The Appellant submits that the character and appearance resulting from the instant proposal ought to be juxtaposed with the established pre-existing outbuilding (see extract from plan below). When the replacement outbuilding is compared and contrasted with the earlier established structure, it is not materially different in terms of its siting, size (less than 30sqm internally), layout, intended use or impact on amenity and character albeit with *de minimis* increment in scale and dimensions. Moreover, the design and materials are improved. Furthermore, it is submitted that given works are substantially complete, requiring the appellant to undertake remedial works just in order to attain the status quo ante in terms of *exactly* the size of the previous outbuilding would appear to serve to use the planning system for punitive purposes.



From submitted drawing L.01 (please also see drawing L.02)

- 4.7. A relevant judgement is the case of *Mansell v Tonbridge & Malling BC* [2017] EWCA Civ 1314. Here Lindblom LJ confirmed the legal considerations in determining the materiality of a fallback position as a planning judgement related to the basic principle that for a prospect to be a “real prospect” it does not have to be probable or likely; instead, a possibility will suffice. This applies in the instant case as the pre-existing outbuilding of a slightly smaller size than existing could possibly be lawfully installed and would form part of the character and appearance of the area.

MC3. Past Appeal decisions

- 4.8. The Appellant will now present a recent appeal decision in a neighbouring part of London where a forward sitting significant sized outbuilding in the front garden of the dwellinghouse and facing the highway was allowed. The decision letter is self-explanatory and for ease, the Appellant has highlighted the relevant remarks within it showing the reasonable approach that was adopted. The Appellant also provides the background plans and that LPA’s officer report for background and to aid understanding.⁴ The New London Plan (intend to publish version) December 2019 states (at paragraphs 1.4.4 and 4.1.2) that the London is to be considered a single housing market area and hence the principle of consistency in decision making applies London-wide.
- 4.9. The Appellant also provides another appeal decision on an outbuilding that was alleged to impact the character of the green belt; the dispute between the parties was whether the new outbuilding was materially larger than the outbuilding it replaced. The decision letter has some applicable words of wisdom in assisting judgement of the instant proposal.⁵

5 REASONS FOR REFUSAL, DELEGATED OFFICER REPORT AND APPELLANT REBUTTALS /SUBMISSIONS

Refusal Reason: The proposed garage, by reason of its siting in this open prominent position, size, scale, bulk and height would result in an incongruous addition and would thus be detrimental to the visual amenities of the street scene and the character and appearance of the wider area. The proposal is therefore contrary to Policy BE1 of the Hillingdon Local Plan: Part One - Strategic Policies (November 2012) and Policies DMHB 11 and DMHD 2 of the Hillingdon Local Plan: Part Two - Development Management Policies (January 2020).

⁴ See Appendix 3

⁵ See Appendix 4

- 5.1. The Appellant, in addition to submissions made within this statement, comments and rebuts (shown in red) specific remarks as annotations within the delegated report.⁶

6 CONCLUSION

- 6.1. After the inspector has taken all the above matters and the accompanying evidence submitted as part of this appeal in the overall planning balance, it is respectfully requested that this appeal be allowed and planning permission be granted for the development.

LIST OF APPENDICES

1. Letter from Council alleging planning breach
2. Exchange of communication with Council Building Control department
3. Appeal decision for outbuilding at 118 Southover in LB of Barnet with officer report and plans
4. Appeal decision for larger replacement outbuilding
5. Annotated officer report

⁶ see Appendix 5