

## Appeal Decision

Site visit made on 23 May 2016

**by George Mapson DipTP DipLD MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 8 July 2016**

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**Appeal Ref: APP/N5090/C/15/3140516**  
**28 Heton Gardens, London, NW4 4XS**

- 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 Mrs Amina Ali Khan against an enforcement notice issued by the Council of the London Borough of Barnet.
  - The Council's reference is ENF/00752/15.
  - The notice was issued on 9 November 2015.
  - The breach of planning control as alleged in the notice is: "*Without planning permission, the construction of a single storey (sic. storey) rear extension.*"
  - The requirements of the notice are: "*1 Demolish the single storey rear extension [and] 2 Permanently remove all constituent materials resulting from the works in 1. above from the property.*"
  - The period for compliance with the requirements is three months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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### Decision

1. The enforcement notice is corrected by deleting from Section 3 the word "*storey*" and substituting "*storey*".
2. Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of a single storey rear extension at 28 Heton Gardens, London, NW4 4XS, subject to the following condition:
  - 1) The development hereby approved shall not be occupied or brought into use until there have been submitted to and approved in writing by the local planning authority details of the external finish to be applied to the blockwork walls. The development shall be carried out in accordance with the approved details.

### Procedural matters

#### *The site visit*

3. Neither the appellant nor her agent attended the accompanied appeal site visit that had been arranged for 23 May 2016. An officer of the Council attended, as did the occupier of the neighbouring property, No. 27 Heton Gardens. He provided me with access to the rear garden of his property and also, with the absent owner's permission, to the rear garden of No. 29. In all other respects the site inspection was conducted as an unaccompanied one.
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## **Clarification**

### *Relevance of objections raised by local residents and the weight that might be attached*

4. The written representations include objections not only on the planning merits of the appeal development, but also on other matters. These include concerns that intentional unauthorised development has been carried out despite protests from surrounding neighbours and in violation of the Council's repeated refusals to grant planning permission.
5. Whilst wilful breaches of planning law cannot be condoned, it is not an offence to carry out development without first obtaining planning permission required for it. Section 73A of the 1990 Act specifically provides that a grant of planning permission may relate to development carried out before the date of the application.
6. Consequently, the fact that a person has carried out works before obtaining planning permission is not held against him or her when assessing the planning merits of a development, at the application stage or at appeal. Equally, where the breach of control unacceptably affects public amenity or the existing use of land and buildings meriting protection in the public interest, the fact that the development already exists is not a factor that weighs in favour of its retention.
7. Some concerns have also been expressed about party wall matters and the safety and adequacy of the building's foundations. There are allegations of damage to fences and a reluctance on the appellant's part to permit the neighbouring occupier's surveyor to assess the situation. Although I understand the feelings of the neighbours on these matters, such concerns cannot sway my decision. I must determine the appeal on its planning merits.

## **Background**

### *The appeal site and appeal development*

8. Nos. 27 and 28 Heton Gardens are a pair of semi-detached houses, located within a residential cul-de-sac of two and three-storey buildings. The neighbouring house, No. 29, has a similar footprint but different building lines, being set forward by about 1.8m. This means that the rear wall of No. 28 extends beyond the rear wall of No. 29 by the same amount.
9. The unauthorised development is a rear single storey extension, a conservatory, which projects about 4.5m from the rear wall of the house. As a result of the staggered building lines, the conservatory extends to a distance of about 6.3m beyond the rear wall of No. 29.

### *Planning history*

10. Although only the occupier of No 27 Heton Gardens made objections to the unauthorised development at the appeal stage, I understand that objections were also made by the occupiers of No. 27 when the prior notifications were made.
11. The representations indicate that the construction of the conservatory commenced in July 2015. The appellant made two prior approval applications in respect of slightly different iterations of the design, but as the work had commenced before the applications were determined, neither could be permitted by the GPDO<sup>1</sup>. In any case,

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<sup>1</sup> The GPDO - The Town and Country Planning (General Permitted Development) (England) Order 2015 came into force in April 2015. It grants planning permission for certain classes of development described as 'permitted development' in Schedule 2 by the Order. Part 1, Class A of the Schedule 2 applies to, among other things, the erection of single storey rear extensions to dwellinghouses. Permitted development rights are subject to the provisions, limitations, conditions and exceptions set out in the Order, which exist to control impact and protect local amenity. In some cases it is necessary to obtain prior approval from a local planning authority before carrying out permitted development. The limitations on the size of extensions that can be erected as permitted

the Council had objections to the development on the basis of its visual impact and effect on the living conditions of the occupiers of the neighbouring houses, and the prior approval applications were refused in July and August 2015.

12. The appellant then made a householder planning application seeking planning permission for the development, but permission was refused in October 2015. The Council issued the enforcement notice in November 2015.

### **The appeal on ground (a) and the deemed application**

#### *General matters relating to a deemed planning application*

13. The deemed planning application is for the operational development that has been carried out, the terms of which derive directly from the words of the allegation; the matters stated in the notice as constituting a breach of planning control.
14. It appeared to me that the unauthorised development is unfinished, because the blockwork walls are neither brick clad, nor rendered or painted. This matter can be controlled by a planning condition requiring the submission and approval of details of the proposed finish and the completion of the development in accordance with the approved details.

#### *Main issues*

15. Having regard to the stated reasons for issuing the enforcement notice, there are two main issues in this appeal. Firstly, the effect of the conservatory on the living conditions of the occupiers of the neighbouring properties, Nos. 27 and 29 Heton Gardens, in terms of creating an overbearing effect and increased sense of enclosure (in the case of No. 29) and overlooking, loss of privacy and loss of light (in the case of No. 27). Secondly, the effect on the character and appearance of the house and its surroundings.

#### *Planning policy*

16. No special designations, policies or controls apply to this area. The Council says that *Barnet's Local Plan Core Strategy* and the *Development Management Policies Development Plan Document* (both adopted in September 2012) contain general policies that are relevant to the issues raised by this appeal. These include *Core Strategy* policy CS5 (*Protecting and enhancing Barnet's character to create high quality places*) and *Development Management* policy DM01 (*Protecting Barnet's character and amenity*).
17. The Council has also drawn attention to the advice in its Supplementary Planning Documents [SPD] entitled *Residential Design Guidance* and *Sustainable Design and Construction* (both adopted April 2013). The Council's policies show what needs to be done and the SPD offers advice on how to do it.
18. Their objectives broadly reflect those set out in chapter 7 (Requiring good design) of the National Planning Policy Framework [NPPF], and the DCLG's web-based Planning Practice Guidance. NPPF paragraph 64 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.

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development under Part 1, Class A are set out in paragraph A.1 (f) and (g). As regards the appeal development, the key points are that the height of the extension must not exceed 4m and projection beyond the rear wall of the original dwellinghouse must not exceed 3m. However, for a period of six years between 30 May 2013 and 30 May 2019 householders are able to build larger single-storey rear extensions (up to 6m long in this case) under permitted development, subject to the proviso that the local planning authority is notified and the necessary information is provided to the authority before development commences. It is not possible to undertake this process retrospectively.

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*Reasons and conclusions*

*Issue 1 – the effect on the living conditions of the occupiers of No. 29 Heton Gardens*

19. Policy DM01 is a criteria-based policy which seeks to ensure, among other things, that development proposals are designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users.
20. The Council's *Residential Design Guidance* SPD provides guidance on the erection of rear extensions. It advises that the depth and/or height of an extension should not cause a significant sense of enclosure, or loss of outlook from, or light to, principal windows of habitable rooms of neighbouring properties.
21. There is no statutory or policy test for deprivation of outlook or creation of an increased sense of enclosure, so a reasoned planning judgment must be made for the specific circumstances. The nub of the issue is whether the presence of the conservatory would have such an overwhelming and oppressive impact on the outlook from a neighbouring dwelling and its amenity space that it would result in unsatisfactory living conditions.

*The effect on the occupiers of No. 27 Heton Gardens*

22. Dealing first with the effect of the conservatory on the occupiers of No. 29, I recognise that this is a long extension, but the visual intrusion is mitigated by two factors. Firstly, there is a difference in ground levels between Nos. 28 and 29, with the rear garden of No. 28 being some 0.45m lower than that of No. 29. This reduces the bulk of the conservatory when viewed from No. 29.
23. Secondly, there is a high timber panelled fence, topped by trellis, along the boundary between the two properties. This fence screens views of the conservatory from the garden of No. 29, from which only the shallow pitched roof is visible. Whilst it could be argued that the fence has been erected in order to counter the visual impact of the extension, prevent overlooking and safeguard sense of privacy within the house and garden, it appeared to me that the fence rather than the conservatory has increased the sense of enclosure within the garden.
24. *The effect on the occupiers of No. 27 Heton Gardens*
25. Turning to the effect of the conservatory on the occupiers of No. 27, I saw that this property has a rear conservatory. It projects about 4m from the rear wall of the house, which is about 0.5m less than the projection of the conservatory at No. 28.
26. The conservatory at No. 28 has been erected close to the boundary between the two properties and this has created a greater sense of enclosure than existed previously. However, there is a high timber fence along this part of along the boundary, which prevents mutual overlooking between the two conservatories.
27. The Council's *Sustainable Design and Construction* SPD (Table 2.4) provides guidance on daylight, privacy (minimum distance), outlook and light pollution, but no evidence or analysis has been provided to support the assertion that sunlight or daylight levels at No. 27 have been compromised by the appeal development.

*Conclusions on the first main issue*

28. I find on the first main issue that the conservatory does not have a significantly overbearing effect or increased sense of enclosure within either neighbouring house or garden. The impact on the outlook from neighbouring dwellings and their amenity spaces is neither overwhelming nor oppressive. Furthermore, there is insufficient loss of light, air or privacy for me to conclude that the development significantly harms the living conditions of the occupiers of the neighbouring properties.

*Issue 2 – the effect on the character and appearance of the house and surroundings*

29. Policy DM01, criterion (b), states that development proposals should be based on an understanding of local characteristics. They should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets. The Council is critical of the design and size of the conservatory, arguing that it has a squat appearance and is an incongruous addition to the building.
30. The conservatory at No. 28 does project about 0.5m further from the rear of the house than the conservatory at No. 27. It also has a rectangular shape - rather than an angled bay front - which gives it a bulkier appearance than would have been the case had the design replicated the neighbouring conservatory. However, it is of a standard height, is not of an obviously poor design, and is not out of scale with the house. Furthermore, it is not open to public view from any public vantage point and has little, if any, adverse effect on the surrounding area.

*Conclusions on the second main issue*

31. I find on the second main issue that the appeal development does not significantly harm the character and appearance of the house and surroundings.

**Overall conclusions**

32. In my planning judgment, the appeal development is acceptable and there is no clear conflict with the local or national planning policies or guidance. In coming to my conclusions, I have taken account of my observations at the site and surrounding area and all the matters raised in the written representations.
33. For the reasons given I have decided that the appeal should be allowed. The enforcement notice, as corrected, is quashed and planning permission on the deemed application is granted. This permission is subject to the condition set out in paragraph 2 above, and the reasons for imposing it are set out in paragraphs 15-17 above.

*George Mapson*

INSPECTOR