
Appeal Decision

Site visit made on 10 August 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 27 October 2016

Appeal Ref: APP/N5090/C/15/3141350
29 Ashbourne Avenue, London NW11 0DP

- 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 Jack Rabbie against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 20 November 2015.
 - The breach of planning control as alleged in the notice is without planning permission the construction of part single, part two storey side extension with incorporated basement.
 - The requirements of the notice are:
 1. Demolish the part single, part two storey side extension with incorporated basement
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property
 3. Return the above property to the state in which it was prior to the breach of planning control
 - The period for compliance with the requirements is 4 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matters

2. The appellant has questioned the expediency of issuing the notice, alleging that the planning officer stated that the unauthorised alterations were minor and a retrospective application should be submitted. In addition the appellant is said to have been advised to carry on with the work until the application was determined, however there is no evidence to verify this claim. Although the appellant considers the requirements of the notice to be disproportionate, I have read nothing to cast doubt on its validity. In the circumstances, the question whether it is expedient to issue the notice is a matter for the Council.
 3. The unauthorised development differs from what was approved by the Council in 2014 under Ref F/00790/14 for a part single, part two-storey side and rear extension and construction of basement. A retrospective planning application incorporating the subsequent changes as constructed was refused in 2015. An "appeal scheme" was then prepared for an appeal under section 78 of the 1990 Act, however that appeal was out of time. The deemed application for consideration under ground (a) is the development as described in the notice
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as constituting the breach of planning control. The “appeal scheme” to all intents and purposes represents what has been constructed on site and I have taken this into account in the appeal on ground (a).

4. For the avoidance of doubt I am not satisfied that unauthorised development was intentional and so this is not a material consideration in the appeal.

Ground (a) and the deemed application for planning permission

Main Issue and Reasons

5. The main issues on this ground are, firstly, the effect of the development on the character and appearance of the area, and secondly the effect on the living conditions of neighbouring occupiers.

Character and appearance

6. 29 Ashbourne Avenue is a semi-detached property at the junction with Eastside Road. The surrounding area is mainly residential in character with a mix of styles and architectural forms. There are existing extensions to the side and rear of No 29. The ground level falls away in the rear garden area and is lower than that of the house and the street.
7. The 2014 permission permitted a two-storey infill extension to the west elevation and a single storey extension across the majority of the full width of the rear of the main building, including the infill side extension. As built however, the first floor side/rear extension has increased in depth by about 1m over the single storey rear extension which has also increased in size by 0.3m. The roof line to the rear has been raised and the size of the roof has increased as shown on the submitted plans showing the “as built” elevations.
8. The first floor side/rear extension as built fails to respect the width and proportions of the original house. I saw that the increased size does not reduce the prominence of the flat roof element of the ground floor extension as suggested but rather creates in the overall appearance an overbearing and incongruous effect on the main property, as can be seen particularly on the west, main elevation.
9. Whilst the increased depth of the single storey extension is itself limited, this increases the incongruity of its flat roof with other pitched roofs nearby, for example in views east and north-east from the junction of Ashbourne Avenue and Eastside Road where the angle of view gives it greater prominence. The full width of the extensions are readily seen from within Eastside Road, against the rear elevations of properties on Ashbourne Avenue, where they appear unduly dominant.
10. The stepping in of the western wall of the two-storey extension is put forward as part of the “appeal scheme” as an improvement on the 2014 approval. In fact the original scheme was revised so that the 2014 approved drawings did provide for the inset which has been built. However, a key aspect of the 2014 approval was also to provide an inset between the two-storey and single storey extension. That has not been carried out as the single storey extension has been built with a west elevation that is flush with that of the two-storey extension. This does nothing to break up the overpowering appearance of both extensions in the street scene.

11. Furthermore the height of the roof of the two-storey rear extension has been increased and extended along the unauthorised section. This produces a further harmful effect in that the increased bulk and mass of the additions dominate the street scene where nearby properties step down in accordance with the natural ground levels.
12. The other examples of extensions submitted have been considered. No 31 is a wider plot, has a differently designed rear projection and is not in my view comparable to the appeal site. I saw that other corner plots do accommodate larger buildings in the vicinity and generally the size, design and bulk including rooflines, of surrounding buildings vary in the locality. However that does not provide a compelling reason to accept a poor design as represented here by the cumulative harmful effect of the development. The effect is detrimental to the character of the surrounding area which I found to contain several substantial properties with large extensions that were however generally subordinate in appearance to, or well integrated within their hosts.
13. The Council has no concerns as to the basement itself, it being largely screened from neighbouring properties and the street scene. However despite the reduction in the basement floorspace, its depth has increased in size by 0.3 m to the rear and its walls are partially above ground level and support the unauthorised section of the single storey rear extension.
14. Supplementary Planning Documents (SPD) entitled Residential Design Guidance 2013 states that extensions should normally be subordinate to the original house, not be overly dominant and consistent in regard to the form, scale and architectural style of the original building, through respecting the proportions of the existing house and using an appropriate roof form.
15. Overall, the cumulative impact of the unauthorised extensions has made them appear too bulky and prominent compared to the size of the host dwelling and garden. This would be contrary to a key consideration of the SPD.¹ Further, their mass and size has a dominant and harmful effect in the street scene as viewed from Ashbourne Avenue as well as in views along Eastside Road towards the rear of No 29.
16. The harm is substantial and contrary to SPD, Policy DM01 of the Barnet's Local Plan Development Management Policies: *Development Plan Document* 2012 (DMP), Policy CS5 of Barnet's Local Plan: *Core Strategy Development Plan Document* 2012 (CS). These policies require development to respect local context including the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets. They are in line with the design aims in Section 7 of the National Planning Policy Framework (Framework) which although encouraging development that optimises the potential of the site to accommodate development, is concerned to ensure that it responds to local character and is visually attractive.

Living Conditions

17. The potential use of the flat roof of the single storey element of the rear extension has been resolved satisfactorily in my view by the installation of a Juliet balcony. This would prevent use of the roof as a terrace and overlooking of adjacent gardens and loss of privacy.

¹ Paragraph 14.22

18. The rear elevations of the adjacent house, No 27 have habitable rooms which would look out onto the extension. The effect on rooms within this house and the use of its garden, in terms of loss of light and sense of enclosure is however significantly mitigated by the existing approved extensions, including the approved openings on the eastern elevation. Bearing this in mind, the increase in size of the extensions would not in my view materially add to the effect on outlook or loss of privacy or light on the occupants of No 27.
19. The distances between the first floor rear wall and ground floor rear wall to the boundary of 2 Eastside Road is some 12-14m. As I have noted there is an adverse visual impact as a result of the unauthorised increase in size of the extensions which includes the impact on the street scene in views on Eastside Road. However in terms of the effect on occupants within No 2 the additional unauthorised development does not materially impair their outlook or privacy.
20. 31 Ashbourne Avenue is on the opposite side of the junction, divided into flats. The ground floor maisonette, No 31B does not enjoy a good outlook from its two ground floor rooms that face the west elevations of the extension. Even so, there is an appreciable separation distance across Eastside Road. In my view the extent of the unauthorised additions does not materially add to the existing impact on living conditions for occupants of this property.

Other Matter

21. The extra accommodation provided would be a benefit although a limited one that would not outweigh my conclusions on the first main issue.

Conclusion on ground (a)

22. The appeal on ground (a) therefore fails.

Ground (f) – whether the requirements of the notice are excessive

23. S173 of the Act states that there are 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 which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. An appeal on ground (f) is constrained by the Council's purpose in issuing the notice.
24. It is clear from the notice that the Council is seeking a complete remedy to the breaches of planning control that have occurred, including restoration of the land to its former condition. The purpose of the notice therefore falls within s173(4)(a).
25. The appeal statement does not set out separately or elsewhere in terms, the requirements of the notice that may be said to be excessive, other than to assert that the unauthorised elements of the building are minor in nature. There is no alternative scheme proposed other than that which would allow the existing building to stand, or any lesser steps put forward that demonstrate how the breach could otherwise be remedied.
26. The Council has not objected specifically to the basement structure of the building, but as it supports the unauthorised section of the single storey rear extension I see nothing unreasonable in the requirement in the notice to remove the extensions "with incorporated basement". Whether the whole

basement structure could be excluded from the requirements in the notice has not been demonstrated. In the absence of any detailed alternative scheme it would not be possible to draft an alternative requirement that would have the necessary precision.

27. Therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements do not prevent the appellant doing what he is lawfully entitled to do in the future after he has complied with the notice.

Overall Conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the notice and refuse to grant planning permission on the deemed application.

Formal Decision

29. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Grahame Kean

INSPECTOR