
Appeal Decision

Site visit made on 21 November 2016

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 13 December 2016

Appeal Ref: APP/N5090/C/16/3157181
60 Prayle Grove, London NW2 1AY

- 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 Abraham Cohen against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 3 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a first floor single storey rear extension and roof terrace.
 - The requirements of the notice are 1. Demolish the single storey rear extension and raised patio, 2. Permanently remove from the property of (sic) all constituent materials resulting from the works in step 1, and 3. Remove the balustrade and decking that form the roof terrace from on the top of the ground floor rear extension.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by the deletion of 'and roof terrace' from the allegation in paragraph 3 and varied by the deletion of 'and raised patio' from the first requirement in paragraph 5 and the deletion of the entire third requirement in paragraph 5. Subject to these corrections and variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The appeal on ground (c)

2. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. The appellant accepts that there has been a breach of planning control in respect of the extension but not the roof terrace. However, the only submission he makes in respect of the matter is that the roof terrace has existed for 12 years but this argument falls to be considered under ground (d), which I deal with later.
 3. A breach of planning control comprises the carrying out of development without the required planning permission. When the appellant built an extension to the rear and side of his property decking was laid on the roof and a balustrade was erected. He also erected an external staircase to access the garden but this is not mentioned in the allegation and I have therefore not had regard to it. These structures are clearly intended to remain in situ and have a measure of permanence.
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4. The meaning of development is set out in Section 55(1) of the Town and Country Planning Act 1990 and includes the carrying out of building, engineering, mining and other operations, in, on, over or under land. Section 55(1A) confirms that such operations include structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on business as a builder.
5. I find the installation of the terrace to the flat roof of the extension together with the balustrade as a matter of fact and degree, amount to an operation of development as defined by s55(1).
6. In some circumstances the improvement or other alteration of a dwelling house can be 'permitted development' (PD) under the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO). However Schedule 2, Part 1, Class A (k) sets out that the construction of a raised platform is not PD. The installation of the terrace therefore cannot be considered as PD.
7. Having regard to all of the above considerations, I conclude that, as a matter of fact and degree, the development that has occurred has been the installation of a roof terrace and balustrade for which planning permission is required. Class A of Part 1 of Schedule 2 of the GPDO does not permit such development. The appeal on ground (c) therefore fails.

The appeal on ground (d)

8. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in respect of the matters alleged in the notice. This is an additional ground of appeal pleaded by the appellant which follows on from his original submissions. It is made only in respect of the roof terrace and balustrade. The burden of proof in an appeal on this ground lies with the appellant. He needs to show, on the balance of probabilities, that the installation of the roof terrace and balustrade took place more than four years before the notice was issued and that it has remained in situ, since that date. The relevant date in this context is 3 August 2012.
9. The appellant's case is that the terrace structure was built in 2004 following the grant of a Lawful Development Certificate application that year for the proposed erection of the single storey extension. He submits a number of family photographs which he states are dated from around 2004 and these show the development in place. He also submits satellite images from Google Maps. These are dated by year and show that there was no extension visible in 2003 but a flat roof, plant pots and garden furniture can be seen in 2006, 2010 and 2013. In addition, he submits letters of support from his neighbours. The occupier of No 62 Prayle Grove confirms that the terrace was in place in 2010 when he moved into his house and the long term occupiers of No 31 Wallcote Avenue and No 58 Prayle Grove state that it has been there 'for the last ten years' and 'about 12 years'.
10. The Council take no issue with the appellant's submissions and suggest that the notice is varied to delete reference to the terrace.
11. The Planning Practice Guidance advises¹ that if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the

¹ Reference ID: 17c-006-20140306

appellant's version of events less than probable, there is no good reason to reject it. This is provided the appellant's evidence alone is sufficiently precise and unambiguous, on the balance of probability.

12. I find there is nothing to actually identify the appellant's family photographs as bearing a date of 2004. However, the Google imagery and the statements from neighbours establish, on the balance of probability, that the terrace and balustrade were substantially completed before the relevant date. The appeal on ground (d), as it relates to these matters, therefore succeeds and I will direct that the notice is corrected accordingly.

The appeal on ground (a) and the deemed planning application

Main Issues

13. It follows therefore that, in respect of the ground (a) appeal, the main issues are the effect of the extension on i) the character and appearance of the host building and the surrounding area; and ii) the living conditions of neighbouring occupiers, having regard to outlook.

Character and appearance

14. The appeal site lies within a residential area. Prayle Grove encircles a small estate of post war, semi-detached houses. These are largely unaltered other than for the addition of replacement windows and present a generally balanced appearance, especially at first floor level. The buildings are modest in size and simple in design, being examples of post war prefabricated construction. The generous spaces between the houses though and the existence of boundary hedges and grass verges result in an attractive layout that contributes to the pleasant appearance of the area.
15. The appellant built a single storey extension across the full width of the rear and side of the property which included a roof terrace. He has now enclosed most of the terrace with a conservatory style extension. This is a light weight, UPVC structure that is positioned adjacent to the rear bedroom and bathroom windows and extends across almost the full depth of the ground floor addition.
16. I consider the extension is a significant and harmful alteration to the rear of the house which has resulted in the semblance of the rear elevation being more or less obscured. This is because the extension encompasses virtually all of the rear elevation and as such I find it is a sizeable feature on the rear of this modest house, notwithstanding its lightweight structure. The extension is also visible from the public domain due to the spacing between the houses. This is the case especially from outside No 67 Prayle Grove, where there is a largely uninterrupted view over the rear garden of the appeal site, and neighbouring properties. It is also visible in long distance views from neighbouring gardens. I find due to its size and siting that the extension intrudes upon the sense of spaciousness in the area which is a particularly attractive feature of the estate.
17. To support his appeal, the appellant submits information about other, larger, first floor rear extensions in the locality which are faced in brickwork whereas his extension better reflects the original design of the house. However I was only able to glimpse one of these from the public domain and compared to the number of unaltered houses I was able to see, these types of extension are very much in the minority. Furthermore, I do not know the circumstances of

the cases referred to or the policies that applied at the time of their consideration. In any case I have determined the appeal on its own merits.

18. For these reasons, I therefore conclude that the development has an adverse effect on the character and appearance of the host building and the surrounding area. The development therefore does not accord with Policies 7.4 and 7.6 of The London Plan (TLP)², Policies CS1 and CS5 of Barnet's Local Plan (Core Strategy) (CS)³ and Policy DM01 of Barnet's Local Plan (Development Management Policies) (DMP)⁴. These policies, which are all concerned with different aspects of design, require amongst other matters that new development should respect the appearance and pattern of surrounding buildings and spaces.

Living conditions

19. The Council are concerned that the extension is overbearing and is a visually intrusive feature when viewed from the adjoining property at No 62 as well as the adjacent property at No 58. The current occupiers of these properties have written to support their neighbour's development. Notwithstanding that support, it is still necessary to consider the effect of the development on the living conditions of any occupiers of those properties.
20. I saw at my site visit that there is a generous gap between the gable walls of Nos 58 and 60 and as such I consider that the extension does not appear unduly overbearing or visually intrusive when viewed from No 58. In addition, there is a significant degree of mature planting on the boundary between the properties and a high boundary fence. Whilst these could change in the future, they currently provide an enclosed area for the users of the garden of No 58 and any perceived harm from the extension is therefore minimal.
21. With regard to No 62, I saw that the depth of the garden to this property is about half that of the appeal site, consequently the depth and height of the extension occupies a large proportion of the side boundary. There are two habitable room windows in close proximity to the shared boundary and due to their position and the size of the extension I consider the extension has caused harm. It has resulted in a loss of outlook from the first floor bedroom window and it has increased the sense of enclosure from the ground floor window. These are matters that the Council's Supplementary Planning Guidance⁵ advises should be avoided.
22. The appellant submits that there is no loss of light or privacy to neighbouring properties caused by the extension but the Council have not raised these matters as reasons for issuing the notice. I have therefore not had regard to them.
23. For the reasons set out above I therefore conclude that the development has an adverse effect on the living conditions of neighbouring occupiers, having regard to outlook. The development therefore does not accord with Policy 7.6 of TLP, Policy CS5 of the CS and Policy DM01 of the DMP. These policies require amongst other matters that new development should be designed to

² The London Plan: Spatial Development Strategy for Greater London March 2015

³ Barnet's Local Plan (Core Strategy) Development Plan Document September 2012

⁴ Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012

⁵ Local Plan Supplementary Planning Document: Residential Design Guidance April 2013 paragraph 14.24

allow for adequate outlook for adjoining existing and future occupiers. The appeal on ground (a) therefore fails.

The ground (f) appeal

24. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve the purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy injury to amenity (s173(4)(b)). In this case the Council require the demolition of the extension. The purpose of the notice must therefore be to remedy the breach of planning control.
25. The appellant submits it is not necessary to require the complete removal of the extension as it would be sufficient to obscure glaze the elevation overlooking No 58 and block the lateral door. However, the purpose of the notice is not to remedy the injury to amenity, where the appellant's suggestions might address the harm, but to remedy the breach of planning control.
26. The breach of planning control is the action of erecting the extension. Adding obscure glazing would not undo that initial action and would not address the harm to outlook caused by the development set out in the reason for issuing the notice. I therefore find that the steps required by the notice do not exceed what is necessary to remedy the harm caused by the extension and the appeal on ground (f) fails.
27. It is necessary to vary the notice by deleting references to the roof terrace and balustrade from the requirements of the notice. This is because of the success on the ground (d) appeal. Neither party would be prejudiced by this change.

Conclusion

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

D Fleming

INSPECTOR