
Appeal Decisions

Site visit made on 29 November 2016

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

Decision date: 14 December 2016

**Appeal Refs: APP/N5090/C/16/3150790 and 3150791
17 Raleigh Close, London, NW4 2SX**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Sarah Deena Benarroch and Mr Simon Benarroch against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/00202/16, was issued on 19 April 2016.
- The breach of planning control as alleged in the notice is without planning permission the construction of a part single, part two storey side, rear and front extension.
- The requirements of the notice are:
 1. Demolish part single, part two storey side, rear and front extension.
 2. Permanently remove all constituent materials resulting from the works in 1. above, from the property
- The period for compliance with the requirements is five months.
- Appeal 3150790 is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal 3150791 is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period for Appeal 3150791, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

The appeals on ground (c)

1. In an appeal on ground (c) the Appellants have to show that there has not been a breach of planning control because planning permission has been granted for the development and/or it is permitted development. The Appellants say that what has been constructed has the benefit of planning permission and was constructed in the correct sequence. The Council's case is that there is no evidence that the ground floor extension was constructed independently of the first floor and thus the whole extension is unlawful. It is also stated in the delegated report that the ground floor extension is 1m higher than originally approved.
 2. It has been established that an extension which has been built and which exceeds the tolerances permitted by, in this instance, Class A of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) is entirely outside permitted development rights. The position is similar with an express grant of planning permission in that if a development departs materially from the development
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granted it is unauthorised. The Technical Guidance¹ advises that in order to be permitted development, a development must meet all the limitations and conditions under the Classes relevant to the development. It follows that a development would lose both permitted development rights and any approved grant of planning permission if the development was not carried out as two separate operations.

3. A number of applications for planning permissions have been granted for extensions to the property together with applications granted for prior approvals and lawful development certificates. I have not been provided with any of these grants of approval, lawful development certificates or any other relevant documents. The Appellants refer to photographs of the works but I do not have these, indeed an email from their Agent dated 1 July 2016 to the Inspectorate states that Appendix 12 to the statement of case – relevant photographs – is not attached. A bundle of email correspondence from the Appellant's various Agents to the Council also refers to photographs which I do not have.
4. An email dated 19 March 2015 from an employee of Complete Building Control says that 'from what I saw it was evident that the ground floor extension was broadly completed (although not enough that I could issue a certificate) prior to the commencement of the first floor extension'. The writer of the email dates his visits to the property 'between April 2014 and when I left'. A covering email from Mrs Benarraoch to the Agent says that the email was written 'to confirm that we had built most of the downstairs before upstairs'. I do not know, among other things, what date the employee left his employment and I note that whatever had been built was incomplete and Mrs Benarraoch refers to 'most of the downstairs'. These emails lack sufficient detail to assist me.
5. A party wall award dated 31 January 2014 refers to 'a level platform to raise the side wall at first floor level'² but this, and the remainder of the document, is of no assistance to me because I do not know such matters as whether the plans referred to are the approved plans or whether they are plans of what has been built. What I saw on my visit was not wholly reflected in the plans attached to the part wall award in that, for example, the inset is not reflected in the plans.
6. I do not have any approved plans in respect of the grants of planning permission or plans that accompanied the lawful development certificate and prior approval applications and therefore I am unable to reach any conclusion whether the existing extension, for which again I have no plans, is a breach of planning control or not.
7. It is for the Appellants to prove their case on the balance of probability and they have not done so.
8. The appeals on ground (c) fail.

¹ Permitted development for householders DCLG April 2016

² The Method Statement of Works

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

9. In an appeal on ground (a) the Appellant is saying that planning permission should be granted for what is alleged in the notice and the deemed planning application is also for what is alleged in the notice.
10. From the reasons for issuing the notice the main issue I have to consider is whether the extension is an overly dominant addition to the property and, if so, its effect on neighbours' living conditions with regard to outlook.
11. The appeal property is a detached two storey house in a largely residential area which has been extended in the roof and by the extension that is the subject of this appeal. The extension with which I am concerned is of considerable size and includes a ground floor extension some 7m beyond the original rear wall and built out from front to back to within about 0.2m of the boundary with No15 save for an inset at the rear about 3m deep and about 1m from the boundary. The ground floor extension is some 4m high³. The first floor element is set back from the boundary and extends for some distance over the ground floor extension.
12. The wall of the ground floor extension is extremely close to the boundary with No 15 and this, together with its excessive depth and height, results in an overpowering and overbearing structure which has an adverse visual impact on the occupiers of No 15. The ground floor extension at No 17 extends far beyond the rear elevation of No 15 and is over-dominant in the outlook from that property. The extension is an unneighbourly form of development that is harmful to the living conditions of the occupiers of No 15.
13. Policy DM01 of Barnet's Local Plan Development Management Policies seeks to ensure that development allows for adequate outlook for adjoining occupiers and the Residential Design Guidance Supplementary Planning Document seeks to ensure that extensions do not significantly impact on people's enjoyment of their own home or garden⁴. For the reasons given above I conclude that the extension at No 17 does not accord with this policy or guidance.
14. The harm I have identified arises from, in the main, the ground floor extension at the rear. However, as set out above, it appears that the total extension, comprising part single, part two storey side, rear and front extension, as alleged in the notice was constructed as one operation. It is therefore not possible to separate the elements and as the ground (a) appeal and the deemed planning application are for the breach of planning control as alleged in the notice, so must the refusal be.
15. The Appellants have referred to an extension at No 19 which, I noted on my visit, is in the process of being constructed. I have no information about this development save for copies of drawings. The construction of another development on a different property in a different location is not a justification for the grant of planning permission for a development that results in the harm I have identified in this appeal.
16. I note that the neighbours entered into the party wall award and there have been no representations made by them in the appeal process. However, as mentioned above, the plans in the party wall award do not appear to represent

³ Dimensions taken from the delegated report

⁴ Section 14 - 14.2 and 14.3

what has been built and there are many reasons why a neighbour may choose not to make representations. These matters are not a justification for a grant of planning permission.

17. I therefore conclude that the extension is an overly dominant addition to the property and that it has a harmful effect on neighbours' living conditions with regard to outlook.
18. The appeal on ground (a) fails and the deemed planning application is refused.

The appeals on ground (f)

19. An appeal on ground (f) is on the basis that the steps required to be taken exceed what is necessary to remedy the breach. The Appellants rely on the matters raised in the ground (c) appeal and the party wall award.
20. The party wall award is, in effect, an agreement between the Appellants and the owners of the adjoining property that works carried out by the Appellants which may impact on the adjoining owners' property are permitted and agreed. This award is a matter outside of the planning considerations with which this appeal is concerned and, in any event, given the apparent deviation of the extension from the plans attached to the award and the works required to construct it I question its validity.
21. In certain circumstances it is possible to not to require the total demolition of a development but to take such steps as will make the development comply with the terms of the relevant permission or permitted development right. However, in this case as set out in the ground (c) appeal, I do not know what has been approved. Without knowledge of the approved plans, grants of planning permission and lawful development certificates the steps could not be drafted to the requisite certainty to enable the breach of planning control to be remedied.
22. I also note that the Council has suggested different ways in which the extension could be altered⁵. However, the plans are not sufficiently detailed for them to form the subject of a requirement of a notice.
23. The purpose of the requirements is to remedy the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land or by restoring the land to its condition before the breach took place⁶. In these appeals, for the reasons given above, the steps required do not exceed what is necessary to remedy the breach and any lesser step would not fulfil the statutory purpose of the requirements.
24. The appeals on ground (f) fail.

The appeals on ground (g)

25. In an appeal on ground (g) the Appellants are seeking a longer period of time to comply with the notice. The Appellants request 12 months to engage the same contractor who undertook the works and for the scope of the works to be detailed and agreed.

⁵ Email from the Council to Mr Lakani dated 2 June 2015

⁶ S.173(4) of the 1990 Act

26. The period of time stated on the notice is the period of time in which the actual requirements specified, that is, the demolition of the extension, are to be completed. I consider that the period of five months as stated on the notice is a reasonable period in which the demolition could be effected. I do, however, remind the Council of its powers in s.173(A)(1) of the 1990 Act to extend any period of time for compliance should it be necessary.
27. The appeals on ground (g) fail.

Conclusions

28. For the reasons given above, and taking all matters into account, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Decision

29. The appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Gloria McFarlane

Inspector