
Appeal Decision

Site visit made on 15 November 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: 15 December 2016

Appeal Ref: APP/N5090/C/16/3148122
85 Farm Road, Edgware, London HA8 9LR

- 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 Sam Ivanov against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 9 March 2016.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a single storey rear extension and raised decking and steps to the rear garden.
 - The requirements of the notice are:
 1. Demolish the single storey rear extension
 2. Demolish the raised rear decking and associated steps
 3. Permanently remove all constituent materials resulting from the works in 1. and 2. above from the property
 - The period for compliance with the requirements is three months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) 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 says that he built the extension mistakenly, believing that it constituted permitted development. I have no evidence to the contrary and so do not regard the unauthorised development as intentional. Consequently such matters are not a material consideration in the appeal.

Ground (a) and the deemed application for planning permission

Main Issues and Reasons

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

Character and appearance

4. 85 Farm Road is a semi-detached dwelling on the north side of Farm Road in a mainly residential area. The ground level falls away in the rear garden area and is lower than that of the house, as is the case with adjacent properties.
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5. A single storey rear extension with a flat roof has been erected about 6m deep and across the full width of the dwelling. In addition a raised decking area which includes railings, up to about 3.18m deep has been built to the rear of the extension, with stairs that extend outwards to the rear garden.
6. Advice in Supplementary Planning Document (SPD) entitled *Residential Design Guidance* 2013 is that extensions should normally be subordinate to their host, respect their form, scale and architectural style, using appropriate roof forms. Single storey rear extensions should not look too bulky or prominent compared to the size of the main building and garden to which they relate.
7. There are no policies or guidance supplied to me that refer specifically to decking or steps being provided to the rear of extensions. However I see no reason why the SPD should also not be applied to these additions, as they have substantially increased the built form of development annexed to the rear of the property.
8. Having viewed the site, and whilst recognising that it is not visible from within the public realm, the development does not have negligible impacts. A reduction in the height of the extension to the permitted development level, which would appear acceptable to the appellant, would not effectively reduce its visual impact. At 6m deep and extending across the main rear elevation, is in my judgement an overly dominant structure not only in relation to the main rear elevation but also in views of the rear elevations of adjoining properties on Farm Road. The various reductions in height of the decking that are proposed would not resolve this objection.
9. A characteristic of neighbouring properties is that they generally have smaller back additions with inclined roof forms consistent with their hosts. The flat roof of the unauthorised extension is incongruous and extends across the full width of the property. The bulk and height of the raised platform, balustrade and stairs add to the undue prominence of the overall structure. In private views across the rear gardens, its height and depth intrude to an inappropriate extent into the otherwise established natural garden spaces.
10. Overall I conclude that the unauthorised development by reason of its design including its excessive size, bulk and mass causes substantial harm to the character and appearance of the main property and the surrounding area contrary to SPD, Policy DM01 of the Barnet's Local Plan Development Management Policies: *Development Plan Document* 2012 (DMP) and Policy CS5 of Barnet's Local Plan: *Core Strategy Development Plan Document* 2012 (CS).
11. These policies require development among other matters to respect local context including the appearance, scale, mass, height and pattern of surrounding buildings and spaces. They are in line with the design aims in Section 7 of the National Planning Policy Framework which is concerned to ensure that development responds to local character and is visually attractive.

Living Conditions

12. I saw that the raised decking is substantially above the level of the rear garden which enables a significant degree of overlooking to both adjacent gardens that did not exist previously. A planning condition might secure mitigation of the loss of privacy by requiring the height of the fencing to be raised along the side boundaries. However from what I have seen additional fencing would have an

unacceptably adverse effect on the outlook from the rear of the properties at Nos 87 and 89 and the spaces immediately in front of them.

13. Overlooking from the decking is said to be to the rear-most sections of the neighbouring gardens, not to the primary amenity areas directly to the rear of the neighbouring houses. However, standing on the raised platform I found it did not require a concerted effort to gain intrusive views into both those rear gardens, including the sitting out area close to the rear elevation of No 87. This has unduly increased overlooking and a sense of loss of privacy from an unexpected close quarter, above that which normally obtains from upper floors of neighbouring houses.
14. On this issue I find the development to cause significant overlooking and loss of privacy to neighbouring residents, contrary to SPD, Policy 7.6 of the London Plan¹ DMP Policy DM01, and CS Policies CS1 and CS5 in that it is not designed appropriately to its context, fails to protect and enhance the gardens of residential properties or to allow for adequate privacy for adjoining occupiers.

Other matters and conclusion on ground (a)

15. The extra accommodation that would be provided, compliance with the Building Regulations and the provision of enhanced accessibility to the rear garden are not matters of such weight that taken individually or together, they outweigh the conclusions arrived at on the main issues.
16. The appeal on ground (a) therefore fails.

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

17. 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 limited by the Council's purpose in issuing the notice.
18. It is clear from the notice that a complete remedy is sought to the breach of planning control that has occurred, including restoration of the land to its former condition. The purpose of the notice therefore falls within s173(4)(a).
19. The appellant would consider reducing the height of the extension to comply with permitted development limitations, however there is no proposal to reduce its depth or width, matters integral to the rejection of the planning merits of the deemed application for planning permission. What is suggested in this regard would not be a complete remedy to the breach of planning control.
20. In addition it cannot be argued that a true fallback exists whereby if the notice were to be upheld the appellant would erect a rear extension 6m deep. An application would have to be made to the Council before work commences to determine whether prior approval is required as to the impact on the amenity of adjoining properties, making the outcome of such a proposal uncertain.
21. In relation to the decking the appellant says that lesser steps would overcome the harm, proffering examples, such as a reduced height of 0.5m or if necessary, the maximum permitted height under the GPDO of 0.3m. This might reduce overlooking but there is no alternative design submitted of the

¹ London Plan: Spatial Strategy for London Consolidated with Alterations Since 2011 (2015)

stairs, railings and platform. Although I might consider lesser steps that are less costly or disruptive, even if all of these elements were reduced to 0.3m high the extension and its associated harm would remain.

22. Consequently there is no specific alternative scheme that would provide an obvious remedy to the breach of planning control. 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. The appeal on this ground therefore fails.

Ground (g) that the time given to comply with the notice is too short.

23. The appellant requests an increase in the period for compliance with the requirements of the notice to 6 months. He argues that as the property is currently rented the tenancy agreements need to end before the remedial works are carried out, and a 3 month period will not enable this to happen.
24. In regard to this matter I have to consider the impact of the Human Rights Act on the tenants if the notice were to be upheld, in particular the protection the Act provides for home and private and family life. No details of the tenancies are provided or information as to the personal circumstances of the tenants. In my view it should be unnecessary for the property to be vacated while the remedial works are being carried on. No doubt some inconvenience would be caused to the tenants; however there is no evidence to suggest that the works would justify the provision of alternative accommodation. There is no other information to suggest it is not feasible to carry out the remedial works within the 3 month compliance period which in all the circumstances I regard as reasonable. The appeal on ground (g) therefore fails.

Overall Conclusion

25. 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

26. 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