
Appeal Decision

Site visit made on 13 December 2016

by Nigel Burrows BA MRTPI

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

Decision date: 23 December 2016

Appeal Ref: APP/N5090/C/16/3146843

35-37 Ravenscroft Avenue, London, NW11 8BH

- 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 Jacob Mizrahi (Yedidia Properties Ltd) against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, ref: ENF/01434/15, was issued on 15 February 2016.
- The breach of planning control as alleged in the notice is 'the construction of a three storey rear and side extension.'
- The requirements of the notice are:-
 1. Demolish the three storey rear and side extension
 2. Restore the dwelling to the state in which it was prior to the breach of planning control as shown on drawing no. 4514/02 of the planning permission granted under the following reference F/01872/14
 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 four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations

Procedural Matters

1. The appeal relates to a pair of semi-detached properties situated upon the southeast side of Ravenscroft Avenue, adjacent to its junction with Beechcroft Avenue in Barnet.
 2. The enforcement notice is directed at what the Council describes as a 'three storey rear and side extension'. I observed that a substantial extension has been erected to the rear of both properties. This structure appears to be three storeys in height when viewed from Beechcroft Avenue. However, when viewed from within the site, the structure has accommodation over four floors, including the basement and roof space.
 3. I have wide powers to correct the enforcement notice under section 176 of the Act. These powers include the correction of any defect, error or misdescription in the notice. I intend to correct the allegation in the notice to make it clear that the extension has accommodation over four floors. However, there was no evidence of a 'three storey side extension'. The parties at the site visit were unable to shed any further light on the matter. I will therefore delete the reference to a 'side extension' from the allegation. It will also be necessary to correct the requirements of the notice in these respects. I am satisfied these corrections would not cause injustice to the main parties in this appeal.
 4. In other respects, I saw that the works to the rear of 35 Ravenscroft Avenue include a single storey range adjacent to the boundary with 33 Ravenscroft Avenue. There is no
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firm evidence to suggest that this single storey range is attacked by the notice or that it is of particular concern to the Council. I intend to deal with the appeal on this basis.

5. Various works appeared to be in progress at the site, which was enclosed by hoardings. According to the Council, a retrospective planning application for the development of the site is under consideration. The Council has described this proposal as '*Conversion into 2 No houses. Retention of rear extension and formation of new pitched roof*'.¹

The appeal on ground (b)

6. The issue under this ground is whether or not the breach of planning control alleged in the notice has occurred as a matter of fact. A three storey extension, albeit with accommodation over four floors, has been erected to the rear of both properties although, as noted earlier, there is no 'side extension'. The breach of control alleged in the notice, as corrected, has occurred as a matter of fact. The ground (b) appeal fails.

The appeal on ground (c)

7. The onus is firmly on the appellant under this ground of appeal to make out the case that there has not been a breach of planning control. In effect, the appellant needs to demonstrate that development has not occurred for the purposes of section 55 of the Town and Country Planning Act 1990, or that planning permission is not required for the extension 'as built' because, for example, permission has already been granted.
8. There appears to be no dispute that the works constitute building operations and therefore development for the purposes of section 55 of the Act. As such, they would require planning permission by virtue of section 57. The appellant's stance is that planning permission exists for various elements of the construction works which have been carried out. However, the submissions do not elaborate further.² There is no substantive evidence before me to demonstrate that planning permission has been granted for the extension 'as built', or that it constitutes 'permitted' development.
9. It is well established in planning law that the onus rests with the appellant to make out his or her case. I find that burden has not been satisfactorily discharged in this instance. On the balance of probability, I conclude that building operations have taken place at the premises without the necessary planning permission and a breach of planning control has occurred as alleged in the enforcement notice.³ The appeal on ground (c) therefore fails.

The appeal on ground (a)

10. There are two main issues in this case. The first is the effect of the extension on the character and appearance of the properties and the street scene. The second is its effect on the living conditions of neighbours, especially their outlook, sunlight and daylight.

Issue 1: Character and Appearance

11. The form and character of the properties is reminiscent of inter-war style suburban housing. The properties have two storey facades with hipped roofs and front wings to either side. The architectural composition of these properties, including the form and disposition of their windows, is well proportioned and they have a pleasing symmetry.
12. However, the overall scale and detailed design of the new extension pays little regard to the character and appearance of the host properties. The extension appears to be linked to the main range by an extensive section of flat roof. The rear elevation of the extension has a pitched roof pierced by tall, recessed dormers. The outcome is an awkward juxtaposition of flat roof and hipped roof-type elements on the flank elevation facing Beechcroft Avenue. In this respect, the extension significantly harms the architectural composition of 37 Ravenscroft Avenue. The adverse visual impact of the

¹ Application reference: 16/2699/FUL

² Other than to provide a list of planning applications relating to the properties with no analysis of their relevance

³ As corrected

extension is accentuated by its bulk and disproportionate size and by the random disposition of windows on the flank elevation to Beechcroft Avenue. The intrusive arrangement of the soil vent pipes and rainwater goods is a further cause for concern.

13. The extension 'as built' harms the character and appearance of the properties to an unacceptable degree and detracts from the visual qualities of the street scene within Beechcroft Avenue. In this respect, it conflicts with the relevant development plan policies, including CS5 of the Council's Core Strategy and DM01 of its Development Management Policies document, insofar as they seek to ensure that development respects its context, incorporates high quality design and respects the appearance of existing buildings.

Issue 2: Living Conditions

14. The Council alleges that the development would harm the amenity of neighbours due to a loss of daylight, sunlight and outlook. The Council has not identified the neighbours in question. However, it is reasonable to assume the Council has in mind the occupiers of 33 Ravenscroft Avenue. In any event, the Council has not produced any compelling evidence in support of its allegations, for example, any daylight or sunlight analysis.
15. The first floor of the extension to the rear of 35 Ravenscroft Avenue is separated from the boundary with 33 Ravenscroft Avenue by an intervening single storey range. Bearing in mind the configuration of the extension attacked by the notice and its separation from this boundary, it would not intrude upon the neighbours' outlook. There is no indication that the extension would diminish the neighbours' daylight. It may well create some additional overshadowing of 33 Ravenscroft Avenue; however, on balance, this would not be sufficient to harm the living conditions of the neighbours to an unacceptable degree.⁴
16. As matters stand, I conclude the development would not conflict with the development plan policies cited by the Council, insofar as they seek to protect the amenity of residents.⁵

Summary

17. I have found in the appellant's favour on the second main issue. However, my overall conclusion is that this consideration is outweighed by the adverse impact of the development on the character and appearance of the properties and the street scene.
18. The Council's policies which seek to protect the built environment are broadly consistent with the Government's objectives for the planning system. Paragraph 14 of the National Planning Policy Framework (March 2012) sets out the presumption in favour of sustainable development. The economic, social and environmental dimensions of sustainable development should be addressed. Paragraph 9 also makes it clear that pursuing sustainable development includes seeking positive improvements in the quality of the environment. The development before me conflicts with this objective.
19. It is not obvious to me that the objections to this particular development could be overcome by planning conditions. I conclude the ground (a) appeal should not succeed.

The appeal on ground (f)

20. The issue under the ground (f) appeal is whether the steps required by the enforcement notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity caused by the extension.
21. The manner in which the Council has prepared the enforcement notice against the unauthorised development, including the formulation of its requirements, indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4)(a) of the Act, by restoring the land to its condition before the breach took place.

⁴ I also noted the projection of the single storey range would not be sufficient to harm the outlook of the neighbours, or create an unacceptable sense of enclosure along the boundary

⁵ Which include policy DM01 of the Council's Development Management Policies

22. The submissions for the appellant do not appear to advance any specific arguments to indicate what lesser steps might be substituted for the requirements of the notice. Nonetheless, the second requirement of the notice appears to create some ambiguity, insofar as it refers to 'the dwelling' even though the notice is concerned with 35 and 37 Ravenscroft Avenue. In any event, this requirement appears to be superfluous, given that the first and third requirements would appear to serve the purpose of the notice.
23. I therefore intend to vary the notice by deleting the second requirement. This will also necessitate variations to the third requirement. I find the requirements of the notice, as varied, would not be unduly onerous or excessive. It is not obvious to me that there are any lesser steps which would remedy the breach of control, or which would satisfy the purpose in section 173(4)(a). Subject to the above variations, the ground (f) appeal fails.

Overall Conclusions

24. For the reasons given above, I conclude the notice should be upheld with corrections and variations. I have taken into account all the other matters raised in the representations, including concerns about overlooking cited by an occupier of 39 Ravenscroft Avenue, but I find they do not alter or outweigh the main considerations that have led to my decision.

Formal Decision

25. The enforcement notice is:-

(i) Corrected by:-

- (a) Deleting from paragraph 3 (THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL) the words '*three storey rear and side extension*' and replacing them by the following words '*three storey rear extension (with accommodation over four floors)*'.
- (b) Deleting from paragraph 5 (1) of the notice the words '*three storey rear and side extension*' and substituting the following words '*three storey rear extension (with accommodation over four floors)*'.

(ii) Varied by:-

- (a) Deleting the second requirement from paragraph 5 of the notice.
- (b) Renumbering the third requirement as requirement 2 and deleting the words '*and 2*' from this particular requirement.

26. Subject to the above corrections and variations, the appeal is 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.

Nigel Burrows

INSPECTOR