
Appeal Decisions

Site visit made on 29 November 2016

by Paul Dignan MSc PhD

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

Decision date: 3 January 2017

Appeal A: APP/N5090/C/16/3156369

Appeal B: APP/N5090/C/16/3156370

14 Courtleigh Gardens, London, NW11 9JX.

- 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 Ms Nicky Ross (Appeal A) and Ms Rachel Golding (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/00026/16, was issued on 11 July 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a part single, part two storey rear extension, first floor/side extension and a roof enlargement including a rear balcony at second floor.
 - The requirements of the notice are: 1. Restore the dwelling to the state in which it was prior to the breach of planning control by demolishing the part single, part two storey rear extension, the first floor/side extension and alter the roof to match the dwelling as shown on drawing nos. HD72/1000 (existing plans) and 1001 (existing elevations) of the planning permission granted under the following council reference F/00775/14; and 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is 7 months.
 - The appeals are 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. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. I direct that the enforcement notice be varied by the deletion from section 5 of Requirement 1 and its substitution by the words "1. The dwellinghouse shall be altered to comply with the terms of the planning permission Ref. F/00775/14, dated 4 April 2014, including the conditions subject to which that permission was granted." Subject to this variation 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.

Ground (c)

2. The appeal property is a two-storey detached house in a residential street. A prior approval application¹ in 2014 established that prior approval was not needed for an 8m single storey rear extension as development permitted by Class A of Part 1 of Schedule 2 to the Town and Country Planning (General

¹ Ref. F/000560/14

Permitted Development) Order 1995. A Lawful Development Certificate (LDC) to that effect was issued² in April 2014.

3. Planning permission³ was also granted in April 2014 for "*Conversion of garage into habitable room; New front entrance including ground floor front extension; First floor side extension; Part single, part two storey rear extension; Alteration and extension to roof involving dormer windows to rear and both sides and 4no. rooflights to facilitate a loft conversion.*"
4. What has been built is somewhat of an amalgam of the two proposals. The appeal on ground (c) concerns the single storey rear extension only. The basis of this ground is that what has been done is not a breach of planning control. It is submitted that the 8m extension was in fact substantially completed before the other parts of the development started, and hence benefits from the LDC.
5. Statements have been provided in the form of Statutory Declarations by Ms Ross and their builder to the effect that the extension was substantially completed before the other works commenced. No other evidence is provided, however, and the description of the sequence of works set out in those declarations makes it quite clear to me that the LDC extension was far from substantially complete when work was paused in November 2015. No doors or windows were fitted, and the roof was not complete. What amounts to substantial completion of a building is a matter of fact and degree, but the description of where the works had got to by November 2015 seems to me to be well short of substantial completion of the extension. The resumption of the works in early 2016 appears to have involved proceeding with the other extensions. It is not clear that the LDC extension was ever in fact substantially completed, whether as a single operation or not. On this ground the burden of proof is on the appellants and I conclude that they have not demonstrated, on the balance of probability, that the LDC extension was substantially completed as a single operation before the commencement of the integrated works on the rest of the rear extension.
6. I conclude therefore that all of the works enforced against were carried out as a single operation, and since they are development that requires planning permission, the appeal on this ground cannot succeed.

Ground (a) and the deemed planning application

7. Aside from the single storey element of the rear extension, discussed above, there have been some significant deviations from the scheme the subject of the 2014 planning permission. Chief amongst these are the steeper roof pitch culminating in a crown roof, the lack of a setback from the front of the house on the first-floor side extension and associated roof works including side dormers, the proximity of the side elevations of the first floor rear extension to the property boundaries, and the inclusion of a balcony within the rear roof slope. The main issues arising from these are the impact on the character and appearance of the area and the effect on the living conditions of neighbours.
8. Development plan policies related to these issues include Policy CS5 of the Core Strategy (CS) which aims to ensure that development respects local character, and Policy DM01 of the Development Management Policies Development Plan Document (DMP), which aims to protect Barnet's character

² Ref. F/01608/14

³ Ref. F/00775/14

and amenity. Weight must also be accorded to the Council's Supplementary Planning Document: Residential Design Guidance (SPD) which was adopted in April 2013. This provides detailed residential design guidance on issues such as character and density.

9. The aspects of the development that are particularly noticeable in the street scene are the side extension and the roof. The first floor side extension has been built level with the back of the central bay, well forward of the neighbouring house on that side, and about 1m forward of the permitted side extension. Seen in combination with the new roof form these elements give the property an incongruous top-heavy and overly dominant appearance, exacerbated by the elevated position of the building in the street scene. The lack of any set-back of the side extension and set-down of the roof line is also contrary to the SPD guidance which advises that extensions should normally be subordinate to the original house and not be overly dominant, in the interests of harmony.
10. The street has some variation in roof form and pitch, but the effect of the steeper pitch of the crown roof in this case is to unbalance the building, with the tall side dormers, which sit close to the roof edge, adding to an impression of excessive bulk at roof level.
11. Overall, the building as altered is somewhat overbearing and intrusive and does not sit well in the street scene. As such it conflicts with CS Policy CS5 and DMP Policy DM01.
12. At the rear, the two storey extension extends well beyond the main rear elevations of the dwellings on either side. By virtue of height and proximity, and the relatively enclosed nature of the gardens, I consider it likely that the extension will appear oppressive and overbearing when seen from the rear gardens of those properties, and thus harmful to the living conditions of their occupiers. The proximity, depth and height of the single storey extension and the bulky appearance of the roof are likely to reinforce the impression of loss of outlook.
13. The inclusion of a small balcony in the rear facing roofslope is also likely to have a detrimental impact on the living conditions of neighbours to the south in terms of privacy. A rear facing dormer was approved in 2014, but there is a considerable difference between the presence of a balcony and that of, effectively, a bedroom window. Much the same can be seen from both, but there are likely to be material differences in how they are used, and how they are perceived by others. The presence of this elevated balcony is likely, in my view, to cause a perception of significant overlooking and loss of privacy in some of the rear habitable rooms and the gardens of the dwellings on Bridge Lane directly to the south of the appeal property. There is little scope to mitigate this impact through landscaping on the appeal site itself.
14. The Council has also expressed concern about the potential for use of the roof of the single storey extension as a roof terrace, in part due to the fenestration in the first floor rear extension which includes glazed doors leading onto the roof. Use of the roof as a terrace would harm the privacy of the properties on either side. It is a legitimate concern, but one that could be dealt with by condition.

15. Overall however I consider that the development adversely affects the living conditions of neighbours, and hence conflicts with DMP Policy DM01.

Other considerations

16. It has been submitted that the disability of one of the appellants was a factor in determining the manner in which the property was extended and altered. However, it has not been made clear how that required such significant departures from the scheme approved in 2014, but in any case personal circumstances will seldom outweigh the more general planning considerations, and it is likely that the building would remain long after the current personal circumstances cease to be material.
17. I have also been referred to other properties in the area which have been significantly extended or altered, but each application and appeal must be considered primarily on its own merits.

Conclusion on ground (a)

18. The unauthorised extensions and alterations have resulted in a building that does not sit comfortably in the street scene. It also harms the living conditions of the occupiers of neighbouring properties. The development is contrary to the development plan for the Borough, and there are not material considerations sufficient to outweigh the conflict with the development plan. For this reason, having considered all other matters raised, I conclude that the appeal on this ground should fail and that planning permission should not be granted.

Ground (f)

19. An appeal on ground (f) is that the steps required exceed what is necessary to remedy the breach, or harm to amenity. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the purpose of restoring the building to its condition before the breach took place, but where there is an extant planning permission section 173(4)(a) indicates that the breach can also be remedied 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. The appellants argue that a requirement to comply with the extant planning permission Ref. F/00775/14 would avoid the unsustainable, wasteful and excessive use of materials and energy that would result from complete demolition of all of the unauthorised extensions.
20. Having regard to the judgement in *Tapecrown*⁴, which emphasised that any “obvious alternative” to full demolition which would overcome “the planning difficulties at less cost and disruption than total removal” should be considered, I consider that it would be appropriate in this case to vary the requirements as proposed.

Ground (g)

21. An extension of the time for compliance to 1 year is sought in order to enable the appellants to enter into pre-application discussions with the Council before

⁴ *Tapecrown Ltd v First Secretary of State and Anr* [2006] EWCA Civ 1744

applying for planning permission for an alternative form of development. However, the period allowed should be sufficient to devise an alternative scheme and see the planning application process through, if that is what the appellants decide to do. The Council has powers to extend the period for compliance, and it has indicated that it would exercise those powers in the appropriate circumstances. The time for compliance is reasonable in my view and the appeal does not succeed on this ground.

Paul Dignan

INSPECTOR