
Appeal Decisions

Hearing held on 2 February 2017

Site visit made on 2 February 2017

by Simon N Hand MA

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

Decision date: 13 February 2017

Appeal A: APP/N5090/C/16/3157884

Land at Oaklands, Lime Grove, London, N20 8PX

- 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 Dr Mohammed Akmal against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, ENF/00394/15 was issued on 5 August 2016.
 - The breach of planning control as alleged in the notice is without planning permission the construction of a two storey dwellinghouse with rooms in the roof space and basement.
 - The requirements of the notice are 1. Demolish the dwellinghouse. 2. Permanently remove all constituent materials resulting from the works in 1. above from the site.
 - The period for compliance with the requirements is 8 months.
 - The appeal 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.
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Appeal B: APP/N5090/C/16/3157885

Land at Oaklands, Lime Grove, London, N20 8PX

- 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 Dr Serap Akmal against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The appeal is identical to Appeal A above except there is no ground (a)
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a two storey dwellinghouse with rooms in the roof space and basement on land at Oaklands, Lime Grove, London, N20 8PX referred to in the notice, subject to the following condition:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development otherwise permitted by any of Classes A, C, D or E of Part 1 of schedule 2 of that order shall be carried out within the curtilage of the dwelling hereby approved.

Background to the Appeals

2. The appellants occupy the house at Oaklands, which stands at the head of Lime Grove, a leafy and narrow cul-de-sac. They obtained planning permission in 2013 to demolish it and replace it with a larger dwelling with a basement. Demolition began in July 2013 and works to construct the new dwelling followed. Because of the difficulty of access along Lime Grove, the appellants intended to use the village hall car park as an offload point and ferry materials across an adjacent field into the back of the site. Unfortunately the owner of the field withdrew his permission. The only alternative was a wide right of way that runs down the side of Oaklands across the head of Lime Grove, and eventually the necessary permissions were obtained to temporarily close this footpath to the public. I saw on the site visit it was still closed, as it had been reseeded following restoration.
3. When completed the dwelling differed from the plans in a number of respects. These differences were sufficient to convince the Council they had built an entirely different dwelling, which is what the enforcement notice alleges. The Council further argued that because of this, the original 2013 planning permission was never implemented and has now become time expired. The appellants argue this is incorrect and all that has happened is a deviation from the details on the plans hence a breach of condition has occurred and the allegation in the notice is incorrect. The appellants characterised this as a ground (c) appeal, but in reality it relates more to the ground (a)/(f) and raises a question about the validity of the notice, which I shall deal with first.

Main Issues

4. Consequently, the main issues in this appeal are firstly the legal situation, that is whether the allegation is correct and whether the 2013 planning permission is still extant. For the ground (a) whether the building is inappropriate development in the green belt and if not whether it is contrary to the Council's Core Strategy and Development Plan Document. For the ground (f) whether the Council agree the changes outlined in part 5 of the Statement of Common Ground are sufficient to return the building to that which was granted planning permission and for ground (g) whether more time would be needed, depending on the outcome of ground (f).

The Legal Situation

5. It is clear to me that the notice is correct in that a different dwelling has been constructed from that which received planning permission. The extra height in the ridge, the different design to the dormer windows, the roof lights, the roof infill with its triangular window, the changed fenestration on three sides, the modern balustrade, lack of a chimney and an entire second floor of accommodation in the roof have all conspired to create a house that looks quite different from that in the plans. It has changed from a large cottagey 'tudorbethan' style house to a more obviously 'modern' design. Given this, the notice does not seem to me to be incorrect in alleging the construction of a building without planning permission.
6. This is not, however, to say that the 2013 planning permission was never implemented. Fortunately I do not need to determine that question as the

Ahmed¹ judgement makes clear, even if it has expired, the planning permission can still be considered as a fallback option. In this case there have been no changes to policy and no significant change to the character of the area that would suggest the Council would now reach a different decision on the 2013 planning permission. Bearing in mind there has always been a large house on the site it is not unreasonable to assume another large house is acceptable. The appeal turns on what sort of large house. Consequently, I consider the allegation is correct, but whether the 2013 permission is extant or not does not affect its position as a fallback.

The Appeal on Ground (a)

7. The site lies in the green belt and redevelopment of dwellings in the green belt is covered by policy DM15² and NPPF paragraph 89. The site is also within the Totteridge conservation area, more specifically character area 3 "Totteridge Village". Policy DM06 seeks to preserve or enhance the character of the conservation area, whilst DMO1 and the Residential Design Guidance SPD seek to ensure high quality design that responds to local character and respects scale, mass, form etc of surrounding buildings.

The green belt

8. Paragraph 89 of the NPPF states that all new buildings in the green belt are inappropriate unless they meet one of the listed exceptions. One exception is for replacement buildings, provided "the new building.....is not materially larger than the one it replaces". The key issue here is whether the building as built is materially larger than the original one that it replaced.
9. There is some dispute as to whether the basement should be included in the figures or not, but setting that aside for the moment, the original dwelling had an above ground volume of 1329m³. The corresponding volume of the building granted consent by the 2013 permission would have been 1559m³. This, the Council confirmed at the hearing, was in their view, not materially larger and so was not inappropriate development. I have been given no reason to disagree with this view. The above ground volume of the building as built is 1599m³, which is 40m³ or 2.6% larger than the approved building. The floor area of the dwelling as built is actually less than the approved version due to a large open entrance void, assuming one includes the original loft which is now accommodation. Another way of looking at the new building is the extra height caused by the increase in ridge height. As one looks at the front of the house the main feature is a large gable, more or less in the centre, which is the same size as in the 2013 permission. The ridge behind the gable to the left is 0.5m higher than the 2013 permission and 1m higher to the right of the gable. This new ridge line is still marginally below the ridge of the front gable, which remains the tallest point of the dwelling.
10. The question is simply whether this building is materially larger than the original dwelling. Bearing in mind the 2013 planning permission was considered not to be so, I do not think the alterations have made a material difference as far as green belt policy is concerned. I accept the basement is larger than that approved, but it is still contained within the building envelope. It is a genuinely underground basement, the only evidence for which is several

¹ Ahmed v SSCLG [2013] EWHC 2084 Admin

² Barnet's local Plan, Development Management Policies (2012)

glass lights set in the decking around the foot of the walls of the dwelling. In my view this has no impact on the green belt and it is correct not to include it in the calculations. I consider there is little between the dwelling as built and the approved dwelling and so, like the latter, it is not materially larger than the original. Consequently, I consider the dwelling as built is not inappropriate development in the green belt.

11. Policy DM15 has an extra criterion that a replacement building should not have "an adverse impact on the openness of the area or the purposes of including land in the green belt". In this case there is no sense in which the dwelling as built has any greater impact on the purposes of including land in the green belt than the original and I cannot agree that it encroaches into the green belt more than the approved dwelling nor does it cause any "sprawl into the green belt" as the Council seem to allege. The footprint of the 'as built' dwelling is virtually the same as that approved and the extra height in the ridge is marginal, and offset by the smaller dormer roofs. The impact on openness is thus no different than the approved dwelling which was considered acceptable by the Council. The proposal is thus in accord with policy DM15.

The conservation area

12. The Character Appraisal for the conservation area describes Lime Grove as "a narrow leafy lane of mainly chalet type bungalows of mediocre design". This seems a little harsh to me. I saw there were a wide variety of houses in Lime Grove, with a range of design styles, several of which seemed to me to be of quite high quality, others were rather more ordinary. I was asked to note Devoran, which was just below the appeal site, and had recently been altered significantly to create a modern bungalow which the Inspector who allowed the appeal³ described as emulating "the clean lines of modern architecture" which contributed to "the natural evolution and mixture of the conservation area's character and appearance".
13. Whatever one's views on the quality of the architecture of Lime Grove it is clearly peripheral to the historic centre of Totteridge and is part of a larger area of what seems to be post-1960s housing that nevertheless is contained within the conservation area boundary. Careful attention still needs to be paid to design in this area, but there is no overall style or feel which an individual house should pay respect to, and so a modern design is not inherently out of place in Lime Grove and the development of a well-designed dwelling on this plot need not impact on the character and appearance of the conservation area.
14. An Article 4 Direction covers part of the conservation area, which, amongst other things, removes the right to change fenestration details. However, this Direction does not extend as far as Lime Grove and I agree with the appellant this does suggest that this part of the conservation area is considered less sensitive to such detailed matters than the main area covered by the Direction. This further supports my view that a modern dwelling need not necessarily fail to preserve the character and appearance of the conservation area.

³ N5090/D/13/2205649 Issued 30 December 2013

Character and appearance

15. The new dwelling has kept the fenestration style of the approved version on the front, but gone for a more obviously modern feel on the other faces of the building. Yet even the front with the flat, dark grey window frames, carried through onto the fascia and lintels fits in with the less cluttered windows and doors elsewhere on the dwelling, and as the Inspector said of Devoran, displays the clean lines of modern architecture. The raised ridge and flat roof dormers on the side as well as the 'V' shaped rooflight on the south elevation and the absence of the chimney stack have all contributed to a less 'cottagey' look, but the overall impression is now of a striking and impressive modern building. There was concern that the higher ridges give the appearance of a taller and bulkier roof, and this does seem to be the case on the plans. However, when viewed on site, Oaklands stands on rising ground at the top of the cul-de-sac. From in front of the gates and down Lime Grove as far as the right angle bend, the large front gable is the dominant feature and the ridges appear to be distinctly subordinate. The same is true of views from the footpath to the north of the site. Although the path to the south was still closed I was able to see the building from the edge of the garden and the impression of a well-proportioned dwelling was maintained.
16. From the highest point at the back garden and the scrub land to the west which belongs to the village hall, the rear and side of the dwelling were prominent but again with large gables which reduce the impact of the ridge. The 'V' shaped rooflight and glass balustrade both add to the sense of a quality contemporary design, with considerable articulation and movement in the various roof planes. Although the dwelling can be seen clearly from the rear and the top of the roof above a tall conifer screen is visible from the village hall, and quite possibly also visible from one or two upstairs windows in nearby houses, because the design of the building is of good quality the fact it can be seen is not an issue.
17. Much was made of the fact that the design did not mimic the nearby houses in Lime Grove, but as mentioned earlier there is no clear style in the area and the contemporary look fits well with its commanding position at the head of the cul-de-sac, a site which demands a better than average design. In my view, therefore, the dwelling as built not only fits into Lime Grove, but complements its surroundings. The character and appearance of the conservation area is preserved and the dwelling meets the requirements of the Council's policies, particularly DMO1, criteria (a) and (b) and the Residential Design Guidance SPD. I shall therefore grant planning permission for the dwelling subject to the conditions discussed below. There is no need to consider the appeals on grounds (f) or (g).

Conditions

18. Two conditions were requested by the Council. Firstly that the building should be retained in accordance with the latest plans, showing the as-built building and secondly that permitted development rights for Classes A, C, D and E should be removed. The appellant was content with the first, but resisted the second on the grounds that permitted development rights should only be removed in exceptional circumstances – paragraph 17 of the PPG refers.
19. In my view, however, the first condition is unnecessary as the building is complete, and the grant of planning permission on ground (a) grants permission only for the matters in the allegation, that is the building as

constructed and nothing more. However, the second condition is necessary as the site lies in the green belt. Two important elements of this appeal relate to the need for this condition. First that the building was not materially larger than the original one and secondly that it is of a high quality design. Both of those could easily be negatively affected by ad hoc extensions or garden buildings. The government sets great store by the protection of the green belt and so in this case a condition restricting extensions is required.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Paul Winter	Solicitor – Lewis Silkin
Tania Tindale	Indigo Planning
Daniel Andrews	Indigo Planning
Andrew Neil	Architect
Drs Mohammed and Serap Akmal	Appellants

FOR THE LOCAL PLANNING AUTHORITY:

James Gould	Legal
Adam Ralton	Planning

INTERESTED PERSONS:

Mr and Mrs Decio	Neighbours
Alison Cornelius	Local Councillors
Caroline Stock	

DOCUMENTS

- 1 Appellants' written response to the court cases raised by the Inspector prior to the commencement of the Hearing.