

Appeal Decision

Site visit made on 15 March 2017

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: 11 May 2017

Appeal Ref: APP/N5090/C/16/3155343

Land at 115 Leaside Crescent, London NW11 0JN

- 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 Zev Shainfeld against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 24 June 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, first floor side and roof extension, including a side dormer and the formation of a new basement incorporating a raised platform to the rear of the property within the last four years.
 - The requirements of the notice are:
 1. Restore the property to the state in which it was prior to the breach of planning control by
 - i) demolishing the part single, part two storey rear, first floor side and roof extension, including the side dormer and parts of the basement above ground level including the raised platform to the rear of the property to match the dwelling as shown on drawing no. 08-06-12_01 of the planning permission granted under the following council reference F/02659/12.
 - ii) backfilling the remainder of the basement to match the dwelling as shown on drawing no. 08-06-12_01 of the planning permission granted under the following council reference F/02659/12.
 2. 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: seven months after this notice takes effect
 - 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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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with corrections.

Matter concerning the enforcement notice

2. The drawing cited in the requirements of the notice shows both the existing dwelling and the proposed development subject to permission Ref F/02659/12. It is clear from the notice that its aim is to restore the property to the condition it was in prior to the breach of planning control, so for the sake of clarity I will correct the notice to refer to the dwelling shown as existing in the drawing.

Ground (c) that the matters alleged are not a breach of planning control

3. In an appeal on ground (c) the onus is firmly on the appellant to demonstrate on the balance of probabilities that, at the time that the enforcement notice
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- was issued, the development as alleged to have been constructed did not amount to a breach of planning control.
4. Several planning permissions were granted for additions to the appeal property. The appellant contends that each element of the development the subject of the notice has been approved such that the development is not in breach of planning control. However no details are supplied that would correlate all of the matters stated in the notice, to an approved scheme.
 5. Permission was granted in 2012 under Ref F/02659/12 for a "*single storey front extension including new front porch, part single, part two storey rear extension and first floor side extension, formation of new basement, including rear lightwell, extension to roof and side dormer to facilitate a loft conversion*". Condition 2 required the development to be carried out in accordance with approved drawings 08-06-12_01 and 08-06-12_02.
 6. Considering as whole the development that has taken place, I am satisfied that the 2012 permission was begun and is extant. However the extensions fail to comply with the approved scheme in some respects. These include: the flat-roofed side dormer, as opposed to the approved hipped roof design; the new small pitched roof element that sits atop the rear extension immediately above the basement storey; erection of stairs leading from the terrace that are on the wrong side to that approved; the full height and enlarged windows on the rear extension above the basement; and the merging of the two approved openings to the rear garden at basement level, into a single large set of patio doors with added windows to either side. It would also appear that the basement is considerably higher than the rear ground level shown in the approved plans.
 7. In addition decking has been attached to the rear of the property. The Council contends, and from my observations on site I have no reason to disagree, that the combined area of the new extensions and the decking covers more than 50% of the ground area around the original dwelling house. This would breach the threshold for permitted development set out in Class E.1(b) of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). I am unaware that it benefits from any other planning permission and no evidence has been provided to the contrary.
 8. The appellant refers to the single storey 5.8m deep rear extension approved in 2013 under Ref F/03931/13 under the prior approval procedure in the GPDO. However in comparing the approved drawings for both permissions, the extension as built far exceeds the 5.8m proposed to be built from the rear wall of the original dwellinghouse. The appellant's reliance on the 2012 scheme has prevented the permitted development scheme being realised because the rear extension has already been built beyond the depth at which prior approval might be obtained. It is established that implementation of one permission will preclude reliance on a later permission, if it is not physically possible to implement it in light of what has been done to implement the first.¹
 9. I am therefore satisfied that the appellant has failed to establish on the balance of probabilities that the development stated in the enforcement notice fully complies with a planning permission, whether granted under the GPDO or expressly by the Council. Consequently, the matters stated in the notice

¹ Pilkington v SSE [1973] 26 P&CR 508

constituted a breach of planning control at the date of its issue and therefore the appeal on ground (c) must fail.

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

Main issues and reasons

10. The main issues are: firstly, the effect of the development on the character and appearance of the area; and secondly, its effect on living conditions of present and future occupiers of neighbouring properties.

Character and appearance

11. No 115 is one of a pair of semi-detached dwellings in a predominantly residential area. This pair and adjoining properties have reasonably long rear gardens but the dwellings, including No 115 generally take up most of the width of the plots. The rear elevation at No 113 has a prominent roof addition, however its rear elevation and the counterpart semi-detached dwelling at No 117 have rear projections that are generally restrained in size and scale.
12. I can best describe the overall appearance of the successive additions that have taken place at the rear of the appeal property, as akin to a series of large container-like structures placed on top of one another across virtually the full width of the plot, projecting to a considerable depth into the rear garden. In particular the encroachment into the garden area and the increased size and bulk of the extensions dominate the natural surroundings of the property as it would have been prior to the breach of planning control. Further, the overall effect is of a significantly overbearing development that fails to respect the more traditional form and proportions of this semi-detached house.
13. I conclude that the development causes substantial harm to the character and appearance of the host property as well as to the close-knit and more modestly stepped rear elevations of the immediately surrounding dwellings. The harm is contrary to Policy CS5 of the Barnet Core Strategy 2012 (CS) and Policy DM01 of the Council's Development Management Policies DPD 2012 (DMP). The policies aim to ensure that development respects distinctive local character by, among other matters creating buildings of high quality design.

Living Conditions

14. It is difficult to estimate the extent to which, if any, the increase in size of the approved scheme as built has caused loss of natural light to adjoining properties. However its increased bulk and overbearing appearance results in a loss of outlook from within Nos 113 and 117. Moreover from the rear garden of the appeal site, the basement appears as an above-ground storey, the roof of which comprises a terrace that overlooks properties on either side of No 115 at a considerable height, causing harm to living conditions of those occupants.
15. Furthermore the evidence suggests that the expanse of glass patio doors and balcony, combined with night-time illumination, have resulted in a use that causes some noise and disturbance in what is a quiet residential area. The increase in footprint of the new extension also reduces the original garden, bringing it closer to the properties along Brookside Road. The overall effect of the unauthorised development is unneighbourly in the extreme.

16. I conclude on this issue that the development causes harm to the living conditions of occupiers of surrounding properties, in particular an unreasonable and very unneighbourly overlooking and loss of privacy. The harm is significant and contrary to DMP Policy DM01 in that the development has failed to provide adequate living conditions for present and future occupants of surrounding properties.

Other matters

17. The appellant has stated he will refer to the 'fallback' position detailing what could be built in any event, but no details have been provided. Clearly the 2012 permission is available but not in combination with the prior approval as the appellant intends. That said, the differences between the 2012 scheme and what has been constructed are not in my judgement so minimal as to justify planning permission being granted for the unauthorised development. The "as built" development results in substantial harm compared to the more acceptable scale in the 2012 approval. Therefore the fallback argument has little weight.
18. It is suggested that the development is in keeping with similar developments in the local neighbourhood but this assertion is not supported with specific examples. I saw that in the general vicinity of the appeal site some properties have substantial and varied additions. I have not been made aware of the circumstances under which any of these additions were constructed but they do not provide a compelling reason to allow unacceptable development on the appeal site, contrary to development plan policies.

Conclusion on ground (a)

19. The development has resulted in a substantial deterioration in the character and appearance of the rear elevations of the host and surrounding dwellings, and gives rise to overlooking and loss of privacy to present and future occupiers of immediately adjacent properties. The harm caused is in fundamental conflict with the development plan. The appeal on ground (a) therefore fails and planning permission on the deemed application is refused.

The appeal on ground (f)

20. In appealing on ground (f), it has to be demonstrated that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breach of planning control and that lesser steps would fulfil that purpose.
21. The only argument made with regard to this ground is that there is no material harm caused by the existence of the basement as constructed and therefore no injustice would be caused by its retention. However the issue of harm caused by the basement is addressed in consideration of the appeal on ground (a).
22. It might be argued that an obvious alternative would be to make the development comply with the 2012 permission. However the appellant has not set out an alternative that would provide a complete remedy to the breach and the combination of permissions that he relies on is not possible to implement under the rule in Pilkington. Once complied with, the notice does not prevent lawful exercise of development rights. Equally, a modified permission can always be sought which, if granted, would by s180 of the Act render the notice of no effect in so far as it is inconsistent with that permission.

23. As the enforcement notice does no more than identify the minimum work necessary to remedy the breach of planning control in accordance with s173(4)(a) of the Act I find that the requirements of the notice are not excessive.

24. The appeal on ground (f) therefore fails.

The appeal on ground (g)

25. The appellant contends that a compliance period of seven months, as prescribed by the enforcement notice, is too short and it should be extended to 12 months. He considers that eleven months would be needed to allow the contractor who undertook the works, to carry out works to comply with the notice.

26. It is suggested that the contractor will need 12 weeks' notice to schedule the works which will take approximately another 5 months. Whilst it may be convenient for the original contractor to be engaged, the scope of the works is readily ascertainable from examination of the approved scheme and there is no compelling reason why they would have to be carried out by the same person. I see no reason why an overall period of seven months would not be an adequate time within which to comply with the requirements of the notice. The appeal on ground (g) therefore fails.

Conclusion

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

28. It is directed that the requirements of the enforcement notice be corrected as follows:

- In i) delete "as shown" and replace with "shown as existing"
- In ii) delete "as shown" and replace with "shown as existing"

29. Subject to these corrections 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.

Grahame Kean

INSPECTOR