
Appeal Decisions

Site visit made on 21 March 2018

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 May 2018

Appeal A Ref: APP/N5090/C/17/3180189

Land at 4 Harris Close, London N11 3PG

- 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 Kai Gao against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 24 April 2017.
- The breach of planning control as alleged in the notice is: without planning permission the erection of a single storey side extension and part replacement of garden lawn with paving area.
- The requirements of the notice are:
 - 1) demolish the single storey side extension;
 - 2) remove paving tiles from lawn area to the side and rear of the house and restore grassed area to previous condition as shown on the Existing Site Plan number 1608-PLN-02 of refused planning application reference 16/8072/HSE dated 15 March 2017;
 - 3) remove all building materials from the site.
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the ground set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Appeal B Ref: APP/N5090/W/17/3176765

Land at 4 Harris Close, London N11 3PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Kai Gao against the decision of the Council of the London Borough of Barnet.
- The application Ref 16/8072/HSE, dated 20 December 2016, was refused by notice dated 15 March 2017.
- The development proposed is the erection of a single storey side extension.

Summary of Decision: The appeal is allowed.

Preliminary Matters

1. The description of the land to which the enforcement notice relates cross refers to an area hatched black on a plan that accompanies the notice. The land as hatched black includes the footprint of the dwelling and an area to the rear of the property. The hatching does not however include the land to the side of the dwelling within which the extension and some of the paving has been

undertaken. The land is also described as being at 4 Harris Close which is sufficient to identify the property to which the notice relates. It is clear that the appellant has understood this, the description of the breach and what developments the notice relates to. I am satisfied that this defect in the notice can be corrected by altering the description of the land and deleting the plan from the notice, using the powers available to me by reason of s176(1)(a) without causing injustice.

2. The hardstanding with metal pergola to enable covered parking of vehicles as well as the paving to the front of the dwelling are not included within the described breach of planning control on the enforcement notice or the description of development on the planning application. I cannot increase the scope of the enforcement notice. Furthermore, elevation drawings are not provided for the pergola within the planning application. For the avoidance of doubt I have therefore treated these developments as being outside of the scope of both appeals.
3. During the course of the appeal, the appellant included a proposal for the erection of screening towards the eastern side boundary of the site. The Council and neighbours have had an opportunity to comment on this matter during the course of the appeal and I will take it in to account.

Main Issue in both appeals

4. The effect of the appeal extension and paving on living conditions at No 60 Hatley Close with particular reference to outlook and privacy.

Reasons

5. The appeal site is part of recent development of 4 dwellings which are positioned to the rear of the surrounding older residential properties. These dwellings were approved at appeal (ref:APP/N5090/A/11/2154738, referred to as 'the previous appeal') and were subject to a condition removing some permitted development due to concerns about the amenities of neighbours and the character of the area. The effect of the condition is that planning permission is required for the extension and the hard-surfacing but there is no presumption that planning permission should not be granted. Such developments need to be considered on their merits.
6. The roof of the single storey extension constructed to the eastern side, is much lower than the eaves of the main roof of the dwelling and is subordinate to the overall appearance of the dwelling. In this position set away from the boundary, the extension is not close enough or high enough to create any additional enclosure of any of the gardens to the east. It is not overbearing for the occupants of the neighbouring properties through its height or proximity. The Planning Inspector in the previous appeal stated that the development being more than 18m from the dwellings in Hatley Close, was sufficient to avoid an overbearing impact. There was no single storey element for that Inspector to consider who was commenting on that particular proposal. In making the comment the Inspector was not ruling out future development which now needs to be assessed according to present circumstances.
7. The extension has double glazed doors on its eastern side elevation which lead to the patio area and beyond that to a lawn and planted areas. The doors face towards the rear elevation and garden area of No 60 Hatley Close with the

appeal development being higher than that neighbouring property. The plan submitted with the planning application showing the dwelling prior to the carrying out of the unauthorised development shows a large full length glazed patio door on the eastern side of the dwelling. The windows within the side of the built extension facing towards No 60 Hatley Close are however 3.8m closer than those original side windows. The distance between the properties as quoted by the Council is now approximately 14.8m.

8. Local Plan Development Management¹ (LPDM) Policy DM01 expects that development proposals should be designed to allow for adequate privacy and outlook for adjoining occupiers. Local Plan Core Strategy² (LPCS) Policy CS5 requires that development should respect the local context and maximise opportunity for community cohesion. The Council's Residential Design Guide (RDG) set outs non-statutory standards to assist the implementation of these policies. It recommends that there should be a minimum distance of about 21m between properties with facing windows to habitable rooms. However the RDG also acknowledges that shorter distances may be acceptable where there are material justifications. It refers to situations where less distance can be acceptable subject to innovative design solutions to avoid overlooking such as angled windows which have been utilised at first floor level of this dwelling. Screening is also referred to.
9. The guideline separation distance would not be achieved. I did not have a clear view of the gardens or windows in the rear of the neighbouring dwellings when standing within the extension as the boundary fence and trellis help to obscure these. However, the degree of overlooking towards the garden and windows in the rear of No 60 when inside the extension is greater than it would have been from the dwelling previously given the position closer to the boundary and the higher vantage point relative to No 60.
10. Views towards the garden of No 60 from the wider paved area are also constrained to a degree by the boundary fence and trellis but it is possible to view down towards the neighbouring gardens and the windows in the rear of the dwelling. The Council acknowledges that it is very difficult to establish how frequently the occupants of the dwelling will use the paved surface. At times when occupants of the dwellings are most likely to be enjoying their gardens such as in dry warm weather, in my opinion there would be greater use of a paved area rather than a softer surfaced, less even lawn. Give the difference in the height and level of use this will create greater potential for overlooking towards the neighbouring properties and No 60 would be most affected.
11. The development therefore currently leads to greater overlooking than would have been the case beforehand. However, I consider that the proposal to include a screen in-set from the existing boundary fence at the level of the side paving would interrupt views of the adjoining properties from both the extension and the patio. This screen could be positioned away from the boundary to prevent it having an imposing impact upon the adjoining neighbours but at the same time it could satisfactorily safeguard the privacy of adjoining residents. Such a solution would need to be subject to further details being submitted for agreement through a planning condition which I have therefore imposed on both appeal decisions. The retrospective nature of the

¹ Barnet's Local Plan, Development Management Policies, Development Plan Document, adopted September 2012

² Barnet's Local Plan, Core Strategy, Development Plan Document, adopted September 2012

development has required the wording of the condition to be structured so that the development would not be lawful if the requirements are not fully met.

12. In conclusion, the harm through a loss of privacy for the occupants of No 60 Hatley Close can be overcome through the imposition of a planning condition. Subject to that condition, the amenities of those occupiers would not be harmed and the local context would be respected. In relation to the main issue the development would not materially harm living conditions enjoyed within that property. This would comply with LPDM Policy DM01 and LPCS Policy CS5 as well as the requirement in paragraph 17 of the National Planning Policy Framework to secure a good standard of amenity for all existing and future occupants of land and buildings.

Formal Decision Appeal A

13. It is directed that the enforcement notice be corrected: by the deletion of the words "shown edged and hatched black on the attached plan" and the deletion of the plan. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. 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 single storey side extension and part replacement of garden lawn with paving area on the land at 4 Harris Close, London N11 3PG, subject to the following conditions:

The extension and paving hereby permitted shall be removed within 3 months of the date of failure to meet any one of the requirements below:

- i) Within 3 months of the date of this decision full details of a scheme to provide a privacy screening to the eastern side of the dwelling at 4 Harris Close shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for implementation.
- ii) Within 11 months of the date of this decision, the scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Formal Decision Appeal B

14. The appeal is allowed and planning permission is granted for the erection of a single storey side extension at Land at 4 Harris Close, London N11 3PG in accordance with the terms of the application, Ref 16/8072/HSE, dated 20 December 2016, subject to the following condition:

The extension and paving hereby permitted shall be removed within 3 months of the date of failure to meet any one of the requirements below:

- i) Within 3 months of the date of this decision full details of a scheme to provide a privacy screening to the eastern side of the dwelling at 4 Harris

Close shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for implementation.

- ii) Within 11 months of the date of this decision, the scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Andy Harwood

INSPECTOR