



Appeal Decisions

Site visit made on 5 August 2019

by Gareth Symons BSc(Hons) DipTP MRTPI

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

Decision date: 20 August 2019

Appeal Refs: APP/N5090/C/19/3224820 & 3224821

Land at 12 Dorchester Gardens, London NW11 6BN

- 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 Mr Kenneth Ozor and Mrs Genevive Ozor against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 7 February 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a raised patio, railings and associated steps.
 - The requirements of the notice are: 1. Remove the railings; 2. Demolish the raised patio on either side of the staircase as shown in red on the attached photographs; 3. Remove all constituent materials from the works listed in 1 and 2 above from the property.
 - The period for compliance with the requirements is: 2 months after this notice takes effect.
 - Appeal Ref: APP/N5090/C/19/3224820 is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal Ref: APP/N5090/C/19/3224821 is proceeding on grounds (f) and (g) only.
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Formal Decision

1. Appeal Ref: APP/N5090/C/19/3224820 is allowed on ground (a), the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under s177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a raised patio, railings and associated steps, as shown on the plan and the photograph attached to the notice, and subject to the following condition:

The building operations (the patio and associated fence and steps) hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 3 months of the date of this decision a scheme for fences or other means of enclosure on the sides of the patio shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
- ii) If within 11 months of the date of this decision 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 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.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

The ground (a) appeal under 3224820

2. The main issue is the effect on the living conditions of the occupiers of 10 and 14 Dorchester Gardens in particular, with reference to their privacy.
3. The reasons for issuing the enforcement notice include concerns that the patio and the associated steps cause harm to the amenities of neighbours due to overlooking and a loss of privacy. However, the enforcement notice does not require the steps or the rest of the patio from the top of the steps back to the single storey rear wall of the house to be removed. It is only the sections of raised patio either side of the steps that would need to be demolished and taken away. Thus, the notice is underenforcing and by virtue of s173(11) of the 1990 Act, once the notice was complied with, the steps and the rest of the patio would have planning permission. Therefore, even if the ground (a) appeal is refused and the enforcement notice upheld, there would be views from authorised positions on the steps and the remaining part of the patio.
4. However, I accept the Council's point about how the existing railings at the edge of the current patio make it safe to use given the drop down to the level of the garden below. Under the circumstances described above, a patio of reduced depth would not necessarily have such an authorised means of enclosure. Particularly in view of the family occupation of the house, there would need to be some form of balustrade which the appellant accepts. It is not clear how that would be provided or whether that might need planning permission. Without such a safety feature, it seems unlikely that the outside space on the reduced patio would provide a suitable space to regularly occupy.
5. Furthermore, there was a raised patio at the back of the appeal property before the house was extended. It is difficult to tell from the submitted photographs, and from my site visit, where the limits of the previous patio were. However, what was there has gone and, as such, it is not a fallback position that can be relied upon in terms of comparing views from the earlier patio to the one that is there now. It does though appear to be accepted by both sides that the patio now extends further out into the rear garden. I shall consider the main issue against this background.
6. There is planting along the boundary with No 14. However, it is not dense enough to prevent views back towards the rear windows of next door and down into their garden next to the patio. These could be prevented by putting up a fence, or other solid boundary, on the side edge of the patio to around 1.8m

- high. That would roughly equate to the height of the existing vegetation and would thus not be an overbearing feature when viewed from No 14.
7. Next to No 10 there is no planting. The views from the patio towards the furthest away ground floor window are very oblique and relatively long and thus they do not seriously invade the privacy of that room. There is a nearer set back window which, although the views are still oblique, can be seen into. There are also clear views down in the garden/patio area next door where the neighbours should, in my view, be able to expect a relatively secluded space. An enclosure along this edge of the patio high enough not to see over would prevent such harmful overlooking. Given the overall size of the space across the back of No 10 and the distance from the neighbour's windows, such an enclosure would not have an undue enclosing or dominating effect.
 8. There are views from the patio down over more of the adjoining gardens than just into the spaces either side of the patio. However, there are already views from the two sets of ground floor full height glazed doors and the upper floor rear windows in the rear of the appeal property over the rest of the neighbours' gardens. This is also a suburban area where a degree of mutual overlooking currently exists. The views from the patio have not materially worsened the extent of overlooking or loss of privacy to the rest of the gardens. There are properties at the end of the appeal site, but they are far enough away with intervening vegetation such that the occupiers of those houses have not suffered material losses of privacy.
 9. At its highest the front end of the patio is about head high. This is around the height of conventional screen fences that divide domestic back gardens which are prevalent in the area. The side walls of the patio are therefore not unreasonably high by comparison. Furthermore, the balustrade on the edge of the patio is a lightweight structure comprised from a lattice of thin steelwork. As a result, it does not add to the solid appearance of the walls below. The patio is therefore not a bulky or obtrusive structure and its set down position, and much smaller scale than the main house, means that it is not a disproportionate addition. Consequently, although the nearest neighbours may be able to see the structure, it does not appear incongruous.
 10. In view of the above, and having had regard to all other matters raised, I find that subject to a condition that secures side boundary screens the development would not harm the living conditions of the neighbours at 10 and 14 Dorchester Gardens in particular, with reference to their privacy. The development accords with the amenity protection aims of policy DM01 from the London Borough of Barnet Local Plan and the Council's Residential Design Guidance SPD.
 11. The purpose of the condition set out above under the Formal Decision is to require the appellant to comply with a strict timetable for dealing with the provision of screen fences which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters

in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

12. I did consider whether to just require a solid fence to be erected without the Council seeing or approving its design. However, as I do not know what that fence or other means of enclosure would look like, and I consider it is important to ensure its design is in keeping with the character and appearance of the area, I have found it appropriate to require the design of it to be submitted to and approved by the local planning authority.

Conclusion

13. For the reasons given above, I conclude that the appeal on ground (a) under Appeal Ref: APP/N5090/C/19/3224820 succeeds. I shall grant planning permission for the development as described in the notice. The appeals on grounds (f) and (g) for both appeals do not therefore fall to be considered.

Gareth Symons

INSPECTOR