
Appeal Decisions

Site visit made on 9 July 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 02 September 2019

Appeal A: ref. APP/N5090/C/18/3210949 19 Station Road, The Hale, Edgware HA8 7JE

- 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 by Mr Salamuddin Jabarkhyl against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, ref. ENF/1125/18, was issued on 7 August 2018.
 - The breach of planning control alleged in the notice is without planning permission the construction of a (1) fence; (2) timber canopy with (3) a supporting brick wall at the rear and the installation of (4) a permanent walk-in fridge and food storage unit within the enclosed area.
 - The requirements of the notice are to:
 1. Restore the property to the state in which it was prior to the breach as per pre-existing ground floor plan no 19-PP-201 included as part of planning application refused on 23 January 2018 under the reference 17/7948/RCU by:
 - i. Demolishing the (1) fence; (2) timber canopy with (3) supporting brick wall at the rear;
 - ii. Removing the (4) permanent walk-in fridge and food storage unit within the enclosed area.
 2. Permanently remove all constituent materials resulting from the works in Requirement 1 above from the property.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. This case is exempt from the prescribed fees, and the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.
-

Appeal B: ref. APP/N5090/W/18/3205398 19 Station Road, The Hale, Edgware HA8 7JE

- 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 Salamuddin Jabarkhyl against the decision of the Council of the London Borough of Barnet.
 - The application ref. 18/2082/RCU, dated 4 April 2018, was refused by notice dated 1 June 2018.
 - The application is for retrospective planning permission for a ground floor rear extension (revised application).
-

Decisions

Appeal A: ref. APP/N5090/C/18/3210949

1. The appeal is allowed on ground (g), and I direct that the enforcement notice be varied by:
DELETION of *3 months*; and,
SUBSTITUTION of *6 months* as the period for compliance.
Subject to this variation 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.

Appeal B: ref. APP/N5090/W/18/3205398

2. The appeal is dismissed.

Preliminary matters

3. I understand the development subject of the notice was built by the previous owner of the property. On discovering it was unauthorised the current owner made a planning application for its retention. This application was refused on 8 June 2017¹. A further application was made in April 2018 and this is the subject of Appeal B.
4. I also understand that a previous enforcement notice was issued on 5 July 2017, but that this was withdrawn as a result of changes made to the extension². I have no further detail of this matter.
5. The substance of the enforcement Appeal A on ground (a), the deemed planning application, and the planning Appeal B is essentially identical. The principal difference being that the planning proposal is to retain the existing structure but reduce the maximum depth from about 9.6 metres to about 8.6 metres. I have therefore determined the ground (a) appeal, the deemed planning application and the planning appeal together, making distinctions where necessary.

Background matters

6. The appeal premises is a take-away food outlet and restaurant on the north-western side of Station Road and is within a generally commercial frontage. The site backs on to property on the residential street called Garden City to the north-west, and shares a side boundary with 20 Garden City, a 2-storey end of terrace house. The land between no. 20 and no. 21 - the neighbouring house to the north-east - is open and lies directly behind the appeal site. As a result, the unauthorised structure is readily visible from Garden City.

Appeal A on ground (a), the deemed planning application and Appeal B

7. From my inspection of the appeal site and surroundings, and all that I have read I consider the main issues in the appeals to be:
 - The effect of the unauthorised development on residential amenity for occupants of the neighbouring dwelling in terms of outlook.

¹ Decision notice ref. 17/2173/RCU.

² Enforcement notice ref. ENF/00601/17, issued on 5 July 2017.

- The effect of the unauthorised development on the character and appearance of the area in the vicinity of the appeal site.
8. The structure subject of the enforcement notice stands to the rear of the main part of the building and is accessed through a store-room behind the restaurant and kitchen. There is also an external access from the passage to the side of the property. The structure is of rather basic construction with timber posts and joists supported partly on low brick and block walls, and with a corrugated sheet flat roof. It is open to the air, and the description 'timber canopy' appears to me accurate. There are sections of close-boarded timber fencing above the base walls at the back of the structure and along part of the boundary with no. 20 Garden City.
 9. Towards the back of the structure is the walk-in fridge and food storage area, beyond which is a storage area where there were items such as an electric fan, a stool, and sundry builders' materials.
 10. Looking from the back yard behind no. 20 Garden City, the structure is highly prominent along the north-eastern boundary. At the site visit its overall height from ground level in the yard was measured at 2.7 metres. It dominates this small space and makes for an oppressive sense of enclosure. From the upper windows of the house – one of which is a bedroom – the expanse of corrugated roof is again a dominating feature in the outlook. Furthermore, the canopy above the external access door is not enclosed, and the poorly constructed roof and unfinished ply cladding are in full view, as well as exposed air-conditioning equipment.
 11. While the yard of 20 Garden City has boundaries with other commercial properties on Station Road, which restrict the outlook considerably, that does not justify further restriction. Furthermore, the fact that the structure does not follow the entire boundary fence and is partially concealed by an outhouse in the yard, does not lessen its intrusive impact. Nor is there any evidence to support the claim that the unauthorised structure reduces potential noise nuisance.
 12. The proposal in Appeal B is to reduce the length of the structure by about a metre. There would be no change to the height, the materials, or the form of construction. I consider the proposed change would have no effect in terms of its impact on residential amenity for 20 Garden City.
 13. I conclude on the first main issue that the development causes significant harm to residential amenity for occupants of the neighbouring dwelling in terms of outlook. The development does not accord with the development plan, particularly with respect to Policy DM01 of the Barnet Local Plan Development Management Policies (DMP) of 2012, which seeks to promote high quality design, and includes aims to ensure development allows for adequate outlook for adjoining occupiers.
 14. Turning to the second main issue, I concur with the appellant that the development has no impact upon character or appearance with respect to Station Road, from where it is virtually unseen. However, the development is readily visible at the back of the open plot to the north-east of 20 Garden City.
 15. As noted above the structure is of generally poor construction. The timber fencing, rudimentary timber framing, and the unfinished corrugated sheet roof

have a makeshift appearance that is quite at odds with the traditionally built and attractive houses of brick, painted render, and slate roofs that are prevalent in Garden City. I saw that a one and two-storey flat-roofed extension to the back of nos. 21 and 23 Station Road is also readily visible from Garden City. I do not know the history of this, but it is of long-standing, soundly built, and finished in traditional painted render. I do not consider it is comparable to the development before me.

16. Although the proposal in Appeal B is to reduce the length of the structure, the height would not change, and there is no suggestion that different constructional materials would be used. In my view the proposed change would have virtually no effect on the appearance of the development when seen from the street in Garden City.
17. I consider the development causes significant harm to the character and appearance of the area in the vicinity of the appeal site. The development does not accord with the development plan, again particularly with respect to DMP Policy DM01, which also includes aims to preserve or enhance local character, and to protect attractive streets.
18. The appellant claims the walk-in fridge and food storage are essential to the ongoing success of the business, which would otherwise close. However, it is not necessary to build such an intrusive structure and to cause significant harm to residential amenity, and to the character and appearance of the area in order to create a successful business. Overall, I conclude that the ground (a) appeal must fail.

Appeal A on ground (g)

19. This ground is that the compliance period of 3 months is too short. The appellant argues that a period of 9 months should be allowed. This is on the basis that the appellant would be forced to wind down and close the business and find other suitable premises for re-location.
20. The Council argue that the appellant has been aware of impending enforcement action since 2017, when the first notice was issued, and should have taken action earlier. However, it cannot be expected that the appellant should take significant action prior to knowing the result of his appeal. While the 3-month period would be sufficient to carry out the requirements, it would be inadequate to find other premises or try to find another way to adapt the current premises. On the other hand, I am mindful that the harm should be remedied with reasonable expedience and consider a period of 6 months should be allowed. The appeal therefore succeeds on ground (g), and I shall vary the notice accordingly.

Conclusions

21. For the reasons given above and having regard to all other matters raised, I conclude that the enforcement appeal should succeed to the limited extent on ground (g), otherwise the enforcement notice is upheld subject to variation of the compliance period, and I shall refuse planning permission on the deemed planning application. The planning appeal will be dismissed.

Stephen Brown

INSPECTOR