



Appeal Decision

Site visit made on 19 August 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2019

Appeal Ref: APP/N5090/C/18/3219821

Land at 21 Cotswold Gardens, London NW2 1QT

- 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 Behrouz Rabbani against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 27 November 2018.
 - The breach of planning control as alleged in the notice is: The construction of two brick walls in the rear garden as part of an incomplete single storey rear extension.
 - The requirements of the notice are: 1 Demolish the two brick walls 2 Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is: 2 Months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) of the Town and Country Planning Act 1990 as amended. Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld with a correction and variation.

Procedural Matters

2. The parties were notified in advance of my intended site visit however the Council were not in attendance. I consequently proceeded to inspect the site unaccompanied and do not consider that injustice arises from determining the appeal on this basis.
3. The enforcement notice alleges a breach of planning control in respect of two brick walls in the rear garden as part of an incomplete single storey rear extension. The reason given for issuing the enforcement notice is centred on the construction of the two walls. In respect of an appeal against an enforcement notice, I am restricted to consider only the development that has been built and therefore enforced against; namely the two walls. Accordingly, any other development, such as the completion of a single storey rear extension, is not before me. This has implications for the determination of the appeal, which I shall address within my decision.

The Enforcement Notice

4. Requirement 5.1 does not identify the location of the two brick walls. However, the alleged breach of planning control identifies these as being located in the

rear garden and it is therefore clear from the enforcement notice which walls are enforced against. I do not consider that any injustice arises from correcting the requirement to mirror that of the allegation, which I shall set-out in my formal decision.

The ground (c) appeal

5. For the appeal to succeed on ground (c) the onus is on the appellant to demonstrate, on the balance of probability, that there has not been a breach of planning control.
6. I could see during my site visit that two walls have been constructed. The appellant indicates he has requested planning permission from the Council for an extension of 5.3m; and this would presumably utilise the walls that have been constructed. However, I do not have actual evidence concerning a planning permission, such as the Council's decision notice, before me.
7. There has therefore been no planning permission brought to my attention for the walls enforced against and very little evidence to indicate they are permitted development, for example, because of their height. On the basis of the evidence before me, the appeal on ground (c) must therefore fail.

The ground (a) appeal

Main Issues

8. The main issues are the effect of the brick walls on the character and appearance of the area as well as the living conditions of occupiers at 23 Cotswold Gardens.

Reasons

9. The site forms part of a collection of semi-detached properties of similar design and appearance. The area therefore retains a distinctive and uniform development pattern with modest additions to properties, which includes associated hardstandings, outbuildings and boundary treatments within gardens.
10. The development enforced against has however resulted in two stark and conspicuous walls positioned parallel with both side boundaries. Whilst these are not visible within the street-scene, they are not reflective of the pattern of development in the immediate area and can be seen from the rear of neighbouring properties, given their height, length and position. I do not accept that the walls assimilate with their surroundings or are representative of other modest additions to properties or gardens within the area. They are therefore incongruous.
11. The walls enforced against are approximately 5.3m in depth and project further rearwards than the adjoining property, No 23 Cotswold Gardens, despite itself benefitting from a single storey rear extension. I have little evidence to convince me that the wall in closest proximity has a detrimental effect in terms of overshadowing this property. However, given its stark appearance, height and depth, the wall does result in an unacceptable sense of enclosure which affects the outlook for occupiers of this property and which is overbearing.
12. I therefore conclude that the brick walls are harmful to the character and appearance of the area as well as the living conditions of occupiers at 23

Cotswold Gardens. This contravenes Policy DM01 of the London Borough of Barnet Development Management Policies Development Plan Document, 2012, Policy CS5 of the London Borough of Barnet Core Strategy Development Plan Document, 2012 (the CS), as well as Policy 7.6 of the London Plan¹. These policies, amongst other things, require development to: allow for adequate outlook; respect distinctive local character; and, incorporate the highest quality design appropriate to its context. For the same reasons the development fails to accord with the principles of good design from the London Borough of Barnet Residential Design Guidance Supplementary Planning Document, 2016. I however do not find conflict with Policy CS1 of the CS as this is principally concerned with housing and economic growth.

The ground (f) appeal

13. The purpose of the enforcement notice is to remedy the breach of planning control by means of demolishing the two brick walls and removing the constituent materials from the property.
14. For an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control. There have however been no alternative requirements put forward. In order to remedy the breach of planning control it is therefore necessary for the walls to be demolished and the materials removed. The appeal on ground (f) accordingly fails.

Other considerations

15. It is apparent from the appellants correspondence that he believed the appeal against the enforcement notice could secure planning permission for a single storey rear extension with a depth of 5.3m. This however cannot be the case for the reason I have explained, and the appeal has otherwise failed. Other extensions in the area are therefore not of relevance to this appeal. However, whilst a ground (g) appeal has not been pleaded, it is within my discretion to consider extending the period for compliance if I believe it would be a proportionate response.
16. Given the circumstances therefore, it would not to my mind be unreasonable to provide the appellant with a short period of additional time to enable the option of pursuing an application for planning permission for such an extension. The determination of any planning application is however a matter entirely for the Council.
17. A period of 5 months would therefore provide this option given the requirements of the enforcement notice are otherwise straightforward and so can be met in a short period. Given the walls were constructed approximately 2 years ago, I do not consider that an additional period of 3 months would be disproportionate, or otherwise unnecessarily or harmfully perpetuate the breach of planning control.

¹ The London Plan, The Spatial Development Strategy for London Consolidated with Alterations since 2011, March 2016

Conclusion

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

Formal Decision

18. It is directed that the enforcement notice be varied and corrected by:

- substituting "*Five months*" as the period for compliance; and,
- deletion of the words at section 5. 1 '*Demolish the two brick walls*' and their replacement with the words '*Demolish the two brick walls in the rear garden as part of an incomplete single storey rear extension*'

19. Subject to this variation and correction the appeal is dismissed and 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.

Paul T Hocking

INSPECTOR