



Appeal Decision

Site visit made on 13 August 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 15 October 2019

Appeal Ref: APP/T5150/C/18/3210286

19 Barn Way, Wembley HA9 9NT

- 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 Mrs Uma Pedapatnapu against an enforcement notice issued by the Council of the London Borough of Brent.
- The enforcement notice, ref. E/18/0419, was issued on 24 July 2018.
- The breach of planning control alleged in the notice is the demolition of the house with the exception of the front façade, earthworks involving excavation to form a basement and raising the ground level at the rear of the premises, and the erection of a building at the rear of the property.
- The requirements of the notice are to:

STEP 1. Cease all engineering operations and other building works, except those that are required to comply with this enforcement notice.

STEP 2. Undertake earthworks and back fill the land to remove the basement and restore the premises back to how it was before the unauthorised development took place.

STEP 3. Retaining the front façade, reconstruct the demolished single dwellinghouse to exactly replicate the previous dwellinghouse at the premises, as shown in the plan (ref. AH 730 Drawing No. 02) and photographs attached to this notice. For the avoidance of doubt, the rebuilt house should not include any extension but must include the reconstruction of the single garage ensuring as per the photograph. As well as compliance with the plan (ref. AH 730 Drawing No. 02) and photographs attached to this notice, the rebuilding works must also ensure that:

- The two side elevations and rear elevations are finished in a coarsely textured roughcast surface mimicking the construction of the Tudor period;
- All other brickwork must be stretcher bond with course sand bucket handle pointing;
- Three tall chimneys finished in roughcast are rebuilt;
- A deep eaves overhang and cast-iron guttering and metalwork is created;
- The roof is constructed of plain roof tiles including flared roof detailing;
- The windows installed are of timber, matching the same overall arrangement and proportions as the original windows. - i.e. sets of plain timber casements

The original timber front door design should be reinstated as shown on photographs attached to this notice.

STEP 4. Carry out landscaping and planting as shown in the attached "existing front garden plan" (ref. AH730 Drawing No. 00, Rev: E), subject to the following:

- The driveway is to be constructed of loose gravel or Marshalls Standard Concrete Block Paving in Brindle;
- The front wall is to match the previous front wall as shown in the attached photographs, and it must be constructed with bricks to match the dwellinghouse with concrete pier caps and coping;

- The area labelled 'patio' at the rear is to be constructed of Bradstone Autumn block paving;

The retaining wall forming the 'patio' at the rear is to be constructed of bricks to match the dwellinghouse.

STEP 5. Undertake earthworks to excavate the earth at the rear and remove newly constructed retaining walls so that the level of the land is commensurate with adjoining land levels and restored to the condition before the unauthorised development took place.

STEP 6. Demolish the building in the rear garden of the premises.

STEP 7. Remove any materials or debris arising from compliance with the above steps.

- The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The prescribed fees have been paid within the specified period, 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.
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Decision

1. The appeal is allowed on ground (g), and I direct that the enforcement notice be varied by:

DELETION of 12 months; and,

SUBSTITUTION of 15 months as the period for compliance.

Subject to this variation the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for costs

2. An application for costs has been made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matters

3. The appeal site lies within the Barn Hill Conservation Area. I have therefore paid special attention to the desirability of preserving or enhancing the character and appearance of that area as required by s.72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the Act).

Background matters

4. The appeal property is a detached house on the south-western side of Barn Way. Before the recent works the house was of two-storeys with a part basement, with a pitched hipped roof and chimneys. There were projecting two-storey bays to front and back, a single storey flat-roofed extension beyond the rear bay, and a garage and single-storey extension on the south-eastern flank. The ground falls away steeply towards the back boundary. There was a patio in the back re-entrant space between the main body of the building and the rear bay/extension, with steps down to the garden.
5. In June 2018 planning permission was granted, subject to conditions, for:
Demolition of the garage extension and store and erection of a two-storey side and single storey rear extension, extension to the basement with rear lightwell,

rear dormer window with 2 side rooflights, to convert the loft into habitable space, a new patio area to the rear, and re-roofing of the dwellinghouse.¹

6. The approved drawings show a proposed two-storey side extension narrower than the previous garage/side extension, and back extension built out slightly beyond the previous flat roofed extension, with the rear rooms opened up to provide a single dining/kitchen/family room. On the first floor, the side enlargement is shown to extend to the back wall of the rear projecting bay, but otherwise the external envelope would be unaltered. The form of the roof would have been largely as previously existing, but extended above the side extension, and with a rear dormer and two rooflights. The proposed basement would have been the same width as the main body of the original house, extend beyond the new rear extension by slightly over a metre, and be about three-quarters of the depth of the main body of the house. This part of the development would entail excavation by a metre - which I take to mean below the original basement floor level - and the basement area would be lit by means of a structural glass rooflight at the level of the main ground floor room above, and projecting from it as a narrow balcony with steps down to the garden.
7. No drawings are available of the development as-built, and I saw that works are still very much in progress. However, the internal layout now built differs significantly from the approved drawings, and there are significant changes in the external envelope. Notably, the basement has been excavated to a significantly greater extent, and there are two rooms extending back from the line of the back wall of the new ground floor extension for almost the full depth of the property. These rooms are accessed from the garden by French doors with sidelights, which also provide daylight to the rooms. The rooms interconnect towards the front of the building, and at the time of my visit there was no staircase to give access from the floor above. Each room has a bath or shower room, and each has a gas boiler.
8. On the ground floor the staircase is on the north-western side of the building rather than the south-eastern side as proposed, and the staircase window overlooks the garden of the neighbouring property, no. 21 Barn Way. The general arrangement with a single large kitchen/dining/family room with smaller spaces for the entrance, living room and other functions remains much as intended. The patio doors of the extended ground floor main room now give onto a substantial balcony, with a wide set of steps leading down to the garden. The basement French doors are below this balcony in the same plane as the back wall of the ground floor extension.
9. On the first floor are four bedrooms, rather than the three originally proposed, and two bathrooms. On the attic floor is a bedroom lit by two roof-windows, with a small shower room. The dormer window now lights the staircase in its new position. I noted also that the relatively low-pitched roof over the extended ground floor now has a flat section where it abuts the main body of the house. This is the result of the extension being higher than approved.
10. Other significant changes are in the fenestration to the back, front and side elevations, and the front door with a side-light. The window type is also different from that approved. The dormer on the back roof conflicts with the

¹ Decision notice ref. 18/0710, dated 8 June 2018.

position of the hip tiles – which results from the first floor back extension being 0.5 of a metre wider than approved.

11. The detached building to the rear of the house – which I shall refer to as the ‘garden building’ for the purposes of this decision – is rectangular with a flat roof and built of red brick. It is 8 metres wide and 4 metres deep. There are patio doors in the region of half the width of the building facing the main house. Internally there is a main room, in which I saw a sofa, television, dining table and chairs. To one side is a small room equipped with a fridge/freezer, a washing machine and general storage. There is another room that I understand is a bathroom. This was inaccessible at the time of my visit, but the washbasin and WC can be seen in Image 25 taken during the Council’s site visit photographs from July 2018. The building is 3.1 metres high above the present ground level on the patio door elevation, and 4.0 metres above ground level adjacent to the back boundary of the site.

The appeal on ground (b)

12. This ground is that the matters alleged in the enforcement notice have not occurred as a matter of fact. In an appeal on ground (b) the burden of proof is on the appellant to show that those matters have not occurred on the balance of probabilities.
13. In this case the appeal is limited to the part of the allegation relating to raising the ground level at the rear of the premises. It is argued that excavation was required for new foundations and extension to the basement comprising part of works approved under planning permission 18/0710. The arisings from the excavation were temporarily stored to the rear of the site, but have now been removed, leaving the original ground level unaltered.
14. It is apparent from photographs taken on 9 July 2019, shortly before the enforcement notice was issued, that the ground level adjacent to the north-east elevation of the garden building was immediately below the threshold of the doors in that elevation. It is apparent that the ground surface had been neatly levelled, and possibly compacted across the width of the plot. This does not have the appearance of excavated soil that has been temporarily stored prior to removal, but of a finished surface suitable for access to the outbuilding.
15. At the time of my visit the ground level had clearly been reduced by some 600-700mm below the threshold of the garden building for the full width of the site. Measurements taken by the Council in July 2018 indicate the original ground level was about 2 metres below the top of the boundary fence, and the raised level about 0.9 of a metre below the top of that fence – that is, the level had been raised by 1.1 metres. These measurements have not been disputed. On the basis of the level I observed on my visit the ground remains some 400-500mm above the original level, which I regard as a significant increase. This is consistent with measurement taken at the site visit indicating the existing ground level to be about 510mm above that of the adjacent site, no.17, and also consistent with the distance below the garden building threshold.
16. I conclude that on the balance of probabilities the ground level at the rear of the property has been raised to a significant degree. The appeal on ground (b) therefore fails.

The appeal on ground (c)

17. This ground is that there has been no breach of planning control. Again, the burden of proof is on the appellant to show this is the case on the balance of probabilities.
18. The appellant argues that there has been no breach since planning permission has been granted for the demolition of the house, in that the approved drawings show the majority of the house was to be demolished, and the only retained wall was to be the flank wall adjacent to no. 21 Barn Way.
19. The appellant claims that the walls to be demolished are shaded on the approved plans. However, the only shaded walls on those plans are the proposed new walls of the side extension and rear extension, as well as several proposed internal walls/partitions. Nevertheless, the extent of retention can be judged from comparison of the drawings of proposed works with the drawings of the house as it existed.
20. Inspection of the approved drawings shows that at ground floor the garage and store along the south-eastern flank wall were to be demolished, along with much of the south-eastern flank wall and the single-storey back extension. The front elevation, north-western flank wall, and internal partitions towards the front of the house were to remain. At first floor level, most of the south-eastern flank wall was to be removed, but the front wall, north-western flank wall and almost all the rear wall were to remain. There is no indication that it was proposed to remove the entire ground and first floor structures. While it would have been necessary to remove much of the south-western side of the roof, there is no indication that virtually all the north-eastern side would be removed.
21. In the event almost the entire superstructure of the house behind the front wall was demolished, leaving a relatively short return on the north-western flank, and a small part of the roof structure of the front projecting bay. In the House of Lords case of *Shimizu*² the judge gave his opinion that if the façade of a building were to be left standing, while the rest of the site was cleared for re-development, this would amount to demolition for all practical purposes. As a matter of fact and degree the works in this case must be regarded as demolition of the building.
22. As to whether the demolition might be considered as 'relevant demolition' under the provisions of s.196D, S.174(2C) states that where any breach of planning control constituted by the matters stated in the notice relates to relevant demolition (within the meaning of section 196D), an appeal may also be brought on the grounds that—
 - (a) *the relevant demolition was urgently necessary in the interests of safety or health;*
 - (b) *it was not practicable to secure safety or health by works of repair or works for affording temporary support or shelter; and*
 - (c) *the relevant demolition was the minimum measure necessary.*It is necessary for all three of these conditions to be met.

² *Shimizu (UK) Ltd and Westminster City Council* [1996] JPL 112.

23. In this case there is no substantial evidence of urgency in the interests of safety or health, nor that works of temporary support were not practicable, or that the works were the minimum measure necessary. None of the three conditions are met. Although the appellant maintains the demolition was necessarily part of the development, in my view the removal of the first floor structure and nearly all the roof structure was unnecessary. In fact, removal of these elements probably reduced the stability of the remaining flank and back walls to the extent that their demolition became inevitable.
24. Demolition of an unlisted building within a conservation area is precluded from being permitted development by paragraph B.1(b) of Class B of Part 11 to Schedule 2 The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Furthermore, it is an offence to fail to obtain planning permission for demolition of such a building under the provisions of s.196D of the Act.
25. In this case no planning permission has been obtained for the demolition, and it follows on the balance of probabilities there has been a breach of planning control. The appeal on ground (c) therefore fails.

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

26. This ground is that planning permission should be granted for the matters alleged in the notice.

The garden building

27. I consider the main issues with regard to the garden building to be:
- The effect of the development on living conditions for occupants of nearby dwellings in terms of outlook; and
 - The effect of the development on the character and appearance of the appeal site and the area in its vicinity.
28. The Council's Supplementary Planning Guidance - '*Buildings in Gardens within Conservation Areas*' - advises that for gardens of between 10 and 25 metres in length the general maximum size of individual buildings should be no greater in plan than one fifth of the overall length and half of the width. Buildings should be located in the rear quarter of the garden and have a maximum footprint of 15 square metres.
29. The back garden of no. 19 is about 15 metres long – from the original back of the house - and 12 metres wide. This building is greater than one fifth of the garden length and considerably more than half the width. It is over twice the plan area advised by the SPG. In my opinion it is a bulky structure, of severe form. From the photograph of April 2019, despite the separation from the boundary of about 2.7 metres, it can be seen it is a prominent and intrusive feature above the boundary fence with no. 21. A similar situation exists for the house on the other side, no. 17. Furthermore, the garden building is a very short distance from the back boundary and given its height of 4 metres on that side, as well as the fall in ground level, must be highly prominent in views from the house on The Crossways to the rear of the appeal property.
30. I conclude on the first main issue with regard to the garden building that it causes significant harm to living conditions for occupants of nearby dwellings in terms of outlook. The garden building does not accord with development plan

aims, notably with respect to Policy DMP1 of the Brent Borough Council Local Plan DMP document, which includes aims to protect external amenities.

31. I saw that gardens to the backs of houses on this part of Barn Way are mature, and generally well-kept, planted with substantial trees and shrubs. I saw no examples of outbuildings of the prominence and size of this garden building. I consider the introduction of this bulky building into this rather small-scale and verdant domestic environment to be intrusive and out of place. I conclude on this issue that the garden building is of significant harm to the character and appearance of the appeal site and area in the vicinity. In this respect the development does not accord with the development plan, notably Policy DMP1, which also includes aims for development to complement its locality.
32. The appellant argues that the garden building should be seen against a fall-back position of what might be allowed under GPDO provisions – that is, that it is 0.6 of a metre higher than the 2.5 metres that might be allowed under Class E, Part 1 of Schedule 2. However, as I have found under ground (b) it is likely that the level towards the main house has been raised, and therefore the height above the original level is in the region of 3.5 metres. I address this matter further under ground (f). Either way, to my mind the increase over the GPDO allowance is significant. This building does not come within the GPDO limits, and such argument does not provide justification for its intrusive nature.

The main house

33. Turning to the appeal relating to the main house, the appellant argues that the demolition was in effect part of the 2018 planning permission, and that the new construction is the realisation of that permission. However, as I have found, the demolition did not form part of the permission. Furthermore, the Council were not apprised of the appellant's further intentions. The scheme as executed has varied significantly from that permission, and there do not appear to be any drawings showing what was intended at that time, what has actually been carried out, or indeed the eventual proposed state for parts of the building, notably the basement. In effect, the demolition was the start of some scheme other than the approved one, for which no planning permission had been obtained.
34. The substance of the ground (a) appeal is therefore whether planning permission should be granted for the alleged unauthorised works, namely demolition of the house with the exception of the front façade, earthworks involving excavation to form a basement, and raising the ground level at the rear of the premises. In that regard I consider the main issue to be the effect of the unauthorised works on the character and appearance of the Barn Hill Conservation Area.
35. The Conservation Area is a network of residential streets and derives much of its interest from the hillside setting, and the varied design of the houses, mainly in a distinctive mock-Tudor style. The inclines in the roads provide changing views of the houses set in mature landscaping, as well as more distant views of the urban landscape. To my mind it is of great importance to protect such a coherently designed area, and to avoid development that degrades its character.
36. I concur with the Council's view that no. 19 was an essential component of the elements making up the character of the Conservation Area. Its demolition, the

extensive excavation of the basement, and raising of the ground level have caused considerable disruption and left a gap in the street scene that has caused significant harm to conservation area interests.

37. While the harm caused by the demolition and related works may have been temporary, I note that Policy DMP7 of the Council's Local Plan Development Management Policies (DMP) document of 2016 includes the statement: *'where demolition is proposed within a conservation area detailed plans for any replacement building will be required to allow consideration of whether the replacement would contribute positively to the character or will be applied to ensure construction of the approved scheme is implemented together with agreed mitigation measures'*. In this case the subsequent building works differed from the approved scheme, no plans of the proposals were submitted, and the appellant cannot claim the subsequent development was the permitted scheme.
38. In this case the purpose of the notice is to remedy the breach of planning control. Where this relates to operational development this may be achieved by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, or by restoring the land to its condition before the breach took place. In my view as a matter of fact and degree, the development that has taken place subsequent to demolition has varied from the permitted scheme to a degree that it is not feasible to require compliance with that scheme. I discuss this matter further under the ground (f) appeal. In the circumstances the remaining option is to require restoration of the land to its former condition.
39. I conclude on the main issue with regard to the main house that the unauthorised works caused significant harm to the character and appearance of the Barn Hill Conservation Area. The development does not accord with development plan policy, particularly with regard to the aims of Policy 7.8 of the London Plan, which seeks to conserve heritage assets and their significance, and the similar aims of Policy DMP7 of the Brent Borough Council Local Plan DMP document.

The appeal on ground (f)

40. This ground is that the requirements of the notice are excessive and that lesser steps would overcome the Council's objections. The appellant argues that with regard to Step 2, relating to the backfilling of the basement, the works have been carried out in accordance with the 2018 planning permission and as a result no lesser steps are possible or necessary.
41. However, the basement as-built is not part of the approved scheme, in terms of extent, layout and daylighting. Indeed, I saw that the works were incomplete. This was not the games room/home cinema envisaged in the approved proposals, and it is unclear in what way these spaces might be used. Its retention as part of an unlawful development is not a lesser step, and a ground (f) appeal cannot succeed.
42. With regard to Step 3, it is argued that the loss of the building in the Conservation Area has been remedied by the house now built, which accords with the 2018 planning permission. However, as found above the scheme as-built differs materially from the approved scheme. I do not accept that no

action need be taken in this regard, and again a ground (f) appeal on the basis of retention of what is there cannot succeed.

43. In relation to Step 4, it is argued that works to the front garden area were approved under the 2018 planning permission, and it would be unreasonable to require reinstatement of the garden as it was previously. However, this requirement is not for reinstatement of the garden, but for works to be carried out in accordance with the approved drawing showing the proposed front garden. This is a lesser requirement than reinstatement of the garden, and I do not consider this can be regarded as excessive.
44. Step 5 requires excavation of the earth forming the raised level to the back of the house and to remove the retaining walls containing the raised area. The appellant claims that there has been no raising of levels, there are no retaining walls, and the requirement is unnecessary. However, I have come to the conclusion on ground (b) that raised levels have been created. I saw there are red brick retaining walls, and these can be seen in the Council's photographs taken in July 2018 – such as Image 20. I do not accept this step is excessive.
45. Regarding Step 6, the appellant suggests the garden building might be lowered to give a roof height of 2.5 metres above ground level, so that the building might come within permitted development allowances. However, given my finding that the ground level has been raised, and the original ground level is not defined, I do not consider this proposal would be likely to achieve the suggested result.
46. The appellant argues under ground (a) that the various elements of the development as built should be granted planning permission. However, the substance of the ground (a) appeal is whether the demolition should be granted planning permission, rather than any judgement about the subsequent development. Nevertheless, retention of the scheme as-built might be regarded as a lesser step.
47. However, as I have already concluded, the differences from the approved scheme are material. The Council suggested in August 2018 that a way forward might be for a planning application to be made for the development. Although the appellant did not respond to this suggestion, it would allow a full consultation to be made, and the merits to be assessed.
48. While there may well be parts of the development that are contentious, much of the external envelope now built is in line with the approved scheme, even though the internal layout is markedly different. The process of making a new planning application would allow for negotiation on possible changes to, or omission of contentious elements. However, apart from the as-built development, the appellant has not put forward any obvious alternative for which planning permission would be granted, and it is not for me to prescribe one. Had an appeal been made on ground (f) on the basis of retention of the as-built development, it would have failed.
49. The appellant argues that the notice could have required the building to be constructed in accordance with the scheme approved under planning permission ref. 18/0710. However, in my view the internal arrangements, structure, and external features are different from the approved scheme to such an extent that compliance with such a requirement would probably be equally onerous.

50. Overall, none of the suggested lesser steps would overcome the Council's objections, and I conclude that the appeal on ground (f) should fail.

The appeal on ground (g)

51. This ground is that the compliance period of 12 months is too short. It is argued that 18 months would be needed for the required works of demolition and re-construction.

52. I consider a period of 12 months would probably be adequate for the required works, since the demolition and re-building that has already taken place was done within a similar period. However, if the appellant were to make a new planning application it would be reasonable to allow an additional period for that to be considered before either a new permission was granted, or the works required by the notice were commenced. I consider an additional period of 3 months should be adequate for this, and I will vary the enforcement notice accordingly.

53. Should this period prove inadequate, under s.173A(1)(b) of the Act it is open for the Council to relax a requirement of the notice, and in particular they may extend the compliance period. Provided that the appellant acts in good faith, and in good time, seeks to discuss matters with the Council at an early stage, and makes any necessary planning application, I see no good reason why an extension should not be granted if appropriate.

54. The appeal on ground (g) therefore succeeds.

Conclusions

55. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed except to the limited extent on ground (g), and I am varying the enforcement notice accordingly prior to upholding it. Planning permission will be refused on the deemed application.

Stephen Brown

INSPECTOR