



Appeal Decisions

Site visit made on 12 November 2019

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 3 December 2019

Land at 39 Harman Drive, London, NW2 2ED

Appeal A Ref: APP/N5090/C/18/3216246

- 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 Ayad Al-Shakarchi against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/0662/18, was issued on 21 November 2018.
 - The breach of planning control as alleged in the notice is the raising of ground levels in the rear garden in the approximate area hatched purple on Figure A attached to the notice.
 - The requirements of the notice are:
 - 1 Restore by reducing ground: along the western boundary (shown by the purple line marked 'A' on Figure A) to the levels, at all points, on the ground underneath the existing boundary fence with No. 38 Harman Drive; on the remainder of the garden to ensure that the garden slopes at an even gradient between all points along the line 'A' and at the parallel point along the line marked 'B' on figure A.
 - 2 Permanently remove all constituent materials and earth resulting from the works in 1 above from the property.
 - The period for compliance with the requirements is 4 months.
 - The appeal 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.
 - **Summary of decision: appeal allowed, notice quashed and permission granted.**
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Appeal B Ref: APP/N5090/W/18/3216990

- 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 Ayad Al-Shakarchi against the decision of the Council of the London Borough of Barnet.
 - The application Ref 18/3334/RCU, dated 30 May 2018, was refused by notice dated 1 October 2018.
 - The development proposed is the levelling of the back garden (retrospective).
 - **Summary of decision: appeal allowed and permission granted.**
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The appeal site and relevant planning history

1. The application site is a semi-detached two storey dwelling (with loft conversion) in a residential area which has been considerably altered in an unconventional manner in recent years. The rear of the property has been extended at ground floor level and part of this extension makes provision for a balcony to a first floor room. A patio has been constructed which steps down to a level area of grass beyond which is an area of hardstanding and some

form of recreational facility is being constructed. The garden is flanked by timber fencing and, to the side of the patio, by a new short length of brick wall on the boundary with 38 Harman Drive.

2. Retrospective permission was refused in September 2018 (18/3330/RCU) for a single storey extension including extension to patio and is the subject of a separate appeal (APP/N5090/W/18/3217292). Enforcement action was taken against the raised patio and boundary wall and this is also the subject of a separate appeal (APP/N5090/C/18/3216417).

Appeals A and B - the appeal on ground (a) and the s78 appeal

3. The main issue in this appeal is whether the development harms the living conditions through overlooking of neighbouring occupiers, in particular those at 38 Harman Drive and 2 Harman Close.
4. The Council considers that the soil level in the rear garden has been raised by between 250mm on the Harman Close side and 350mm on the boundary with 38 Harman Drive. A 500mm retaining wall has been constructed to hold back the soil.
5. The appellant indicates that the garden level was raised by approximately 500mm above the garden of 38 Harman Drive. He has explained that the work was carried out to overcome a considerable gradient across the site. A new fence 1.2m above the raised garden level has been erected on the appellant's land parallel to the existing fence which is about 0.5m lower. The boundary fence at the bottom of the garden with 2 Harman Close is 1.3m above adjacent ground levels within the appeal site.
6. As with many properties in suburban areas there is often a degree of mutual overlooking between upper floor windows and neighbouring houses and gardens and this is acknowledged by the Council. The rear gardens of 38 Harman Drive and 1 Harman Close are already overlooked from the first floor balcony on the appeal site and the first floor window in the flank elevation of 2 Harman Close.
7. In general terms occupiers should be able to enjoy a reasonable degree of private outdoor space and this is usually sited close to the rear of a house. Further into the garden, there is a reduced expectation of there being the same degree of privacy. At my site visit I observed that there existed a reasonable extent of shrubs and other vegetation in the various gardens, which, coupled with the existing fences, provides a some degree of protection from overlooking. With the increase in ground levels that has taken place, it is likely that the potential opportunity for overlooking to occur has increased although it is highly likely that it would have been possible to look over the rear boundary fences between gardens prior to the raising of levels. This is not uncommon in residential areas. I find that the extent of change would not be of an order to conclude that the degree of overlooking is so significant to warrant the refusal of planning permission.
8. Policy DM01 of Barnet's Local Plan Development Management Policies DPD (2012) requires development to be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users. The Residential Design Guidance SPG recognises that privacy is an important design issue. I am satisfied that adequate privacy is maintained as a result of

the development and that it accords with this and other policies referred to by the Council.

9. I have considered whether the offer of the appellant to carry out further planting or screening or by raising the height of the boundary fence but the Council considers that this would not mitigate the impact of the development in its entirety. In view of this, and as I have found the development to be acceptable, a condition requiring any mitigation is unnecessary. This of course does not prevent the appellant from carrying out such works if he so chooses.
10. The appeals on this ground and the s78 appeal succeed.

Conclusions

11. In respect of Appeal A, for the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.
12. In respect of Appeal B, for the reasons given above I conclude that the appeal should be allowed.

Decisions

Appeal A

13. The appeal is allowed, the enforcement notice is quashed and 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 raising of ground levels in the rear garden on land at 39 Harman Drive, London, NW2 2ED referred to in the notice.

Appeal B

14. The appeal is allowed and planning permission is granted for the levelling of the back garden at 39 Harman Drive, London, NW2 2ED, in accordance with the terms of the application, Ref 18/3334/RCU, dated 30 May 2018 and the plans submitted with it.

P N Jarratt

Inspector

