
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/18/3216417

- 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/1397/18, was issued on 15 October 2018.
- The breach of planning control as alleged in the notice is the erection of a raised patio in the approximate area outlined red and boundary wall in the approximate area outlined yellow in Figure 1 attached to the notice.
- The requirements of the notice are:
 - 1 Restore the land, including the levels, to the state in which it was prior to the breach of planning control by demolishing the raised patio and the brick wall;
 - 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 3 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 planning permission granted**

Appeal B Ref: APP/N5090/W/18/3217292

- 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 18/3330/RCU, dated 30 May 2018, was refused by notice dated 18 September 2018.
 - The development proposed is a single storey extension including extension of patio at rear (retrospective).
 - **Summary of decision: appeal allowed and planning permission granted**
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Application for costs

1. An application for costs was made by the appellant against the Council. This application will be the subject of a separate decision.

The appeal site and relevant planning history

2. 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.

3. An application for the same development as in Appeal B (17/4491/RCU) was not determined as the application failed to include the completion of Certificate B notifying the owner of 38 Harman Drive in respect of the development which incorporates a party wall. Following non-determination of the appellant by the Committee, the appellant was advised to re-submit a fresh application with the correct certificate and to include the patio in the description of the development.
4. Retrospective permission was refused in October 2018 (18/3334/RCU) for the levelling of the back garden and is the subject of a separate appeal (APP/N5090/W/18/3216990). Enforcement action was taken and this is also the subject of a separate appeal (APP/N5090/C/18/3216246).

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

5. The main issues in these appeals are whether the development has an overbearing appearance and adversely affects the living conditions of neighbours.
6. The extension is in two adjoining parts with the element closest to the boundary with No 38 measuring 3m in depth for a width of 4.5m, and then steps out an additional 2.8m for a width of 4.4m closest to the shared boundary with 1 Harman Close, creating a total of 4m depth along this side of the property. The patio is in the area enclosed by the two elements of the extension, extending from the rear of the first element by about 4.7m before stepping down to the garden level. The appellant indicates that the height of the patio is similar to its previous level.
7. The Council has not indicated any concerns in respect of the single storey extension in Appeal B and there is no sound reason why it should not be approved as built. Whilst I note that representations have been made by some residents in respect of the design and appearance of the extension and the patio, which I have had regard to but they raise concerns that do not justify refusal of the application. Some comments are not relevant to the appeal as they raise issues relating to other work carried out to the property and to private matters.
8. In respect of the patio and wall, I find that both are perfectly acceptable and cause no harm. The size of the patio is not excessive and cannot possibly be described as having an overbearing appearance as claimed by the Council. The wall is attractive, well built and designed such that it has a curved section rising up from 1.5m in height to tie in with the flank wall of the extension. Again, it cannot be said to be overbearing as it is a well designed addition to the property that provides an adequate privacy barrier between the neighbours. The wall is not high enough to prevent a person of average height from viewing the neighbouring garden but this would need to be a positive act on the part of an observer, which would be unlikely to happen through the normal use of the patio. As with many suburban properties, there is inevitably

a degree of mutual overlooking that could occur but I do not consider that the construction of the patio has led to any significant change in loss of privacy or overlooking that would justify withholding planning permission.

9. The Council considers that the patio and boundary wall represent development contrary to Policies CS NPPF, CS1 and CS5 of the adopted Core Strategy 2012, Policy DM01 of the Adopted Development Management Policies DPD 2012 and the Adopted Residential Design Guidance SPD 2016. Policy DM01 requires development to be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users. I am satisfied that no significant degree of harm to living conditions is caused by the development, either in terms of outlook or loss of privacy to No 38. Accordingly I can find no significant conflict with the adopted planning policies or with the National Planning Policy Framework.
10. The appellant has referred to the wall being increased to 1.75m above the patio level but the whilst Council considers that this would mitigate the impact of overlooking, it would increase its overbearing nature to 38 Harman Drive. In view of this, and as I find the development to be acceptable, it is not necessary to impose a condition to that effect.
11. The appeals on this ground and the s78 appeal succeed.

Conclusions

12. 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.
13. In respect of Appeal B, for the reasons given above I conclude that the appeal should be allowed.

Decisions

Appeal A

14. 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 erection of a raised patio and boundary wall on land at 39 Harman Drive, London, NW2 2ED referred to in the notice.

Appeal B

15. The appeal is allowed and planning permission is granted for a single storey extension including extension of patio at rear at 39 Harman Drive, London, NW2 2ED, in accordance with the terms of the application, Ref 18/3330/RCU, dated 30 May 2018 and the plans submitted with it.

P N Jarratt

Inspector