The Planning Inspectorate

Appeal Decision

Site visit made on 3 December 2019

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/N5090/C/19/3226115
29 Poplar Grove, London N11 3NH

- 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 Mrs. Nishi Ronnie against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0294/18, was issued on 1 March 2019.
- The breach of planning control as alleged in the notice is *Without planning permission the construction of a single storey rear extension linking the existing outbuilding to the main house*.
- The requirements of the notice are:
  (1) Demolish the single storey rear extension linking the existing outbuilding to the main house and restore the property to the state in which it was prior to the breach as per previously existing plan numbers LP/0025/PP/03 and LP/0025/PP/04, included as part of planning application reference 18/6504/RCU, refused on 28.01.19.
  (2) Permanently remove from the property all constituent materials resulting from the works in 1. above.
- The period for compliance with the requirements is four 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.

Decision

1. 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.

Preliminary Matters

2. No representative from the Council attended the scheduled site visit, and I proceeded in their absence having been given access to the property by the appellant.

The appeal on ground (a)

3. The main issues arising are the effect of the development that has been carried out on the living conditions of the existing and future occupiers of the property and those of the adjoining neighbours, and its effect on the character of the host property and the surrounding area.

Living conditions at the property

4. The Council's first reason for issuing the notice was that the resulting extensions to the dwelling consume the entire rear garden area, with the

consequent lack of an outdoor garden area meaning that the standard of accommodation is unsatisfactory for the existing and future occupiers of the dwelling.

5. The property is a mid-terraced dwelling in a residential part of Barnet, facing south west. An open front garden is hard surfaced and used as a parking area for 2 cars. On its rear north eastern side, the dwelling has been extended in three parts. Prior to the recent works that are the subject of the notice, the rear of the property consisted of an attached flat-roofed single storey rear extension to the dwelling, taking up the full width of the house and garden, and projecting rearwards by around 3.6 metres. At the back of the garden, a flat-roofed single storey outbuilding used for principal living accommodation also extended to the full width of the plot. Between the two was an outdoor garden area. That has recently been infilled, with the insertion of joining walls and a roof above, flat-roofed at the sides but with 3 velux windows inserted into a raised upturned asymmetrical 'V' in the centre. It is this 'infill' extension, which the Council have found to be around 3.8m deep, at which the enforcement notice is directed. Access to the rear of the property is taken from a pedestrian passageway leading to the back gate, and door beyond, and this passageway also serves the rear gardens of the neighbouring properties to the south east.

6. Policy CS5 of the Barnet Local Plan (Core Strategy) ('the CS') of September 2012 requires that developments should protect and enhance the gardens of residential properties. Policy DM01 of the Local Plan (Development Management Policies) document ('the DMP'), also of September 2012, requires that developments should retain outdoor amenity space having regard to its character. Policy DM02 of the DMP requires that, where appropriate, developments should demonstrate compliance with a suite of supplementary planning documents. These include the Sustainable Design and Construction SPD of October 2016.

7. That SPD in turn sets out that development proposals would not normally be permitted where minimum outdoor amenity space standards, which in the case of a house is at least 40 m² of usable space, are not met. It also sets out that residential units with insufficient garden or amenity space are unlikely to provide good living conditions. For houses, amenity space should be provided in the form of individual rear gardens.

8. The appellant describes the former outdoor space as very tiny, and problematic. Trees surround the property on its north and eastern sides, and the appellant describes the former space as having been dark, a repository for debris such as falling leaves and branches, and as attracting spiders and slugs.

9. Notwithstanding these problems, I consider that the former garden area, reduced in size compared with its neighbours as the result of former choices to extend the property and construct the rear outbuilding, was not so small or unattractively sited as to be unusable. It constituted a small garden area which the relevant local planning policies seek to protect, and its development has been contrary to those policies, and to the Sustainable Design and Construction SPD. The appellant suggests that the infill extension continues to be used as an ancillary amenity area, rather than as principal living accommodation. This may be so, but it would not overcome the policy conflict that arises from the loss of

it being a usable outdoor area. That loss results in an unsatisfactory standard of accommodation for the existing and future occupiers of the dwelling.

Living conditions of neighbouring occupiers

10. The Council's second reason for issuing the notice was that the resulting extensions are considered overbearing and visually intrusive to the neighbours on either side, and result in a perceived sense of enclosure, loss of light and overshadowing of those properties.

11. Neither No 27 nor No 31 has been extended to the rear, and No 27 is stated by the Council to have a rear garden and patio area that is overshadowed by the built extensions in the mornings. Although the middle infill extension has parts of its roof that are higher than the remainder of the flat roof I do not consider that the impact on No 27 by loss of light or overshadowing would be discernibly worse than would result from the pre-existing development, which for most of the day would include the shadow cast by the 2-storey terrace. Although the Council cite overshadowing to No 31 as a reason for issuing the notice, it receives no mention in the officer's report, and it too would be shaded mainly by the existing 2-storey terrace rather than by the infill extension.

12. As to whether the infill extension results in a sense of enclosure or is overbearing or visually intrusive, I do not consider that it adversely affects the neighbours' living conditions in these respects. It is, for them, seen in the context of filling in the space between a pre-existing rear extension and outbuilding. Photographs submitted by the appellant show extensive vegetation abutting the development in the garden of No 27. At No 31 I saw that the extensions protrude only slightly higher than the garden fence.

13. Policy DM01 requires development proposals to be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers. The Council also refer to the Residential Design Guidance SPD of October 2016 and again the Sustainable Design and Construction SPD. These documents seek to protect residential amenities, but I find no conflict with them in respect of the neighbouring occupiers here.

Character of the host property and surrounding area

14. The Council's third reason for issuing the notice alleged a detrimental impact on the character and form of the original host building and the surrounding area.

15. The London Plan of 2016, by policies 3.5, 7.4 and 7.6, requires housing developments to be of the highest design and architectural quality, having regard to the existing pattern and grain. Policy CS5 of the CS, Policy DM01 of the DMP and the Residential Design Guidance SPD all seek high quality design that preserves and enhances local character. The SPD advises that the acceptable projection of a single storey rear extension to a terraced house is normally 3m.

16. The grain of development in the area is very different from what has taken place at the appeal site. The two neighbouring gardens are largely undeveloped. With occasional exceptions, the general pattern in the area is of residential houses and flats with some small extensions and outbuildings but with largely undeveloped curtilages that contribute to the greenery of the area. The scale of the development at the appeal site, whereby the whole of the rear

garden is covered by buildings, departs from this prevailing character. I consider the development to be unsympathetic to the house and to the character of the surrounding area, and contrary to the relevant development plan policies.

Conclusion on ground (a)

17. For the above reasons, although I do not find the development to produce unacceptable impacts on the neighbours' living conditions, I consider it to be out of character with the area and to result in an unacceptable loss of usable outdoor amenity space for the occupiers of the host dwelling. It conflicts with the development plan for the area.

18. I have considered whether any planning conditions could overcome the harm identified, and in particular have considered the suggestions made by the appellant in relation to the ground (f) appeal. The first of those is to suggest that the flank elevation be glazed so as to maintain an open sided amenity area. This would not result in a usable area of rear outdoor amenity space, and so I do not consider that it would overcome the harm to living conditions. The harmful effect on the character of the property would also be unresolved because the overall built form would remain regardless of the fenestration.

19. The second suggestion is to convert the infill extension into a fully glazed conservatory. This would amount to a materially different proposal from what has been built, and so is beyond the remit of this appeal and would require a separate planning application.

20. I shall therefore dismiss the appeal on ground (a) and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

21. The appeal is also made under ground (f), which is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the specified steps is to remedy the breach of planning control by restoring the land to its condition before the breach took place.

22. The appellant suggests that conditions could be imposed to require the flank elevation of the infill extension to be replaced with a glass panel, or to completely convert the extension to a conservatory, as discussed in the appeal on ground (a) above. Neither of these options would result in the restoration of an outdoor amenity area, and so would not remedy the breach of planning control that has occurred. Therefore the appeal on ground (f) fails.

The appeal on ground (g)

23. Finally the appellant contends that the period specified in the notice for requiring the steps to be taken falls short of what should reasonably be allowed. The period given by the notice is 4 months. A period of 9 months is sought as being required to source a reputable builder to undertake the physical alterations, and for amenity space to be provided.

24. The 3 separate extensions remain physically distinguishable, and there would not appear to be any complex building operations required to dismantle the

infill extension or to restore the land. I find that the 4 month period afforded by the notice does not fall short of what is reasonable. Therefore the appeal on ground (g) also fails.

Overall Conclusion

25. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice, and refuse to grant planning permission on the deemed application.

Laura Renaudon

INSPECTOR