



Appeal Decision

Site visit made on 4 November 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 20 December 2019

Appeal Ref: APP/Q5300/C/19/3219817

All that Land known as Rear of 10-12 Elmscott Gardens, London N21 2BP

- 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 Taylan Cavus against an enforcement notice issued by the Council of the London Borough of Enfield.
- The enforcement notice was issued on 5 December 2018.
- The breach of planning control alleged in the notice is failure to comply with conditions Nos 1 and 2 of a planning permission Ref 14/04759/FUL granted on 17 June 2015.
- The development to which the permission relates is subdivision of site and erection of 1 x 3 storey, 5-bed single family dwelling, external staircase at side to first floor level, rear balconies and terrace, solar panels, amenity space including lower ground floor terrace, associated landscaping and off street parking to front.
- The conditions in question are Nos 1 and 2 which state that: 1. The development hereby permitted shall be carried out in accordance with the approved plans including plan(s) that may have been revised, as set out in the attached schedule which forms part of this notice. 2. The development shall not commence until plans detailing the existing and proposed ground levels including the levels of any proposed buildings, roads and/or hard surfaced areas have been submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details.
- The notice alleges that the conditions have not been complied with in that the rear garden elevations have been altered to create a terrace.
- The requirements of the notice are: Remove the unauthorised raised terrace (outlined in blue on the attached plan *[to the notice]* for identification purposes) from the Premises; Reinstate the rear gardens levels in accordance with approved plan reference SL/09E; Remove all resulting materials from the Premises.
- The period for compliance with the requirements is one month.
- 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. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. The letter to the appellant enclosing the enforcement notice refers to it as a breach of condition notice (BCN) under s187A of the Town and Country Planning Act 1990 as amended (the 1990 Act), in respect of which there would be no right of appeal. The plan attached to the enforcement notice is also headed as accompanying a BCN.

2. However, the form and content of the notice, including the reference to the ability to make an appeal, means that it is clear on its face that it was not intended as a BCN. Further, neither party has treated it as such. I therefore proceed with the appeal on this basis.
3. Planning permission was granted under reference 14/04759/FUL and dated 17 June 2015 (2015 Permission) for the subdivision of the site and erection of a three storey dwelling and associated works as outlined in my banner heading above. The land that is the subject of the enforcement notice is described as to 'all that land known as rear of 10-12 Elmscott Gardens...' but the appellant says that the address of the property built in accordance with the 2015 Permission is '140 Bush Hill'.
4. That said, the appeal form states the address as rear of 10-12 Elmscott Gardens. There appears to be no dispute or uncertainty as to which land the notice is directed at and the appellant has received the notice so as to make a valid appeal. As such, I do not consider a correction to be necessary.

The Appeal on Ground (a) and the Deemed Planning Application

5. I now proceed to the ground (a) appeal which is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

Background

6. The breach of planning control referred to in the notice is the failure to comply with conditions 1 and 2 in the 2015 Permission requiring development to be in accordance with approved plans, and for details of existing and proposed ground levels to be approved by the Council, and implemented as approved. Details were submitted under application reference 16/01489/CND to discharge condition 2 of the 2015 Permission.
7. The plans subject to the 2015 Permission and the plans approved pursuant to condition 2 show that the rear garden to the approved dwelling would include a lawn that slopes down from a lower ground floor terrace. The Council alleges that conditions 1 and 2 have not been complied with because the ground has been altered so that the lawn is terraced.
8. In the interests of clarity, the enforcement notice is concerned only with the garden and not with the ground level (or any other matter relating to) the approved house.

Main Issue

9. The main issue is the effect of the unauthorised terrace on the living conditions of neighbouring occupants, with particular regard to overlooking and outlook.

Reasons

10. The reasons for issuing the enforcement notice refer to the impact of the "raised terrace" but the EN only alleges that ground levels have been "altered". From the evidence before me, it appears that parts of the land have been levelled to create a terraced garden but not raised as such, although I recognise that the works would make it easier for occupiers to use this part of the garden for activities such as play and sitting out. The enforcement notice

attacks only the higher of these two terraces, which is outlined in blue on the enforcement notice plan.

11. As outlined above, it does not appear that ground levels have been raised to create the unauthorised terrace. However, in the absence of detailed topographical surveys, I cannot be certain of this. It could, for example, be that the land previously sloped from one side boundary to the other.
12. I therefore shall assess the impact of the unauthorised terrace as observed at my site visit. In making this assessment, I have borne in mind that, as a matter of fact and degree, the levelling of the garden which has created the unauthorised terrace would make it easier for occupants to sit out in this part of the garden. This therefore creates a greater risk of overlooking and a perception of overlooking as compared to the approved sloping levels.
13. As the appeal property does not yet appear to be occupied, I consider the position that would result once residents are in occupation.

Living conditions assessment

14. The relatively long gardens of houses at 10 and 12 Elmscott Gardens are positioned end to end with the appeal property garden. As such, even with the increased risk of overlooking resulting from the unauthorised terrace, there is no harmfully close overlooking of the more private parts of No 10 and 12's gardens nearest the house, or of rear habitable room windows of these properties.
15. However, the likely increased use of the unauthorised terrace area for sitting out would cause a harmfully dominant perception of overlooking for the occupants of these dwellings due to the elevated position of the terrace relative to Nos 10 and 12. The occupiers of these properties would feel "watched" to such an extent that this would unacceptably spoil their outlook from, and enjoyment of, their gardens.
16. The unauthorised terrace allows a clear view over the boundary from an elevated position into rear sections of the gardens of 8 and 14 Elmscott Gardens, and at a very close distance. No 8 has a summer house type building in this location, and No 14 has a football goal. Thus, it appears that these areas are fairly well used for recreational purposes.
17. Some overlooking between residential gardens is not unusual. However, I find that the terrace causes an increased risk of overlooking of these parts of No 8's and No 14's gardens, which would be harmfully invasive. It would result in an unacceptable loss of privacy and outlook, inhibiting the reasonable enjoyment of these gardens. Equally, it would result in a harmful perception of overlooking in respect of Nos 10 and 12 as outlined.
18. However, as proposed in the appellant's appeal on ground (f), a condition could be imposed requiring privacy screens and landscaping on the boundaries with the affected properties. Boundary treatment up to 2 metres high and appropriate landscaping would be sufficient to prevent unacceptable overlooking of Nos 8 and 14 and an unacceptable perception of overlooking of Nos 10 and 12 as described.

19. Existing overlooking from the permitted lower ground floor terrace and rear windows in the appeal property does not obviate the need for this condition as this is from a greater distance than overlooking from the unauthorised terrace.

Other Matters

20. Concerns have been raised in relation to other conditions on the 2015 Permission not having been complied with. These are not matters for me as the enforcement notice is only concerned with breach of conditions 1 and 2 and land levels in the garden.

Conclusion on Ground (a) and Conditions

21. I therefore conclude on the main issue that whilst the unauthorised terrace currently would have a harmful effect on the living conditions of neighbouring occupants with particular regard to overlooking and outlook, this could be overcome by condition.
22. The Policies referred to in the enforcement notice do not contain any direct explicit reference to living conditions. However, I find that if appropriately conditioned, the unauthorised terrace would comply with Core Policy 30 of the Enfield Plan Core Strategy (2010) and with Policy DMD37 of the Council's Development Management Document (2014) in the sense of being appropriate to its context. The condition proposed would also ensure that a high standard of amenity is offered to neighbouring occupants as expected by paragraph 127 of the National Planning Policy Framework 2019.

Conditions

23. Where an appeal is allowed on ground (a) in respect of a notice which alleges a breach of condition, s177(1)(b) and s177(4) of the 1990 Act provide that the disputed condition may be discharged and new conditions may be substituted on the original permission, while the deemed planning permission granted under s177(5) of the 1990 Act would amount to a fresh permission and be granted subject to the same conditions.
24. Conditions 1 and 2 on the 2015 Permission will be discharged but new conditions will be imposed to require compliance with the approved plans and details except as regards the rear garden levels.
25. Condition 19 detailed below (numbered to reflect the number of conditions on the 2015 Permission) is imposed to ensure that details of the privacy screens and landscaping are submitted, approved and implemented so as to make the development acceptable in planning terms. There is a strict timetable for compliance because permission is being granted retrospectively, and so it is not possible to use a negatively-worded condition to secure the approval and implementation of the privacy screens and landscaping before the development takes place.
26. The condition will ensure that the development can be enforced against if the privacy screen and landscaping details are not submitted for approval within the period given by the condition, or if the details are not approved by the local planning authority or the Secretary of State on appeal, or if the details are approved but not implemented in accordance with an approved timetable.

Overall Conclusion

27. For the reasons given above I conclude that the appeal should succeed on ground (a) and that the enforcement notice should be quashed. I propose to discharge the conditions the subject of the notice, and to grant planning permission, on the application deemed to have been made, for the operations previously permitted without complying with the conditions enforced against, but subject to conditions as indicated in paragraph 30 above. The appeals on grounds (f) and (g) do not therefore fall to be considered.

Formal Decision

28. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, the condition nos 1 and 2 attached to the planning permission dated 17 June 2015, Ref 14/04759/FUL are discharged and the following new conditions are substituted and added:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
SL/01 Rev E; SL/02 Rev H; SL/03 Rev C; SL/04 Rev D; SL/05 Rev D; SL/06 Rev D; SL/07 Rev E; SL/08 Rev D; SL/09 Rev E; SL/10 Rev C; SL/11 Rev B; Design and Access Statement; Tree Survey; Ecology Report; Energy Statement; Code for Sustainable Home.
- 2) The development hereby approved shall be constructed in accordance with the existing and proposed ground levels plans approved under application Ref 16/01489/CND approved on 4 January 2017, except in respect of the rear garden and subject to condition no. 19.
- 19) The rear garden shall be restored to its original ground level(s) and all materials resulting from the restoration shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for:

Landscaping works and privacy screens to protect the living conditions of the occupants of 8, 10, 12 and 14 Elmscott Gardens

shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

29. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended subdivision of site and erection of 1 x 3 storey, 5-bed single family dwelling, external staircase at side to first floor level, rear balconies and terrace, solar panels, amenity space including lower ground floor terrace, associated landscaping and off street parking to front without complying with the said conditions but subject to the other conditions attached to that permission and the following new conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

SL/01 Rev E; SL/02 Rev H; SL/03 Rev C; SL/04 Rev D; SL/05 Rev D; SL/06 Rev D; SL/07 Rev E; SL/08 Rev D; SL/09 Rev E; SL/10 Rev C; SL/11 Rev B; Design and Access Statement; Tree Survey; Ecology Report; Energy Statement; Code for Sustainable Home.

- 2) The development hereby approved shall be constructed in accordance with the existing and proposed ground levels plans approved under application Ref 16/01489/CND approved on 4 January 2017, except in respect of the rear garden and subject to condition no. 19.

- 19) The rear garden shall be restored to its original ground level(s) and all materials resulting from the restoration shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 3 months of the date of this decision a scheme for:

Landscaping works and privacy screens to protect the living conditions of the occupants of 8, 10, 12 and 14 Elmscott Gardens

shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

V Bond

INSPECTOR