



Appeal Decision

Site visit made on 13 February 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th March 2020

Appeal Ref: APP/N5090/C/19/3237439

Land at 6 Hemswell Drive, London NW9 5WN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Ms Mary Kadama against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 20 August 2019 under ref. ENF/0401/19.
 - The breach of planning control as alleged in the notice is: *"Without planning permission the construction of a single storey rear extension"*.
 - The requirements of the notice are set out as follows:
*"1 Demolish the single storey rear extension
2 Permanently remove all constituent materials resulting from the works in 1. above from the property"*.
 - The period for compliance with these 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is dismissed, 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.

Matters of clarification

2. There was no representative from the Council at the site at the appointed time of my site visit. After waiting for a short while, the appellant permitted access via the rear of the property, following which my inspection was conducted on an unaccompanied basis.
3. The appeal property is a 2-storey, mid-terraced house. The notice attacks a single-storey extension that has been added to the rear of the house to enlarge the ground floor living accommodation.
4. The original rear elevation of the appeal property is staggered such that the rear extension has a depth of between about 3.5 m and 4.3 m. It spans across virtually the full width of the appeal property. Its sloping roof has a shallow pitch but reaches a maximum height of about 3.5 m, just under the first floor windows. The external walling and roofing surfaces of the extension appear to be unfinished.

5. The notice is not made null and void by whatever advice was set out in the letter sent by the Council in April 2019 following the original investigation. It is a fundamental principle that a local planning authority does not fetter its discretion to issue an enforcement notice by any form of informal advice.

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

6. In assessing whether planning permission ought to be granted for what is alleged in the notice, the main issues are the effects of the single-storey rear extension upon the character and appearance of the host terraced building and its surroundings and upon the living conditions of neighbouring residents, particularly in terms of outlook and light.
7. My decision is based on the development plan policies to which I have been referred – Policy CS5 of Barnet’s Local Plan Core Strategy and Policy DM01 of Barnet’s Local Plan Development Management Policies. When read together, they broadly seek to encourage high quality design and to protect the quality of the built environment, including Barnet’s character and amenity and accord with the broad thrust of the National Planning Policy Framework (Framework) which sees the creation of high quality buildings and places as being fundamental to what the planning and development process should achieve. The Framework says that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions, taking into account any local design standards or style guides in plans or supplementary planning documents. The parties have referred to the Council’s Supplementary Planning Document: *Residential Design Guidance* October 2016 (SPD).
8. The appellant has pointed to paragraphs from a section in Part 2 of the SPD titled “*Reducing the visual impact of external additions to building*”. On closer inspection, these paragraphs essentially provide advice on how to incorporate measures in new residential development for the discreet accommodation of external services such as flues, pipes, ventilation units, satellite dishes and the like. Of far greater relevance to this case is paragraph 14.21 from Part 3 relating to rear extensions to existing residential development; this advises that single-storey rear extensions up to a depth of 3 m are normally considered acceptable for terraced properties. However, the SPD is only guidance and does not rule out larger rear extensions.
9. No. 6 falls within a 2-storey residential terrace of 8 properties (nos 1-8 Hemswell Drive) where each pair has a staggered alignment to the next pair. Being at the rear, the extension has no impact on the street scene along Hemswell Drive. However, the rear of the appeal property faces towards an area of public open space through which is a public right of way. The extension is also very visible from Elvington Lane where the road finishes as a cul-de-sac. It can also be picked out above various rear garden boundary structures when approaching along Heywood Avenue towards the junction with Hemswell Drive. From all these public vantage points, I could see that the extension is quite prominent and that none of the houses in the host terrace has any form of rear extension that is comparable to what has been built at no. 6.
10. I consider the subject extension conveys the impression of a large, block-like structure which is insufficiently subservient to the main house. It appears as a

discordant feature of this terraced property and within its immediate surroundings by reason of its size and scale, particularly having regard to its overall height in combination with its depth and width and its siting on or very close to the 2 side boundaries. It also visibly sticks out beyond the rear building line disrupting the staggered alignment of the host terrace and takes up a considerable amount of the modest back garden.

11. The choice of building materials leaves a lot to be desired at the present time. Despite having had ample opportunity to do so, it has not been made clear exactly how the external roofing and walling surfaces will fully or even reasonably match the bricks and tiles used on the rear elevation of the host building. It may not be possible to add bricks to the breeze blocks on the side wall of the extension facing no. 5 if that wall is already on the boundary.
12. This is a disproportionate, poorly designed and visually unattractive enlargement of the house at ground floor level. The extension detracts from the character and appearance of the host terraced building, stands in stark contrast to the prevailing pattern of development at the rear of the host terrace and has a negative visual impact upon its surroundings as viewed from public vantage points at the rear.
13. The second reason for issuing the enforcement notice is somewhat confusing. The first sentence invites a reader to believe that the occupants of both neighbouring properties would be adversely affected, whilst the second refers to a single property. Reading the Council's statement and delegated report for the enforcement notice, the focus is on no. 5 and I consider this to be correct.
14. The extension has resulted in a significant depth (about 3.45 m) of built development right next to or even on the boundary with no. 5. The ground floor rear elevation of no. 5 contains a window to a habitable room in close proximity to the common boundary line. The extension is visually overbearing and intrusive as it has impinged to an unacceptable degree upon the outlook from that adjacent ground floor window and the garden area immediately beyond it. This adverse sense of enclosure is exacerbated by the fact that these properties are fairly narrow which limits the opportunity for outlook from their rear elevations and that there would have been some loss of daylight. The extension is sited to the north of no. 5 so there would be loss of sunlight. It contains no side windows so there would be no loss of privacy at no. 5.
15. The extension is sited to the south of no. 7. It is likely to have brought about some loss of sunlight reaching the rear ground floor patio doors and back garden of no. 7. However, the effect is limited as the extension projects only about 1.47 m further out than the closest rear wall of no. 7 owing to the staggered alignment. From what I could see, the amenities of the neighbouring occupiers at no. 7 have not been affected for any reason to an extent that justifies the withholding of planning permission. That does not alter the concerns I have with regard to the impact on the occupiers of no. 5.
16. The appellant argues that the additional extent of the extension beyond its predecessor and beyond what could be built under permitted development rights is very modest and has no real effect on the amenities of no. 5.

17. I am aware that the Council issued a lawful development certificate in December 2018 for a single-storey rear extension under ref. 18/6376/191 due to the fact that it had been in place for over 4 years. This extension was taken down prior to the subject extension being built and apparently it had a depth of 3 m and a maximum height of 2.8 m. Although I have not been provided with any detailed plans or full photographs of the previous extension, in my judgement it would have been materially smaller in size, scale and height compared to the extension the subject of this appeal in the context of this site.
18. Permitted development rights represent a fallback and a material consideration when considering the planning merits. However, there is no clear evidence, such as fully worked-out plan drawings of an alternative scheme, before me to suggest that an identical or even a very similar extension scheme could take place once the notice has been complied with, using the permitted development rights that would then be available. Embarking on permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), would be unlikely to produce something less desirable than the development that has taken place.
19. As the Council has indicated the matter is probably more complicated than the appellant suggests given that the original rear elevation is stepped or staggered with 2 rear walls. Under permitted development rights an extension from each of the 2 original rear walls up to 3 m in depth would have been permissible. However, the side wall created by the step in the original rear wall amounted to a wall forming the side elevation of the original dwelling house. Any extension built beyond such a side wall of the original dwelling would have to have a width no greater than half the width of the widest part of the original building. Larger home extensions, up to 6 m in depth for terraced houses, can only be followed if the prior notification and neighbour consultation procedures have been properly followed. The outcome of such procedures cannot and should not be predicted at this stage.
20. I have noted the cases brought to my attention by the appellant at 13 Hemswell Drive and 3 Gaydon Lane. The former concerned the issue in 2017 of a certificate of lawfulness for a proposed 2-storey rear extension on a far larger plot at the end of a terrace, whilst at the latter I would need to know the full planning history of the site to understand how a single-storey rear extension 6 m in depth came to be granted planning permission in 2019. These cases have little bearing on the appeal case before me which must be determined on its own merits.
21. I have noted that a retrospective planning application (ref. 19/2941/RCU) for the subject rear extension at the appeal property was refused in August 2019. I am not examining that application as such but judging from section 2.0 of the Council's statement a subsequent appeal under section 78 of the 1990 Act seems to have been dismissed. Neither party has sought to rely or comment upon that appeal decision which was issued well before the deadline given for the submission of statements in the appeal before me.
22. For the reasons given, I find on the main issues that the single-storey rear extension has materially harmful impacts upon the character and appearance of the host terraced building and its surroundings and upon the living conditions of the neighbouring residents at 5 Hemswell Drive, particularly in

terms of outlook and daylight. There is thus conflict with the relevant development plan policies which I referred to in paragraph 7 above. There has been an infringement of the guidelines for single-storey rear extensions to terraced houses found in the SPD. The conflict with this local design standard confirms the decision I have reached in this particular case.

23. Drawing all the above together and taking into account all other matters raised, including the lack of third party objections in response to this appeal, my finding on the main issues determines the outcome of the ground (a) appeal. There is conflict with the development plan and no material considerations of sufficient weight to justify a grant of planning permission. The objections to this development could not be fully overcome by the imposition of planning conditions. Attempting to reduce the depth of the structure by condition would not be the right way forward when the appellant could approach the Council in the first instance with fresh fully-worked out alternative proposals at any stage. The appeal on ground (a) fails and planning permission will not be granted on the deemed planning application.

The appeal on ground (f)

24. This ground allows arguments to be put that the steps required by the enforcement notice to be taken, exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by the breach.
25. The manner in which the Council has prepared the enforcement notice, including the formulation of its requirements, indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4) (a) of the Act. It is reasonable and not excessive to require that the unauthorised development be removed. This would remedy the breach and nothing more.
26. There is no express planning permission in place for alterations or enlargements at the rear of this house. I accept that the enforcement regime is not meant to be punitive, but no firm agreement has emerged between the parties about the changes to the development that would be required so that it fell within all the permitted development tolerances or about precisely how this would be achieved through a variation to the requirements of the notice. For the reasons given in paragraph 19 above, a permitted development extension would not be achieved by simply removing 450 mm from its depth. Moreover, it may not be possible to fully reflect a fallback through the GPDO by way of a variation of the requirements when the relevant rights in the GPDO are subject to conditions. There is no fully worked-out alternative scheme or precisely worded alternative requirements submitted for consideration. In any event, upholding the enforcement notice would not prevent the appellant from doing what is lawful under householders' permitted development rights or from entering into further discussions with the Council about other ways forward.
27. The steps required by an enforcement notice should be clear and unambiguous. I have not been provided with sufficiently precise or objective criteria to enable the requirements of the notice to be varied. I have therefore upheld the requirements as they stand. The appeal on ground (f) fails.

The appeal on ground (g)

28. This ground of appeal is that the time given for compliance with the notice falls short of what should reasonably be allowed. The notice gives 3 months for the requirements to be carried out. The appellant has requested that the compliance period be extended to 12 months. She says that having shown that a reduced extension would be acceptable, it would be hard to secure the necessary consents and contracts to amend the extension in 3 months.
29. As I explained under grounds (a) and (f), there is no worked-out proposal before me showing that there is a practicable alternative to demolition. The appellant could choose to apply for planning permission for a differently designed extension. It is desirable that the breach of planning control is remedied without unnecessary delay in order to address the harm that arises from it, as identified in the reasons for issuing the notice. I am inclined to the view that the physical works required by the notice are relatively straightforward and should not take very long to complete.
30. In line with the advice set out in paragraph 58 of the Framework, effective enforcement is important to maintain public confidence in the planning system. I note that the Council may choose not to initiate prosecution proceedings after the expiry of the compliance period with reference to section 179(3) of the 1990 Act as amended. The Council also has the discretion to extend the compliance period, should any unforeseen difficulties arise or should it wish to allow time to consider any fresh planning application, using its powers under section 173A(1) (b) of the 1990 Act as amended. On all the available evidence before me, I find that the 3-month compliance period given in the notice was reasonable. The appeal on ground (g) does not succeed.

Andrew Dale

INSPECTOR