

Appeal Decisions

Site visit made on 13 February 2020

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Date of decisions: 12th March 2020

Appeal A Ref: APP/N5090/C/19/3238968 **43 Colindale Avenue, London NW9 5EP**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Lee Saywack against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 6 September 2019 under ref. ENF/1332/19.
 - 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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Appeal B Ref: APP/N5090/W/19/3237960 **43 Colindale Avenue, London NW9 5EP**

- 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 Lee Saywack against the decision of the Council of the London Borough of Barnet.
 - The application ref. 19/3078/RCU, dated 15 May 2019, was refused by notice dated 5 August 2019.
 - The development proposed is "*Retrospective Planning Application for rear extension to ground floor residential flat*".
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Decisions

Appeal A Ref: APP/N5090/C/19/3238968

1. 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 Town and Country Planning Act 1990 as amended for the development already carried out, namely the construction of a single-storey rear extension at 43 Colindale Avenue, London NW9 5EP as shown on the plan attached to the notice.
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Appeal B Ref: APP/N5090/W/19/3237960

2. The appeal is allowed and planning permission is granted for retrospective planning application for rear extension to ground floor residential flat at 43 Colindale Avenue, London NW9 5EP in accordance with the terms of the application, ref. 19/3078/RCU, dated 15 May 2019 and the following plans, submitted with the papers for appeal ref. APP/N5090/W/19/3237960, namely drawing no. FP-CA-03-0118 titled *Floor plan – Existing* and drawing no. FP-CA-04-0118 titled *Elevation/Section – Pre-Existing/Existing*.

Background and matters of clarification

3. The appeals concern a single-storey, flat-roofed rear extension which has been added to enlarge a ground floor flat in a 2-storey, semi-detached residential property. The flat now has 3 bedrooms. The main building seems to date from the Victorian period. It was built with a 2-storey rear outrigger, beyond which was a single-storey outrigger. There is every reason to believe that this was the original building in planning terms. The original rear elevation was therefore stepped with 3 rear walls. The subject extension has effectively replaced the original single-storey outrigger.
4. The terms of the deemed planning application in Appeal A are defined by the breach of planning control alleged in the enforcement notice. As this is the same as the retrospective planning application that is the subject of Appeal B (the section 78 appeal), the 2 appeals can be dealt with together.
5. The plans which accompanied the retrospective planning application did not accurately reflect what had been built on site. For the avoidance of doubt and as clarified with the parties at the site visit, I have had closest regard to drawing no. FP-CA-03-0118 titled *Floor plan – Existing* and drawing no. FP-CA-04-0118 titled *Elevation/Section – Pre-Existing/Existing*, both of which have been submitted with the appeal papers. No prejudice to any party would arise from considering these plans as they most closely resemble what has been built on site which is what I must focus on.
6. Further clarification about the extension was gained from the measurements taken and agreed by the parties at my visit. Its maximum width, measured along its rearmost wall, is 4.31 m. It virtually adjoins the back of the original 2-storey rear outrigger. The extension has a depth of about 6.93 m beyond that outrigger. Along this depth there is a 1.04 m gap between the extension and the fence on the boundary to no. 41.
7. The parties have made comments about permitted development rights which I shall briefly deal with at this juncture. Flats do not attract permitted development rights. Even if the whole building was treated as a single dwelling, under permitted development rights an extension from each of the 3 original rear walls up to 3 m in depth may have been permissible. The enlargement here extends beyond the middle rear wall of the original building by more than 3 m. Furthermore, in this scenario, each of the side walls of the outriggers would have amounted to a wall forming the side elevation of the original dwelling house. The extension was built beyond the side walls of the original single-storey outrigger and has a width greater than half the width of the widest part of the original building, contrary to another limitation applying to permitted development at single dwellings.

Appeal A, ground (a) and the deemed planning application and Appeal B

8. Reading the written submissions and the reasons for the issue of the enforcement notice and the refusal of planning permission, I consider the **main issues** for my determination of the appeals are the effects of the extension upon the character and appearance of the building and the wider surroundings and upon the amenities of the neighbouring occupiers at 41 Colindale Avenue with particular regard to outlook.
9. The Council's Supplementary Planning Document: *Residential Design Guidance* October 2016 (SPD) advises that single-storey rear extensions up to 3.5 m in depth are normally considered acceptable for semi-detached properties. However, the SPD is only guidance, does not rule out larger rear extensions and, somewhat surprisingly, does not offer any guidance on how to deal with rear elevations which are stepped. That aside, it is not entirely correct to say, as the Council does, that the extension has a maximum depth, when measured from the original rear elevation, of 11.8 m. This could only be the case if the 2-storey rear outrigger is included in the depth. This would be unfair as that structure was part of the original property. It is notable that the original outriggers would have conflicted with the SPD if they had been built as extensions after October 2016.
10. The development appears to comply with the SPD guidance on depth in respect of the former position of the rearmost part of the original single-storey rear outrigger as pointed out by the appellant. It could be construed to conflict with that guidance where it projects (about 6 m) beyond the part of the former single-storey outrigger that was directly attached to the 2-storey outrigger. However, it is only slightly wider than the 2-storey outrigger, the most important architectural feature at the rear, which remains distinct and it is not quite as wide as the main body of the property. There has been no material infill of the side yard next to the 2-storey outrigger. I consider that such side yards are a key characteristic of the form, scale and character of period properties of this type.
11. No. 43 is in a short row of properties between the stream next to the main entrance of Public Health England and the junction with Annesley Avenue. There is a degree of uniformity to the front facades of the properties in this row. Part of the extension can be glimpsed in public views from Colindale Avenue down the narrow passageway between nos 41 and 43 but, given its location, it has no material impact upon the Colindale Avenue street scene.
12. The rear of the appeal property has an aspect towards the stream, mature vegetation and the grounds of Public Health England. There are no obvious public vantage points at the rear. When viewing from the back gardens in this row, a far more varied appearance is apparent with a range of extensions and alterations forming part of the established local character. In particular, the appellant draws support from rear extensions of similar proportions and appearance at nos 37, 49 and 51. I note that a similar but wider extension was granted planning permission at no. 41A in June 2011. Whilst this was not implemented, the Council has offered no commentary upon it. Still, the important point is that the subject extension does not look incongruous when viewed by neighbouring residents in the context of the wider surroundings found at the rear of this row of properties.

13. The extension has greater bulk than the pre-existing arrangement but it is not an unduly prominent feature or out of proportion with the size of the main building viewed as whole or the back garden. The lean-to style single-storey outrigger had little merit in itself, especially after the paired one at no. 45 was altered by development. The character and appearance of the host property is sufficiently respected since the original 2-storey outrigger remains the dominant feature at the rear and the side yard next to it has not been infilled. I saw that the occupants of the ground floor flat still benefit from a reasonably-sized, usable garden at the rear.
14. The neighbours residing within no. 41, which also seems to be in use as 2 flats, will not have noticed any overbearing effects or any substantial loss of visual amenity. This is because the side yards next to the 2-storey outriggers at both nos 41 and 43 remain open, the extension is set away from the boundary fence by at least 1.0 m and only a small part of the flat-roofed extension reaches above that fence. The windows in the rear-facing walls of no. 41 would retain a reasonable outlook over the well-sized rear garden. I am not therefore persuaded that the extension has given rise to an unacceptable sense of enclosure or otherwise caused a harmful loss of outlook from those windows or from this neighbouring property at large.
15. Drawing these threads together, I find on the main issues that neither the character and appearance of the house and its wider surroundings nor the amenities of the neighbouring occupiers at 41 Colindale Avenue have been affected to an extent that justifies the withholding of planning permission. The absence of third party objections in response to these appeals lends some support to the finding I have reached. Whilst there may be a degree of departure from the Council's SPD, no material planning harm arises and there is no obvious conflict with Policies CS NPPF, CS1 and CS5 of Barnet's Local Plan Core Strategy or Policy DM01 of Barnet's Local Plan Development Management Policies which, when read together, broadly seek to encourage high quality design and to protect the quality of the built environment, including Barnet's character and amenity.
16. The Council's statement of case did not suggest any planning conditions in the event of Appeal A, ground (a) and Appeal B succeeding and I see no need for any. My finding on the main issues determines the outcome of the appeals. For the reasons given above and having taken into account all other matters raised, I conclude that Appeal A should succeed on ground (a). I shall grant planning permission for the construction of a single-storey rear extension as described in the notice. I conclude that Appeal B should be allowed and planning permission granted with reference to the plans I have considered.

Appeal A, the appeal on grounds (f) and (g)

17. The enforcement notice has been quashed after the success of the appeal on ground (a). Grounds (f) and (g) no longer fall to be formally considered.

Andrew Dale

INSPECTOR