

Appeal Decision

Site visit made on 26 February 2020

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 24th March 2020

Appeal Ref: APP/N5090/C/19/3234413
35 Sunny Gardens Road, London NW4 1SL

- The appeal is made by Shimon Ben-David under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: ENF/0475/19) issued by the Council of the London Borough of Barnet on 15 July 2019.
 - The breach of planning control alleged in the notice is "the erection of an outbuilding to the rear of the host property".
 - The requirements of the notice are as follows: -
 - "1 Demolish the outbuilding to the rear of the property
 - 2 Permanently remove all of the constituent materials resulting from the works in 1. above from the property."
 - The period for compliance with these requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f). Since there is an appeal on ground (a), an application for planning permission is deemed to have been made by section 177(5) in respect of the matters stated in the notice as constituting a breach of planning control.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the erection of an outbuilding at the rear of 35 Sunny Gardens Road, London NW4 1SL, subject to the condition that the outbuilding shall only be used for purposes incidental to the enjoyment of the residential accommodation at 35 Sunny Gardens Road, as such.

Reasons for the decision

Ground (a)

2. The main issue under ground (a) is whether the outbuilding is acceptable, having regard to its effect on the character and appearance of its surroundings, visual amenities and privacy.
 3. The outbuilding is a system-built structure designed for use as a summerhouse. It is typical of structures that are often to be seen in the rear gardens of houses. Planning permission is required for its erection here only because this particular house contains flats. The same structure if erected in a similar location in the gardens of single households in the area would not normally require the Council's approval, since it would comply with all the limitations as to size and ground coverage contained in the general permitted development
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order. In these circumstances, I consider that there is little force in the argument that the outbuilding is harmful to the character and appearance of its surroundings or to anyone's visual amenities, when such structures are generally permitted in the area and could be erected as of right by most householders.

4. The outbuilding and the rear garden are occupied along with the ground-floor flat. Privacy issues between the facing window in the outbuilding and the ground-floor flat therefore do not arise. The Council's claim that the privacy of the occupiers of the upper floors in the house is harmed by the upwards view from this window is implausible. The reverse may apply, but the matter has been dealt with by installing window blinds in the outbuilding. The outbuilding leaves sufficient garden space for other domestic activities to be carried out by the occupiers of the ground-floor flat.
5. The Council and others have raised concerns that the outbuilding may be used as a separate dwelling, particularly as it is possible to gain access on foot to the rear garden by a private shared path from the road. The enforcement notice is directed at the outbuilding as a structure and does not contain any allegations about its present use. Its future use can be controlled by a planning condition that would place its use in the same category as domestic outbuildings erected as permitted development.
6. The outbuilding complies with the guidance about back garden buildings in the Barnet Local Plan Supplementary Planning Document: Residential Design Guidance and it is not in conflict with Policies DM01 and DM02 of the Barnet Local Plan (Development Management Policies) Development Plan Document, in so far as these policies are relevant to domestic outbuildings. Planning permission should be granted for it, subject to the condition referred to in paragraph 5 above. The appeal has therefore been allowed on ground (a).

Ground (f)

7. As a result of the success of the appeal on ground (a), the enforcement notice has been quashed. Ground (f) no longer falls to be considered.

D.A.Hainsworth

INSPECTOR