



Appeal Decision

Site visit made on 30 September 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2020

Appeal Ref: APP/N5090/C/19/3243211

Land at 7 Kenerne Drive, Barnet EN5 2NW

- 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 Tony Isaku against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 7 November 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the construction of roof extensions incorporating a rear dormer window and hip-to gable conversion. The unauthorised creation of an additional 1no self-contained flat within the roof space.
- The requirements of the notice are 1 Restore the roof to its original state prior to the current breach in planning control by removing the rear dormer and gable extensions and restoring the roof to its original specification with tiles to match the existing; 2 Cease the use of the loft space as a dwellinghouse, i.e. a self-contained flat; 3 Remove all kitchen facilities from the loft, including the removal of all cookers, ovens and food preparation and/or work surfaces; 4 Remove all bathroom facilities from the loft, including the removal of all toilets, basins, showers and shower cubicles.
- The period for compliance with the requirements is 6 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.

Summary of Decision: The enforcement notice is upheld with a variation.

Preliminary Matter

1. The appellant argues that the appeal site has operated as a House in Multiple Occupation (HMO), being made up of a number of individual units. However no appeal is made under ground (b), that is that the alleged development has not occurred. The alleged development includes the creation of a self-contained flat.
2. Section 254 of the Housing Act 2004 sets out the criteria to be met if a building or a part of a building is an HMO. The criteria include that it must consist of one or more units of living accommodation not consisting of a self-contained flat or flats and that two or more of the households who occupy the living accommodation share one or more basic amenities, or the living accommodation is lacking in one or more basic amenities. "Basic amenities" is defined as a toilet, personal washing facilities or cooking facilities.
3. From my visit it was apparent that the unit the subject of the notice had a lockable front door and there is no evidence that the amenities contained within, including cooking and en-suite bathroom are shared with the occupiers

of any other unit. I am not therefore persuaded, on the balance of probability, that the use of the unit the subject the notice forms part of an HMO. Accordingly any Council policies which seek to retain existing HMOs do not weigh in favour of the development.

4. The appellant has referred to a license previously granted by the Council for the use of the property as an HMO. This however relates to a separate consenting regime and does not have a bearing on my assessment in this case, nor does it alter the above findings.

The appeal on ground (a)

5. The ground (a) appeal is that planning permission should be granted for the alleged development.
6. The main issues are the effect of the development on i) the character and appearance of the host building and the surrounding area and ii) the living conditions of a) the occupiers of the flat with particular regard to internal space standards and b) neighbouring residents with particular regard to noise disturbance.

Reasons

Character and Appearance

7. The appeal site is part of a linear residential cul de sac, predominantly consisting of two-storey, semi-detached buildings, with relatively uniform forward building lines. The prevailing original design characteristics of the houses in this street appear to have been hipped roofs with double storey projecting bay windows, to the front elevation, often capped with smaller peaked gables. Material finishes are predominantly brick and various textures and colours of render.
8. It was apparent from my visit that many houses along the street have received two storey side and / or hip to gable roof extensions. There are examples of such development in close proximity to the appeal site, including the adjacent property at No 9. The extensions have brought some variation to the design of the street scene, serving to disrupt any strong sense of symmetry between pairs of dwellings and visual rhythm around the cul de sac.
9. Notwithstanding this, when viewed from the front, it seems to me that several buildings, particularly those on the opposite side of the road, have substantially retained a hipped roof form, such that the original visual character of the street is still in evidence.
10. Because the cul de sac is built on a slope the ground and roof ridge levels of the appeal property are somewhat higher than that of the adjoining dwelling. The combination of the change in levels and full hip to gable roof extension serve to visually jar with the adjoining dwelling, undermining the sense of symmetry between the two. Therefore, notwithstanding similar designs in the locality, on balance these features draw the eye to a development that does not appear sympathetic to the design of its immediate surroundings.
11. It is also apparent that rear dormer extensions are relatively common along the street. Whilst some of these structures, including the one at the adjacent property, No. 9, are similar in scale to that subject to the current appeal, in

that they cover virtually the full width and height of the main roof, such large dormer extensions nevertheless do not appear to be usual in the vicinity. From the information before me I cannot be certain as to whether other large dormers are lawful and if they are, the underlying circumstances for their justification.

12. However I must consider the present case on its own merits and in this case the dormer appears as an excessively dominant part of the rear elevation as a whole, such that the resulting form of the building is starkly at odds with that of the adjoining dwelling and with the original design of the property. I am not persuaded that the occurrence of other large dormer extensions serves to justify the development in this case.
13. On balance, I find the extensions to be disproportionate and unsympathetic additions that stand out as incongruous or obtrusive features. Whilst I acknowledge that the appeal site is not within a Conservation area, I conclude that the extensions nevertheless result in harm to the character and appearance of the original dwelling and surrounding area. Accordingly I find conflict with Policy 7.4 of the London Plan 2016 (LP), Policies CS1 and CS5 of Barnet's Core Strategy 2012 (CS) and Policy DM01 of Barnet's Development Management Policies Development Plan Document 2012 (DPD) insofar as they seek to secure high quality design that respects the local character of the area including in terms of the appearance, scale, mass, height and pattern of surrounding buildings.
14. The extensions are also in conflict with guidance set out in the Council's Residential Design Guidance Supplementary Planning Document 2016 (SPD), as it relates to dormers and large roof extensions. This states that dormer extensions should not be more than half the width or depth of the roof slope and that a hip to gable extension should not unbalance a pair of semi-detached properties or appear out of character within the streetscape.
15. The appellant states that if the building was a single dwelling then the extensions would benefit from permitted development rights and as such would be regarded as inherently acceptable in design terms. However the permitted development rights in question seek to promote the provision of additional living space within single dwellings. The extensions in this case are not so permitted and it is right that they are assessed against the relevant policies in the Council's development plan.

Living Conditions of Occupiers

16. The Council's position is that the flat would fail to meet satisfactory minimum internal space standards for single bedroom properties, as set out in Policy 3.5 of the LP, and as such would be harmful to the amenity of present and future occupiers.
17. The appellant, whilst acknowledging that the flat would fall short of the aforementioned minimum standards, claims that the development would still provide good quality living accommodation.
18. Whilst I have no reason to take issue with the internal quality of accommodation in terms of facilities present, there is no dispute that it falls short of minimum space standards. I conclude that harm would be caused to the living conditions of occupiers of the flat resulting from insufficient internal

space. Accordingly the development is in conflict with Policies 3.5 and 7.6 of the LP, with Policies CS5 of the CS and DM01 of the DPD and with the SPD insofar as they seek to achieve a high standard of development that protects the living conditions of residents.

Living Conditions of Neighbours

19. The Council has referred in the notice to the impact on the living conditions of neighbours arising from an over-intensification of the use of the site. The Council's officer report indicates that it is concerned with regard to noise disturbance associated with various comings and goings that would result from the occupation of the flat. However it seems to me that when considering the limited scale of development involved and that the property has already been sub-divided into a number of flats, there would not be any significant difference in the scale and pattern of comings and goings.
20. The main front entrance to the flat is offset from the adjoining property, No 5, by several metres and from the adjacent dwelling, No 9, by a substantial gap. Whilst I am aware of objections to the scheme from local residents, they do not refer to any specific harms caused from comings and goings in connection with one additional flat. Whilst concern has been expressed by the adjoining resident about loss of privacy I am satisfied that the additional flat results in no direct overlooking of that property.
21. I conclude that the development would not result in harm to the living conditions of adjoining or nearby residents with particular regard to noise disturbance. I therefore find that there would not be conflict with Policy 3.5 of the LP, Policies CS1 and CS5 of the CS, Policies DM01 and DM02 of the DPD or with the National Planning Policy Framework insofar as they seek to protect the living conditions of nearby residents. This however does not overcome the harm that I have identified above.

Other Matters and Planning Balance

22. The appellant contends that the development delivers an additional affordable residential unit, therefore helping to address housing need in the Borough. However no evidence has been provided that the Council is unable to provide a sufficient supply of housing land to meet its local housing needs. In any event, even if this was the case, the development provides only a single unit of accommodation.
23. I therefore attach very limited weight to this consideration in the overall planning balance and I find that this does not outweigh the harm and resulting policy conflict that I have identified above. The ground (a) appeal fails.

The appeal on ground (f)

24. The ground of appeal is that the steps required by the notice to be taken are excessive. The appellant has raised the concern that the requirement in the notice to remove the kitchen and bathroom facilities is excessive and that it should be sufficient for the residential use to cease.
25. However, it seems to me that the existence of various fixtures and fittings including the kitchen and bathroom are part and parcel of facilitating the independent use of the unit. Notwithstanding any work that may or may not be undertaken in the future in connection with the lawful use of the property, if

these fixtures and fittings were allowed to remain in place they would make it unreasonably difficult to prevent the resumption of the unauthorised residential use. I am not persuaded that the requirements are excessive in terms of returning the property to its last lawful use. I do not therefore concur with the view that requirements 3 and 4 should be deleted.

26. S173(4)(a) of the 1990 Act as amended provides that the purposes of an enforcement notice can be to remedy the breach of planning control, including by making any development comply with the terms of any planning permission granted or by restoring the land to its condition before the breach took place.
27. The Council previously granted planning permission for alterations comprising a reduction in the scale of the rear dormer; the removal of the hip to gable roof extension and its replacement with a side dormer window and the amalgamation of the resultant space into one of the existing flats. I therefore find that the notice should be varied, in line with s173(4)(a), to stipulate that either the requirements of the notice be complied with or that the development is modified so as to comply with the terms and conditions of that planning permission. Varying the notice on this basis would cause no injustice to the Council.
28. I conclude that the requirements of the notice are not excessive to remedy the breach, but the same end could also be achieved by the alternative, lesser step of making the development comply with the terms of the permission. I shall vary the notice and the appeal on ground (f) succeeds to that extent.

The appeal on ground (g)

29. The ground of appeal is that the compliance period is too short. The appellant seeks to extend the compliance period to 18 months in order to arrange for vacant possession of the flat and to allow time to organise the various remedial building works.
30. I have not been provided with a copy of an extant tenancy agreement for the flat with a view to demonstrating any outstanding tenancy period. Furthermore it is now a considerable time since the enforcement notice was served, almost a year ago, and I have not been provided with any other information to indicate that a lengthy tenancy remains in place. I am not persuaded, on the balance of probability, that sufficient time has not already been made available for the flat to be vacated.
31. With regard to the time allowed to organise the necessary building works, no information has been provided to indicate that this could not happen within the compliance period given. The ground (g) appeal fails.

Conclusion

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

Formal Decision

33. It is directed that the enforcement notice be varied by inserting the following wording at the end of Schedule 5 of the notice:-

'OR Modify the building so as to comply with the terms of the planning permission Ref 20/2286/FUL, dated 14 August 2020, including its conditions and limitations.'

34. Subject to this variation 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.

Roy Merrett

INSPECTOR