



Appeal Decision

Inquiry Held on 14 October 2020

Site visit made on 20 October 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th November 2020

Appeal Ref: APP/N5090/C/19/3225071

Land at Chumleigh Lodge Hotel, 226 - 228 Nether Street, London N3 1HU

- 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 Michael Wilson, Chumleigh Lodge Hotel, against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 12 February 2019.
- The breach of planning control as alleged in the notice is Without Planning Permission the Construction of a two storey Rear Extension as shown in the photo.
- The requirements of the notice are 1 Demolish the two-storey rear extension; 2 Permanently remove all constituent materials resulting from the works in 1. above from the property.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Preliminary Matters

1. The appellant claims that the notice should be regarded as a nullity for two reasons. Firstly, because the plan attached to the notice fails to include the land on which the alleged development has actually taken place and secondly because the photograph referred to in the notice, as depicting the alleged breach, was not included with the notice at the time of service.
2. It is common ground that the plan in question falls short of including the area to the rear of No 228, where the alleged development has taken place, and is therefore defective. From the evidence given at the Inquiry, whether the photograph in question was included with the notice is uncertain, however Mr Wilson has referred to the relevant photograph within his written proof.
3. On the balance of the evidence I am persuaded that there has been no misunderstanding of the development which is subject to the alleged breach. Furthermore, from the evidence given by Mr Ormonde, I am satisfied that if I were to substitute a correct plan, thus enlarging the site, this would not mean including land in which others not served by the notice would have an interest. I am therefore satisfied that the notice may be corrected without resulting in injustice. I consider that the site location plan attached to Mr Ormonde's proof of evidence would be a suitable plan with which to make this correction. The notice is not so deficient as to constitute a nullity.

4. The appeal is lodged on grounds which include (a) and (f). Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve wholly or partly, any of the purposes set out in Section 173(4). These include, remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land.
5. The alternative scheme advanced by the appellant as part of the ground (f) appeal (Drawings U-XX-PP001 dated 15 November 2018 depicting annotations to the Lower Ground Floor and Ground Floor) is neither for the retention of what is built nor does it benefit from planning permission. Accordingly, in the event that I find the development as-built to be unsatisfactory, in order to give proper consideration to this alternative I need to deal with it under ground (a) and amongst other things consider whether this outcome could be achieved by granting planning permission "in relation to the whole or any part" of the matters alleged in the notice, either with or without conditions.

The appeal on ground (d)

6. The ground of appeal is that at the date when the notice was issued no enforcement action could be taken. In order to succeed on this ground it would be necessary to show, on the balance of probability, that the development the subject of the notice had been substantially completed four years before the notice was issued.
7. It is undisputed that prior to the development taking place, there stood on part of the footprint of the extension, a shorter extension, albeit that it was the appellant's view that this may actually have formed part of the original building. Simply for ease of reference I refer to this shorter element as the 'original extension'. The parties differed in terms of how much longer the new extension is compared to the original, to the effect that it is between 4 and 5 metres longer. However this dimension was agreed to be approximately 4.3 metres, from measurements taken during my visit.
8. Whilst it is also undisputed that the original extension has been modified and built upon in order to facilitate the new extension, subject to the notice, it is the Council's primary position that the changes to the original have been so significant that it should be regarded for the purposes of planning law¹ as being part and parcel of the new extension. In the alternative it says that if I find the original and new extensions to be distinctive entities then it accepts that the original extension should be regarded as immune from enforcement due to the passage of time.
9. From the evidence before me and my site visit it is apparent that modifications to the original extension included the demolition of the rear wall, the incorporation of a substantial window in the side elevation and the raising and levelling of the previously stepped roof to allow for the fitting of coping stones. It seems to me that the effect of these works was to give the original extension a significantly different appearance and form. It became physically changed to reflect the continuity of design of the new extension as a single entity. I therefore conclude, on the balance of probability, that the original extension became part and parcel of the new extension. The correct approach, in my view, is therefore to consider whether the new extension as a whole,

¹ Oates v SSCLG and Canterbury City Council [2018] EWCA Civ 2229

incorporating the old extension, may be regarded as immune from enforcement.

10. The enforcement notice to which this appeal relates was issued on 12 February 2019. For operational development the material point at which the immunity period would commence would be four years after substantial completion of the development. In other words the extension would need to have been substantially completed by 12 February 2015. In evidence Mr Wilson said that the extension was finished in early 2015, although was not precise about the date. It is therefore uncertain as to whether the extension is immune from enforcement on this basis.
11. However, even if it can be said that the new extension was substantially completed by February 2015, it is material that the Council previously purported to take enforcement action in relation to this matter through the issue of a notice on 4 January 2018. That notice, though ultimately withdrawn by the Council on the basis of being defective, was clearly issued within four years of what the appellant indicates to be the relevant material date, that is 'early 2015'.
12. S171B(4)(b) of the Act provides that if within the appropriate 4 year period the Council have taken or "purported to take" enforcement action in respect of a breach of planning control they have a further 4 years in which to issue a subsequent notice, provided that the first was not already out of time and the matter constituted a breach of planning control. It may be deemed that the Council "purported" to take action where it issued a defective notice which was quashed on a validity or nullity point.
13. Therefore when taking into account the previous purported enforcement action by the Council, the appellant has not provided evidence, on the balance of probability, that the alleged development was immune from enforcement due to the passage of time. The ground (d) appeal therefore fails.

The appeal on ground (a)

Reasons

14. The ground (a) appeal is that planning permission should be granted. The main issues are the effect of the development on i) the character and appearance of the main building and wider street scene and ii) the living conditions of neighbouring residents at No 230 Nether Street with particular regard to outlook.

Character and Appearance

15. The hotel is situated at the corner of Nether Street and Grosvenor Road, at the end of a group of similarly designed, large, red brick fronted buildings that are set back from the highway, within a verdant, suburban location. Other building materials, notably various forms of painted render, are evident within the wider vicinity. The hotel is four storeys in height, including a lower ground floor level and accommodation within the roof space.
16. From outside the site itself the extension at lower ground floor level is substantially screened from view by boundary fencing. Whilst the side elevation of the extension at ground level is prominent in direct views from Grosvenor Road, it is set well back from the highway and behind the side

building line of the main hotel. The extension is therefore substantially screened by the scale of the hotel, when viewed from more oblique angles nearer to the road junction. Furthermore, though relatively large in both width and projection, I consider that its set back location in relation to the significantly larger scale of the main building serves to give the extension a recessive and proportionate appearance.

17. From my site visit I noted the flat roofs of projections to the rear of the building situated directly opposite the appeal site, No 224 Nether Street, and to the rear of No 240 Nether Street, visible from Eversleigh Road. Whilst these extensions differ in size and scale, the flat roof of the appeal extension is not an unusual design feature within this context. Nor is the flat roof form unusual in the context of the building itself, which already incorporates various flat roofed elements at the rear.
18. I acknowledge that the Council has raised concerns regarding the overall projection of the extension, relative to the rear building line of other buildings running southwards along Nether Street. Whilst this disparity can be observed from aerial photographs, I am firmly of the view that seen from the public domain along Grosvenor Road, the extension does not serve to interrupt any strong sense of a uniform building line and thus appear at odds with its surroundings. Indeed from my visit it appeared that the length of the extension is commensurate with that to the rear of No 224, the side elevation of which is also highly visible from Grosvenor Road.
19. The Council has referred to the extension not conforming with its residential design guidance, which refers to single storey rear extensions of 4 metres in length, for detached properties, normally being considered acceptable, whilst needing to take into account the rear building line of neighbouring properties. However, without setting aside the value of such guidance, it is important to consider each case on its merits having regard to specific site circumstances and surrounding context.
20. I concur with the view that the presently unfinished grey cement render of the side elevation serves to give the extension a worn and run-down appearance, which draws the eye. However I am satisfied that this impact can be overcome through the imposition of an appropriately worded condition, requiring the development to be completed in suitable materials. Aside from this, a further condition requiring additional landscaping measures would be unnecessary in my view.
21. Drawing the above considerations together I conclude that the extension would not result in harm to the character and appearance of the main building and the wider street scene. Accordingly I find that the development does not conflict with Policies CS1 and CS5 of Barnet's Core Strategy 2012 (CS) or with Policy DM01 of the Council's Development Management Policies Development Plan Document 2012 (DPD) insofar as they seek to secure the highest standards of design that respects the character and context of the surrounding area.

Living Conditions

22. There is no dispute that the projection of the two-storey extension is very deep in relation to the neighbouring property at No 230. Letters have been submitted by residents of the three respective flats at that property raising no

objection to the development. Whilst I acknowledge that the existing residents feel comfortable with the extension, I must consider that occupation of the flats is likely to change over time.

23. However the appellant's case is that although the extension is large any impact on No 230 is significantly mitigated by the presence of a line of tall trees, situated inside and adjacent to the side boundary of No 230 and which serve to substantially screen the two-storey extension from view. I concur that the trees in question result in significant screening of the extension from the rear of No 230, to the extent that they mitigate any adverse impact on outlook or sense of enclosure that may otherwise result. Whilst the Council says that the trees are not protected by statute and could therefore be removed, it is important to have regard to the likelihood of this occurrence.
24. From my visit and the evidence before me there is nothing that would make me consider that the trees are in poor condition or that there is an imminent threat to their removal for any other reason. The choice as to whether they should be removed, thus potentially leading to a wider outlook, whilst making the extension more visible, would be a matter in the control of existing and future owners or occupiers of No 230. Aside from this, the neighbouring flat residents have expressly referred to the benefit of the protective screen of trees and it was apparent from my visit that despite the trees the property does still enjoy a relatively long garden with a reasonably open outlook directly to the rear.
25. The Council acknowledges that the original extension would still have resulted in some impact on outlook and conceded that it would accept the extension reverting to its previous form. When considering only the net change to the projection of the extension the overall level of the impact would be less. Notwithstanding this I consider that the presence of the trees serves to mitigate the impact of the extension as a whole on neighbours and is therefore a key factor overriding the significance of the scale of the development in this particular case.
26. Furthermore whilst the alignment of the trees along the north east boundary of the plot may result in some limited overshadowing of the rear garden in the early morning hours, it seems to me that there would be little benefit in removing them to increase any long term availability of sunlight to the property. I also consider that the presence of the trees serves to obviate any similar impact from the extension itself on natural light entering the property.
27. For the above reasons I conclude that the development does not result in harm to the living conditions of residents of No 230 with particular regard to outlook. Accordingly I find no conflict with Policy CS5 of the CS or with Policy DM01 of the DPD insofar as they seek to protect the living conditions of residents. I have taken into account the Council's design guidance as referred to above, however this does not lead me to consider that the impact on living conditions would be unacceptable in the context of specific site circumstances.

Other Matters

28. I acknowledge that there have been representations from local residents which refer to parking problems, littering and anti-social behaviour associated with the use of the hotel and that these problems will become worse if the hotel is allowed to expand. However there is no information before me to suggest that

it is proposed to increase visitor capacity and I note that such concerns have not been cited by the Council as reasons for serving the enforcement notice. Any disturbance resulting from building works associated with the completion of the extension would reasonably be expected to be relatively short in duration. The concerns raised are not therefore significant enough to justify the refusal of planning permission.

Conclusion

29. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

Conditions

30. A condition requiring agreement over the use of appropriate external materials is needed in the interests of the character and appearance of the area.
31. The purpose of this condition is to require the appellant to comply with a strict timetable for dealing with external materials which needs to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved either by the local planning authority or by the Secretary of State on appeal, and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the extension would have to be demolished.

Formal Decision

32. It is directed that the enforcement notice be corrected by i) the deletion of the plan attached to the notice and substituting it with the plan attached to this decision and by ii) deleting the words "and hatched black" in Schedule 2 of the notice and substituting the word "red" instead.
33. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the Construction of a two storey Rear Extension on Land at Chumleigh Lodge Hotel, 226 - 228 Nether Street, London N3 1HU shown edged red on the attached plan, subject to the conditions set out in the schedule below.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The extension hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within **three months** of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within **one month** of the date of this decision details / samples of the materials to be used in the construction of the external surfaces of the extension hereby permitted 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 **five 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, a valid appeal shall have been made to 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.

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.

END OF SCHEDULE OF CONDITIONS



Plan

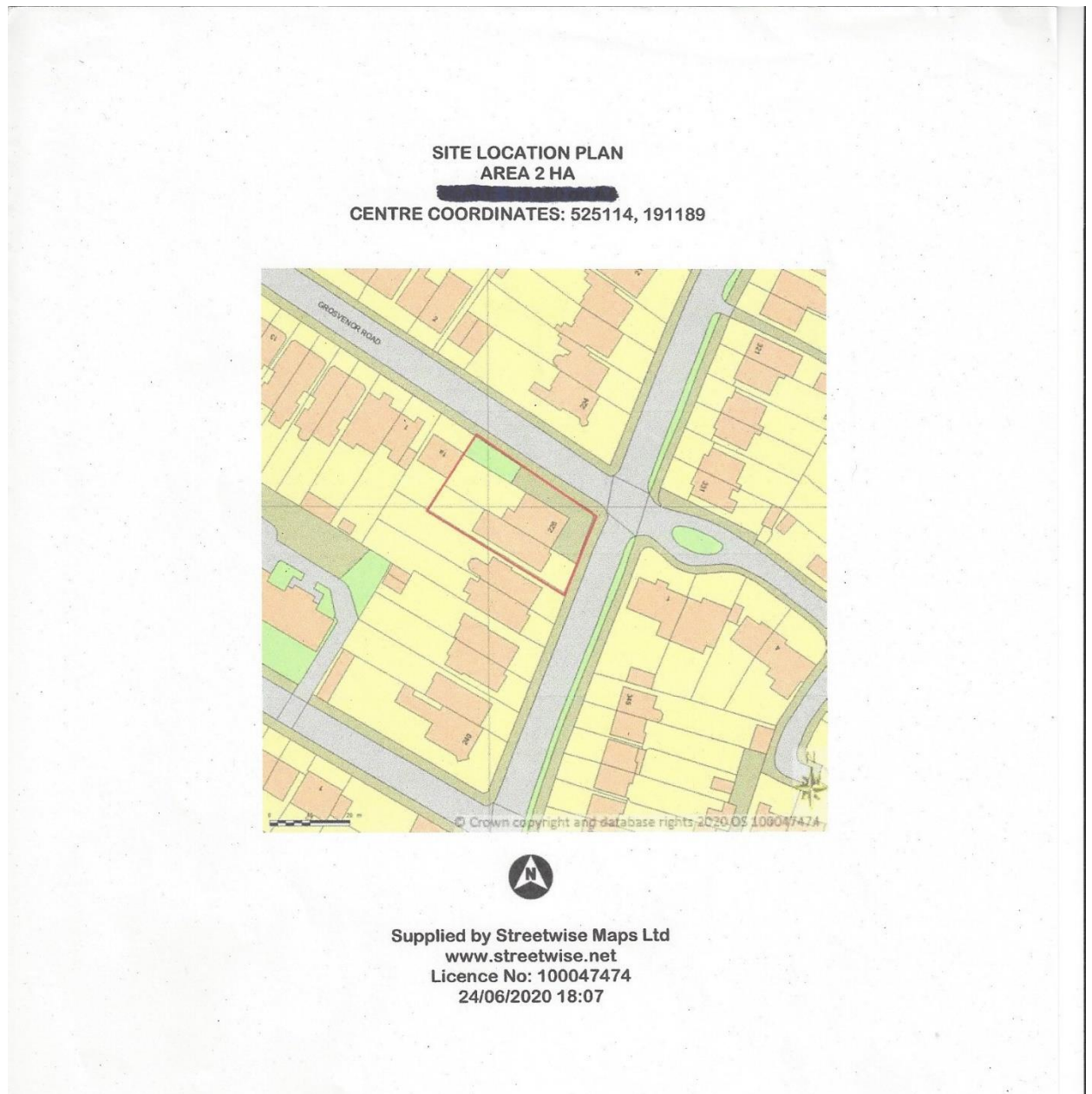
This is the plan referred to in my decision dated: 5th November 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

Land at: Chumleigh Lodge Hotel, 226 - 228 Nether Street, London N3 1HU

Reference: APP/N5090/C/19/3225071

Scale: Not to scale



APPEARANCES

FOR THE APPELLANT: Giles Atkinson of Counsel

He called:

Alvin Ormonde - Agent

Michael Wilson - Appellant

FOR THE LOCAL PLANNING AUTHORITY: Rachel Sullivan of Counsel

She called:

Frances Haines - Planning Enforcement Officer

Emma Brown - Planning Officer