
Appeal Decisions

Site visit made on 7 December 2020

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 January 2021

Appeal Ref: APP/N5090/W/20/3250137

78 Kings Drive, Edgeware HA8 8EF

- 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 B Pilram against the decision of the Council of the London Borough of Barnet.
- The application Ref 19/6469/RCU, dated 2 December 2019, was refused by notice dated 6 February 2020.
- The development proposed is erection of a single rear outbuilding.

Summary Decision: The appeal is dismissed.

Appeal Ref: APP/N5090/C/20/3249686

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- 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 Saeed Irvani-Pour against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 20 February 2020.
- The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding, not in accordance with the approved plans of lawful development certificate reference 19/2749/192.
- The requirements of the notice are comply with terms of the Lawful Development Certificate reference 19/2749/192 dated 17th June 2019, by modifying the development to match the scheme shown on plan number KD78-01-1001 including but not limited to reducing the height of the outbuilding to 2.5 metres.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variation.

Procedural Matters

1. The Council's description of development as contained in its decision notice more accurately reflects the s78 appeal proposal. I have therefore used this description in my decision.

Appeal A (s78 appeal)

Main Issues

2. The main issues in this case are the effect of the development on i) the character and appearance of the appeal property and the street scene and ii)

the living conditions of the occupiers of No 76 Kings Drive having regard to outlook.

Reasons

Character and appearance

3. The appeal site is a semi-detached dwellinghouse situated on a corner plot in a residential area. The surrounding area is largely characterised by two storey semi-detached properties set back from the highway beyond open front gardens.
4. The Council has provided measurements of the outbuilding as 11.2m (depth) by 5m (width) with a mono pitched roof rising from an eaves height of 2.9m to a maximum height of 3.1m. These measurements are shown on the submitted annotated drawing and are not disputed by the appellant.
5. As a result of its size and height the outbuilding appears as an unacceptably intrusive feature within the rear garden which is not subordinate to the main dwelling. Moreover, whilst the materials used in its construction match the existing dwelling, due to its corner plot location the outbuilding appears unduly dominant and visually intrusive in this back-garden setting in views from the host property, neighbouring properties and Kings Drive.
6. The Government attaches great importance to the design of the built environment. The appellant has drawn my attention to a number of paragraphs in the National Planning Policy Framework (the Framework) regarding sustainable development. The Framework states that good design is a key aspect of sustainable development and goes on to advise that permission should be refused for development of poor design that fails to improve the character and quality of an area.
7. Overall, I consider that the outbuilding causes unacceptable harm to the character and appearance of the appeal property and the street scene. Thus, it conflicts with Policy 7.4 of the London Plan (2016) (TLP), Policies CS1 and CS5 of the LB Barnet's Local Plan (Core Strategy) Development Plan Document (2012) (CS) Policy DM01 of the LB Barnet's Local Plan (Development Management Policies) Development Plan Document (2012) (DMP) and Local Plan Supplementary Planning Document: Residential Design Guidance (2016) (SPD) which seek to ensure that development respects local context and distinctive local character creating places and buildings of high quality design.

Living conditions

8. The Council is concerned that the outbuilding harms the outlook from the living room at ground floor level to the front of No 76. No 76 has an attached garage between the ground floor level window and the shared boundary. The outbuilding is higher than the intervening garage and occupies virtually the whole width of the rear garden of No 78 along the shared boundary with No 76.
9. Notwithstanding the bay window configuration and the intervening garage, by virtue of its size, height and proximity to the shared boundary together with the difference in land levels between the two properties, I consider that the outbuilding is likely to be visually intrusive and overbearing when viewed from this window.

10. I have taken into account the photographs submitted by the appellant and the occupants of No 76. Given the orientation of the properties I consider that the living room is likely to benefit from an adequate level of natural light such that any reduction in the current level of sunlight as a result of the development, is unlikely to cause unacceptable harm to the living conditions of the occupants of No 76 with regard to light.
11. I conclude that the development has an unacceptable harmful effect on the living conditions of No 76 having regard to outlook. Thus, the development conflicts with Policy DM01 of the DPD and residential design guide SPD which seek to allow adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users.

Other matters

12. The appellant contends that by virtue of the LDC, the principle of a single storey structure with a flat roof profile in this location is accepted. Nevertheless, what has been built is not the same outbuilding for which the LDC was issued. The appeal outbuilding, with an increased height of approximately 0.6m, is larger than the building subject of the LDC. Despite the intervening garage, given its proximity to the shared boundary with No 76, this increase in height is significant resulting in a harmful impact on the occupiers of this property. In my view, the development that could be carried out under the LDC would be less harmful than the appeal outbuilding. I therefore afford the fall-back position limited weight.
13. The appellant refers to communication with the Council concerning the ground level and argues that the Council considered no further action was necessary subject to the submission of a planning application to regularise the situation. Whether it was expedient to issue the notice is a matter for the Council and is not relevant to the s174 grounds of appeal. Thus, I afford little weight to the appellant's comments regarding this matter.
14. I have had regard to the appellant's comments regarding the internal height of the outbuilding and accessibility. I acknowledge the benefits to the appellant of being able to park his vehicle in the outbuilding and the added security this affords. However, I am mindful that the harm identified would be permanent and is not outweighed by the appellant's particular circumstances. I therefore afford these matters limited weight.
15. The appellant refers to other outhouses adjacent to the boundary of No 76. I am not aware of the detailed circumstances of these developments. In any event, I have determined the appeal before me on its own merits with regard to the specific context of the appeal outbuilding and its location.
16. The lack of objections from neighbours other than the occupants of No 76 does not change my conclusion on the main issues in this appeal.
17. Overall, I find that the matters advanced by the appellant in support of the development do not, either individually or collectively outweigh the identified harm nor the conflict with the development plan.

Conclusion

18. For the reasons given above, and having regard to all other matters raised, I conclude that appeal A should be dismissed.

Appeal B on ground (g)

19. The ground of appeal is that the time given to comply with the requirements of the enforcement notice is too short. The appellant seeks 12 months to comply with the notice in order to raise the funds, instruct a builder and carry out the works.
20. In my view, given the identified harm to the character and appearance of the street scene and to the neighbours' living conditions, a compliance period of 12 months is too long. From all I have seen and read I consider that a period of 6 months would represent a more reasonable length of time for compliance and would strike the appropriate balance between the legitimate interests of enforcing planning control and the interests of the appellant. If this reasonably proves not to be the case, the appellant can ask the Council to extend the period specified in accordance with s173(9) in the notice using their powers under s173A(1) of the 1990 Act as amended. To this limited extent the appeal on ground (g) succeeds.

Formal Decisions

Appeal A

21. The appeal is dismissed.

Appeal B

22. It is directed that the enforcement notice be varied by the deletion of the words "1 month" from paragraph 5 (time for compliance) of the notice and the substitution therefor of the words "6 months".
23. Subject to this variation the appeal is dismissed and the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR