



Appeal Decision

Site visit made on 12 January 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 January 2021

Appeal Ref: APP/N5090/C/20/3258491

18 Lewes Road, LONDON N12 9NL

- 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 Ms Dallandyshe Hupi against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0264/20, was issued on 14 July 2020.
- The breach of planning control as alleged in the notice is *The construction of a single storey rear extension not in accordance with approved plans*.
- The requirements of the notice are:
 - (1) Amend the rear extension to meet the specification set out on the plans (enclosed) under permission 19/5806/PNH dated 26.11.2019 by reducing the height of the rear extension to 2.8m when measured from the highest point of adjoining land to the top of the structure
 - (2) Permanently remove all materials resulting from the necessary works carried out from 1. from the site
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

1. The notice recites that it appears to the Council that the apparent breach of planning control falls within paragraph 171A(1)(a) of the 1990 Act; namely that development has been carried out without the required planning permission. This appears to be at odds with paragraph 3 which refers to construction 'not in accordance with approved plans'. The requirements of the notice then go on to require alterations so as to meet the specification set out on those plans.
2. The plans in question were supplied with a prior notification, to which the Council responded that prior approval was not required, so the plans are not 'approved', as such. An enforcement notice seeking to remedy a breach of planning control must do so, wholly or partly, in one of a number of ways. They are to make any development comply with the terms of any planning permission that has been granted; to discontinue any use of the land; or to restore the land to its condition before the breach took place. Although the 'prior notification' plans may fall within the tolerances set out in the permission granted by the Town and Country Planning (General Permitted Development)(England) Order 2015, those permitted development rights cannot arise retrospectively and so with the development having already been

carried out, it is now impossible to comply with the terms and conditions of the permission granted by the 2015 Order merely by making alterations to what has already been built.

3. I therefore find that the purpose of this enforcement notice is not to remedy (whether wholly or partly) the breach of planning control, because its requirements do not fall within paragraph (a) of section 173(4) of the 1990 Act: it does not require the restoration of the land to its former condition, and it does not require the development to comply with the terms (including the conditions and limitations) of a planning permission. Instead it under-enforces and its purpose must be to remedy any injury to amenity which has been caused by the breach; that is, falling within paragraph (b) of the aforementioned section. Notwithstanding the description of the breach at paragraph 3 of the notice, the Council's statement appears to recognise the position at paragraph 3.3.
4. I shall nonetheless correct the notice by removing reference to the approved plans at paragraph 3. The deemed planning application to be considered under the appeal on ground (a) is for the construction of a single storey rear extension.
5. The Council's statement also refers to a number of planning policies and a guidance document for the area that were not referred to in the notice and copies of which have not been supplied. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 requires an enforcement notice to specify all policies and proposals in the development plan which are relevant to the decision to issue the notice, and I have had regard to the policy so specified in the notice. I have therefore not requested copies of those additional policies or documents, none of which post-dates the issuing of the notice.

Main Issue

6. The Council's reasons for issuing the notice concerned the impact of the development on the character and appearance of the host dwelling and the area, and the impacts on the living conditions of the neighbouring occupiers at No. 20 Lewes Road. These matters are all relevant to the purposes of the notice and are therefore the main issues in the appeal.

Reasons

Character and appearance

7. Paragraph (b) of Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document of September 2012 sets out that development proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets. Here, the Council considers the rear extension to be obtrusive and non-subordinate, so causing harm to character and appearance. The extension is a yellow-bricked flat-roofed ground floor extension with protruding parapet walls to each side. It is remarkably similar to the extension next door at No. 16. It protrudes from the rear of the dwelling by around 5 m and above the boundary fences on each side by around 1m. It is a little larger than most of the single storey rear extensions on the street, but there is no homogenous or predominant design of such extensions to be found, and it is

not out of keeping with the modern refurbishments to the house itself. I therefore find no conflict with Policy DM01 in this respect.

Living conditions

8. As to the impact on living conditions, the Council considers that the extension results in an increased sense of enclosure for the occupiers of the neighbouring property at No. 20. This may be so, but the relevant policy, paragraph (e) of DM01, requires that development proposals are designed to allow for 'adequate' privacy and outlook of neighbours. It is not that any changes are necessarily unacceptable. The Council does not contend that the resulting impacts on the neighbour are less than adequate. The occupier of No. 20 objects in principle, but does not articulate any substantive concerns.
9. I was unable to discern any unduly adverse impacts on the neighbouring property at the time of my visit. The extension does protrude further from the original rear wall than the extension of the neighbouring property at No. 20, but I find the impact on the outlook of that property to be negligible. The houses are of generous proportions with substantial gardens giving open aspects to the rear of the houses. This is not unduly affected, in the case of No. 20, by the present size of the neighbouring extension. The projection of the extension as compared with what the enforcement notice seeks to achieve will not make any real difference to the question whether the neighbouring living conditions are adequate, which they plainly are. Therefore I am unable to discern any conflict with Policy DM01 in this regard and find that there is no requirement to remedy any injury to amenity resulting from the development.

Conclusion

10. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted on the deemed application arising from the corrected enforcement notice.

Formal Decision

11. It is directed that the enforcement notice be corrected by the omission of the words "not in accordance with approved plans (plans enclosed)" from paragraph 3 of the notice.
12. Subject to that correction 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 1990 Act for the development already carried out, namely the construction of a single storey rear extension on land at 18 Lewes Road, London N12 9NL. No planning conditions have been suggested and I find none to be necessary.

Laura Renaudon

INSPECTOR