
Appeal Decisions

Site visit made on 12 January 2021

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 01 February 2021

Appeal Ref: APP/Q5300/C/20/3250728 (Appeal A) **217 Bramley Road, London N14 4XA**

- 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 Mihai Ghertan against an enforcement notice issued by the Council of the London Borough of Enfield.
- The enforcement notice was issued on 11 March 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, the unauthorised erection of a two storey rear extension (hatched blue on the attached plan for identification purposes) to the rear of the Premises.*
- The requirements of the notice are:
 - (1) Remove the two storey rear extension (hatched blue on the attached plan for identification purposes)
 - (2) Remove all resulting materials from the Premises resulting from [(1)] above.
- The period for compliance with the requirements is three 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 Decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Appeal Ref: APP/Q5300/W/20/3250041 (Appeal B) **217 Bramley Road, London N14 4XA**

- 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 Mihai Ghertan against the decision of the Council of the London Borough of Enfield.
- The application Ref 19/03530/FUL, dated 13 October 2019, was refused by notice dated 5 February 2020.
- The development proposed is the Installation of a new shop front, basement and two storey rear extension to provide part ancillary floorspace to existing A1 use and part B1 use (Retrospective).

Summary Decision: The appeal is dismissed.

Preliminary Matter

1. Although the development proposed in the planning application subject to Appeal B comprises the additional elements of a new shop front and basement, it is clear from the Council's notice of refusal that the Council's objection to the development rests on the rear two storey extension. There is no suggestion by any party that the proposal, although comprising elements to which the Council do not object, may be dealt with piecemeal and consequently I shall not exercise my discretion to issue a 'split decision' in the case.

Main Issues

2. The Council's objection to the rear two storey extension, expressed in both its notice of the refusal of planning permission and in the enforcement notice, is founded upon the impacts of the development on the character and appearance of the area, and upon the impacts on the living conditions of neighbouring residents. These therefore comprise the first two main issues in the appeal, although the Council's Statement concerning the notice does not pursue the second of them. A third main issue, founding a reason for the refusal of planning permission although not for issuing the notice, relates to the adequacy of cycle parking provision. Further issues are whether the requirements of the enforcement notice are excessive, having regard to a planning permission that exists for a smaller rear extension on the land, and whether the time stipulated for compliance with the requirements of the enforcement notice falls short of what should reasonably be allowed.

Reasons

The section 78 appeal and the enforcement appeal on ground (a)

Character and appearance

3. 217 Bramley Road is a commercial property with residential uses above at the end of a terrace of mainly commercial units at ground floor facing onto Bramley Road, shortly north east of Oakwood underground station. The terrace is 3 storeys high, with the upper floors in use as residential flats. At the junction, South Lodge Drive leads south away from Bramley Road into a residential area of semi-detached homes. A service road runs to the rear of the commercial terrace that faces Bramley Road, with a small bricked electricity sub-station the other side of that.
4. To the rear of the terrace facing Bramley Road, between the principal buildings of the terrace and the rear service road, there is an assortment of extensions, outbuildings, garages and service yards, all unobtrusive and none of higher than a single storey save at the appeal site. These rear aspects, interspersed with occasional trees and other vegetation, result in a smooth transition into the well-vegetated residential area behind. By contrast, the rear two-storey extension to the building at the appeal site, with its boxy and rather unremitting façade especially as it borders South Lodge Drive immediately against the footway, appears considerably out of character at this point of transition. It is considerably larger and more obtrusive than any of the development surrounding it, and I find that its two-storey element unacceptably harms the transition into the residential area from the commercial frontage.
5. As a result, I conclude that the development is contrary to policies 7.4 and 7.6 of the existing London Plan (2016) that require buildings to protect and complement local character as well as to the requirements of policies D2 and D3 of the emerging London Plan to achieve good design; to policy CP30 of the Enfield Plan Core Strategy 2010-2025 requiring developments to contribute to the maintenance and improvement of local built quality; and to policy DMD37 of Enfield's Development Management Document (2014) that requires development to have appropriate regard to its surroundings. I do not find any specific conflict with policies DMD39 or DMD40 concerning the design of business premises and ground floor frontages, because my conclusions result

from the two-storey nature of the development. Nor do I find any particular conflict with policy DMD8 arising from the residential use of the first-floor element, rather than from its design and dominating appearance in general, or with policy DMD11 which I consider applies to extensions to existing residential properties rather than, as here, to a property in various uses. Nonetheless I find that the development conflicts with the development plan for the area as it relates to matters of character and appearance.

Living conditions

6. A stairway adjacent to South Lodge Drive rises to the rear of the property and leads to '271B', which is the flat forming the first floor of the rear extension the subject of these appeals, as well as to '217A', which is a pre-existing residential property comprised of the upper floors to the original No. 217 facing Bramley Road, and leads also to further residential flats above the row of shops. Those flats are reached from the top of the stairway via a walkway above the ground floor rear projection of the row of shops, with a low wall to the south east beyond which the properties have an open aspect as far as the service road and the residential dwellinghouses beyond. Although the walkway is not especially wide, I saw that there was sufficient room for each flat to create some useable outdoor space to the rear, utilising the northern half of the width of the walkway. A number of tubs and pots marked out the 'boundaries' between properties and I saw that seating areas had been created for use by the occupiers.
7. No. 217B directly adjoins the walkway at its north eastern corner, and the exception in the row to having a low wall and an open aspect beyond is found at No. 217A, which looks directly onto the brick façade of No. 217B at very close quarters. I find that the building of a second storey to create No. 217B has resulted in an unacceptable impact on the residential occupiers of No. 217A, by reason of the loss of light to that property and the outlook available to its occupiers. The development of No. 217B significantly stymies the use of the only available outdoor space to the occupiers of that flat, as well as creating darkness and a poor outlook to the rear from within it. The neighbouring flat above No. 215 is also affected in this way, albeit to a lesser degree. Accordingly I find that the development conflicts with the requirements of the development plan to secure good design that has appropriate regard to its surroundings (DMD37) and to preserve amenity in terms of daylight and outlook (DMD8).

Cycle parking

8. The Council's notice of refusal of planning permission cites several policies in support of a reason concerning the lack of cycle parking, but no further details are given and the appellant's suggestion of a planning condition to secure such provision has met with no objection from the Council. Accordingly I do not find there to be sufficient grounds to warrant dismissing the appeal on the grounds of concerns about sustainable transport provision.

Conclusion on the s. 78 appeal and the enforcement appeal on ground (a)

9. For the reasons set out above, I find the second storey element of the development to be unacceptable on the grounds of both its impact on the character and appearance of the area and on the living conditions of neighbouring occupiers. No material considerations have been brought to my

attention that might outweigh these conflicts with the development plan for the area. Therefore Appeal B will be dismissed, and I will refuse to grant planning permission on the deemed application arising on the Appeal A appeal on ground (a).

The appeal on ground (f)

10. The appellant points to the existence of a planning permission allowing for a single-storey rear extension granted in March 2019, and asserts that the requirement of the notice to remove the extension in its entirety is excessive, given the overlap with the extant permission. The Council asserts that the existing development is an entirely different development. Whilst the current development is materially different from that approved, the Council does not suggest that the 2019 permission (together with the subsequently approved non-material amendment) is not extant or is not capable of implementation. It appears that there is at least some physical overlap between the works authorised by the permission and the current unauthorised development.
11. The purpose of the enforcement notice is to remedy the breach of planning control which, where operational development is concerned, may be achieved in one of two ways. The first is to restore the land to its condition prior to the breach, which is what the notice presently requires. The second is to make any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. It appears to me that the steps required by the notice exceed what is necessary to remedy the breach if the second of those avenues were to be pursued. Either avenue would remedy the breach in accordance with section 173(4)(a) of the 1990 Act. Therefore I shall vary the notice to give the choice of either removal of the extension or its alteration so as to comply with the extant permission, and the ground (f) appeal succeeds to this extent.

The appeal on ground (g)

12. The appellant seeks further time to carry out the works required to comply with the notice for reasons concerning his financial means, the ability to appoint contractors to carry out works within the specified time scale, and because of Covid-19. In addition to these matters it was apparent at the time of my site visit that No. 217B, comprising the second storey of the rear extension, is presently occupied. Whilst the points made by the appellant about finances and the ability to appoint contractors are not supported by any evidence, and I saw that works were ongoing at the site at the time of my visit, three months does seem rather short now given that No. 217B is in occupation. The appellant's suggested 12 months is excessive but I shall allow the appeal on ground (g) and vary the notice to give 6 months to comply.

Conclusion

13. For the reasons given above I conclude that the aspects of the appeals seeking planning permission for the works should not succeed, and thus the section 78 appeal and the enforcement appeal on ground (a) will be dismissed and I shall refuse to grant planning permission on the deemed application. However, I also conclude that the requirements of the notice are excessive and a reasonable period for compliance would be 6 months. I am therefore varying the enforcement notice accordingly, prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent.

Formal Decision: Appeal B

14. The appeal is dismissed.

Formal Decision: Appeal A

15. It is directed that the enforcement notice be varied by substituting the following text for the existing paragraph 5:

5. WHAT YOU ARE REQUIRED TO DO

- 5.1.1 Remove the two storey rear extension (hatched blue on the attached plan for identification purposes) and restore the land to its condition before the breach took place;
OR
- 5.1.2 Alter the two storey rear extension to comply with the terms of the planning permission reference 18/04663/FUL dated 5 March 2019 or its non-material amendment 19/01579/NMA dated 6 June 2019 including the conditions subject to which that permission was granted;
AND
- 5.2 Remove all resulting materials from the Premises resulting from 5.1.1 or 5.1.2 above.

16. It is further directed that the enforcement notice be varied by substituting "Six (6)" for "Three (3)" in paragraph 6.

17. Subject to these variations 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.

Laura Renaudon

INSPECTOR