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# Appeal Decision

Site visit made on 7 July 2021

**by E Griffin LLB Hons**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 November 2021**

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**Appeal Ref: APP/N5090/C/20/3264231**

**Flat 1, 24 Loring Road, Whetstone, London N20 0UH**

- 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 Francis Waters against an enforcement notice issued by the Council of the London Borough of Barnet.
  - The enforcement notice was issued on 4 November 2020.
  - The breach of planning control as alleged in the notice is the unauthorised erection of a conservatory in the rear of the garden of the premises
  - The requirements of the notice are
    1. Demolish the conservatory
    2. Repair and make good any damage to the host building arising from the erection and removal of the conservatory.
    3. Remove from the land, those materials arising from the erection and demolition of the conservatory.
  - The period for compliance with the requirements is 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (the Act) as amended. As an appeal has been made under ground (a), the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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## Decision

1. The appeal is dismissed and the enforcement notice is upheld.

## Application for costs

2. An application for costs was made by the appellant against London Borough of Barnet. This application is the subject of a separate Decision.

## Procedural Matters

3. Although planning permission was previously granted for a modest conservatory, there is no evidence before me that any of that conservatory remains and I am therefore satisfied that the allegation is correctly described as erection of a conservatory not the extension of a previously approved conservatory.

## Planning History

4. A retrospective planning application for the development was submitted on the 9 April 2020 after the appellant became aware that planning permission was required for the development. Planning permission was refused on the 26 August 2020 and the Council served the enforcement notice on the 4 November 2020.

5. Since this appeal was lodged, a revised planning application was made and planning permission was granted on the 16 July 2021 for "Alterations to existing single storey rear conservatory to include lowering of roof height, reduction in depth, removal of existing glazed roof and replaced with felt roof. Removal of side window (as amended.)" I will address the implications of this later planning permission in my decision.

### **The appeal on ground (a) and the deemed planning application (the DPA)**

6. The terms of the DPA are directly derived from the allegation – namely the erection of a conservatory. The appellant's case is that planning permission should be granted for an alternative scheme which would involve changes to the development, the subject of the notice. However, I do need to firstly consider the development as it exists and then address the extent of my powers in relation to an alternative scheme.

### **Main Issues**

7. The main issues are (i) whether the development effects the character and appearance of the host building and the surrounding area and (ii) whether the development harms the living conditions of the occupiers of No 22 and No 26 Loring Road with particular regard to overlooking, overshadowing and loss of light.

### *Character and Appearance*

8. Flat 1, 24 Loring Road is the ground floor flat of a semi-detached building converted into 3 self-contained flats with a garden to the rear. Extensions and additions to the rear of buildings are not uncommon in Loring Road.
9. The conservatory, the subject of the notice, extends across the width of the appeal building to the rear and has brick sides with floor to ceiling glazing to the garden elevation and a raised glazed roof. Access from the conservatory to the garden is onto a terrace with steps down to the garden. It is not disputed that the steps and terrace pre- date the development but are now finished in paving.
10. Whilst there are boundary fences to both sides of the appeal site garden, the elevated nature of the development combined with the presence of the original terrace and the steps means that the brick walls and the raised roof are significantly higher than those boundary fences. Whilst the parties are not agreed upon the depth of the conservatory, it does extend significantly beyond the original building which increases the extent of views of the development for immediate neighbours and adds to the overall scale and mass. In terms of height, parts of the raised roof appear to overlap the lowest part of the windows of the flat above. The height, width and mass of the development is visually over- dominant and incongruous in relation to both the appeal building and neighbouring development.
11. The appellant has referred to the presence of other extensions within the vicinity of the appeal site. However, there is no evidence that the other extensions are of the same design and scale and have the same relationship with neighbouring properties to the appeal site and they are therefore not directly comparable.

12. I therefore do find that the development does adversely effect the character and appearance of the host building and the surrounding area. It is therefore in conflict with Policy DM01 of the Barnet Development Management Policies DPD (2012) and Policy CS5 of the Barnet Core Strategy (2012)(the Core Strategy) which collectively refer to preserving local character and context.
13. It would also be in conflict with the Residential Design Guidance SPD (2016) which states, amongst other things, that extensions should normally be subordinate to the original house, respect the original building and should not be overly dominant. I do find Policy CS1 of the Core Strategy to be not particularly relevant to the development as it is an overarching place shaping strategy.

#### *Living conditions*

14. No 22 is the adjoining semi- detached dwelling to No 24 and has a modest veranda style extension to the rear. The veranda does not extend out as far as the development. The appellant considers that the only view from the side would be of the glazed roof but there would be views of the solid side wall of the development above the boundary fence particularly when the development is in very close proximity to that boundary. As a result, I do consider that there would be some overshadowing to the rear of No 22 due to the scale and depth of the development.
15. The relationship between No 26 and the development is different as there is a side window in the conservatory. Both the later planning permission and the alternative scheme proposed as part of this appeal, include bricking up this window. At the time of my site visit, the window had been obscured by a film cover. Whilst bricking up of the window would resolve the overlooking issue, that is not a matter that could be overcome by condition as part of this appeal unless I was minded to approve the development.
16. There is limited information about any other harm to living conditions and the Council has not sought to distinguish between overshadowing and loss of light or sunlight. I therefore find harm to living conditions to No 26 is limited to the overlooking aspect and to overshadowing with regard to No 22.
17. The development is therefore in conflict with Policy DM01 of the Barnet Development Management Policies DPD (2012) which refers to the amenity of adjoining occupiers. It would also be in conflict with the Residential Design Guidance SPD (2016) which refers to protecting residential amenity. Policy DM02 of the Adopted Development Management Policies DPD 2012 simply refers to development standards generally and a suite of documents which have not been provided to me. I do not find Policies CS5 of the Core Strategy to be directly relevant to living conditions.
18. In summary, I have found that the development does harm the character and appearance of the host building and the surrounding area and I have found harm with regard to overlooking to No 26 and overshadowing with regard to No 22.

#### *The Alternative Scheme*

19. As part of the appeal, the appellant has asked for an alternative scheme to be considered. A drawing dated the 10 December 2020 entitled "proposed revision to roof as a built conservatory and removal of side window" shows the changes

proposed which include removal and replacement of the glazed roof with a flat roof with three roof lights and a box gutter. Changes also include a new rendered band over previous alterations and the existing window to the side with No 26 being bricked up.

20. Section 177(1)(a) of the Act is clear that I am only able to grant permission under ground (a) for an alternative scheme to the extent that it could be achieved by granting planning permission for the whole or part of the matters stated in the notice.
21. The alternative scheme would require the installation of a new roof with rooflights and the bricking up of the side window. Whilst the blocking of the side window would address the overlooking issue, there is no proposal within the alternative scheme to reduce the depth of the development. I do consider that the existing depth does add to the overall mass and scale of the development and impacts upon both character and appearance and living conditions. There is also a lack of detail about the flat roof although a flat roof would assist with the height issue.
22. Therefore, even if I were to consider the changes proposed to form part of the existing development, the changes proposed in the alternative scheme would not in my view be sufficient to overcome the harm that I have previously found. The ground (a) appeal is therefore dismissed and planning permission is refused for both the existing development and the alternative scheme.

#### Other Matters

23. The appellant is clearly unhappy with the way that he has been dealt with by the Council. However, that is not a matter that can influence my decision on the grounds of appeal before me. The appellant's concern about the delegated report is a matter for the appellant to address with the Council as case law<sup>1</sup> has established that I do not have jurisdiction to deal with internal procedures of the Council prior to the service of the notice.

#### **An appeal under ground (f)**

24. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
25. Under this ground, the appellant was of the view that it was unreasonable to insist upon the entire removal of the conservatory when he had made a bona fide offer to make changes to the development as existing. Nevertheless, as the purpose of the notice is to remedy the breach, demolition would not have been excessive.
26. However, Section 180 of the Act states that where after service of a enforcement notice, planning permission is granted for any development carried out before the grant of planning permission, the notice shall cease to have effect so far as inconsistent with that permission. The requirement therefore retains its original wording but has to be read in conjunction with Section 180 of the Act.

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<sup>1</sup> R v Wicks {1997}JPL 1049 and Beg & Others v Luton BC{2017} EWHC 3435 ( Admin)

27. The effect of that statutory provision is that the requirement is no longer to demolish the conservatory but to remove the elements that do not have planning permission following the grant of planning permission on the 16 July 2021. Whilst events have overtaken this ground of appeal, as the ground (f) has not been formally withdrawn, the appeal under ground (f) fails.

### **Conclusion**

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed applications.

*E. Griffin*

INSPECTOR