



Appeal Decision

Site visit made on 18 January 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 February 2022

Appeal Ref: APP/N5090/C/21/3272586

1 Elmbank Avenue, Barnet EN5 3DU

- 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 John Fairbairn against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 19 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the use of a rear garden outbuilding as a self-contained residential dwelling.
 - The requirements of the notice are
 1. Cease the use of the rear garden outbuilding as a self-contained residential dwelling.
 2. Permanently remove all cooking facilities from the outbuilding including the kitchen units, sinks, cookers and food preparation areas, in line with drawing reference PL-000 of planning application reference 20/4778/RCU.
 3. Permanently remove all bathroom facilities from the outbuilding including the toilet, basin and shower in line with drawing reference PL-000 of planning application reference 20/4778/RCU.
 - The period for compliance with the requirements is six 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.
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Decision

1. It is directed that the enforcement notice is:

- (i) corrected by the deletion of the words in the allegation and the substitution with "Without planning permission, the material change of use of a rear garden outbuilding to a self-contained residential dwelling"; and
- (ii) varied by the deletion of the words "in line with drawing reference PL-000 of planning application reference 20/4778/RCU" in paragraphs 5.2 and 5.3 of the notice.

Subject to this correction and variation, the appeal is dismissed, 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.

Application for costs

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

Procedural Matter

3. The description of development in the enforcement notice is incorrect in that the allegation does not allege that there has been a material change of use. It is open to me to correct it to put the notice in order but this can only be done provided there is no injustice to either party. I consider this can be achieved as the Council's Officer report on the matter describes the breach of planning control as a material change of use. I will therefore direct that the notice is corrected and I will proceed on the basis that the description of development for the deemed planning application is the material change of use of a rear garden outbuilding to a self-contained residential dwelling.

The ground (a) appeal and the deemed planning application

Main Issues

4. The main issues are the effect of the development on (i) the character and appearance of the surrounding area; and (ii) the living conditions of the occupiers of the dwelling, having regard to outlook and the provision of suitable outdoor space.

Reasons

Character and appearance

5. The appeal site lies within an established residential area adjacent to Barnet Hospital, laid out largely as two storey semi-detached and terraced housing. Many properties have large mature gardens and due to the layout of the housing, a few flank the various roads in the area. In the past, some householders of these corner properties have taken advantage of vehicular access to the rear and have erected a garage at the bottom of their garden, but this is not a common feature of the area.
6. The appellant's property is situated on the corner of Elmbank Avenue and Well Road. The land rises steeply from Elmbank Avenue to the rear of the property. At the very end of the garden there is an old double garage, which sits in an elevated position above the rest of the plot and next to this is the outbuilding, which faces the road. The slab level of the outbuilding is well below the garage and the road with the result that the roof of the outbuilding is barely visible above the high boundary fencing, which has been topped with a trellis.
7. Access to the outbuilding is from across the hardstanding in front of the garage via a door that has been fitted into the boundary fence, where the fence turns the corner to meet the garage. Once through the door there are several steps down to the outbuilding entrance, which leads straight into an open plan lounge and kitchen. Although the appellant's plans show that there is just one bedroom, at the time of my site visit the "Living 2/study" room was being used as a second bedroom. The outbuilding is separated from the remainder of the host property garden by the same high boundary fencing, which is sited about a metre away from the side of the outbuilding.
8. Although the outbuilding already exists and has changed the pattern of development in the area to a limited degree, the new use for residential purposes could still affect the character and appearance of the area.

9. It is my view that the residential use does not represent good planning or design and is not what the Government envisaged when seeking to make the most of existing buildings for new housing. The National Planning Policy Framework (the Framework) sets out that there is a balance between making the effective use of land¹ while safeguarding and improving the environment. It states that the creation of high quality buildings *and places* (my emphasis) is fundamental to what planning should achieve.
10. In particular, the Framework states plans should set out a clear design vision and this is what has been achieved at Barnet following the preparation of the local plan with the adoption of Supplementary Planning Document: Residential Design Guidance, October 2016 (SPD). There is a great emphasis on high quality design that responds to local character and even though the SPD was written before the publication of The National Design Guide in January 2021, it remains consistent with the latest guidance. The Council, an outer London borough, is protective of its low density, suburban character and values the contribution it makes to high quality places to live.
11. The character and appearance of an area can easily be eroded by incremental changes, such as the loss of front gardens to off-street parking. The presence of a large hospital nearby no doubt brings pressure for change, which is not only expressed in the designation of a controlled parking zone (CPZ). I find the residential use of the outbuilding is another example of incremental change that detracts from the identified strong suburban character and appearance of the area, which the Council seeks to protect as a high quality, low density place.
12. This change is different from the planned change that is needed to deliver the housing requirements identified in development plan documents and the appellant refers to Policies H1 and H2² of The London Plan published March 2021. Local character does evolve over time but contrary to the appellant's assertion, the need for housing in Barnet is not for one and two bedroom units as this demographic is already well served in the borough³.
13. Furthermore, Policy H2 states boroughs should recognise changes in character in *appropriate* (my emphasis) locations and list small sites on brownfield registers. "Appropriate" is not defined but the supporting text to the policy refers to residential areas with good transport connections. The appeal site is near to a bus route but is some distance from Barnet town centre and, as such, in my view, does not qualify as an appropriate location. In addition, it is doubtful whether the site could be listed on the brownfield register given the definition of Previously developed land excludes residential gardens.
14. For these reasons the new use does not accord with Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012 (the DMP). This requires, amongst other matters, that all development should preserve or enhance local character.

¹ See also Annex 2 Glossary, definition of Previously developed land excludes residential gardens

² Policy H1 Increasing Housing Supply and Policy H2 Small sites

³ Latest Annual Monitoring Report: One and two bedroom homes remain the dominant type of accommodation delivered in Barnet, accounting for 78% of new homes overall and 86% of flats.

Living conditions

15. The main bedroom has two windows, one is high level, but both have an outlook onto boundary fencing approximately 1m away and taller than the height of the windows. This results in a poor outlook for the occupiers of the bedroom and a gloomy interior. The appellant submits that the occupiers benefit from an upward outlook in a southern and westerly direction from the bedroom windows and that bedrooms do not need the same level of outlook as living areas. A condition could also be imposed to reduce the height of the fencing to 1.7m, thereby improving outlook whilst maintaining privacy.
16. I find that bedrooms are defined as habitable rooms in the Council's second Supplementary Planning Document: Sustainable Design and Construction October 2016 (SPD2). Furthermore, the guidance sets out that the availability of daylight/sunlight to the occupants of a building contributes significantly to the quality of life, as well as reducing energy use. Homes should be fit for purpose and enable flexible use. The latter has become more apparent during the various national lockdowns in the last two years when people have been working from home in their bedrooms and other rooms. In addition, reducing the height of the fence would not mitigate the poor outlook.
17. As such, the layout of the outbuilding for residential purposes fails to have regard to SPD2. This was produced following the introduction of national technical housing standards in 2015, The previous London Plan March 2016 and the Mayor of London's Housing Supplementary Planning Guidance. It requires, amongst other matters, such as when designing the layout of accommodation, that consideration should also be given to the positioning of doors and windows.
18. I find the outlook is poor largely due to there being insufficient outdoor space associated with the residential use. Essentially, the outbuilding occupies most of the land allocated to it, there being just an "entrance area" adjacent to the front door, which the appellant states is 18sqm. Around the other three boundaries there is roughly a 1m wide strip of land.
19. SPD2 states that for houses with up to four habitable rooms (in this case that would be three rooms, namely the two bedrooms and the open plan lounge/kitchen) these should be provided with 40sqm of outdoor amenity space. The appellant appears to define the outbuilding as a flat or as a 1-2 person dwelling and refers to a minimum provision of either 5sqm or 10sqm. Either way, the "entrance area" meets the minimum requirements in his view.
20. I find that this is not the case, notwithstanding that the minimum provision should be 40sqm. This is because the SPD2 also refers to the quality of the outdoor space provided which should be to the rear, with a reasonable level of privacy and a good acoustic environment. Whilst a high fence separates the "entrance area" from the footway, it is nevertheless immediately adjacent to the back edge of the footway where there is disturbance from passers-by.
21. The provision of outdoor amenity space has been recognised during the COVID-19 pandemic as being highly valued and suitable provision helps to improve the living standards of residents as well as contributing to maintaining and enhancing the wider character of the borough.

22. The appellant has submitted amended plans to address the Council's concerns. These show a revised internal layout with just one bedroom. This would overlook the area previously occupied by the double garage which would be demolished to provide a garden. New French windows would be inserted within the west elevation to provide access to the garden. It is stated that this space amounts to 70sqm in area. The fencing in front of the property would be replaced with low boundary walls, thus opening up the frontage.
23. However, it appears that the plans do not fully reflect the difference in slab levels between the garage and the outbuilding. It has not been demonstrated that the position of the bedroom window would enable a view across the new garden, as opposed to a limited outlook onto a retaining wall. Whilst the provision of private open space would be welcome, it does not resolve the first of the Council's concerns.
24. For these reasons I find that there is harm to the living conditions of the occupiers, having regard to outlook and the provision of private outdoor space, which is not overcome by the amended plans. The development therefore does not accord with Policy DM02 of the DMP which states, amongst other matters, that development will be expected to demonstrate compliance with various documents including SPD2.

Other Matters

25. Local residents have expressed a number of concerns, some of which I have addressed already. With regard to privacy, there would be no change to the windows within the rear elevation of the outbuilding which look directly onto the fence separating the appeal site from the garden of No 3 Elmbank Avenue. The windows in the elevation facing the garden of No 1 Elmbank Avenue have the same outlook, namely a very high fence. If the amended plans had been acceptable, these windows would have changed to a smaller one for the lounge and what was the bedroom window would serve a bathroom. Both of which would, arguably, be an improvement on the existing situation for the occupiers of the outbuilding if it was not for the intervening fence preventing an acceptable degree of outlook from the windows.
26. In addition, I find there is no substantiated evidence before me to show that there has been additional noise and disturbance from the new use in relation to the location of Nos 1 and 3 Elmbank Avenue.
27. There are also strong objections from residents on the grounds of increased pressure for on-street parking, effects on ground stability and drainage. No capacity issues have been identified by the Council and no concerns have been expressed by the Highway Authority. There is no evidence before me which shows that highway safety is compromised by the additional residential use. Similarly, there is no evidence before me that there are drainage or subsidence issues caused by the residential use.
28. Finally, there are concerns that if this development is allowed, it would set a precedent. However, each application and appeal must be determined on its individual merits.

Summary Conclusion

29. For all these reasons the appeal on ground (a) fails.

The ground (f) appeal

30. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy any injury to amenity (s173(4)(b)). In this case the notice requires that the use should cease and that cooking and bathroom facilities should be removed from the building. I therefore consider that the purpose of the notice is to remedy the breach of planning control.
31. In appealing on ground (f) the onus is on the appellant to specify lesser steps which in his view would overcome the objections to the development. The appellant submits that it is excessive to require the removal of all bathroom facilities on the basis that a bathroom was shown on the existing plans submitted to rectify the unauthorised use.⁴ In addition, the removal of the kitchen would be sufficient to ensure the cessation of the use.
32. Both parties refer to a previous appeal decision⁵ to support their case where the Inspector emphasised that "The question is...what was the last lawful use of the property and are the requirements excessive when considering how to return the property to that state."
33. It is for the appellant to demonstrate, on the balance of probabilities, that the additional facilities were installed at a time and for purposes other than to enable the material change of use to take place. The appellant has provided no substantiated evidence of when the bathroom facilities were installed and how the building was being used at the time of their installation.
34. I have already found that the "existing plan" appears to be inaccurate with regard to the windows and the slab level. At the time of my site visit I also noted that there was an additional toilet and basin in the main bedroom, which is not shown on the "existing plan". This of course may have been added after the plan was prepared. The appellant has not submitted any other evidence such as photographs from when the outbuilding was first built or a manufacturer's specification to demonstrate how the building was laid out and used when it was first built. In addition, third parties have stated that what was shown to them in terms of a proposed development is different from what has been built.
35. On the basis of the evidence before me it is considered that the installation of kitchen and bathroom amenities facilitated the material change of use and as such were integral to, and solely for, the purposes of facilitating that use. It is therefore appropriate and not excessive that the requirements include the removal of all works integral to, and solely for, the purpose of facilitating the material change of use. To that end it is necessary to vary the requirements to remove reference to plan No PL-000, which is labelled the "pre-existing ground floor plan".
36. Therefore, in the absence of cogent evidence to the contrary, it is concluded that the requirements of the notice are not excessive and the appeal on ground (f) fails.

⁴ Planning application ref: 20/4778/RCU

⁵ Ref: APP/N5090/C/17/3290564

The ground (g) appeal

37. This ground of appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the actual time needed to carry out the work or actions specified in the steps.
38. The appellant submits that six months is not a reasonable period to comply with the requirements of the notice and that this should be increased to nine months. He refers to the notice period for the tenants but does not specify what this would be; the possibility that he may need to instigate eviction proceedings but provides no evidence that this would be the case; and that a builder may not be able to start work immediately, again with no supporting information.
39. I find that the appellant's case largely relates to the time before the requirements can be carried out and that the actual removal of the kitchen and bathrooms should take no more than a week, in my view. An extension of time has not been justified in any detail and it is therefore considered that the period for compliance is reasonable. As such, I see no cause to vary it. The appeal on ground (g) therefore fails.

Conclusion

40. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

D Fleming

INSPECTOR