



Appeal Decision

Site visit made on 31 January 2022

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2022

Appeal A Ref: APP/N5090/C/20/3260354

Land at Alexandra Arms Court, 1 Cromwell Road, London N10 2AF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Springchild Investments Limited against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0893/20, was issued on 20 August 2020.
- The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref B/00264/11 granted on 30 March 2011.
- The development to which the permission relates is: The conversion of the property into 8 No. flats, following the formation of a new mansard roof including dormers, and the construction of single storey rear extensions; alterations to fenestration; and parking spaces to the front and rear of the building; without complying with conditions 1 (in accordance with the approved plans), 5 (parking) and 11 (hard and soft landscaping) of planning permission references B/00264/11, dated 30th March 2011.
- The conditions in question are nos 1, 5 and 11 which state that:
 1. The development hereby permitted shall be carried out in accordance with the following approved plans: Design and Access Statement, Plan Nos. 4057/01, 4057/02, 4057/03, 4057/05/A, 4057/06/B, 4057/07, 4057/08/A, 4057/09/B, 4058/10.
 5. Parking spaces shall be provided in accordance with submitted drawings and that area shall not thereafter be used for any purpose other than for the parking of vehicles associated with the development.
 11. All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use.
- The notice alleges that the conditions have not been complied with in that: there is an absence of hard and soft landscaping to the rear, there is an absence of amenity space for existing or future occupants and inadequate and unsatisfactory provision has been made for the parking of vehicles on the site.
- The requirements of the notice are to:
 1. Either
 - a) Comply with conditions 1, 5 and 11 of planning permission B/00264/11, dated 30th March 2011, by providing the proposed garden/lawned area, all the parking spaces, and the hard and soft landscaping, as shown on either Plan number 4057_Plan_Con8to12 (Amended and received 04/01/2012) of permission reference B/03821/11, dated 20.01.2012; or Plan number 1622-09 Rev D of permission reference 18/0337/CON, dated 22.02.2018.
 - Or
 - b) Restore the land back to the state in which it was prior to the breach, by ceasing its use as 8 No. flats and returning the building back to its form as per the existing site plan, drawing number 4057/02; existing floor plans, drawing number 4057/03; and existing elevations, drawing number 4057/04, of planning permission reference B/00264/11, dated 30th March 2011.
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
- The period for compliance with the requirements is: 6 months.

- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal B Ref: APP/N5090/C/20/3259020

Land at Alexandra Arms Court, 1 Cromwell Road, London N10 2AF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Mofak Husseini against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/0893/20, was issued on 20 August 2020.
 - The breach of planning control as alleged in the notice is failure to comply with conditions imposed on a planning permission ref B/00264/11 granted on 30 March 2011.
 - The development to which the permission relates is: The conversion of the property into 8 No. flats, following the formation of a new mansard roof including dormers, and the construction of single storey rear extensions; alterations to fenestration; and parking spaces to the front and rear of the building; without complying with conditions 1 (in accordance with the approved plans), 5 (parking) and 11 (hard and soft landscaping) of planning permission references B/00264/11, dated 30th March 2011.
 - The conditions in question are nos 1, 5 and 11 which state that:
 1. The development hereby permitted shall be carried out in accordance with the following approved plans: Design and Access Statement, Plan Nos. 4057/01, 4057/02, 4057/03, 4057/05/A, 4057/06/B, 4057/07, 4057/08/A, 4057/09/B, 4058/10.
 5. Parking spaces shall be provided in accordance with submitted drawings and that area shall not thereafter be used for any purpose other than for the parking of vehicles associated with the development.
 11. All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use.
 - The notice alleges that the conditions have not been complied with in that: there is an absence of hard and soft landscaping to the rear, there is an absence of amenity space for existing or future occupants and inadequate and unsatisfactory provision has been made for the parking of vehicles on the site.
 - The requirements of the notice are to:
 1. Either
 - a) Comply with conditions 1,5 and 11 of planning permission B/00264/11, dated 30th March 2011, by providing the proposed garden/lawned area, all the parking spaces, and the hard and soft landscaping, as shown on either Plan number 4057_Plan_Con8to12 (Amended and received 04/01/2012) of permission reference B/03821/11, dated 20.01.2012; or Plan number 1622-09 Rev D of permission reference 18/0337/CON, dated 22.02.2018.
 - Or
 - b) Restore the land back to the state in which it was prior to the breach, by ceasing its use as 8 No. flats and returning the building back to its form as per the existing site plan, drawing number 4057/02; existing floor plans, drawing number 4057/03; and existing elevations, drawing number 4057/04, of planning permission reference B/00264/11, dated 30th March 2011.
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is: 6 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decisions: Appeals A and B

1. It is directed that the enforcement notice be corrected by:
 - The deletion of '1 (in accordance with the approved plans),' from section 3 of the notice, so that it says '...without complying with conditions 5 (parking) and 11 (hard and soft landscaping) of planning...'
 - The deletion of '1' from section 5 of the notice, so that it says 'a) Comply with conditions 5 and 11 of planning permission reference B/00264/11...'
2. Subject to these corrections, the appeals are allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the 1990 Act as amended, the conditions nos 5 and 11 attached to the planning permission dated 30 March 2011, ref B/00264/11 are discharged.
3. Planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the conversion of the property into 8 No. flats, following the formation of a new mansard roof including dormers, and the construction of single storey rear extensions; alterations to fenestration; and parking spaces to the front and rear of the building without complying with the said conditions but subject to the other conditions attached to that permission.

Preliminary Matters

4. Although Appeals A and B have been made by different appellants, they relate to the same site and the same enforcement notice. I shall therefore deal with them together.

Matters concerning the notice

5. Condition 1 requires that the development is carried out in accordance with approved plans. Some of the land to the rear of the building remains undeveloped. Where building or other operations have been carried out in accordance with a grant of planning permission but have been left uncompleted, the works are not in breach of planning control. The Council would need to consider issuing a completion notice under section 94(2) and a discontinuance notice under section 102.
6. I shall correct the notice so that the allegation does not refer to condition 1 and shall correct requirement 1 so that it does not require compliance with condition 1. Since these corrections would narrow the scope of the of the notice, I consider they can be done without causing injustice to either party.

Grounds (b) and (c): Appeal A only

7. An appeal under ground (b) is made on the basis that the matters stated in the notice have not occurred. An appeal under ground (c) is made on the basis that the matters stated in the notice do not constitute a breach of planning control.
8. The main thrust of the appellant's case under ground (b) or (c) is that no conflict with condition 5 has occurred. It is not disputed that parking and landscaping has not been carried out in accordance with the approved plans and so the matters stated in the notice have occurred as a matter of fact. The appeal under ground (b) therefore fails.

9. Whether a breach of planning control has occurred is a matter which should be considered under ground (c). A planning permission is a public document which may be relied upon by parties unrelated to those originally involved. A condition should be clearly and expressly imposed and is to be construed objectively and not by what the parties may or may not have intended at the time but by what a reasonable reader construing the condition in the context of the planning permission as a whole would understand.
10. Condition 5 states 'Parking spaces shall be provided in accordance with submitted drawings and that area shall not thereafter be used for any purpose other than for the parking of vehicles associated with the development.' However, there is no time by which the appellant must carry out these actions. As held in *Fawcett properties Ltd vs Buckingham CC* [1961] AC 636¹, a planning condition is only void for uncertainty if it can be given no meaning or no sensible ascertainable meaning, and not merely because it is ambiguous or leads to absurd results. The lack of an implementation trigger does not render the condition void.
11. Condition 10 requires a scheme of hard and soft landscaping to be submitted and condition 11 requires the works comprised in the approved scheme of landscaping to be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner, or commencement of the use. The scheme which was approved included car parking spaces. Although there is no trigger for implementation in condition 5, the trigger for the implementation of the parking spaces is effectively contained in condition 11, since it requires the scheme to be carried out.
12. The appellant states that the areas shown as car parking on the approved drawing are not being used for any other purpose and so either the breach has not occurred as a matter of fact or there is not a breach of planning control insofar as it relates to condition 5. However, the plan approved under condition 11 shows two parking spaces, identified as '5' and '6' within an area which was, at the time of my visit, being used for the storage of bins. Consequently, condition 5 is being breached, since they are being used for a purpose other than for the parking of vehicles.
13. The appellant asserts that planning permission 16/5047/FUL (the "2016 permission") was implemented and the 17/7180/FUL (the '2017 permission') also remains extant and are both fallback positions that should carry significant weight in any planning balance. Although a matter principally for an appeal under ground (a), it merits consideration under ground (c) as it is important in understanding whether a breach of planning control has occurred.
14. The 2016 permission was for the installation of iron railings to front wall of property. The planning permission appears to have been implemented. Drawing 1622-04 comprises one of the approved plans and shows the layout of the frontage, as it has been laid out on site. However, since the permission was for the installation of iron railings, it was this that was authorised by the permission, not the layout of the frontage. The installation of the iron railings would not prevent the implementation of the landscaping scheme.

¹ And reaffirmed in *Alderson vs SoSE* [1984] JPL 429

15. Planning permission 17/7180/FUL was granted on 8 January 2018 for the installation of new boundary wall and railings, installation of secure access gates and incorporation of one additional car parking space and reinstatement of two spaces. The appellant asserts that the planning permission has been implemented. However, it is not clear on what basis the appellant considers the permission has been implemented.
16. The black railings and wall appear which have been constructed appear in line with the 2016 permission. Additional walls and gates authorised by the permission have not been constructed. The layout of parking is not consistent with the approved layout, with a number of parking bays facing a different direction. From my inspection of the site, it appears that the permission has not been implemented. Since the permission was granted in 2018 and was subject to 3 year commencement condition, in my view, it has now lapsed.
17. Requirement 1, as corrected, requires the appellant to comply with conditions 5 and 11 of planning permission reference B/00264/11, dated 30 March 2011 by providing the proposed garden/lawned area, all the parking spaces, and the hard and soft landscaping as shown on either Plan number 4057_Plan_Con8to12 (Amended and received 04/01/2012) of permission reference B/03821/11, dated 20.01.2012; or Plan number 1622-09 Rev D of permission reference 18/0337/CON, dated 22.02.18.
18. The development has not been carried out in accordance with the approved landscaping plan and so a breach of planning control has occurred in respect of conditions 5 and 11. Since I have found permission 17/7180/FUL has lapsed, in the event that the appeal under ground (a) fails, the requirements would need to be amended so that it no longer makes reference to plan number 1622-09 Rev D of permission reference 18/0337/CON, dated 22.02.18.
19. Thus, for the reasons given above, the appeal under ground (c) fails.

Ground (a): Appeals A and B

20. The appeals under ground (a) are made on the basis that planning permission should be granted to carry out the development subject to the planning permission without complying with the conditions being enforced against.

Main Issues

21. The main issues of the appeals are the effect of the appeal scheme on:

- The character and appearance of the area; and
- The provision of outdoor amenity space; and
- On-street parking demand and highway safety.

Reasons

Character and appearance

22. The appeal site comprises an attractive building in a prominent location on the corner of Cromwell Road and Strode Close. To the front of the building, low level brick walls have been constructed, within which shrubs have been planted. To the rear of the building, an area has been enclosed with fencing and a gate, beyond which is a parking space. The remainder of the site to the

rear, which is bound by fencing, remains undeveloped and appeared overgrown, with an accumulation of litter at the time of my visit.

23. Under the approved scheme, the front of the site would comprise a lawned area, paving and hardstanding for parking, with boundary treatments comprising 1m high dwarf brickwork walls with 800mm high railings painted black. To the rear of the site, boundary treatments would also include a 1m high dwarf brickwork walls with 800mm high railings painted black and would be laid with block paving, two parking spaces and 1.8m high close boarded timber fencing, enclosing a lawned garden.
24. Policy DM01 of Barnet's Local Plan Development Management Policies Development Plan Document (DMP)(2012) seeks to protect the character of the area. The low level brick walls help delineate the frontage of the building and the highway and provides an interesting feature which draws the eye. The retention of trees, planting and the grass verge to the side helps give the site a verdant quality.
25. The fencing which is *in situ* to the rear of the building is not a prominent feature and is not out of keeping with the character of the area. Whilst the litter diminishes the character of the area, this could occur whether the landscape scheme had been complied with or not. Given the position of the parking spaces to the rear, I consider this area is less likely to be used by occupants of the building and so could still be subject to littering.
26. Thus, for the reasons given above, I conclude that there is no harm to the character and appearance of the area and no conflict with policy DM01 in this regard.

Living conditions

27. Policy CS1 of Barnet's Local Plan Core Strategy Development Plan Document (Core Strategy)(2012) seeks to enhance high quality suburbs and CS5 of the Core Strategy seek to protect and enhance the gardens of residential properties. Policy DM01 of the DMP seeks to ensure that outdoor amenity space is retained. The Residential Design Guidance 2016 (RDG) states that rear private gardens should provide adequate space for day to day uses such as a table and chairs for outdoor dining, clothes drying, relaxation and safe children's play (where family accommodation is proposed).
28. The site has been subdivided, with the undeveloped part of the land in different ownership to the building and land immediately surrounding it. The practical reality of this is that even if the landscaping scheme was laid out as approved, the occupants of the building are unlikely to be allowed to use this part of the land as amenity space and there appears to be no mechanism to oblige the landowner to allow such occupation to occur.
29. Although the outdoor space currently provided for occupants of the building is modest, it provides an area which occupants of the building can use for day to day activities, such as the drying of clothes. I saw that the appeal site is within walking distance of Hollickwood Park. Consequently, I consider the provision is likely to meet the needs of the occupants of the building.
30. Thus, there is no harm to the living conditions and no conflict with policies CS1 and CS5 of the Core Strategy, DM01 of the DMP or the RDG in this regard.

Highways

31. The front of the premises is laid with tarmac, with parking spaces delineated using white lines. I visited the site shortly before 10am and saw that three vehicles were parked within the site. On-street parking in the area appeared prevalent, however, it was not possible for me to determine whether occupants of Alexandra Arms Court were choosing to use on-street parking. Since parking spaces within the appeal site were freely available, I consider it highly likely that on-street parking was being utilised by occupants of other buildings in the area.
32. The appellant has carried out a number of visits to identify the level of usage of parking within the site, which showed that, typically, between 1 and 2 vehicles tend to utilise the parking. The visits were carried out at different times of the day and on different days of the week. I have no reason to doubt the observations made, which appeared fairly consistent with what I saw on site.
33. Policy DM17(g) of the DMP sets out that maximum standards of 1 to less than 1 space per unit for development consisting mainly of flats. Although the parking which has been provided is less than 1 per unit, from the evidence provided and from my own inspection of the site, it appears that current provision is sufficient to meet the needs of the occupants of the building. There would therefore be no harm arising to highway safety and no conflict with policy DM17(g) in this regard.

Other Matters

34. The Council states that it is not agreed that the land allocated for amenity and parking space should have a single dwelling erected in its place. However, this is not before me.

Conditions

35. I have considered whether it would be necessary to include any additional conditions, including those suggested by the appellant for Appeal A. However, I consider it is unnecessary to do this. The appellant has shown that the area already provided is sufficient to meet the needs of the occupants of the building and I consider there is no need to require the parking space currently provided to the rear is incorporated as external amenity space.

Conclusion

36. For the reasons given above, I conclude that the appeals should succeed on ground (a) and the enforcement notice, as corrected, should be quashed.
37. I shall discharge the conditions which are subject to the notice, and grant planning permission on the applications deemed to have been made for the operations previously permitted without complying with the conditions enforced against.
38. The appeals on grounds (f) and (g) do not fall to be considered.

M Savage

INSPECTOR