
Appeal Decision

Site visit made on 17 February 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 04 March 2022

Appeal Ref: APP/N5090/C/21/3267237

3 Blakeney Close London N20 9LH

- 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 Tara Quinn against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0730/19, was issued on 16 December 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, the construction of a single storey rear extension*.
- The requirements of the notice are to:
 - (1) Demolish the rear extension; and
 - (2) Permanently remove all constituent materials resulting from the works in (1) above from the property.
- The period for compliance with the requirements is two 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 succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice as corrected is upheld as set out below in the Formal Decision.

Preliminary Matters

1. A conditional permission was granted on 1 October 2018 for development of approximately the same description as that now alleged in the Council's notice: a single storey rear extension. The permission required the development to be carried out in accordance with a series of application plans, and to be begun within three years from the date of the permission.
2. Having had regard to the remarks of Mr Justice Kerr in the case of *Hussain v Secretary of State for Communities and Local Government* [2017] EWHC 687 (Admin), particularly at paragraph 46, I wrote to the parties seeking their views as to the correctness of the allegation and, commensurately, any consequences for the requirements of the notice and what the appellant's fall-back position might be (the 2018 permission having now expired if not already begun).
3. There are no 'legal' grounds of appeal before me seeking to show that the alleged breach has not occurred, or that the matters alleged do not constitute a breach of planning control. The appellant's response to my correspondence was to say that the allegation that the works are wholly without planning permission is intrinsically flawed, and that the notice is incapable of correction and should be quashed. No response was received from the Council.

4. Having considered the matters put forward by the appellant concerning the similarities between the two developments (that permitted and that built) and when the works were carried out, I agree that the alleged breach appears to me to be properly characterised as one consisting of development in breach of a planning condition, namely the 'plans' condition 1 of the 2018 permission.
5. The general nature of the allegation is however entirely clear. The appellant has appealed on both grounds (a) and (f), and so it does not appear to me that recasting the allegation would result in any possible prejudice to her case, as it would not reasonably lead to the introduction of any additional grounds of appeal. No possible prejudice has been identified by the Council, and I do not perceive any. Whilst there appears to be no compliance with the 'materials' condition (no.3) at present, the materials used are not expressly cited in the Council's reasons for issuing the notice and (given my findings below) they are anyway not precluded from enforcing the condition if they deem it expedient. It being my duty to get the notice in order where possible, I shall therefore make the appropriate corrections to the allegation.

Main Issues

6. It follows from my findings above that the deemed planning application arising under ground (a) is seeking a retrospective permission for the development without complying with condition 1 of the 2018 permission, and is thus akin to an application made under section 73A(2)(c) of the Act. On this basis it is not open to me to revisit the principle of the development, and thus the question arising is whether the departures from the approved plans are acceptable. The Council's notice cites the departure from the prevailing form of development in the locality and adverse effects on the amenities of neighbouring properties. Although the Council do not expressly refer to any impacts on neighbouring occupants, I take this to mean that they consider the development has an adverse impact on the living conditions of neighbours.
7. It follows that the two main issues for consideration are, first, the effects of the development on the character and appearance of the property and surrounding area; and secondly, the effects on the living conditions of neighbours.

Reasons

Character and appearance

8. It is first necessary to explain the differences between what was permitted and what was constructed. The Council's delegated report records the permitted extension as having a depth of 3.8m and a maximum height of 3.7m. The approved plans now provided to me in fact show the height of the permitted extension to be a maximum of around 4.15m. The height as built was measured at my site visit to be 4.4m.
9. The depth is acknowledged to be 4.2m rather than the permitted 3.8m, although I have been referred to correspondence in the course of the application in which the Council sought a reduction in depth to no more than 3.8m in order 'to match the extension that was allowed at no 2' (in what appears to relate to a permission of some vintage).
10. The depth of the constructed extension does match the depth of the extension at no. 2. It appears that both have been built to a more extensive depth than permitted.

11. In terms of its dimensions, therefore, the extension as built appears to exceed the permission by 40cm in depth and 25cm in height when viewed from the rear: the side walls of the permitted extension are further reduced in height.
12. My attention is drawn to other rear extensions in the vicinity and in particular to those at no.s 5 and 7 in the Close of commensurate height and depth to the development as built. Leaving the materials aside, I agree that the depth of the development as constructed does not offend the prevailing character or appearance of the terrace. It is commensurate with its neighbour at no. 2 and with others in the Close.
13. Given the Council's apparent objective in achieving a like depth with the neighbouring no. 2 extension, I do not consider that the additional 40cm raises any unacceptable harm to character or appearance. I acknowledge that it exceeds the normally accepted depth of an extension according to the adopted Residential Design Guide, but in the context of the other extensions in the Close I do not find the overall policy objective of policy DM01 to be breached in this regard.
14. As a flat-roofed structure it is of a different design from its immediate neighbours but is not dissimilar to that at no. 7. As to the height, the appellant draws my attention particularly to the extension at no. 7 that is of a comparable height. I accept that this is so, but it is necessary to consider the development in both its immediate and its wider context. Its wider context is that no. 7 is a comparable development. Its immediate context however is its relationship with its immediate neighbours, particularly at no. 2 whose rear extension has a sloping roof away from the dwelling. The rear façades are thus of considerably different heights and viewed together they appear unbalanced. I note the appellant's argument that the location of the Close means that there is little impact on the public realm but nonetheless I consider the result to be harmful to the appearance of the Close.
15. The appellant explains that works to reduce the perceived height of the roof can be carried out without difficulty, namely by reducing the parapet walls surrounding the flat roof by 25cm so as to accord with the permitted (maximum) height. I consider that this would achieve an acceptable relationship with the property next door. The height of the extension would still exceed that of no. 2 at the point of the rear façade, but not to such a degree that would result in the unbalanced appearance that I have identified. Subject to this alteration, and mindful of the appellant's fall-back position, I find that the extension would accord with the policy requirements of the Barnet Local Plan to protect and enhance local character. I am specifically referred to policies CS1 and CS5 of the Core Strategy, and to policy DM01 of the Development Management Policies document, both of 2012, together with the Residential Design Guide SPD of 2016. I find that there is overall compliance with these policies on this issue.

Living conditions

16. It appears from the Council's reason for issuing the notice that adverse effects on neighbouring living conditions arise because the extension is 'overbearing'. The appellant reports that no adverse comments were received from either neighbour at the time of the 2018 planning application, even on an earlier iteration of plans where the depth of the extension was shown to be 5m.

17. The Close consists of terraced houses lying on a north-south alignment, and thus the extension lies immediately to the south of the rear conservatory extension at no. 4. That extension appears to project around 3.5m from the rear wall of the house. It appears that the construction of the appeal development may have some impact on the sunlight received into the conservatory; however, compared with the development permitted in 2018 I consider these effects to be marginal. In any event sunlight levels are not the identified issue.
18. Compared with the development permitted in 2018 I do not find the extension to be unacceptably overbearing on either neighbour. In the case of no. 2 it does not extend beyond their own rear extension, so has no impact. In the case of no. 4 I acknowledge that, especially with a conservatory extension, the impacts will be felt from inside the house. The principle of a neighbouring extension exceeding the depth of their own was established in 2018, however, and I do not perceive any additional harm resulting from the rather marginal changes to the dimensions.
19. Therefore I do not perceive any unacceptably adverse impacts on the neighbouring living conditions that would warrant dismissing the appeal.

Overall conclusions on the planning merits and requirements

20. My reasons above set out why I consider the depth of the extension to be acceptable, but to require a 25cm reduction in its height so as largely to accord with that element of the plans permitted in 2018. As there are appeals on both grounds (a) and (f) such an outcome could be achieved in different ways. One route would be to quash the notice and discharge the condition and substitute it with another in accordance with section 177(1)(b) and section 177(4) of the 1990 Act; however, as prospective works are required in order to give effect to my conclusions, I do not think this is appropriate. Another route would potentially be to uphold the notice and dismiss the ground (a) appeal but introduce alternative requirements to achieve either compliance with the 2018 plans or alterations to achieve the effects (by reducing the height) suggested by the appellant that I have found would be acceptable. However, the latter course would not remedy the breach of planning control (pursuant to the ground (f) appeal) and nor would it make the development comply overall with the terms and conditions of a planning permission previously granted.
21. For reasons alluded to above I consider it desirable that the development remains subject to the remaining conditions applicable to the 2018 permission that could continue to have any application. These include a requirement for matching materials, and also include a prohibition on northern side windows and any conversion of the flat roof to use for sitting out. Therefore I shall grant permission for the development without complying with condition 1 to which the 2018 permission was granted. I shall however impose a replacement condition requiring the walls to be reduced in height by 25cm. I shall also reimpose the remaining conditions applying to the 2018 permission, save for the 'commencement' condition no. 2, given that the permission I am granting is retrospective. As to the condition requiring the reduction in the parapet walls, I have had regard to the appellant's case on ground (g). However, as the works to be required will now fall well short of the original requirements of the notice I do not consider that the factors identified there will apply to the works now required. I shall require the works to be done within two months.

22. Because the ground (a) appeal effectively succeeds only in part, I also think it an appropriate case not to quash the enforcement notice. I shall uphold the notice and subsequently grant the planning permission in the terms I have explained. The effect of this, pursuant to section 180 of the 1990 Act, will be to 'save' the requirements of the notice insofar as they are at odds with the terms of the permission that I shall grant or, put another way, the permission will override the requirements of the notice to the extent that they are inconsistent. As the inconsistency applies only to the height of the parapet walls, I have not found it necessary to vary the requirements of the notice, although for the reasons explained above I shall correct the allegation. The notice will thus continue to have effect to require the demolition of the structure and the removal of the constituent materials, but only to the extent now required by the permission I shall grant.

Conclusion

23. It follows from the reasons I have given above that I conclude the appeal should succeed in part on ground (a) and planning permission will be granted subject to conditions requiring (inter alia) a reduction in the height of the extension's walls. The appeal on grounds (f) and (g) does not therefore need to be considered. Otherwise I will uphold the notice and refuse to grant planning permission allowing the retention of the present structure without alteration. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of section 180 of the 1990 Act.

Formal Decision

24. It is directed that the enforcement notice be corrected by:

- (i) Deleting "Section 171A(1)(a)" and replacing it with "Section 171A(1)(b)" in paragraph 1;
- (ii) Deleting the existing text to paragraph 3 and replacing it with "The construction of a single storey rear extension without complying with condition no. 1 of planning permission granted on 1 October 2018 under reference 18/4648/HSE".

25. Subject to those corrections the enforcement notice is upheld, the appeal is dismissed and planning permission is refused in respect of the single storey rear extension as constructed on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

26. Retrospective planning permission is however granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the construction of a single storey extension without complying with condition no. 1 of planning permission dated 1 October 2018 under reference 18/4648/HSE but subject to the following conditions:

- (1) Within two months of the date of this permission the exterior walls of the extension hereby permitted shall be reduced in height by 25cm;
- (2) The materials used in the external surfaces of the building(s) shall match those used in the existing building(s);

- (3) Notwithstanding the provisions of any development order made under section 59 of the Town and Country Planning Act 1990 (or any Order revoking and re-enacting that Order) no windows or doors shall be placed at any time in the northern elevation of the extension hereby approved facing 4 Blakeney Close;
- (4) The roof of the extension hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting out area.

Laura Renaudon

INSPECTOR