
Appeal Decisions

Site visit made on 17 February 2022

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Refs:

APP/N5090/C/20/3265300 (Appeal A) and 3265301 (Appeal B)
52 Sinclair Grove, London NW11 9JG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Sharad (Appeal A) and Vaneshree (Appeal B) Patel against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0150/19, was issued on 12 November 2020.
- The breach of planning control as alleged in the notice is *Without planning permission, the construction of a single storey rear extension to a pre-existing extension and the construction of a first floor rear extension on top of the existing development (as shown edged red).*
- The requirements of the notice are to:
 - (1) *Restore the property to the state in which it was prior to the breach as seen in the 'As existing plans' drawing number 4721_01 and 'As existing elevations' drawing number 4721_02, included as part of planning application reference 15/03585/PNH, decision date 06/07/2015. The above is including but not limited to:*
 - (a) *Demolishing the existing ground floor rear extension.*
 - (b) *Demolishing the existing first floor rear extension.*
 - (2) *Permanently remove all constituent materials resulting from the works in (1) above from the property.*
- The period for compliance with the requirements is six months.
- The appeals are proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decisions: the appeals succeed in part and permission for that part is granted, but otherwise the appeals fail and the enforcement notice as varied is upheld as set out below in the Formal Decisions.

Preliminary Matters

1. The parties record two previous applications relating to the appeal site of particular importance. On 6 July 2015 it was determined by the Council that 'prior approval' was not required in relation to the exercise of permitted development rights to construct a single storey extension, shown on plans to amount to 6m in depth and 3m in height. A subsequent planning permission was granted on 16 November 2015 to construct a first floor extension above the existing ground floor extension of around 3m depth (without reference to the 'prior notification' (hereafter 'PN') plans). It is agreed that what has been constructed amounts to an approximate amalgamation of those application plans, but does not accord with either. It is not clear whether either consent now remains extant, although each is material to my considerations as relating to the planning history of the appeal site and as indicative of what the Council have previously found to have been acceptable or authorised by permitted development rights.

2. The requirements of the notice require the restoration of the land to its previous condition by requiring the reinstatement of the building to accord with the 'as existing' plans submitted with the PN plans. It is evident from inspecting the elevations plans that they are inaccurate. There is a pronounced declivity in ground levels from the front of the site to the rear, which is not depicted on the PN plans. This results in the 'as existing' rear ground floor wall being depicted as 3m in height, rather than the approximately 3.5m that it was, as depicted more accurately in the November 2015 permission plans.
3. The contents of an enforcement notice are required (by section 173 of the Act) to specify steps to achieve, wholly or partly, the purposes of remedying the breach of planning control by making any development comply with the terms of any planning permission which has been granted, by discontinuing any use of the land, or by restoring the land to its condition before the breach took place. Alternatively, the steps may be imposed so to achieve the purpose of remedying any injury to amenity which has been caused by the breach.
4. It is apparent from the Council's notice that the purpose sought to be achieved is the remedying of the breach of planning control by requiring the restoration of the land to its condition before the breach took place. That requirement is contained in the opening part of step 5(1) of the notice. In the interests of certainty it would be necessary to strike the remainder of step (1) from the notice, because of the resulting ambiguity arising from the reference to inaccurate plans. I consider that such amendments to remove the unnecessary reference to plans could be made without prejudice to the interests of either party. In the event, there are appeals on both grounds (a) and (f) and so I am asked to consider other steps that might achieve the objectives of the notice, whether in whole or part.

Main Issues

5. The Council's reasons for issuing the notice raise two main issues in the appeal. The first relates to the effect of the development on the character and appearance of the property and the area, with the Council's reason stating that the development is considered to lack a subordinate relationship with the host dwelling, is overly dominant when viewed from the rear garden, and amounts to an over development of the property.
6. The second reason supplied by the Council concerns the effect of the development on the neighbouring living conditions, citing impacts on the neighbour's outlook and sense of enclosure as a result of the dimensions of the development.

Reasons

Character and appearance

7. Policies and documents cited by the Council in support of its reasons include policies CS NPPF and CS1 and policy DM01 of the Local Plan, contained respectively in the Core Strategy and Development Management Policies documents adopted in 2012. Additionally two supplementary planning documents relating to design are referred to. Not cited in the notice but now referred to are policy D6 of the London Plan 2021, concerning housing quality and standards, the emerging Local Plan, and existing Local Plan policies CS5 and DM02. The general approach to development, consistently with national

policy, is to encourage proposals that preserve or enhance local character and are respectful of the appearance of their surroundings.

8. As noted above, reference has been made to previous planning and prior approval applications made in respect of the property. What has been built appears to incorporate elements of those prior consents but no coherent permission exists for what has been built, and an application for retrospective planning permission has been refused.
9. The Council refers to its residential design guide SPD in requiring extensions to achieve a subordinate relationship with the original dwelling. Having viewed the rear of the properties in the street, with gardens backing onto the A406 North Circular, what has been built at No 52 does not appear to me out of context with its neighbours generally. Dormer roof conversions are seen, as are two storey extensions including some to the full width of the property. By contrast the (approx.) half width of the first floor extension here is quite modest. There are various shapes and sizes of the dwellings to the rear of the street, and the works that have been done to No 52 do not appear out of place.
10. The Council asserts that the resulting structure is out of character with its more modest neighbour. It is quite a large extension, exceeding its immediate neighbours in its rear dimensions; however, considering the dwelling in the overall context, I do not find the works to be disproportionate to the dwelling or detrimental to the character or appearance of the dwelling or its locality. The pitch and overhang of the first floor roof are not unacceptable in their context.
11. Therefore I find no conflict with the provisions of the development plan in this regard overall, although I consider that a requirement to match the materials of the pre-existing dwelling would be necessary to achieve a satisfactorily harmonious overall appearance. The present juxtaposition of the brickwork against the rendered walls is rather jarring. Subject to the imposition of relevant planning conditions, therefore, I would not dismiss the appeal on the grounds of adverse impacts on character or appearance, finding compliance with the development plan in these respects.

Living conditions

12. The adjoining neighbours at no. 54 consider that the ground floor extension is overbearing. They contend too that it is unsightly and a visual intrusion. The Council contends that the neighbouring outlook is substantially reduced and the sense of enclosure increased as a result of the height and depth of the rear extension. Having visited both premises, I agree that the ground floor extension, appearing to exceed 4m in height as a result of the declining ground levels, results in an imposing and enclosing wall that is oppressive to the neighbours' living conditions. I do not find that the first floor extension has the same effect, owing to its lesser depth. Whilst the appeal site lies to the NE of the adjoining neighbours, meaning that overshadowing is not a concern, I nonetheless consider that the height and depth of the monolithic ground floor extension result in feeling 'hemmed in' by it to an unacceptable degree.
13. Whilst some improvement could be achieved by the lightening in colour of the extension, by rendering it to match the existing house, that I have found would be required to improve its appearance, I do not think that such measures would result in a satisfactory outcome for the adjoining neighbours. This is because such works would not overcome the impact of the mass of the

extension. As the land levels fall away from the property, the height of the building increases, and this is perceived by the neighbours whose land levels in their rear garden are on a similar decline.

14. Development Management Policy DM01 requires development proposals to be designed so as to secure adequate outlook for adjoining occupiers, and in this it is supported by the 2016 Residential Design Guide which seeks to ensure that extensions do not lead to a significant sense of enclosure or loss of outlook to neighbouring properties. I find that the development as constructed does not meet with these requirements and thus that it conflicts with the development plan for the area.

Other matters

15. The November 2015 planning permission envisaged a basement extension to the rear, to accommodate the changing land levels, and information has been supplied by the appellants to explain why, for personal reasons, it was inappropriate to build to the split levels that were permitted. I understand that personal circumstances have since changed significantly. It is inappropriate to repeat the details in this decision letter, but taking the information before me together I do not consider that the appellants' personal circumstances would outweigh the conflict with the development plan that I have identified so as to justify the development as constructed.

Overall conclusions on the planning merits

16. Overall I consider that the retention of the first-floor element of the extension would, subject to requiring steps to achieve matching materials, be acceptable to the character and appearance and to the neighbouring living conditions. For the reasons I have explained, the excessive height of the ground floor extension resulting from the declining land levels results in unacceptable impacts on the neighbouring living conditions by reason of enclosure and loss of outlook. I therefore consider how to give effect to these conclusions.
17. My powers on appeal are limited to granting planning permission, either in whole or in part, or imposing steps to achieve, wholly or partly, the purposes set out in section 173 of the Act to which I have referred above. The appellants contend under ground (f) that it is excessive to require the complete demolition of both extensions where adaptation could be the fall-back situation. In this, the appellants understand the Council's position to be that the ground floor extension could be acceptable subject to a reduction in height.
18. This may be so, but a reduced height ground floor extension is not shown before me in any (accurate) plans and the appellants do not explain quite how a satisfactory outcome could be achieved by reducing only the roof height of the ground floor extension. It appears that to reduce the height to 3m at the rear would involve reducing the overall height by at least a metre, and I have insufficient detail before me to understand what the impacts would be on the intersection with the first floor extension or on the useability of the internal space without permitting or requiring additional works that go beyond the scope of this appeal. I therefore agree with the Council that demolition of the ground floor extension (or at least most of it, to which I turn below) is required in order to remedy that aspect of the breach of planning control.

19. As to the first floor, as I have said, I find that this can be made acceptable. The Council contend that the first-floor rear extension would have to be removed completely in order to effect any reduction to the existing single storey rear extension, but it is not explained in any detail why that is. The Council's allegation consists of two discrete elements, and in relation to the first floor the allegation is that it has been constructed on top of the 'existing' development. In their statement the Council contend that the first floor extension has been constructed above the extended ground floor. From the plans before me, which are not shown to scale, it appears that the rear façade of the first floor extension is approximately aligned with the original façade of the ground floor one, and thus that elevations similar to those on drawing no. 4721_05 applicable to the November 2015 permission can be achieved, minus the basement elements.
20. However, given the Council's contention, it appears that the first floor extension may protrude slightly beyond the pre-existing ground floor one. If the façade is to align on both storeys to match the first floor as built, I do not consider the additional protrusion of the ground floor, which appears very marginal if it does exist, to give rise to the harm I have otherwise identified as resulting from the construction of the ground floor extension. The appropriate outcome is therefore to allow the first floor extension to remain, and as much of the ground floor extension (if any) as results in the rear façade of the two storeys aligning.
21. I am mindful that the permission granted in 2015 removed permitted development rights to insert side windows, and consider it important that this requirement should continue to attach to the development in order to avoid scope for overlooking. It is therefore important that any resulting amended enforcement notice should not 'under enforce', given the provisions of section 173(11) of the Act.
22. Accordingly, I shall uphold the enforcement notice as it is, save for the reference to the PN plans which as noted above I have found to be inaccurate as a depiction of the pre-existing property. I shall however grant retrospective planning permission for the construction of the first floor extension, but subject to conditions requiring the achievement of matching materials and to remove those permitted development rights identified by the Council in the November 2015 permission.
23. As to the ground floor, the requirement will be to demolish and restore it to its pre-existing condition, as per the existing notice which I do not propose to vary in that regard. I have considered whether to grant a permission for any additional protrusion of the ground floor from its previous position so to align with the first floor façade. However, this is unnecessary. It appears to me from the plans available that the requirement to demolish and restore the ground floor to its pre-existing condition will result in its alignment with the rear façade of the first floor. To the extent that there is a difference, it appears to me one that is *de minimis* and thus that the practical effect of the notice will be to require the ground floor to be demolished to the extent that its rear façade aligns with that of the first floor. The requirement to restore to the pre-existing condition will require the reinstatement of the previous fenestration without the notice needing to say so expressly.

24. The permission granted will override the effects of the notice so far as they are inconsistent, pursuant to section 180 of the Act, but there will be no 'under enforcement' conferring any unfettered permission under section 173(11) as a result of complying with the notice. Thus my formal conclusions are that the ground (a) appeals should succeed in part, but the ground (f) appeals fail.

Conclusion

25. For the reasons given above I conclude that the appeals should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice with variations and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I shall grant by virtue of section 180 of the 1990 Act.

Formal Decisions

26. It is directed that the enforcement notice be varied by deleting, from paragraph 5(1) of the notice, the words "*as seen in the 'As existing plans' drawing number 4721_01 and 'As existing elevations' drawing number 4721_02, included as part of planning application reference 15/03585/PNH, decision date 06/07/2015. The above is including but not limited to*" and replacing those words with "including by".
27. The appeals are allowed insofar as they relate to the construction of a first floor rear extension and planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the construction of a first floor rear extension on land at 52 Sinclair Grove, London NW11 9JG subject to the following conditions:
- (1) The materials to be used in the external surfaces of the building(s) shall match those used in the existing building(s).
 - (2) 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 flank elevations of the first floor rear extension.
28. The appeals are otherwise dismissed, planning permission is refused in respect of the applications deemed to have been made under section 177(5) of the 1990 Act, and the enforcement notice as varied is upheld.

Laura Renaudon

INSPECTOR