
Appeal Decisions

Site visit made on 20 June 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 19TH JULY 2022

Appeal A Ref: APP/N5090/W/21/3269676

Basement and Ground Floor Flat, 39A Bellevue Road, Friern Barnet, London N11 3ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Daniel Alexis against the decision of the Council of the London Borough of Barnet.
- The application Ref 20/4736/RCU, dated 6 October 2020, was refused by notice dated 10 December 2020.
- The development proposed is (Retrospective) Outbuilding to be used ancillary to the existing residential dwelling.

Summary Decision: The appeal is dismissed.

Appeal B Ref: APP/N5090/C/21/3269602

Land at 39A Bellevue Road, London N11 3ET

- 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 Daniel Alexis against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 25 January 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the construction of an outbuilding in the rear garden (as shown edged red in the attached photograph [sic]).
- The requirements of the notice are 1 Demolish the outbuilding and restore the land to the condition in which it was prior to the outbuilding works 2 Remove all constituent materials resulting from the works in 1. above from the site.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decision.

Appeal A – S78 planning appeal

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the appellant's name in my banner heading above from the appeal form since this was incomplete on the planning application form. I have slightly amended the address for the property to that on the enforcement notice, and which was stated as the appellant's address on the planning application form.
3. The application is partially retrospective since the appeal building has been partly constructed and I have dealt with the appeal on this basis.

Main Issues

4. The main issues are the effect on the character and appearance of the area and on the living conditions of neighbouring occupants.

Reasons

Character and appearance

5. The appeal property is the ground and basement floor flat at 39 Bellevue Road. The original garden has been divided into two for the use of the appeal property and first floor flat. The partially constructed outbuilding sits at the end of the appellant's garden, but effectively in the middle of what presumably was the original garden for the building at No 39. Although there are some structures in the rear gardens surrounding the appeal site, these are generally modestly sized and positioned fairly unobtrusively. As such, the overall surrounding character is one of space and openness.
6. The outbuilding as proposed would be of substantial size, its footprint would take up a significant portion of the appeal property's rear garden, stretching almost across the full width of the garden and rising materially above the height of the surrounding boundaries. Although the design and materials to be used would not be out of place in a garden location and seek to add visual interest, the resultant massing of the building in this location would be visually intrusive in the open rear garden environment surrounding the site.
7. The proposed outbuilding would thus have a harmful effect on the character and appearance of the area. It would conflict with Policy DM01 of the Council's Development Management Policies 2012 (DMP) and Policies CS1, CS5 and CS NPPF of the Council's Core Strategy 2012 (CS) which indicate that development proposals should be based on understanding of local characteristics and should respect local context, and that planning applications should accord with policies in Barnet's Local Plan. It would also fail to accord with the Council's Residential Design Guide 2016 (RDG) which advises that back garden buildings should not be over large or significantly reduce the size of a garden such as to become out of character with the area.

Living conditions

8. The proposed outbuilding would be positioned close to the boundaries of the properties either side¹, and also to the shared boundary with the upper floor flat at 39B Bellevue Avenue. From what I saw at my site visit, the height of the outbuilding above these garden boundaries, its massing and its position in the middle of the original rear garden would result in an overbearing effect

¹¹ Albeit that a side access passageway provides a small degree of separation from No 41's garden boundary

from the gardens of 37, 39B and 41 Bellevue Road. This would be to the detriment of the living conditions of the occupants of those properties.

9. The height and size of the building in view of its orientation relative to No 41's garden would also result in significant overshadowing of the area of No 41's garden nearest the house, being the area most likely used for sitting out. This would result in additional material harm to the living conditions of the occupants of this property.
10. I conclude then on the second main issue that the proposed outbuilding would result in harm to the living conditions of the occupants of neighbouring properties. Conflict would arise with Policy DM01 of the DMP which indicates that development proposals should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users. It would also run contrary to guidance in the RDG which also seeks to protect residential amenity. The Council has not though explained how there would be direct conflict with Policy CS5 of the CS in this respect.

Conclusion

11. The proposed outbuilding would result in material harm in respect of character and appearance and living conditions, and would fail to comply with the development plan, read as a whole. No material considerations have been advanced which outweigh the development plan conflict and harm found. For these reasons, and taking into account all other matters raised, I conclude that the appeal should fail.

Appeal B – s174 enforcement notice appeal

The appeal on ground (b)

12. The appeal on ground (b) is that the matters alleged in the notice have not occurred.
13. The appellant's position is that an outbuilding has not been constructed on the site; what has occurred is the partial construction of an outbuilding. It is claimed also that it is an abuse of process for the Council to serve an enforcement notice in respect of a building which is incomplete as this undermines the ability of the appellant to appeal on ground (a) on the basis that the planning merits of a 'substantially incomplete structure' are 'non-existent'.
14. I agree that the development which has taken place on site could more properly be described as the partial construction of an outbuilding, in view of the fact that the structure has no roof, windows, or doors. However, I do not consider that the Council was precluded from taking enforcement action because the building was not complete. It is plain that the Council's objection is to the height and size of the building. As such, finalising the building with a roof, windows, doors and external finish would clearly not overcome these fundamental concerns. Thus enforcement action was not premature.
15. Further, whilst the service of a notice against an incomplete building would in principle affect the appellant's ability to put forward planning merit arguments, in this case, I have found under Appeal A that the completed building proposed by the appellant would not be acceptable on the planning merits. The notice

can therefore be corrected to refer to partial construction of an outbuilding without injustice.

The appeal on ground (g)

16. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
17. The appellant has indicated that he does not consider three months to be long enough to seek quotations, give instructions and ensure that the necessary works are completed. A period of four months is requested. Whilst the works required are relatively straightforward, I consider that backlogs of work ongoing from the COVID-19 pandemic are likely to render it difficult for the appellant to secure compliance with the notice within a 3 month period. My view is that a four month period strikes the right balance in this regard and the ground (g) appeal therefore succeeds.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation as set out above.

Formal Decision

19. It is directed that the enforcement notice is corrected by:
- in paragraph 3 the insertion of the word 'partial' before the word 'construction'; and
 - in paragraph 5, requirement 1, before the word 'outbuilding' in the first and second sentences, insertion of the wording 'partially constructed';
- and varied by in paragraph 6 the deletion of the wording '3 months' and substitution of '4 months'
20. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

V Bond

INSPECTOR