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## Appeal Decision

Site visit made on 6 June 2022

**by K A Taylor MSC URP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 26 July 2022**

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**Appeal Ref: APP/N5090/C/21/3277437**

**Land at 29 Glendor Gardens, London NW7 3JY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ananta Manandhar against an enforcement notice issued by London Borough of Barnet.
  - The notice was issued on 26 May 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of a part single, part two storey rear extension internally attached additional two storey rear extension, as edged blue on the plan attached to the notice.
  - The requirements of the notice are to: 1. Demolish the part single, part two storey rear extension internally attached two storey rear extension, as edged blue on the plan attached to the notice; 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
  - The period for compliance with the requirements is: 3 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (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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### Decision

1. It is directed that the enforcement notice is corrected by the deletion of the words in the allegation and their substitution with "Without planning permission, the erection of a single storey rear extension and alteration and extension of an existing garage situated in the rear garden, to create a two storey rear extension linked to the single storey rear extension, and a first floor rear extension to the host property".
2. It is also directed that the notice is varied by 1) deleting the words in paragraph 5.1. of the notice and substituting "Demolish the single storey rear extension linked to the two storey rear extension formed from the previous garage building and the first floor rear extension to the host property; and 2) by deleting "3 months" and substituting "6 months" for the time for compliance.
3. Subject to the 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.

### The Notice

4. The enforcement notice at paragraph 3 alleges the breach of planning control to be the erection of a part single, part two storey extension internally attached additional two storey. However, a notice must enable any person on whom a

copy of it is served to know clearly what those matters are. It is clear from the attached plan, and as I saw there is a single storey rear extension, alteration and extension of an existing garage linked to the two storey rear extension with the additional two storey extension being a first floor extension to the host property. The breach of planning control is expressed awkwardly.

5. Therefore, it is necessary to correct the notice, in the interests of clarity, and to make consequential amendments to the requirements, but I can only do this provided there would be no injustice caused to the parties. The appellant has appealed on grounds a), f) and g). I find correcting the allegation would not cause any injustice to the parties and it is necessary to do so in order to have a clear description of the development to be considered under the ground (a) appeal.
6. I shall therefore proceed on the basis that the description of the development is the erection of a single storey rear extension and alteration and extension of an existing garage situated in the rear garden, to create a two storey rear extension linked to the single storey rear extension, and a first floor rear extension to the host property.

### **Preliminary Matters**

7. There is another appeal for a similar development relating to the adjacent property at No.27 Glendor Gardens. The former garage at the appeal site adjoins the former garage at No.29. This is the subject of a separate decision APP/N5090/C/21/3277517. That appeal is made by Mr Robert Oliver but his agent is the same as the agent for this appeal.
8. A site visit was arranged for 9.30am on 6 June 2022 and the Council were informed of this. On the day of the site visit the Council were not in attendance at that time. As the appellant and agent were present, I proceeded to carry out the site visit on an access required only basis within the property and rear garden area. The Council arrived at the site at the point where I had completed the site visit and were informed of this procedure.

### **The appeal on ground (a) and the deemed planning application**

#### **Main Issues**

9. The main issues are the effect of the development as built on i) the character and appearance of the host property and surrounding area; and ii) the living conditions of the occupiers of No.31 Glendor Gardens (No.31), with particular regard to outlook and privacy.

#### **Reasons**

##### *Character and appearance*

10. The appeal site relates to a semi-detached dwelling within a predominantly residential area which is characterised by mostly two-storey dwellings of varying design but with similar features, such as projecting gable roofs and bay windows. Properties along Glendor Gardens are semi-detached and set in generous plots; they are constructed from traditional materials; and are laid out with front gardens, shared driveways and enclosed rear gardens. The gradient of some of those rear gardens, including that at the appeal site, rise steeply away from the properties.

11. Several properties have also been extended but those additions to the rear appear to be mainly single storey, subservient and/or detached outbuildings. Despite some variation in form, the properties in the immediate area present a discreet arrangement that appreciably contributes to the local character and appearance of the area.
12. The development has resulted in the addition of rear extensions being of excessive projection from the original house due to the combination of the depths of the single storey, infill and two-storey extension (former garage). A first-floor extension with hipped roof has also been added which projects from the original dwelling. This is sited above the single storey extension, of which the appellant states is some 3m in depth and was constructed after the completion of the single storey extension.
13. Due to the extent of the combined rearward projections, including the first-floor addition and the height of the two-storey part extension, they appear of a significant scale to the detriment of the host property. Thus, the combined extensions appear overwhelming, out of proportion and fail to be subordinate to the character and appearance of the original host property and appear out of place when compared to existing development along Glendor Gardens.
14. Furthermore, this is exacerbated by the excessive height and design of the two-storey part extension, including the mix of roof forms of the whole development and the stark appearance of the parapet wall. This adds to the overall massing, bulk and cumulative negative impact. The linking of the development to the adjoining development at No.27 further adds to the developments overall incongruous appearance. Whilst there are limited views of the development from the wider street scene, it can still be glimpsed from when looking in between the gap at No.29 and No.27 and wider viewed from the rear of adjacent neighbouring properties.
15. For the above reasons, I conclude that the development as a whole has caused unacceptable harm to the character and appearance of the host property and surrounding area. It does not accord with Policies CS1, CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document, 2012 (CS), Policies DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document, 2012 (DPD) and Policy D3 of The London Plan, 2021. Amongst other matters, taken together these policies require the highest standards of urban design and that development should respect local context and distinctive local character, including appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.
16. The development also conflicts with the Council's Supplementary Planning Document: Residential Design Guidance, 2016 (SPD), which sets out that rear extensions should not look too bulky and prominent compared to the size of the main building and garden to which they relate.

### *Living Conditions*

17. The velux windows on the two-storey extension of the former garage are obscure glazed. I observed these were more than capable of being opened to a significant degree and direct views across are afforded of the rear garden area of No.31. There was also considerable direct sight and views into the rear windows of No.31, which was due to the excessive height of the two-storey and its rearward siting.

18. Furthermore, the windows of the additional first floor extension also gave direct sight into the rear garden of No.31. I accept that there are windows in the existing first floor, but the extension projects some further 3m than those, bringing direct sight closer. This is greater than the former existing situation or mutual diagonal sight prior to the development taking place, resulting in overlooking and loss of privacy to an unacceptable degree for any occupiers of No.31.
19. With regards to the overall scale, mass and height of the two-storey extension, I observed that a fence is sited along the boundary wall shared with No.31. This did not extend above the parapet wall and the single storey extension sits directly next to the boundary. However, this does not prevent the development, including the single storey extension or two-storey extension combined with its design and parapet wall being visually obtrusive and appearing overbearing to the detriment of the outlook from any existing or future occupier of No.31. Particularly when looking upwards from the rear garden or from across out of existing first floor windows.
20. For the reasons given, I conclude the development has resulted in a material loss of privacy and unacceptable loss of outlook for the occupiers of No.31. Therefore, the development does not accord with the amenity requirements including privacy and outlook of Policy DM01 of the DPD, Policies CS NPPF, CS1 and CS5 of the CS; Paragraph 14.24 of the Residential Design SPD and Section 2.4 of the Sustainable Design and Construction SPD.

### **Other Matters**

21. The appellant's evidence relies on a 'fallback position' for development, including the single storey rear extension and the raising of the garage roof height. Prior approval<sup>1</sup> was given for a single storey rear extension in 2018. The plans show the single storey rear extension with a proposed depth of 6 metres (m) from the original rear wall, eaves height of 2.5m and ridge height of 3.9m. Planning permission<sup>2</sup> was granted in 2019 for 'new pitched roof to adjoining garages at 27 and 29 Glendor Gardens to replace existing flat roof'. The plans show the two garages which share a party wall with each other remaining in footprint with a new roof of some 2.5m to the eaves and 4m to the ridge.
22. However, the single storey part of the extension would not accord with those approved plans due to it being conjoined and due its overall design, being at odds with the granted prior approval details. Neither is it possible to undertake the prior approval process retrospectively, or be certain of any future application having no objections from neighbours.
23. The planning permission for the increase in height of the garage related only to the roof replacement and no other alterations. It appears that other works to the former garage to create living accommodation, has included excavation and levelling of ground. Moreover, both the prior approval and 'new pitched roof to adjoining garages' consent have now lapsed, whilst planning permission for the first-floor extension was refused<sup>3</sup>. Therefore, I do not consider there is a realistic prospect the 'fallback position' could take place.

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<sup>1</sup> 18/3999/PNH

<sup>2</sup> 19/0713/HSE

<sup>3</sup> 19/4611/RCU

24. With regard to the pre-application report<sup>4</sup>. I have not been provided with revised plans, such, that any amended scheme, as a whole or part, could be severable and undertaken with suitably worded conditions to modify the detail of the development or overcome the planning objections. Moreover, it appears that the Council have significant concerns with the combining single storey extension and first floor addition.
25. The appellant has drawn my attention to other examples where planning permission has been granted, or properties extended within the vicinity of the site. Nonetheless, I do not have full details of those and cannot be sure they are directly comparable to the appeal development. The lack of harm in those schemes does not justify the development before me. In any event, I have determined the appeal on the basis of the evidence before me and site observations.
26. An objector to the development, living on Mill Way raised concerns regarding overlooking of their garden area. However, I saw that the rear garden of the appeal site was enclosed, with significant tree and vegetation coverage towards the rear boundary and there were limited views of the Mill Way garden from the windows of the extensions. I acknowledge there has been support for the development, but these are a neutral consideration in respect of the unauthorised development.

### *Conclusion*

27. Therefore, for the reasons given above, I conclude that the appeal under ground (a) should fail and that planning permission should be refused in respect of the DPA in full.

### **The appeal on ground (f)**

28. This ground of appeal is that the steps required to be taken by the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the Act and are to remedy the breach of planning control (S173(4)(a)) or to remedy injury to amenity (S173(4)(b)). Since the notice requires the removal of the rear single storey, part two storey and additional internal two storey extension the purpose is clearly to remedy the breach. Leaving any part of it in place would not achieve that purpose.
29. The appellant's case is that elements of the development could have been constructed lawfully and in principle a first-floor extension is considered acceptable. However, I have discussed this in the ground (a) appeal, and the appellant has not provided sufficient evidence, to show that any lesser steps would overcome the harm identified.
30. For the above reasons, I conclude that the ground (f) fails.

### **The appeal on ground (g)**

31. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant states that the period of 3 months is too short to find alternative accommodation for the family whilst the works take

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<sup>4</sup> reference 21/8338/QCJ

place. It would appear from the appellants submissions that he is seeking to find an alternative solution to demolition. The Council has made no comment on the appellant's suggestion of 12 months, but I consider a more reasonable compliance period would be 6 months.

32. This would enable the appellant to discuss further, and seek the necessary planning permission from the Council in respect of the separation of the single storey extension, the altered and extended former garage and first-floor extension. This is set out in the recommendation section of the Council's pre-application report which formed part of the appellant's evidence.
33. Therefore, I shall vary the enforcement notice accordingly prior to upholding it. I conclude, the appeal on ground (g) succeeds to that extent.

### **Conclusion**

34. For the reasons given, 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.

*K A Taylor*

INSPECTOR