
Appeal Decisions

Site visit made on 1 August 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 August 2022

Appeal A Ref: APP/N5090/C/20/3266169

Land at 3 Old Fold View, Barnet EN5 4EA

- 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 Mrs Abigail Ajayi against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 24 November 2020.
- The breach of planning control as alleged in the notice is: Without Planning permission the construction of (1) a raised decking to the rear garden, (2) a side and rear extension to the existing outbuilding in the rear garden and (3) a boundary fence on the east boundary, as identified on the attached photo of the site.
- The requirements of the notice are:
 - 1 Demolish the raised decking including the decking steps
 - 2 Demolish the side and rear extension to the existing outbuilding
 - 3 Reduce the height of the boundary fence on the east boundary, to a height of no more than 2m at any point along its length
 - 4 Permanently remove all constituent materials resulting from the works in 1 to 3 above from the property.
- The period for compliance with the requirements is 4 Months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out in the formal decision.

Appeal B Ref: APP/N5090/W/20/3266171

Land at 3 Old Fold View, Barnet EN5 4EA

- 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 & Mrs M Ajayi against the decision of the Council of the London Borough of Barnet.
- The application Ref 20/3491/HSE, dated 24 July 2020, was refused by a notice dated 29 September 2020.
- The development proposed is described as rear patio to existing site level.

Summary of Decision: The appeal is allowed, and planning permission is granted in the terms set out in the formal decision.

Procedural Matter

1. The enforcement notice relates, amongst other things, to a raised decking area in the rear garden. The development the subject of the planning application and section 78 appeal refers to the construction of a rear patio. From the evidence before me and observations on my site visit, the section 78 appeal

and enforcement notice both relate to the expanse of timber decking, including steps which has been constructed to the rear of the property and around the extended outbuilding.

The Enforcement Notice

2. The breach of planning control alleged in the notice includes, '(3) a boundary fence on the east boundary'. This fence is identified on the site photo attached to the notice. Although within paragraph 4.1 of the notice, reasons for issuing this notice, the fence is described as being adjacent to No 1 Old Fold View, this is clearly a typographic error, as No 1 lies to the west of the appeal site. However, the alleged breach clearly identifies the unauthorised fence, as do the requirements. Furthermore, there is no doubt that the appellant is aware which fence the enforcement notice refers to. I do not therefore consider the notice to be ambiguous on its face. I am satisfied that there would be no injustice to either party if I were to correct the notice to delete the reference to No 1 Old Fold View and replace it with No 5 Old Fold View.

Appeal A on ground (c)

3. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. It is the appellant's case that the permission was granted by the local planning authority for the extension to the outbuilding on 6 August 2019,¹ (2019 permission), and that the extension has been built in accordance with the approved plans attached to that permission. It is accepted by the appellant that the fence and raised patio/decking does not benefit from planning permission.
4. The 2019 permission was for a single storey rear extension and single storey side extension to existing rear outbuilding. The details approved were conditional on, amongst other matters, the development being carried out in accordance with approved plans. The approved plans were specified in Condition 1 as: Site Location Plan; P.01 and P.02. Drawing P.01 showed existing plans and elevations and Drawing P.02 showed the proposed plans and elevations.
5. From the evidence before me, including the approved plans and observations on my site visit, there are clearly some discrepancies both in terms of the accuracy of the approved existing and proposed plans, and in terms of what has been constructed.
6. I appreciate that as constructed the position of the flat roof of the extended outbuilding appears to have the correct relationship to the apex of the original garage, as detailed on Drawing P.02. However, what Drawing P.02 also shows on the 'proposed side elevations', is that the eastern flank wall of the extended outbuilding would be higher than the western facing flank wall due to sloping land where it adjoins the garden of No 5 Old Fold View. According to the existing and proposed rear and the western facing side elevation of the extended outbuilding, the ground level within the garden of the appeal property was generally level. It is difficult to see how that would have been the case? If the garden had been level, then there would have been no need to construct the raised patio/decking. The proposed rear elevation of the extension must also be inaccurate. The proposed rear elevation does not show the area of

¹ Local Planning Authority Ref: 19/3344/HSE – Single storey rear extension. Single storey side extension to existing rear outbuilding. Approved August 2019.

walling that has been constructed below the extended outbuilding's finished floor level. Furthermore, the proposed rear elevation shows the outbuilding's flank walls to be the same height. However, according to the proposed side elevations the eastern facing flank wall would be higher than the western facing wall. Consequently, it is difficult to see how what is shown on the proposed plans could be accurate or indeed possible to construct.

7. It is clear to me that the existing and proposed approved plans did not accurately show the original ground levels within the appeal site. The raised decking has been constructed to facilitate access to the outbuilding and the approved plans gave no indication that a new decking area was envisaged. I appreciate that when the Council considered this application, a site visit with the proposed plans should have alerted the Council Officer to the discrepancies set out above. However, what is clear to me is that whilst the roof height of the outbuilding in relation to existing garage has been correctly constructed, the height of the building's walls from ground level do not correspond with the approved drawings. Furthermore, the eastern facing flank wall has been constructed with a small parapet, which is not shown on the approved drawings, and there is more glazing in the outbuilding's rear elevation than approved.
8. I therefore conclude that the side and rear extension to the existing outbuilding alleged in the notice is materially different from the development permitted by the 2019 permission.
9. I have also taken into consideration the appellant's view that the extension to the outbuilding and the new fence were shown on the plans submitted with the retrospective application for the raised patio/decked area.² However, although the extension is detailed on the drawings that accompanied that application, the application only sought permission for the rear patio/decked area, and in any event, that application was subsequently refused by the Council. I therefore give this consideration little weight.
10. My conclusion is that there has been development for which no planning permission was granted by the local planning authority. The building operation is not permitted under any provision of the Town and Country Planning (General Permitted Development) (England) Order 1995, as amended. A breach of planning control has occurred and the appeal on ground (c) fails.

Appeal A on ground (a), deemed planning application and Appeal B

Main Issues

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

Reasons

12. The appeal property is a semi-detached dwelling which has been previously extended by the addition of a small front porch and a single storey rear extension. There is a detached double garage to the rear which is accessed via a shared drive with No 5, each property having access to one of the garages. The property is in a residential area characterised by similar dwellings, many of which have also been altered and extended. In addition, the properties have

² Local Planning Authority Ref: 20/3491/HSE

deep rear gardens where outbuildings and other garden structures have been constructed.

13. From the evidence before me, the unauthorised extension the subject of this appeal relates to works undertaken to alter and extend a single storey flat roofed outbuilding which extended beyond the rear elevation of the appellant's half of the detached double garage. The garage straddles the common boundary of the appeal site with that of its neighbour at No 5 Old Fold View.
14. Considering the aerial image showing the previous site situation at the appeal property (Figure 14 Appellant's statement of case), the proposed plans approved in the 2019 permission and observations on my site visit, it seems to me that the original outbuilding has been substantially rebuilt. The approved plans in the 2019 permission showed that the new walls would be double skinned, and a new roof would be constructed which would be slightly higher than the original outbuilding. I appreciate that considering the fixed apex of the adjoining garage roof, the overall height of the extended outbuilding is no higher than originally intended in the 2019 permission. What is not clear is how the ground levels have or have not been altered such that the external walls of the extended outbuilding do not correspond with the approved drawings. That said, my consideration in the deemed planning application is whether the matters alleged should be granted planning permission.
15. The extended outbuilding is attached to the original garage and constructed in facing brickwork to match the garage and host property. It has a simple box form, and by reason of its scale and design it appears visually subordinate and proportionate to the host property. It is evident from the aerial images and photographs submitted as part of the appeal process, that many of the properties on Old Fold View have garage extensions and other ancillary buildings/structure within their rear gardens. Therefore, the extended outbuilding the subject of this appeal is not an uncharacteristic development in this location. Furthermore, situated in the rear garden it is not visible from the street and does not therefore affect the character or appearance of the street scene.
16. The outbuilding has been constructed with its eastern flank wall abutting the common boundary with the neighbouring property No 5. However, it is situated to the rear of their shared garage and away from the neighbour's private patio and outdoor seating areas, which are located close to the rear elevation of their dwellings. Those more private and sensitive amenity areas are not therefore affected by the development. I recognise the neighbours' concerns in relation to overshadowing and loss of privacy, and I appreciate that the height of the outbuilding's flank wall will result in some overshadowing of No 5's lawned garden area during the late morning and afternoon. However, taking into account the size of No 5's garden area and noting that the outbuilding does not cast any shadow on the property's internal living space or more sensitive private spaces close to the dwelling, the overshadowing that occurs to a small part of their lawned garden is not significantly harmful to their living conditions overall.
17. The raised patio/decking area has been constructed around the outbuilding and provides a level access to it. It also provides a seating area for the occupants of the appeal property. Although the area of decking is quite extensive, taking into account the size of the appeal property's rear garden, it does not appear

disproportionate or incongruous in this location. Furthermore, garden decking is not a development which would be out of character in a domestic rear garden setting.

18. When standing on the decked area there are views towards the end of No 5's rear garden. However, the new trellis fence panels which have been constructed adjacent to it prevent direct overlooking from both the decked area and from within the outbuilding itself. Furthermore, the ends of the rear gardens of all the properties on Old Fold View already experience mutual overlooking from the upper floors of the neighbouring dwellings. Indeed, I noted on my site visit that both Nos. 1 and 5 Old Fold View have Juliet balconies within their rear dormers overlooking neighbouring gardens. With the trellis panels in place, I do not consider that the decked area has a harmful effect on the privacy and living conditions of the occupants of No 5. In addition, the extensive mature planting along the boundary ensures there are no privacy concerns in relation to the neighbouring occupants at No 1 Old Fold View.
19. I appreciate that the unauthorised fence/trellis casts some shadow on No 5's garden during the day. However, for the same reasons I have set out in paragraph 16 above, limited overshadowing of a small part of a large garden would not have a significantly harmful effect on the living conditions of the occupants of No 5. Furthermore, it is only a small section of fencing where there has been an increase in its height. The fencing does not therefore have a substantial enclosing effect, nor is it visually incongruous in this location.
20. For the reasons given above, I conclude that the development does not have a harmful effect on the character and appearance of the area. Furthermore, having particular regard to privacy and sunlight, the development does not harm the living conditions of neighbouring residents. There is no conflict with the development plan, including Policies CS1 and CS5 of Barnet Local Plan Core Strategy and Policy DM01 of the Local Plan Development Management Policies, 2012. Those policies, together with the Council's Residential Design Guidance SPD, 2016 seek to ensure, amongst other things, that new development preserves or enhances local character and respects the appearance, scale, mass, height and pattern of surrounding buildings, spaces and street, as well as ensuring that development proposals are designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users.

Other Matters

21. I understand the neighbours' concerns in relation to the discrepancies on plans submitted to and approved by the Council. I also recognise that there are concerns relating to the rear extension to the dwelling and construction methods/drainage. However, my considerations in this appeal relate solely to the extension to the outbuilding, raised patio and new fencing, and for the reasons set out above I consider those works to be acceptable.
22. I have taken into account the proximity of the patio/decking to neighbouring trees, however I have not been provided with any substantive evidence that would lead me to conclude that those trees are at risk of falling. I therefore give this consideration limited weight.

Conditions

23. The Council has suggested a number of conditions which I have considered against the advice in the National Planning Policy Framework and Planning Practice Guidance. It is not necessary to impose conditions specifying compliance with plans or matching materials for the development, as the planning permission I have granted relates to a development which has been carried out. In addition, I have found that as constructed, the new fence/trellis provides adequate screening to overcome privacy concerns, and thus it would not be necessary for additional privacy screens to be installed.

Conclusion

24. For the reasons given above I conclude that Appeal A on ground (a) and Appeal B succeed.

Overall Conclusions

25. For the reasons given above and taking into account all other matters raised, I conclude that whilst Appeal A on ground (c) fails, it succeeds on ground (a) and planning permission will be granted for the development described in the notice. The enforcement notice will be corrected and quashed. For the same reasons, I conclude that Appeal B should be allowed and planning permission granted as set out in the formal decision. Grounds (f) and (g) on Appeal A do not therefore fall to be considered.

Formal Decisions

Appeal A

26. It is directed that the enforcement notice be corrected by the deletion of the words "No1" and the substitution of the words "No5" in paragraph 4.1. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the construction of (1) a raised decking to the rear garden, (2) a side and rear extension to the existing outbuilding in the rear garden and (3) a boundary fence on the east boundary on the land at 3 Old Fold View, Barnet EN5 4EA and shown on the photograph annexed to the enforcement notice.

Appeal B

27. The appeal is allowed and planning permission is granted for construction of rear patio at 3 Old Fold View, Barnet EN5 4EA in accordance with the terms of the application, Ref 20/3491/HSE, dated 24 July 2020, and the plans attached to it.

Elizabeth Pleasant

INSPECTOR