



Appeal Decision

Site visit made on 31 August 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 October 2022

Appeal Ref: APP/N5090/C/21/3288181

Land at 97 Mays Lane, Barnet EN5 2DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Michael Turzynski against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 22 October 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of raised decking and balustrades at the rear of the property.
 - The requirements of the notice are to:
 - 1 Demolish the raised decking and balustrades.
 - 2 Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. 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 appeal on ground (a) and the deemed planning application

2. The main issue is the effect of the raised decking and balustrades on the living conditions of neighbouring occupiers with particular regard to privacy and outlook.
3. The appeal property is a mid-terrace house with the neighbouring 99 Mays Lane being situated at a lower level. The gardens in the terrace are relatively wide and long, sloping downwards away from the rear of the houses.
4. Mutual oblique overlooking of rear garden areas is common between neighbouring properties in the area, though generally limited to views from upper floor windows.
5. The decking extends beyond an extension to No.99 and screening has been erected to the sides of the decking where it meets the neighbouring boundaries. This screening although lightweight in nature prevents some views into neighbouring properties.
6. Nevertheless, and whilst the vegetation growing on the boundary between numbers 97 and 99 provides some screening, because of the depth and height of the decking, it is possible from the outside edge, to gain views of a fairly significant proportion of the adjoining gardens.

7. The effect is such that there is an increase in the actual and perceived level of overlooking and loss of privacy, making the gardens less pleasant to use by the occupants of these houses. The elevated position of the decking heightens the sense of invasive overlooking and so differs from mutual visibility over a boundary fence.
8. Although the garden at No.95 was somewhat overgrown, as stated in Policy DM02 of the Council's Local Plan¹, decisions should ensure that development allows for adequate privacy for adjoining and potential occupiers and users.
9. The decking itself does not project above the existing boundaries however, the screening will be visible from the neighbouring houses and gardens. Nevertheless, given its relatively lightweight nature and the otherwise open aspect afforded across the gardens, there is no materially harmful overbearing impact on the outlook from within either the houses or gardens of numbers 95 and 99.
10. The appellant stated that there was previously a decking structure however, no details have been provided. As such this is a matter of limited weight.
11. Notwithstanding the lack of harm to outlook, I have found harm because of loss of privacy contrary to Policies DM01 and DM02 of the Local Plan, Policy CS5 of the Core Strategy² and the Local Plan Supplementary Planning Document Sustainable Design and Construction October 2016. Together these policies require development to protect and enhance the gardens of residential properties and allow for adequate privacy.

Other Matters

12. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010 and to the evidence regarding the appellant's family circumstances and the reasons for requiring the decking. Notwithstanding these important considerations, it does not follow from the PSED that the appeal should succeed, and in this instance the appellant's circumstances do not outweigh the harm I have found.
13. Dismissing the appeal would mean that the appellant may have to consider other options for meeting their family's living needs. However, there is no evidence before me to demonstrate the appeal development is the only means by which such needs may be met. Accordingly, dismissing the appeal would be a proportionate response given the identified harm.
14. The appellant referred to the Human Rights Act 1998 in respect of photographs taken however, those did not form part of the appeal submissions, and this is therefore a separate matter for the appellant away from this appeal.

¹ Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012

² Barnet's Local Plan (Core Strategy) Development Plan Document September 2012

Conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR