



Appeal Decisions

Site visit made on 31 August 2022

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 November 2022

Appeal A Ref: APP/N5090/C/21/3289212

Appeal B Ref: APP/N5090/C/21/3289213

51 Hartland Drive, Edgware HA8 8RJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mrs Veronika Pyzowski and appeal B is made by Mr Tomasz Pyzowski against an enforcement notice issued by London Borough of Barnet.
- The notice, numbered ENF/0902/21, was issued on 29 November 2021.
- The breach of planning control as alleged in the notice is without planning permission, the creation of a raised patio, associated steps, associated boundary walls incorporating a walled and roofed structure to the rear of the property.
- The requirements of the notice are to:
 1. Demolish the patio including the patio steps
 2. Demolish the boundary walls incorporating a walled and roofed structure to the rear of the property.
 3. Permanently remove all constituent materials resulting from the works in 1 and 2 above from the property.
- The period for compliance with the requirements are: 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decisions: the appeals are dismissed and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. The enforcement notice refers to a walled and roofed structure to the rear of the property. At my site visit, I noted three roofed structures, being a covering over part of the patio that does not have walls, a small shed on the patio directly to the rear of the house and a larger outbuilding. The Council have confirmed that the structure referred to in the enforcement notice was a breezeblock structure in the position marked on a plan that has been submitted during the course of the appeal. That is in the position of the small shed. For clarity, I will add that plan to the enforcement notice.
2. I understand that the small shed now in this location on the site differs from that originally constructed and subject of the notice. Nevertheless, they appear to be approximately the same size and in the same position. I need to consider the appeal based on the structure on the site at the time the notice was issued.
3. I note that the appellants compare the previous timber deck to the patio subject of the enforcement notice and refer to similar structures at the rear of neighbouring properties. They suggest that the patio is not incongruous, inappropriate or out of context with the prevailing character of the wider locality. This suggests that they consider planning permission should be granted for the development. However, no appeal under ground (a), that

planning permission should be granted for the breach alleged in the notice, has been made. Consequently, I am unable to consider these matters further.

The Appeal on Ground (c)

4. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellants, with the relevant test of the evidence being on the balance of probability.
5. There is no dispute that the raised patio, steps, boundary walls and walled and roofed structure to the rear of the property constitute development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for the development.
6. The appellants suggest that the raised patio replaces an earlier area of raised decking at the same height and of the same size. They indicate the patio had become lawful, as set out in the ground (d) appeal that follows. However, in order to construct the patio, the decking had to be removed. Although a small part of the decking structure may have been retained, the raised patio is essentially a new structure of a different character to the decking. As such, it required planning permission.
7. The breezeblock structure was located on part of the patio, albeit a lower section. Consequently, it was built on the patio subject of the enforcement notice. Given that the patio required planning permission, so would the structure built on it.
8. The appellants argue that the larger outbuilding is lawful. However, it is clear from the plan submitted by the Council that is not subject to the enforcement notice. On that basis, neither is it subject of this appeal or this decision.
9. Since no planning permission has been granted for the development subject of the enforcement notice, it thereby constitutes a breach of planning control.
10. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (d)

11. An appeal under this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellants, with the relevant test of the evidence being on the balance of probability.
12. The enforcement notice was issued on 29 November 2021. The raised patio, steps, boundary walls and walled and roofed structure would become lawful were they to have been substantially completed for a period of 4 years beginning with the date on which the operations were substantially completed.
13. The appellants suggest that the previous decking was installed in 2010 or 2011. That was largely removed, albeit elements such as the retaining walls were infilled with hardcore to support the concrete base to the patio. Nevertheless, the patio is a new structure. I understand those works took place in 2021, such that raised patio, steps, boundary walls and walled and roofed structure could not have become lawful through the passage of time.

14. For these reasons, I conclude that the appeal under ground (d) should fail.

The Appeal on Ground (g)

15. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed. The enforcement notice requires compliance within three months, but the appellant has requested a further three months to enable them to seek planning permission and complete any resulting works.

16. The Council suggest that they have previously indicated to the appellant that they should make an application for planning permission for the development, but this has not been forthcoming. Nevertheless, I note that there was previously decking in this location and a means to exit the patio doors to safely get to ground level will be necessary. I understand that neighbouring properties have decking or patios. The enforcement notice requires the removal of the patio, steps and boundary walls incorporating a walled and roofed structure. It is those works that need to be completed within the period specified in the notice. An alternative means to exit the patio to ground level does not need to be completed within that period.

17. Nevertheless, taking all that into account, a longer period would be reasonable to allow for a scheme to be prepared to ensure safe access from the patio doors to the garden prior to removal of the patio. It is reasonable for the timescale to take into account the need for any planning application that may be necessary to be submitted and determined. On that basis, I will increase the period for compliance to five months.

18. For these reasons, I conclude that the appeal under ground (g) should succeed.

Formal Decisions

19. It is directed that the enforcement notice is corrected and varied by:

- The deletion of three months and the substitution of five months as the time for compliance.
- The addition of the plan annexed to this decision to the enforcement notice.

20. Subject to the correction and variation, the appeals are dismissed and the enforcement notice is upheld.

AJ Steen

INSPECTOR



Plan

This is the plan referred to in my decisions dated: 17 November 2022

by AJ Steen BA(Hons) DipTP MRTPI
an Inspector appointed by the Secretary of State

Land at: 51 Hartland Drive, Edgware HA8 8RJ

References: APP/N5090/C/21/3289212 & APP/N5090/C/21/3289213

Not to scale



This is the wall structure referred to in enforcement notice, ENF/0902/21

Land at: 51 Hartland Drive Edgware HA8 8RJ	Fabien Gaudin Service Director – Planning and Building Control, 2 Bristol Avenue Colindale, London NW9 4EW	ENF/0902/21 N ↑
Title: SITE PLAN.	This product includes mapping data licensed from Ordnance Survey. With the permission of the Controller of Her Majesty's Stationary office. © Crown Copyright and database right 2016. All rights reserved. London Borough of Barnet Licence No. 100017674.	
SCALE: 1 : 1250 Date: 29.11.2021		