



Appeal Decision

Site visit made on 23 November 2022

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2022

Appeal Ref: APP/N5090/C/22/3299869

Land at 28 Oakleigh Road South, London N11 1NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr Frank Ohanessyan against an enforcement notice issued by the Council for the London Borough of Barnet.
 - The notice was issued on 20 April 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a single storey rear extension.
 - The requirements of the notice are to:
 - 1 Demolish the single storey rear extension as shown edged in red on the attached photograph.
 - 2 Restore the property to the state in which it was prior to the breach as per the existing drawing number: FO.21.101 as part of application reference 21/6599/191, decision date 23.02.2022, by restoring the amenity space and boundary fence and gate.
 - 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 word 'sown' within paragraph '5)1' and its replacement with 'shown'.

Subject to the correction, the appeal is allowed, the enforcement notice is quashed and 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 erection of a single storey rear extension at Land at 28 Oakleigh Road South, London N11 1NH as shown on the plan attached to the notice and outlined in red on the photograph attached to the notice.

Preliminary Matters

2. There is a typographical error within paragraph '5)1' of the notice. The word 'sown' should be 'shown'. This is a minor error which could not reasonably be argued to result in any misunderstanding about what is alleged. I therefore consider that this error can be corrected under the provisions of s176(1)(a) of the Act as it would not cause injustice to the appellant or the Council.

3. The appellant has confirmed that the appeal under ground (e) is not being pursued. I have therefore considered the appeal only on the basis of the grounds set out above.

The Appeal on ground (a)

4. The appeal on this ground is whether planning permission should be given for what is alleged on the enforcement notice.

Main Issues

5. The first main issue is the effect of the development on living conditions for occupants of the building, with particular reference to any previous amenity value to the occupants of the land on which the building has been constructed. The second is the effect of the development on the character and appearance of the appeal site and surrounding area.

Reasons – living conditions

6. The single-storey building is located at the rear of No 28 Oakleigh Road South which is a busy mixed residential and commercial area. Being at the rear of the building, the extension is however positioned within the tight knit, mainly residential road of Park View Crescent. The building directly adjoins the footpath and a side lane that runs perpendicular to the Park View Crescent and which leads to a number of single-storey buildings. The neighbouring one of those buildings is used by an undertaker.
7. Policy DM02 of Barnet's Local Plan¹(LP) requires, amongst other things, that where appropriate, development will be expected to demonstrate compliance with national and London-wide standards as supported by the Council's suite of Supplementary Planning Documents (SPD). With respect to outdoor amenity space, I am referred to the Sustainable Design and Construction SPD (SDC SPD) and the Residential Design Guidance SPD (RDG SPD).
8. Both SPDs refer to how outdoor amenity space is highly valued. The SDC SPD specifically states that suitable provision will help to protect and improve the living standards of residents. Furthermore, the same guidance refers to what should be calculated as useable amenity space. Shared surfaces, driveways, vehicle parking areas or hardstandings, cycle storage areas, footpaths, servicing areas and refuse storage areas are all excluded.
9. From the limited information showing what the space previously looked like, it appears to have been a small hard-surfaced area which had limited amount of space. The plan referred to in the second requirement of the notice, at Section 5(2), shows 14m² of space is available and there is no dispute about that. The requirement to comply with the plan is disputed though. I am aware that it was a plan submitted with a Lawful Development Certificate (LDC) for the 'Ground floor unit use as a self-contained residential dwelling'. However, the appellant states that the area was previously an empty concrete slab and has not commented on that. The only evidence I have been presented with in this case are an aerial view and an image from an on-line mapping site. These do not show the enclosure of the area as set out on the plans. The officer report from the Council does not explicitly refer to those details existing prior to the construction of the building and merely explains what the plans show. I have

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

not been provided with any other information from the LDC application to indicate that the use that was determined as lawful also related to the form of the external space shown on the plan.

10. If the land was just a concrete slab, it was fairly difficult previously to distinguish as a separate entity from the surface of the lane. It may have partly functioned as an element of the visibility splay at this minor junction which is borne out by one of the comments from an interested party. It is close to the activity from people passing and vehicles both along Park View Crescent and the side lane. It would not have presented an attractive place to sit-out even if the details shown on the plan had been carried out with a form of railed fencing. Even if it were enclosed, it would not have been private and would have been of very limited amenity value for the occupants of the dwelling to sit out, for children to play or other functions of an effective amenity space. The land may have had some useful utility such as for parking, cycle storage and refuse storage areas but as such would not fulfil the Council's definition as an outdoor amenity space.
11. The land on which the building has been constructed does not appear to have previously been outdoor amenity space within the definition of the SDC SPD. In relation to this main issue, the development has not therefore had a harmful effect on living conditions for occupants of the building. As such, the proposal does not conflict with LP Policy DM02 or the SPD advice referred to.

Reasons – character and appearance

12. The building is clad in horizontal timber boards, has a roof which slopes gently up towards the flat roof of part of the dwelling which was established as being lawful through the issuing of the LDC. It also adjoins the building at the rear which is used by an undertakers' business.
13. Park View Crescent includes traditional mainly terraced dwellings facing the road, constructed largely of red-brick behind short front gardens with low brick walls and front-boundary fences. Red brick is a common construction material for buildings, including the rest of the dwelling at the appeal site, although some brickwork is painted over on some of the dwellings nearby. There is also however a broader palette of materials including different coloured bricks, prominent timber fences along with single storey buildings with metal doors.
14. The timber cladding of the building has a natural tone, which does not significantly contrast with the dark browns and reds of the brickwork of adjoining buildings or the existing dwelling. When approaching from Oakleigh Road South, the building is not in prominent view until one gets very close to it. The appearance is reminiscent of a domestic shed which does not look out of place in this location at the rear of the main, 2-storey building that fronts onto Oakleigh Road South.
15. From the evidence submitted, the small site previously was not landscaped, it allowed a view through to the building at the rear. It was at times used for parking a vehicle. This space does not appear to have played a positive part in the overall character of the street. The loss of the space and construction of the building has not had a harmful visual impact in those terms.
16. In relation to this main issue, the development has an acceptable effect on the character and appearance of the appeal site and surrounding area. Although

not referred to on the notice, both main parties have referred in their submissions to LP Policy DM01. Based upon my understanding of the local characteristics of the area, I consider that the development would comply with this policy's requirements to represent high quality design in so far as it would preserve the local character and has not involved the loss of an outdoor amenity space with high character value.

Reasons - other matters

17. When looking from Park View Crescent, I could see that the splayed entrance to the side lane has been encroached over which is evidenced by the position of the dropped curb. This may have made it more permanently difficult for drivers of vehicles to see pedestrians along the footway when exiting the lane. As I have reasoned above, the land may have previously been used for parking at times and that is not disputed by the Council. The comments of the user of the neighbouring building indicates that the site may have assisted visibility at this junction for drivers. However, the Council has not issued the notice on the basis of this being a significant highway safety problem. From what I saw, the wide footpath in this location would enable people walking past to see a vehicle exiting and approach with care. Likewise, there are a limited number of properties served from the lane and I am satisfied that the physical layout would encourage care to be taken by drivers when exiting.

Conditions

18. I have not had any planning conditions suggested to me. The building is complete and I do not consider that any planning conditions are necessary.

Conclusion on ground (a)

19. The other matters do not outweigh my conclusion on the main issues and that the development complies with the development plan as a whole.

Conclusion

20. For the reasons given above, I conclude that the appeal succeeds on ground (a), the enforcement notice is quashed, and I shall grant planning permission for the development as described in the notice. The appeal on grounds (f) and (g) do not therefore fall to be considered.

Andy Harwood

INSPECTOR