



Appeal Decisions

Site visit made on 6 October 2022

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 January 2023

Appeal A Ref: APP/N5090/C/22/3294763

Appeal B Ref: APP/N5090/C/22/3294764

143 Daneland, Barnet EN4 8QB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr Alfred Frroku (Appeal A) and Mrs Arisela Frroku (Appeal B) against an enforcement notice issued by London Borough of Barnet.
- The notice, numbered ENF/1015/21, was issued on 2 February 2022.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a ground floor rear extension and formation of lower ground floor level with associated access steps and railings.
- The requirements of the notice are to:
 - 1 Demolish the ground floor rear extension and lower ground floor level with associated access steps and railings and restore the property to the state in which it was prior to the breach as per drawings A01 and A05 submitted under application reference 20/2518/PNH.
 - 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.
- Appeal A 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.
- Appeal B is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: Appeal A is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decisions. No further action is taken in respect of Appeal B.

Formal Decisions

Appeal A

1. Appeal A 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 ground floor rear extension and formation of lower ground floor level with associated access steps and railings at 143 Daneland, Barnet EN4 8QB as shown on the plan attached to the notice.

Appeal B

2. Since Appeal A succeeds on ground (a), I take no further action in respect of Appeal B.

Preliminary Matters

3. These appeals relate to a single notice, with both appeals proceeding on grounds (f) and (g) and appeal A on ground (a), against the alleged works described above. It is common ground between the main parties that prior approval was not required for the works of extension set out in the application reference 20/2518/PNH (the 2020 scheme).
4. It is also agreed that the totality of the works undertaken, as alleged in the notice and including a balcony / raised terrace, stairs, railings and lower ground floor internal area, do not benefit from the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the Order) and require planning permission. The application deemed to have been made under section 177(5) of the Act as part of appeal A seeks to resolve this matter. The Council accept, however, that the 5 metre deep ground floor extension set out in the 2020 scheme has, 'in essence' been constructed, albeit that the lower ground floor element, access steps, railings and terrace take what has been built beyond the scope of that scheme.

Appeal A

The appeal on ground (a)

Main Issues

5. The main issues are the effects upon:
 - The character and appearance of the appeal property and the surrounding area;
 - The living conditions of occupiers of 141 Daneland and 145 Daneland, with particular regard to privacy, daylight / sunlight and outlook; and
 - The living conditions of occupiers of the appeal property

Reasons

Character and appearance

6. The appeal property is a typical example of the prevailing suburban semi-detached properties that characterise Daneland and much of the surrounding area. Although the house is set down from the Daneland street-level by way of a short, sloping driveway, ground levels continue to fall towards the rear of the garden plots from where properties enjoy a commanding elevated aspect across adjacent woodland and parkland.
7. Many properties along the southern side of Daneland have been altered and extended, and the properties on either side of No. 143 are no different, albeit to differing degrees. Nevertheless, whilst the size and form of their extensions differ from those at the appeal property, they share broadly similar characteristics of having elevated raised terraces / decks looking out over lower rear garden levels, steps leading down from the raised terraces / decks to the garden level and exposed retaining walls bridging the difference in levels.
8. The rear lane / track that runs around the garden perimeter of these properties affords long views along the rear face of the street's properties, where the mix of mostly ground floor and roof extensions can be clearly seen. However,

outbuildings, rear garden enclosures and intervening garden boundaries and paraphernalia limits the extent to which the retaining walls between garden and raised terraces / decks are appreciable.

9. The ground floor rear extension at the appeal property is larger than that advocated by the '*Local Plan Supplementary Planning Document: Residential Design Guidance*' (2016) (RDG) as typically being of an acceptable size for a single storey extension to a semi-detached property. I accept, and it is agreed between the main parties, that the ground floor extension no longer benefits from being permitted development. However, I am also conscious that there is increasingly scope for larger house extensions given the flexibility afforded by Part 1, Class A (A.1.(g) and A.4) of the Order for such works.
10. Although perhaps larger in projection than many ground extensions along this stretch of rear elevations, it shares many characteristics of those around it in terms of its overall form and location on the rear of the property. The larger size of the extension is not particularly discernible in longer views along the rear façade and so its impact on wider character and appearance is neutral. Nor does it overwhelm the scale, proportions or general character of the appeal property, whilst the generous lower garden level is more than capable of accommodating a scheme of this size and nature.
11. Whilst the Council clearly see the lower ground floor element of the scheme as more problematic in character and appearance terms, I do not agree. Ground levels and intervening structures are such that the lower ground floor level at the appeal property does not appear materially different to other retaining walls. Nor does the raised terrace / balcony or steps up fundamentally alter the prevailing character of either the appeal property or the surrounding area, whilst the railings across the face of the terrace / balcony and steps are visually lightweight and discrete in their presence.
12. The layout at the rear of the appeal property, whilst boasting more generous proportions than those of immediate neighbours, nevertheless follows the broad principles of layout within the street, seeking to make the most of the elevated outlook over the woodland and parkland, beyond. This is not, I conclude, harmful to the character or appearance of the appeal property, or to the surrounding area.
13. Collectively, policies CS1 and CS5 of '*Barnet's Local Plan: Core Strategy*' (2012) (CS), Policy DM01 of '*Barnet's Local Plan: Development Management Policies*' (2012) (DMP) and London Plan Policy D4 set out the Council's approach to securing good design and high quality development. Amongst other things, in order to achieve this, proposals will be expected to respect local context based upon an understanding of local characteristics, respect the appearance, scale, mass and pattern of buildings and the spaces around them, protect and enhance the gardens of residential properties and allow for adequate daylight, sunlight, outlook and privacy.
14. The ground and lower floor extension, raised terrace, steps and railings, although more substantial than other examples within the street, nevertheless follow the prevailing broad pattern of development. That the scheme utilises the void under the ground floor / terrace created by the falling levels as a storage space rather than as retaining walls as others have, does not cause harm to the character or appearance of the surrounding area.

15. Nor does the extension's scale, to which the lower ground floor unavoidably contributes, cause harm to the character or appearance of either the appeal property or the surrounding area. Rather, what has been built is merely another, if larger, entry to the varied pattern of built form of properties along this stretch of the southern side of Daneland. Whilst the use of bricks in the construction of the extension departs from the prevailing use of render finishes, their colour is not inconsistent with the mixed palette of colours, which includes the red / orange hues of roof and facing tiles.
16. Thus, for the reasons I have set out, there is no conflict with policies CS1 and CS5 of Barnet's Core Strategy, DMP Policy DM01 or London Plan Policy D4 as a consequence even if the proposal does not entirely follow the guidelines, recommendations and suggestions set out within the RDG.

Living conditions - neighbours

17. The extension projects in the region of 5 metres at ground floor level and in the region of 6.57 metres at lower ground floor. With regard to the neighbouring property at No. 145, this is a not insignificant projection from the rear of the houses. Cumulatively, these elements, together with the additional height of the wall which extends from the rear of the ground floor element mean that the extent of the exposed flank elevation upon which the rear of No. 145 looks out upon is a substantial feature at the rear of the property.
18. However, the nature of the raised terrace at the rear of No. 145 and the elevated, open outlook across the woodland and parkland beyond is sufficient to more than offset the presence of the extension's flank wall. Whilst the overall extent of the wall's projection at lower ground floor level comfortably exceeds 6.5 metres, this has to be considered in the context of an otherwise generous rear garden and the raised terrace at No. 145.
19. The extension will undoubtedly have had some impact upon No. 145 in terms of daylight and sunlight, located as it is to the east of the rear elevation of that property. However, that would inevitably be the case with any extension at the appeal property, but the aspect is otherwise open, elevated and south facing and enjoys lengthy periods of direct sunlight and good daylight overall.
20. Given the elevated position that the properties enjoy relative to adjacent garden areas, inter-visibility between properties is unavoidable. The extension, terrace / balcony and steps do not materially increase this, or introduce direct overlooking or a loss of privacy where none previously existed or would not be expected. The other neighbouring property, at No. 141, is set apart from the appeal property and is part of the next short terraced block of four properties. Access to the rear of the appeal property and No.141 is shared between their opposing flank elevations, leading to separate gated accesses to their respective rear gardens.
21. The ground floor extension, although clearly visible from the rear windows and deck area of the neighbouring property¹, is sufficiently offset from the rear of No. 141 so as to avoid having an excessively or harmfully overbearing impact. Indeed, whilst ground levels generally fall away from the rear of the properties, the ground floor extension is broadly similar to that of the deck and ground floor levels of No. 141. Nor are the effects of the lower ground floor element of

¹ Photographs included as Appendix to representations of occupiers of 141 Daneland (dated 12 April 2022)

the extensions at the appeal property fully appreciable from within the rear of No. 141 or from its decked area as this is at a considerably lower level than these neighbouring vantage points.

22. I accept however that, because of the differences in ground levels, the retaining walls and structures are likely to be more keenly felt from other areas of No. 141. The photographs supplied by the occupiers of that property show a substantial concrete and brick retaining wall immediately beneath their deck / terrace area and adjacent to the appeal property. However, given that it is already partially enclosed on two sides by the existing substantial deck and retaining wall at No. 141 and the timber steps down from it to garden level, the wall here has only a limited additional impact in terms of the attractiveness and usability of this area.
23. Moreover, in the context of the elevated open southerly aspects enjoyed from the raised decks, terraces and ground floors of No.141 and its neighbours, the additional height of this part of the wall between No. 141 and the appeal property is such that any harm arising from it in terms of over-bearing impact and effect on daylight and sunlight, is limited. As DMP Policy DM01 seeks to ensure 'adequate' levels in these respects, no harm arises from the works in this respect.
24. Despite the open aspect to the rear of all of these properties, there is inevitably a degree of intervisibility between properties here as is typical in many suburban residential locations. Differences in ground levels within and between properties are also typically likely to increase such incidences and again, given the level changes within and between properties in this instance, a degree of inter-visibility is inevitable here.
25. The steps leading to / from the lower garden level of the appeal property to the raised terrace / balcony rise towards, and turn directly adjacent to, the boundary with No. 141. At this point, the wall dividing the two properties is lower than it is for the rest of its length, from where direct views across the garden and decking area of No. 141 are possible.
26. However, given the nature, and nature of use, of this particular area of the terrace / balcony as part of the steps to / from differing levels, intervisibility is likely to be transitory whilst navigating the steps, rather than lingering as if sat or stood for extended periods of time at, for example, a main sitting out or dining area. Rather, concentration is likely to be required in navigating the steps and turning to the main area of the terrace and balcony. Moreover, in the particular context of properties with elevated ground floors that enjoy a degree of prominence over neighbouring gardens, the works as built maintain at least adequate levels of privacy between properties.
27. Furthermore, in a suburban residential context such as this, matters such as overheard conversations and noise from the use of outdoor spaces is neither uncommon nor unexpected. Whilst I have noted the concerns expressed from neighbouring occupiers regarding this matter, I have no reason to believe that the alleged works are solely responsible for such incidences, or that their removal would alleviate such concerns. Thus, such matters, as well as the installation of security cameras and lights are part and parcel of suburban residential living and do not persuade me as to harm in planning terms.

28. Taking all these factors together, I have given careful consideration to the provisions of CS Policies CS1 and CS5, DMP Policies DM01 and DM02 and London Plan Policy D4, together with the advice and guidance set out within the RDG in setting out the Council's approach to securing high quality development. I accept that there are elements of the works that have been undertaken that result in a degree of intervisibility between properties and affect outlook and daylight / sunlight. However, I am satisfied that these effects are not so great as to go beyond the DMP Policy DM01's requirement of seeking to ensure that development proposals should ensure adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers. Taking these considerations together, I conclude that there is no conflict with CS Policies CS1 and CS5, DMP Policies DM01 and DM02 and London Plan Policy D4, or the RDG, as a consequence in this respect.
29. Representations were made to the effect that the rights of the adjoining occupiers at No. 141, under Articles 1 and 8 as set out in the Human Rights Act 1998 would be violated if the appeal were allowed. However, I have found that the proposed development would not result in the neighbouring property being overlooked such that the occupiers of that property would suffer unacceptable harm to their living conditions in terms of either intervisibility and privacy, daylight and sunlight or outlook. Thus, for the reasons set out, I conclude that the development would not conflict with CS Policies CS1 and CS5, DMP Policies DM01 and DM02 and London Plan Policy D4, or the RDG. I am satisfied that the grant of planning permission deemed to have been made under ground (a) of this appeal would not unacceptably interfere with the occupiers' entitlement to the peaceful enjoyment of possessions or the right to respect for a private and family life and home. It is proportionate in the circumstances to allow the appeal.

Living conditions – occupiers of the appeal property

30. The internal area at lower ground floor level, located under part of the raised terrace and ground floor extension, together with a covered but open-fronted area have restricted headroom. This, the Council contend, compromises the living conditions of current and future occupiers of the appeal property.
31. Certainly, as I observed during my visit to the site, headroom in this area is limited in comparison with rooms in the main house at ground, first and second floors. However, the appellant is clear that the internal area is not intended as habitable space. I saw during my visit that the space is not accessible internally from within the main house and was used for a mix of domestic and garden storage, laundry facilities, a small play area and to house the boiler.
32. The Council's '*Local Plan Supplementary Planning Document: Sustainable Design and Construction*' (2016) (SPD) sets out some guidelines regarding internal layout and design requirements and, at Table 2.2, provides advice in respect of ceiling heights. However, the reference to a minimum ceiling height is that it is 'strongly encouraged', not a requirement. Nor does it identify particular ceiling heights for storage areas, such as that provided within this lower ground floor area.
33. I am satisfied that the lower ground floor area provides a sufficiently usable area for storage purposes in the manner indicated and used by the appellant. As such, it does not have a materially detrimental impact on the living conditions of current or future occupiers of the appeal property, giving

particular consideration to the quantity and quality of living accommodation provided within the living accommodation across the ground, first and second floors of the appeal property.

34. For the reasons set out, there is no conflict with the aims and provisions of CS policies CS1 and CS5, or DMP Policies DM01 and DM02, or with the aims of the guidance set out in the SPD with regard to the living conditions of current and future occupiers of the appeal property.

Other Matters

35. The enforcement regime is intended to be remedial rather than punitive and whilst I have noted the concerns expressed regarding what has been built in respect of the provisions of the Order and the 2020 scheme, the provisions of sections 174(2)(a) and 177(5) have allowed me to give consideration to the Council's reasons for serving the notice and as identified as main issues, above.
36. A number of other matters have been raised by neighbours to the appeal property in objection to the development, including in respect of ground stability, drainage and water levels, damage to property during construction, and boundary disputes. Boundary disputes, matters relating to the alignment of the wall between Nos 141 and 143, which is not referred to by the notice in any event, and communication between parties are private matters between the respective parties and are not matters before me in this appeal.
37. I have no reason to believe that the works described by the notice would any more encourage or facilitate incidences of items being dropped or thrown towards neighbouring properties than would otherwise occur between residential properties in suburban locations. The day-to-day conduct of, and between, the parties is not a matter for me in this appeal.
38. I have also noted concerns expressed in terms of ground stability and in relation to drainage and water levels. Whilst mindful of the advice and guidance referred to within the RDG and SPD in relation to these matters, and noting the comments of the interested party, I have not been presented with compelling evidence regard the extent to which the works the notice seeks to attack are responsible. I therefore have no evidence before me to lead me to conclude that the appeal should fail on these grounds.
39. The questions of whether or not the terrace / balcony provides level access to allow the enjoyment of an elevated part of the appeal property's garden and whether the sloping nature of the approach to the property from Daneland compromises this matter, have not been determinative in my consideration of these appeals. Matters relating to encroachment beyond the appeal site during works, and possible damage arising therefrom, are matters between the respective parties and have not been determinative in my consideration of these appeals.

Conditions

40. No conditions have been suggested by either party and I have not been presented with any compelling reasons to instigate the imposition of conditions.

Conclusion

41. For the reasons given above, I conclude that appeal A succeeds on ground (a), and I shall grant planning permission for the development as described in the notice. The notice will be quashed and it follows that the appeals on grounds (f) and (g) in relation to both appeal A and appeal B do not fall to be considered.

G Robbie

INSPECTOR