
Appeal Decisions

Site visit made on 10 January 2023

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 7TH FEBRUARY 2023

Appeal A Ref: APP/N5090/C/21/3283150

Land at 79 Brunswick Crescent, London N11 1EE

- 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 Ms Jagruti Bhatt against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 2 September 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a single storey rear and side infill extension, shown edged in red on the attached Photograph 01.
- The requirements of the notice are: 1. Demolish the single storey rear and side infill extension; 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
- The period for compliance with the requirements is 4 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. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal B Ref: APP/N5090/W/21/3283143

79 Brunswick Crescent, New Southgate, London N11 1EE

- 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 Jagruti Bhatt against the decision of the Council of the London Borough of Barnet.
- The application Ref 21/3065/RCU, dated 1 June 2021, was refused by notice dated 24 August 2021.
- The development proposed is a ground floor rear extension.

Summary Decision: The appeal is dismissed.

Preliminary Matter

1. The Appeal B planning application was noted on the application form as being partially retrospective as works had begun when the application was submitted. The Appeal A development relates to essentially the same scheme and so I shall combine my assessment under Appeal A and Appeal B below.

Appeal A – enforcement notice appeal: the appeal on ground (a) and the deemed planning application (DPA); and Appeal B – s78 appeal

Main Issue

2. The main issue is the effect on the living conditions of the occupants of 77 Brunswick Crescent (No 77) with regard to outlook.

Reasons

3. The appeal property is a mid-terrace dwelling and the appeal extension has been built alongside the boundary with the dwelling at No 77, entirely infilling the side return area between the two. The dwelling at No 77 has a shallow depth infill extension to its side return, along with a ground floor rear extension attached to the outrigger, which steps out towards the appeal property.
4. No 77 has two ground floor windows directly opposite the appeal extension, the larger of these two windows is to No 77's kitchen, with the smaller also apparently serving the same room. Prior to the appeal development, the outlook from these windows was restricted by the wider part of the 'L' shaped projection to one side and by the side return infill extension to the other side. However, a harmful sense of enclosure was prevented by the separation between these windows and the side outrigger elevation of the appeal property, with the outlook in this direction having previously been over a boundary fence.
5. As a consequence of the appeal development, the outlook from these two windows is almost entirely 'boxed in' resulting in an oppressive sense of enclosure. Outlook to the one side is a rear wall of No 77's side return infill extension, to the other side is No 77's 'L' shaped projection wall and directly opposite now and at very close distance is the appeal extension which is of some 2.3m to the eaves rising to a maximum height of 3m, which also sits on noticeably higher ground than the house at No 77.
6. As such, by reason of its height and position on the boundary, along with the above outlined context at No 77, the appeal extension has a materially harmful effect on the living conditions of the occupants of No 77 with regard to outlook. The use of translucent materials in the upper section of the extension side wall and roof does not overcome these concerns since a large proportion of the height of the side wall is still comprised of block work.
7. I do not have evidence that No 77's kitchen contains a dining area, meaning it is not a habitable room. Nonetheless, it is a room in which occupants are likely to spend a good deal of time on a daily basis. As such, and in view of the particularly overbearing effect on outlook identified, I find a consequent harmful effect on the living conditions of the occupants of No 77.
8. The appellant raises a fallback position to build a similar side return infill extension relying on permitted development (PD) rights in Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015. This could be of greater height and of more solid construction than the appeal extension. It seems very likely that such an extension would be built if the appeal extension were required to be removed. However, this fallback position would be for an extension of significantly lesser depth. Consequently, it would not have a comparable effect on the outlook

from the larger kitchen window. It does not thus justify the appeal development.

9. The appellant identifies another fallback position to build an extension of greater depth than the appeal extension following a prior approval process, highlighting that as no neighbours objected to the Appeal B planning application, it can be assumed that prior approval would be granted. Whilst there might be a real prospect that such a development would be carried out if approved, this is not an option that is readily available to the appellant in the absence of a prior approval application having been made. The objection by occupants of No 77 made in respect of this appeal also indicates that an objection to a prior approval application would be likely. Consequently, this alternative fallback position is due only very little weight and does not justify the appeal development.
10. The appellant refers to the 'modest increase in the height' of the appeal extension as compared to 'conventional boundary fencing' and that the comparative increased sense of enclosure is not material bearing in mind the existence of taller main buildings on both sides of the boundary. This comment is not specifically expressed as a fallback position but it is an option available to the appellant and there is more than a theoretical prospect of such development. However, in my view, whilst the appeal extension eaves are not significantly greater in height than a fence that could be erected under PD rights, in view of the sensitive context outlined, the additional height does result in material harm as regards No 77's outlook.
11. The appellant also draws my attention to various other appeal decisions in support of its case. Each case is determined on its merits and I do not have full details of the planning circumstances related to these other developments in order to form a proper comparison with the appeal development.
12. In any event, these appeal decisions can be distinguished from the present case. For example, in the Kingswood Avenue appeal¹, the affected window was to a utility room, which I would expect occupants to use for less sustained periods than a main kitchen. In the Purves Road appeal², the Inspector refers to a 'tunnelling' effect, which can be distinguished from the 'boxed in' effect resulting from the appeal development. Similarly, in the Highlever Road appeal decision³, whilst I note the comment that living conditions matters involve some contextual compromise, there is no suggestion that the development in question would result in an equivalent 'boxed in' outlook.
13. Finally, as regards the Sandringham Road appeal decision⁴, although I acknowledge the fact that a fallback position was considered to be a material consideration, I have explained the reasons why the cited fallback positions here are due very little weight. In addition, in the Sandringham Road decision, the Inspector highlights that there are no flank windows on the affected neighbouring property facing the proposed extension and so plainly this is a different situation to that in this appeal.
14. I conclude then on the main issue that the appeal development has a materially harmful effect on the living conditions of the occupants of No 77 with

¹ APP/T5150/D/15/3129649

² APP/T5150/D/13/2200108

³ APP/K5600/W/14/3002946

⁴ APP/A5270/D/16/3152624

regard to outlook. There is conflict in this way with Policy CS05 of the Council's Core Strategy (2012) and with Policy DM01 of Barnet's Development Management Policies (2012) which strive for high quality design and seek to ensure adequate outlook for adjoining occupiers.

15. Although I note that the Council's Residential Guidance Supplementary Planning Document (SPD) (2016) might not have specific guidance on ground floor infill extensions to a property's side return, nonetheless, I find conflict with its requirements to ensure that extensions are not overbearing. The development also fails to meet with the aims of the Council's Sustainable Design and Construction SPD (2016) which seeks to ensure that residential occupants have an adequate outlook.
16. I find then that in view of the fundamental conflict outlined, the appeal development conflicts with the development plan, read as a whole. There are no material considerations which warrant a decision other than in accordance with the development plan.

Period for compliance with the notice

17. Pursuant to s176(1) of the Town and Country Planning Act 1990, I am empowered to vary the terms of the enforcement notice, including the period for compliance, provided that this would not cause any injustice to the appellant or the Council.
18. In my view, the 4 month period for compliance falls short of what is reasonable in this case. Whilst the works are relatively minor, it seems to me that a 4 month period in which to obtain quotes and timetable the works, as well as time to have the works carried out, and resulting debris removed, is too short.
19. I am mindful of ongoing harm to the living conditions of neighbouring occupants, but in my view, a period of 6 months for compliance would strike the right balance between the interests of the neighbouring residents and providing a reasonable period for compliance. Such a short extension would not in my view result in any injustice.

Overall Conclusion on Appeal A – enforcement notice appeal

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

Overall Conclusion on Appeal B – s78 Appeal

21. In view of the reasons stated, and taking into account all other matters raised, I conclude that the appeal should not succeed.

Formal Decision on Appeal A – enforcement notice appeal

22. It is directed that the enforcement notice is varied by in paragraph 6 of the notice deleting the wording "4 months" and substituting "6 months". Subject to the variation, 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.

Formal Decision on Appeal B – s78 appeal

23. The appeal is dismissed.

V Bond
INSPECTOR