

Appeal Decision

Site visit made on 10 January 2023

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 February 2023

Appeal Ref. APP/N5090/D/22/3311697
26 Derwent Avenue, Barnet EN4 8LX

- 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 Mrs Gosia Thomas against the decision of the Council of the London Borough of Barnet.
 - The application ref. 22/1281/RCU, dated 10 March 2022, was refused by notice dated 27 September 2022.
 - The development proposed is described on the application form as *Retention of existing outbuilding*.
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Decision

1. The appeal is allowed and planning permission is granted for *Erection of a rear outbuilding (retrospective application)* at 26 Derwent Avenue, Barnet EN4 8LX in accordance with the terms of the application ref. 22/1281/RCU, dated 10 March 2022, and the plans titled/numbered *Location Plan* ELA/13 Rev A, *Block Plan* ELA/11 Rev A and *Existing Layout & Elevations (As built)* ELA/1 Rev A, subject to the following condition:
 - 1) The rear outbuilding hereby permitted shall not be occupied or used at any time other than for purposes ancillary to the residential use of the dwelling known as 26 Derwent Avenue, Barnet EN4 8LX, and shall not at any time be used or occupied as a separate unit or dwelling.

Preliminary matters

2. An application for a full award of costs has been made by Mrs Gosia Thomas against the Council of the London Borough of Barnet. This application will be the subject of a separate decision.
3. The development was completed in February 2022. The application was made retrospectively. This does not count against the appellant. Equally, the fact that the rear outbuilding exists is not an argument in its favour.
4. The retention of a building, as referred to on the application form, is not an act of development as such. The description of the proposed work on the Council's decision notice, which is also included on the appeal form, more accurately reflects what is proposed. The description I have used in the decision above is therefore derived from the Council's decision notice.

Main issue

5. Reading the single reason for refusal given in the Council's decision notice, I consider the main issue in deciding whether planning permission ought to be granted for the rear outbuilding is its effect upon the character and appearance of the surrounding area and upon the residential amenities of the occupiers of the neighbouring property at 24 Derwent Avenue, with particular regard to visual impact and the effect on outlook.

Reasons

6. The planning system is plan-led. The most relevant development plan policies are referred to in the decision notice, Policies CS1 and CS5 of Barnet's Local Plan Core Strategy 2012 (CS) and Policy DM01 of Barnet's Local Plan Development Management Policies 2012 (DMP). These policies are consistent with the broad thrust of the National Planning Policy Framework on achieving well-designed places. The policies are supported by the Council's Supplementary Planning Document: Residential Design Guidance 2016 (SPD). I have had particular regard to paragraphs 14.37, 14.40 and 14.41 (dealing with buildings in back gardens) of the SPD which have some relevance to the case.
7. The appeal property is a 2-storey house at the end of a short terrace. It has further accommodation in the roof space. The subject single-storey, flat-roofed outbuilding has been erected at the bottom end of the rear garden.
8. I saw that the outbuilding is used mainly for the purposes shown on the submitted plans. It provides a double garage suitable for the parking and safe storage of the appellant's camper van and the charging of its leisure battery. I am told that "robbery attempts" were made for the camper van when it was parked at the front of the property. Other household items are also stored within the outbuilding. The Council raised no concerns about the use of the outbuilding and does not set out to establish that, in terms of general land use planning principles, the provision of an outbuilding represents an inappropriate development of a residential garden.
9. The surrounding area is residential in character. The opposing rear gardens in Derwent Avenue and Chetwynd Avenue are fairly deep. They are separated by an unmade alleyway or service lane which provides the vehicular access to the outbuilding. The outbuilding is in a location where it is not obviously noticeable from any public vantage points on the 2 avenues.
10. In private views from the rear of the houses in the locality, I am in no doubt that the outbuilding would be primarily regarded as another one at the bottom end of a garden in the assortment of outbuildings in the surrounding area which vary in terms of size, roof style, height, building materials and site coverage. Notable amongst these are sizeable outbuildings behind 34, 46 and 52 Derwent Avenue and 27 Chetwynd Avenue, all of which are also visible in varying degrees from public vantage points, and outbuildings at the rear of 30, 28 and 22 Derwent Avenue, the latter one being of considerable depth with a steel flue pipe projecting above its roof.
11. The Council has not alleged that the footprint of the subject outbuilding is excessive in scale or site coverage. The garden space that remains is more than sufficient for practical use and to reflect the established character of the locality of predominantly short terraces of houses, back gardens and outbuildings. With an undivided internal floor area of only about 33 sq. m and

being single-storey in form, the outbuilding is not out of proportion with the size of the original dwelling and back garden or excessive in size in itself.

12. Viewed as a whole, the outbuilding has an admittedly functional appearance but then so have many of the other outbuildings in the locality. The comparisons made in the local representations to a bomb shelter or industrial unit are misplaced. The appellant has gone to some length to ensure that the principal garden elevation has a reasonable appearance with a smooth white finish that reflects light and complements the rear walls of the house.
13. A maximum height for outbuildings is not specified in the SPD either in general terms or for where an outbuilding is within 2 m of the site boundaries, as is the case here. A key concern of the Council and third parties is the height of the subject outbuilding. I can understand that concern. The change in land levels is a contributory factor to the height of the building. So, the flat roof of the outbuilding is about 4 m above the back garden level but only about 3.4 m above the level of the rear service lane where the land is higher. Under permitted development rights, where the height of an outbuilding is measured from the highest ground level immediately adjacent to the building to its highest point, the outbuilding could be 2.5 m high above the level of the rear service lane. The outbuilding is therefore only about 0.9 m higher than what could be built under permitted development rights.
14. Whilst the outbuilding is taller than the others in the immediate vicinity of the site and projects above the boundary features, on balance I did not find it to be so seriously out of keeping with its setting or the character and appearance of the area as to warrant a refusal of planning permission on these grounds.
15. No. 24 is the first house in a separate terrace adjacent to the northern side of the appeal property and set at a somewhat lower level. However, given the outbuilding's location adjacent to the rear boundary, the depth of the back gardens hereabouts, the boundary structures, and the presence of a substantial tree next to the outbuilding in the garden of no. 24, the outbuilding does not appear unduly dominant, overbearing or obtrusive in the outlook from the rear-facing windows and principal back garden areas of no. 24. This assessment is finely-balanced and it is not to say that the outbuilding is not in view from no. 24. I can understand the concerns of these neighbouring occupiers. The development has very plainly changed the view out from the rear of no. 24 but an overwhelming sense of enclosure has not occurred. Such an unreasonable effect on outlook may have occurred if this scale of construction had taken place as, say, an extension to the host dwelling along the common boundary with no. 24 next to that dwelling's rear ground floor habitable room windows.
16. Drawing these threads together, I conclude on the main issue that the rear outbuilding does not have any materially harmful effects upon the character and appearance of the surrounding area or upon the residential amenities of the occupiers of the neighbouring property at 24 Derwent Avenue, with particular regard to visual impact and the effect on outlook. Thus, I find no conflict with CS Policies CS1 and CS5 and DMP Policy DM01, insofar as they seek, amongst other things, to ensure that developments exhibit a high standard of design and protect Barnet's character and amenity or with the SPD.

17. The Council's planning committee members did not oppose the development for any other reasons such as the potential effects on the properties on Chetwynd Avenue, any shadowing effects across the back garden of no. 24, the relationship to no. 28 and the installation of security lighting. I have studied these concerns, but I find no reason to come to a different view.
18. Used for ancillary purposes, there is no reason to believe the outbuilding would result in a loss of privacy or in undue noise and disturbance for neighbouring occupiers. Both the Council's officer (in the Committee report on the planning application) and the appellant (in the appeal statement) recognised the need for a condition to control the use of the outbuilding accordingly. I find that it is necessary and reasonable for a condition restricting the outbuilding to ancillary usage in order to reflect the purposes stated by the appellant and because the use of the outbuilding for other purposes, such as separate self-contained residential accommodation, would raise wholly different planning considerations. This condition would also address the concerns in some of the local representations about potential alternative uses in the future.
19. Given that the development has already been carried out in an acceptable manner in appropriate materials, it is not necessary for the standard conditions setting a time limit for the commencement of development, requiring the development to be carried out in accordance with the submitted drawings or ensuring the use of matching materials or retaining the existing materials. I shall still refer to the submitted drawings in the main body of the decision.
20. I have had regard to all other matters raised in all the written representations but my finding on the main issue is decisive. I find nothing to outweigh the conclusion I have reached that the appeal should succeed. Conditional planning permission has been granted.

Andrew Dale

INSPECTOR