



Appeal Decision

Site visit made on 24 April 2023

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 May 2023

Appeal Ref: APP/N5090/C/22/3303689

30 Deansway, London N2 0JF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Sally Ahmadi against an enforcement notice issued by London Borough of Barnet.
- The notice was issued on 15 June 2022.
- The breach of planning control as alleged in the notice is the creation of a lower ground floor extension, including the installation of a raised patio (which forms the roof of the lower ground floor extension), and associated canopy.
- The requirements of the notice are to:
 1. Demolish the lower ground floor extension including the raised patio and associated canopy and restore the rear of the site in accordance with drawing no. 957 (01) 02 B of approved application reference, C16927/06.
 2. Backfill the hole created by the demolition of the basement level and removal of the raised patio and restore the levels of the land to their previous state (as depicted on drawing no. 957 (01) 02 B of approved application reference, C16927/06).
 3. Permanently remove from the property all constituent materials resulting from the works in 1 and 2 above.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (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.

Summary of Decision:

Preliminary Matter

1. I note the invitation to view the appeal property from the neighbouring property, 28 Deansway. However, I am satisfied that I fully understood the effects of the proposal on the occupants of this neighbouring property from the appeal site, particularly given the high degree of intervisibility between the two properties. Consequently, I considered that it was not necessary to view the property from No 28 to make a fully informed decision.

The ground (d) appeal

2. In pursuing this appeal on ground (d), the onus is on the appellant to demonstrate on the balance of probabilities that at the time the Enforcement Notice (the Notice) was served on 15 June 2022, it was too late to take enforcement action against the alleged breach of planning control. The relevant test of the evidence is 'on the balance of probability' (i.e. that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.

3. The appellant contends the canopy and flat roof above the lower ground floor extension, which is used as a raised patio, has been in situ for more than four years. Photographs of the rear elevation of the appeal property prior to the construction of the lower ground floor extension clearly shows the canopy and the raised patio in situ, albeit the patio area is slightly smaller than the existing. However, these photographs are undated. Nevertheless, a Google Earth image, dated 2017, shows the canopy in situ. Given the canopy sits atop the patio area, on the balance of probabilities, it is reasonable to conclude that the patio was also in situ in 2017, albeit minus the more recent addition to it.
4. The Council argues that it is possible the canopy and raised patio area could have been removed to enable the construction of the lower ground floor extension, given that the patio forms the roof of the extension. However, there is no evidence to support this. The photographs showing the canopy, including the side screening facing 32 Deansway, prior to the construction of the extension and after it clearly show the canopy as being identical in both images, supporting the appellant's argument that it was not removed.
5. Overall, I consider the appellant's evidence is adequately precise and free of significant ambiguities to demonstrate that on the balance of probabilities the canopy and the majority of the raised patio area has been in situ for a period of four years prior to the service of the Notice. The appeal on ground (d) therefore succeeds and the Notice will be varied to remove the reference to the canopy and the majority of the raised patio.

The ground (a) appeal and the deemed planning application

6. Given my findings on the ground (d) appeal, only the lower ground floor extension and the most recent extension to the raised patio area falls to be considered under the ground (a) appeal and the deemed planning application.

Main Issue

7. The main issue is the effect of the lower ground floor extension and the most recent extension to the raised patio area on the living conditions of the occupants of 28 Deansway, with regard to outlook and privacy.

Reasons

8. The lower ground floor extension is partly below ground level with two windows and French doors on the rear elevation. As a result of the low level of the windows, there would not be any undue overlooking of the rear gardens of neighbouring adjacent properties from them.
9. The Council's concern lies with the ability of users of the raised patio area to overlook the neighbouring property, No 28, due to its elevated position. The majority of the raised patio is immune from enforcement action and when stood on this immune area of the patio there are clear, largely unobstructed, views of almost the entire rear garden of No 28. Whilst the recent addition to the patio is close to the boundary with No 28, it does not encroach any closer to the boundary than the immune section, indeed, it is set further back. Consequently, it does not result in any increased level of overlooking from what is capable from the immune section of patio. Nevertheless, the degree of overlooking from this recently added section of patio still has a harmful effect on the privacy of the occupants of No 28. However, I am satisfied that this

harm could be adequately mitigated by way of an appropriately worded condition requiring screening to be erected on this side of the patio.

10. I have had regard to the possible overbearing effect of such a screen. However, if I found the recent addition to the patio to be unacceptable and it was subsequently removed, the immune section of the patio could still be used, from which a high degree of overlooking of the garden of No 28 could be achieved. Consequently, I consider the potential moderate harm to outlook as a result of such a screen is outweighed by the reduction in the degree of overlooking.
11. With regard to outlook, the recent raised patio addition would be set back from the boundary with No 28, further back than the immune section, and from the view of No 28 it would be read against the backdrop of the remaining part of the development. Whilst the infilling of the space beneath the raised patio with the lower ground floor extension has resulted in a greater solid mass of development, it does not rise any higher than the immune raised patio area or canopy. Consequently, I do not find that it has an overbearing effect on the occupants of No 28 and therefore does not harm their outlook.
12. During my site visit, I observed that a similarly raised patio area had been constructed at No 28. Whilst the planning history of this patio is not before me, if it is lawful, it lessens any overlooking and overbearing effect the appeal development has on the occupants of this neighbouring property.
13. I have had regard to the effect of the development on other neighbouring properties, notably 32 Deansway. Given the high boundary hedge/fence with this property and the presence of screening on the immune section of the patio that faces this boundary, I am satisfied that the unlawful development does not cause any increase in overlooking or loss of outlook to the occupants of No 32.
14. I have also had regard to the effects of noise and disturbance on the occupants of the neighbouring properties as a result of the appeal property allegedly being rented out on a short-term basis, as well as parking issues. However, there is no evidence that such effects would not occur if I dismissed the ground (a) appeal, bearing in mind the majority of the raised terrace would be immune from enforcement action.
15. I find therefore that, subject to condition, the lower ground floor extension and the addition to the raised patio do not have a harmful effect on the living conditions of the occupants of No 28, with regard to outlook and privacy. As such, it complies with Policy D3 of the London Plan, Policy CS5 of the London Borough of Barnet Plan Core Strategy 2012 and Policy DM01 of the London Borough of Barnet's Local Plan Development Management Policies 2012, which, amongst other matters, seek to ensure development protects living conditions of neighbouring residents. Furthermore, it would accord with the advice set out in the London Borough of Barnet's Residential Design Guidance Supplementary Planning Document 2016.

Other Matters

16. I have had regard to the concerns raised over the accuracy of the drawings submitted with the appeal, notably the inaccurate size of the dormer window in comparison to what has been constructed. However, the dormer window does not form part of this appeal.

17. I have also had regard to the effect of the proposal on the setting of the nearby Hampstead Garden Suburb Conservation Area (CA). Whilst the appeal development may well be visible from properties within the CA, given the scale of the development that I have found to be unlawful, its subordinate relationship with the host dwelling does not harm the setting of the CA.
18. Matters relating to party wall agreements, disposal of spoil, health and safety statements, working hours and noise levels have had no bearing on my consideration of the planning merits of the proposal.

Conditions

19. I have considered the imposition of appropriate planning conditions, having regard to the six tests set out in the National Planning Policy Framework. In the interests of protecting the privacy of the occupants of No 28, a condition is necessary requiring screening to be erected on the side of the raised patio area that fronts the boundary with No 28.

Conclusion

20. For the reasons given above, having considered the development plan as a whole and all material considerations, the ground (a) appeal and the deemed application should succeed and planning permission will be granted for the development described in the Notice, subject to conditions set out in the formal decision. The enforcement Notice will be quashed.

Formal Decision

21. It is directed that the Notice is corrected by:
 - i. Deleting 'the installation of a raised patio (which forms the roof of the lower ground floor extension), and associated canopy' from paragraph 3 and substituting 'the extension to the raised patio (which forms the roof of the lower ground floor extension).'
 - ii. Inserting 'extension to the' between the second 'the' and 'raised patio' in requirement 1 under paragraph 5 and deleting 'and associated canopy' from the same requirement
 - iii. Inserting 'extension to the' between the fourth 'the' and 'raised patio' in requirement 2 under paragraph 5.
22. Subject to the corrections, 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 creation of a lower ground floor extension, including the extension to the raised patio (which forms the roof of the lower ground floor extension) as shown on the plan attached to the Notice and subject to the following condition:
 - 1) Unless within three months of the date of this decision:
 - a) details of a 1.8m high screen to be erected on the side of the hereby approved raised patio area that fronts the boundary with 28 Deansway have been submitted to and approved in writing by the local planning authority, and;

b) the screen has been fully completed in accordance with the approved details;

the extension to the raised patio and lower ground floor extension shall be demolished, all damage to the dwelling resulting from removal of the extension to the raised patio and the lower ground floor extension shall be made good and all the demolition materials shall be removed from the site within three months.

After the works required by (a) and (b) above have been undertaken, the screen shall be maintained in accordance with those requirements.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Alexander Walker

INSPECTOR

