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# Appeal Decision

Site visit made on 24 May 2023

**by Laura Renaudon LLM LARTPI Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 June 2023**

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**Appeal Ref: APP/N5090/C/22/3302379**  
**34 Bell Lane, London NW4 2AD**

- 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 Shital Patel against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0458/21, was issued on 25 May 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of an outbuilding to rear garden of Flat 1, 34 Bell Lane*.
- The requirements of the notice are (1) demolish the outbuilding; (2) permanently remove from the property all constituent materials resulting from the works in (1) above.
- The period for compliance with the requirements is two 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.

**Summary Decision: The appeal is dismissed and the enforcement notice upheld.**

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## Main Issue

1. The Council's reason for issuing the notice relates to its effects on the character and appearance of the site and the wider area, and this therefore constitutes the main issue in the appeal.

## Reasons

### *Policy context*

2. The development plan for the area consists of a suite of documents comprising the Barnet Local Plan of 2012 and the London Plan of 2021. Policies CS1 and CS5 of the Local Plan Core Strategy DPD refer to the Council's place shaping strategy and to protecting and enhancing Barnet's character to create high quality places. The highest standards of urban design are sought, in order to create an accessible, safe and attractive environment. Development in the borough is to respect local context and distinctive local character, creating places and buildings of high quality design. Requirements include protecting and enhancing the gardens of residential properties.
3. Policy CS5 provides that supplementary planning guidance will be provided through a Residential Design Guidance SPD. This was adopted in 2016, and sets out local priorities for protecting and enhancing the character of the borough. Residential gardens are to be protected and enhanced. Rear outbuildings should not be too large or significantly reduce the size of a garden to become out of character with the area, and their design and materials

should be in harmony with the surrounding area. The building materials used should respect the existing buildings and the overall character of the area.

4. The related Development Management Policies document specifically refers at policy DM01 to protecting the borough's character and amenity. All development should represent high quality design, and development proposals should be based on an understanding of local characteristic. Proposals should preserve or enhance local character and respect surrounding buildings and spaces. Proposals should retain outdoor amenity space having regard to character. Policy DM02 requires the highest standards of urban design, and for developments to make a positive contribution to the borough.
5. Policy D3 of the London Plan has similar aspirations, requiring a design-led approach to optimise site capacity and requiring high quality developments that respond to existing character.
6. Not yet part of the development plan, but having been consulted upon, is Barnet's emerging Local Plan. Policy CDH01 promotes high quality design that is appropriate to the local context and enhances the character and quality of an area.

*The outbuilding and the allegation*

7. The Council's notice alleges the erection of an outbuilding to the rear garden of Flat 1 at 34 Bell Lane. Its reasons for issuing the notice concern the impact of the building on the character of the area. They do not concern the use of the building, about which no allegation is made.
8. Nonetheless in the Council's appeal statement reference is made to the 'unlawful use of the outbuilding as a self-contained residential unit'. Reference is also made by the Council to the building's intended use as a gym.
9. At the time of my site visit, which is not necessarily reflective of the position at the time the notice was issued, the building was clearly separated from the garden area of the ground floor flat, with a long fenced 'corridor' leading down the side of the retained garden to the end part, where the building is. The building has its own clearly defined curtilage, being laid to hardstanding. Internally, the building has all the required facilities for day to day living, and was being residentially occupied at the time of my visit.
10. No allegation as to the use of the building, or as to any subdivision of the relevant planning unit, is however made, and the use of the building is not addressed by the appellant in her appeal statement. The reasons for issuing the notice concern the building's appearance, not its use. The scope of the allegation could not be extended without resulting in injustice to the appellant.
11. I therefore confine my findings on this appeal to the allegation raised by the Council and the reasons for it. If the Council were to conclude that an unauthorised material change of use has arisen, they would not be precluded from taking additional enforcement action in the event that this appeal is allowed. This is because the building is described as an 'outbuilding', evidently as a garden one given the description of the breach and in any event controllable by a relevant planning condition, and there is no appeal made on the basis that that description is wrong. Section 75(3) of the 1990 Act would not apply to confer any other lawful use, if permission were to be granted.

### *Considerations*

12. The planning site history is set out in the officer's report pertaining to a planning application to retain the building, dealt with under reference 22/0541/RCU. That history refers to applications to subdivide (and extend) the former dwellinghouse into flats, the most recent of which was in 2020. No history of permissions relating to any outbuildings is given.
13. The appellant impresses upon me the importance of the history, because it is said that the present outbuilding replaces one of near-identical proportions that was *in situ* for some 20 years.
14. I acknowledge the existence of the previous outbuilding, but am unable to give it, or any other hypothetical outbuilding, any real weight in the circumstances of this case. This is because the former building was, of the appellant's own volition, demolished; there is no history of any express permission ever having been conferred for it (albeit that may not have been necessary at the time of its construction, given the former configuration of the host property as a single dwellinghouse); and permission would now be required for the construction of any outbuilding. Because the host property has been divided into flats, no relevant permitted development rights are available. Thus the previous existence of an outbuilding at the property is a consideration insufficient to disturb my findings in relation to the development plan.
15. The building lies at the end of the garden, taking up the width of the plot and having a footprint of around 40 square metres. There is some dispute between the parties about whether the garden area is intended to be subdivided for the benefit of each of the flats, but either way it is an improbably large outbuilding for the property it serves. It stands surrounded by other residential gardens, and protrudes significantly above the height of the adjoining fencing. I saw no comparable examples in the vicinity. As a white rendered building of obviously domestic appearance, with a near-flat roof, its design is not commensurate with that of a usual domestic outbuilding to terraced housing.
16. Although not visible from the street scene, I am unable to find that the building complies with the requirements of the Design Guidance for its design and materials to be in harmony with the surrounding area. Consequently the building does not comply with the development plan's requirements for development to respect local context or the distinctive local character which here consists of spacious rear gardens containing outbuildings, if any, of appropriately subordinate scale and appearance.

### **Conclusion**

17. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

### **Formal Decision**

18. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Laura Renaudon*

INSPECTOR