
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: 07 July 2023

Appeal Ref: APP/N5090/C/22/3302430

5 Marlborough Avenue, Edgware HA8 8UH

- 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 Mr Emmanuel Patcas against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/1342/21, was issued on 25 May 2022.
- The breach of planning control as alleged in the notice is *Without planning permission the erection of a rear extension*.
- The requirements of the notice are to (1) demolish the rear extension; and (2) permanently remove all constituent materials resulting from the works in (1) above from the property.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed, and the enforcement notice is upheld with variations.

Main Issues

1. The Council gave three reasons for issuing the notice, which in turn give rise to the main issues in the appeal. The first contention is that the extension is detrimental to the character and appearance of the host property and surrounding area, contrary to the relevant provisions of the development plan. Considering this question is therefore the first main issue in the appeal.
2. The second two reasons concern different aspects of potential impacts on the living conditions of the occupiers of neighbouring properties, which together amount to the second main issue. The Council contend that the extension results in an unacceptable loss of outlook and sense of enclosure to the occupiers of no. 7 Marlborough Avenue. They also contend that it results in an 'enhanced perspective' into the rear garden of no. 3 Marlborough Avenue.
3. Should I find that the development is harmful and contrary to the development plan in any of these respects, I will then consider whether there are any other factors indicating a different decision.
4. Although no appeal on ground (f) is expressly brought, I shall also consider the notice's requirements in the light of what is said to be the appellant's 'fall back' position arising from previous grants of planning permission. Finally, if the notice is otherwise to be upheld, the ground (g) appeal gives rise to the need to consider whether the time stipulated for compliance with the notice's requirements, four months, falls short of what should reasonably be allowed.

Reasons

The appeal on ground (a)

Character and appearance

5. 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.
6. Policy CS5 provides that supplementary planning guidance will be provided through a Residential Design Guidance SPD. This was adopted in 2016, and requires that domestic extensions should normally be subordinate to the original house, respect the original building and not be overly dominant.
7. 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 characteristics. Proposals should preserve or enhance local character and respect surrounding buildings and spaces. Proposals should retain outdoor amenity space having regard to character.
8. 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.
9. Permission was granted in July 2021 ('the 2021 permission') for a rear extension at the property, that I understand was to replace a former garage building. That was not constructed, and what has been built instead is the present extension, exceeding the dimensions of the permitted structure by around 1.75m in both lateral directions, as well as being around 30cm taller. It is over 9m long, 4.5m wide and over 4m tall. At the time of my site visit it was unfinished, although with most structural elements present.
10. Permission was subsequently granted ('the 2023 permission') for a different rear extension, again not as large as that constructed although larger than that previously permitted. It is the same width as that constructed, which is principally where it differs from the 2021 permission. What has been built differs from the 2023 permission by having an additional two storage areas to the rear of the extension: one at the ground floor of some 10.5m² above an undercroft area accessed externally of some 8.4m², both to the full width of the extension. The garden falls away from the house to the rear, so the undercroft area of a much lower head height of 1600mm is achieved without any change in the levels at the ground floor.
11. The first issue for consideration is thus whether this rear additional depth, and resulting overall height when considered from the rear garden of the host property and those of its adjoining neighbours, is harmful to the character and

appearance of the area. The rear extension is not visible from public vantage points.

12. The house lies near the corner of the street, meaning that it is backed onto in different ways. The house to which it is attached, at no. 3 Marlborough Avenue, has a smaller garden leading diagonally to a point adjacent to approximately the rear of the permitted extension (although the extension, both permitted and as built, lies to the other, northern, side of the host property's garden). The gardens of no.s 19 – 23 Warwick Avenue, which runs at an approximate right angle to Marlborough Avenue, each back on to the southern boundary of the host property's garden, with the garden at no. 23 tapering diagonally and adjacent to that of no. 3 Marlborough Avenue. To the other side, no. 7 Marlborough Avenue has a garden of commensurate length (appearing slightly longer) with that of the appeal property: no. 5 is the last of the row of houses on Marlborough Avenue having rear gardens of a generous length, with some good tree coverage. By contrast, the properties abutting the garden of no. 5 from the south each have smaller rear gardens available to them. There are no paths to the rear of these properties; their boundary fences separate them.
13. The constructed extension at no. 5 exceeds the dimensions of comparable properties in the vicinity, both in its depth and width. The fall of the land means that it is effectively two-storied to its rear, unlike any other extensions in the immediate vicinity. Although accepting that it lies in a generous plot that can bear the dimensions of the extension without unacceptably reducing the amount of garden area available to the host property, overall I find that it is excessively large and dominant in its present form. I concur with the Council's assessment that it appears disproportionate, bulky and incongruous with the character of the area.
14. I therefore find that the extension as constructed conflicts with the requirements of the development plan for the area to achieve the preservation and enhancement of an area's character. Whilst acknowledging that permission has been granted for different extensions, I consider that the additional dimensions of what has been constructed result in a development that causes harm to the character and appearance of the area.

Living conditions

15. The same policy considerations apply in relation to the assessment of the impact of the development on the living conditions of nearby occupiers. Development Management policy DM01 requires proposals to be designed to allow for adequate privacy and outlook for adjoining occupiers. The Residential Design Guidance SPD states that extensions should not be overbearing or unduly obtrusive, and care should be taken to ensure that they do not result in a harmful loss of outlook or an increased sense of enclosure to adjoining properties.
16. Dealing with the Council's 'enhanced perspective' point into no. 3, I do not consider there to be an appreciable difference here between the development as constructed and the permitted scheme. The ground floor storage area does have a window facing south (which the appellant suggests could be obscurely glazed) but the main sliding door element on that side is the same in both schemes. Thus, with the fallback of the 2023 permission in consideration, I do not find that this element would justify refusing permission in its own right.

17. The Council's other concern is of the loss of outlook to the adjoining neighbours at no. 7 Marlborough Avenue. Here, I do share their concern that the size and proximity of the development as built adversely affects the neighbouring outlook to a degree considerably greater than of either permitted scheme. Because of the fall in the land levels, the extension appears particularly large at its rear, and with a height immediately adjoining the boundary to no. 7 of up to some 4 metres. Although no. 7 itself has a generous garden and any overshadowing of the garden area would be limited, the dimensions of the extension apparent to the adjoining property at no. 7 result in an unacceptable loss of outlook and sense of enclosure.
18. The loss of outlook and increased sense of enclosure to the adjoining occupiers at no. 7 is conceded by the appellant, but it is contended that when compared with the 'fall back' position of the extant planning permissions there is no demonstrable harm to the outlook of neighbouring ground floor windows to habitable rooms, or to the rear garden. Here I disagree, particularly in respect of the garden at no. 7 which also falls away to the rear, because the additional dimensions apparent to no. 7 of the extension as constructed cumulatively result in an unacceptable degree of enclosure and loss of outlook.
19. In reaching this finding I have in mind both the dimensions of the permitted extensions as well as the pre-existing garage, and find that what has been constructed is significantly more harmful to the neighbouring outlook from no. 7. The depth of the extension is greater, and the height immediately adjoining the boundary (a near-flat roof replacing the former garage's pitched roof) results in a significantly greater expanse of adjoining wall than would be experienced under either permitted scheme or under the pre-existing position.

Other matters

20. I have had sight of correspondence adverting to special personal circumstances that it is contended justify granting planning permission. It is said that if the extension is required to be demolished then this would likely cause additional hardship.
21. I accept what is said in the correspondence, but it is insufficient to disturb my conclusions in respect of the development plan. For the reasons I will come onto, the notice will not require the complete demolition of the extension (save as an option) but will require its alteration so as to comply with the approved plans of either the 2021 or 2023 permissions. The additional 'as built' elements are depicted on the plans as storage areas only. Storage space could potentially be achieved in different ways. The works were unfinished at the time of my site visit, and I do not find that building works to remove the additional elements would be significantly more disruptive to the family than completion of the development as is.

Conclusions on ground (a)

22. For the above reasons I find the development as constructed to be harmful to the character and appearance of the area and to the living conditions of the adjoining occupiers at no. 7. The development does not comply with the development plan for the area and the other material considerations brought to my attention are insufficient to justify granting permission. Therefore the appeal on ground (a) will not succeed.

An appeal on ground (f)

23. Although no appeal has expressly been brought on ground (f), contending that the requirements of the notice exceed what is required to remedy the breach of planning control, it is necessary to consider the position in the light of the previous permitted schemes. The relevant legislation sets out (in the 1990 Act, at section 173) that a Council may seek to remedy the breach of planning control, in whole or part, either (as relevant) by requiring a demolition of the unauthorised development and the restoration of the land to its previous condition; or by making the development comply with the terms (including conditions and limitations) of any planning permission that has been granted in respect of the land. Although the development as it exists is unauthorised, allowing the development to be altered so as to comply with the terms and conditions of the 2021 permission appears to me an obvious alternative here, given that the 2021 permission remains extant and open to implementation following compliance with the notice's existing steps, and I shall vary the notice accordingly.
24. The legislation also provides (section 180) that where, after the service of an enforcement notice, permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.
25. Thus the 2023 permission, which is described on its face as being partly retrospective ('alterations and retention of rear extension') effectively overrides the existing requirements of the notice to some extent; however to avoid any doubt I shall vary the requirements of the notice so as to allow the development to be altered so as to comply with the terms and conditions of the 2023 permission.
26. Thus the appeal succeeds on ground (f) in that I shall vary the requirements of the notice so as to allow for the completion of either of the two recently granted permissions. Although this ground was not expressly raised, and therefore the Council have not commented upon it, I do not detect any prejudice arising because I am only giving express effect, within the corners of the notice, to the appellant's existing fall-back position.

The appeal on ground (g)

27. Additional time is sought to comply with the notice in order to allow time to seek quotes from builders and to carry out the necessary work. The works are presently unfinished, although I am not informed as to the present contractual position with any builders. As the works now required do not need to involve the complete demolition of the extension but only its partial demolition and alteration, the nine months sought by the appellant appear to me unnecessary. Accepting the general point that it is presently difficult to source builders, however, I shall extend the period to six months.
28. As the 2023 permission appears potentially to remain extant for only a further few days (by reason of condition 2) my variations to the notice, when requiring the development (in the alternative) to be altered so as to comply with the terms and conditions of the 2023 permission, will reflect the above position by omitting the requirement to comply with condition 2 but nonetheless requiring completion of the works within six months.

29. Similarly, although the 2021 permission would not expire until July 2024, I shall likewise disapply condition 2 of that permission, if that alternative option is pursued pursuant to the notice. Therefore any works required by the notice, whichever option is pursued, are to be completed within six months.

Conclusions

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

Formal Decision

31. It is directed that the enforcement notice be varied by:

(i) Adding, after paragraph 5(1),

“OR

1A making alterations to the rear extension so as to comply with the approved plans and the terms (including, save as to condition 2, the conditions and limitations) of planning permission for a single storey rear extension at 5 Marlborough Avenue, Edgware HA8 8UH granted under reference 21/0618/HSE on 15 July 2021;

OR

1B making alterations to the rear extension so as to comply with the approved plans and the terms (including, save as to condition 2, the conditions and limitations) of planning permission for alterations and retention of rear extension at 5 Marlborough Avenue, Edgware HA8 8UH granted under reference 22/2437/HSE on 14 March 2023.”;

(ii) Adding, after “in 1.” in paragraph 5(2), “or 1A or 1B as the case may be”;

and

(iii) Deleting “4” and inserting “6” at paragraph 6.

32. Subject to these variations the appeal is dismissed and 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.

Laura Renaudon

INSPECTOR