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## Appeal Decision

Hearing Held on 29 June 2023

Site visit made on 29 June 2023

**by R Satheesan BSc PGCert MSc MSc MRTPI**

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

**Decision date: 13 July 2023**

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**Appeal Ref: APP/N5090/C/22/3311480**

**18 Underne Avenue, London N14 7NE**

- 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 Murat Asiroglu against an enforcement notice issued by the Council of the London Borough of Barnet.
  - The enforcement notice was issued on 12 October 2022.
  - The breach of planning control as alleged in the notice is: Without Planning Permission: the erection of a single storey rear extension with associated raised patio and steps (edged in red in the attached images); The erection of a wall adjoining the single storey rear extension built on top of the raised patio to a total height exceeding 2 metres (edged in yellow in the attached images); The raising of the level of the rear garden, (edged in blue in the attached images) and; The erection of boundary fencing (with 20 Underne) that exceeds 2 metres in height.
  - The requirements of the notice are:
    - 1 Demolish the existing single storey rear extension and raised patio terrace with associated steps. This includes the wall erected upon the patio to the side of the patio, neighbouring the property of 20 Underne Avenue.
    - 2 Return the level of the garden to that which existed prior to the breach of planning control by:
      - a) On the Northeast boundary reduce the levels of the garden to match that on the adjacent land at number 16 Underne.
      - b) On the Northwest boundary reduce the levels of the garden to no more than 30 cm higher than the adjacent land at number 20 Underne.
      - c) Ensure that there is a smooth gradient between the two boundaries.
    - 3 Reduce the height of the boundary fencing with No. 20 Underne to 2 metres in height.
    - 4 Permanently remove from the property; of all constituent materials resulting from the works in 1, 2 and 3 above.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (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.
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### Decision

1. It is directed that the enforcement notice be:

- Corrected by deleting the first requirement under Section 5 of the enforcement notice (What you are required to do) and its replacement with:

“1. Demolish the existing single storey rear extension, raised patio with associated steps and the wall adjoining the single storey rear extension built on

top of the raised patio to a total height exceeding 2 metres, and restore the property to its condition before the breach took place”.

- Varied by deleting the words “6 months” within section 6 (time for compliance) and its replacement with “7 months”.
2. Subject to this correction and variation, 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.

### **Preliminary matters**

3. The appeal has been lodged under grounds (a), (b), (f) and (g). However, it is clear from the substance of the appeal submissions that the appellant is also seeking to appeal under ground (c), in so far as he considers that the ground level of the garden nearest to 16 Underne Avenue, has not been raised to an extent where it could be considered to constitute development, as defined by s55 of the Town and Country Planning Act 1990 as amended (the 1990 Act). As the Council commented on this during the Hearing, I am satisfied that neither party would be prejudiced by consideration of the ground (c) appeal. I have therefore determined the appeal on this basis.
4. Under the appeal on ground (f), the appellant states that the requirements of the Notice do not allow for a rear wall to be rebuilt following the removal of the rear extension. However, it is clear that the purpose of the Notice is to remedy the breach of planning control. That is to say, restoring the land to its condition before the development took place. To that end, there is nothing before me to suggest that would not include rebuilding the rear wall to its condition before the breach took place. For clarity therefore I will correct the first requirement to include this. To do so would not cause injustice.

### **The Appeal on ground (b)**

5. To succeed on this ground, the onus is upon the appellant to demonstrate on the balance of probabilities that the allegation has not occurred as a matter of fact.
6. The original submissions state that the garden level had not been changed to an extent where it would be considered to constitute development, as defined by s55 of the 1990 Act. However, following evidence submitted during the appeal process, the appellant accepts that “the ground level of the garden closest to the neighbouring property at 20 Underne Avenue, has been raised to an extent where it could be considered to constitute development, as defined by s55 of the 1990 Act.”
7. Since the appellant accepts that the raising of the level of the rear garden has occurred, I consider that the matters as alleged by the notice have occurred.
8. Accordingly, the appeal on ground (b) must fail.

### **The Appeal on ground (c)**

9. This ground of appeal is that the development enforced against does not constitute a breach of planning control. Like ground (b) the onus of proof lies with the appellant, the relevant test of the evidence being the balance of probability.

10. As outlined above, the appellant accepts that the garden level closest to the neighbouring property at 20 Underne Avenue, has been raised to an extent where it could be considered to constitute development. The appellant's case is that the level of the rear garden nearest to the neighbouring property at 16 Underne Avenue has not been raised to an extent where it constitutes development as defined by s55 of the 1990 Act.
11. Under s55(1) of the 1990 Act, 'development' comprises 'two limbs':
  - 1) The carrying out of building, engineering, mining, or other operations in, on, over or under land (operational development);
  - 2) The making of any material change in the use of any buildings or other land.
12. It is clear that the allegation is referring to operational development, and that the raising of land relates to an 'engineering operation.' 'Operational development' comprises activities which result in some physical alteration to land which has some degree of permanence. Engineering operations involve works with some element of pre-planning, which would generally (but not necessarily) be supervised by a person with engineering knowledge.
13. The appellant argues that the approved drawings demonstrate that the existing levels are similar to those shown on the existing side elevation. However, during my site inspection I observed that the new raised patio at No 18 rises above the existing patio at No 16, which is not consistent with the approved drawings in so far as these are shown as being level. Furthermore, the land at No 18 immediately adjacent to No 16 also appeared higher than that at No 16. As such, little documented evidence has been submitted to support the claim that the land levels have not been raised to a level that would constitute 'development.'
14. In contrast the Council and both neighbouring occupiers at Nos 16 and 20 have provided detailed photographic evidence of the site both before, during and after the development had been carried out. Underne Avenue sits on a relatively steep hill, with 2 Underne Avenue being located on the highest part of the hill. Therefore, following the natural topography of the Avenue, No 16 should be on higher ground than No 18. However, the photographs submitted by the Council and No 16 show that the land levels are reversed with No 18 being on higher ground than No 16.
15. Based on my site inspection and review of these photographs, as a matter of fact and degree, given the extent of the works undertaken across the entire rear garden (which facilitates the construction of walling, fences, patio, and an outbuilding above the new raised land levels), I consider that it amounts to an engineering operation for which planning permission is required.
16. I therefore find that, on the balance of probabilities, the scale of works undertaken in raising of the land levels amounts to an engineering operation for the purposes of s55 of the 1990 Act. Planning permission is required for these works. There is none in place. Therefore, based on all the evidence before me, there has been a breach of planning control and the appellant has not discharged the onus to demonstrate otherwise.
17. Accordingly, the appeal fails on ground (c).

## **Appeal on Ground (a)**

### **Main Issues**

18. The effect of the development upon:

- The living conditions of the occupiers of 16 & 20 Underne Avenue in terms of daylight, outlook, and privacy; and
- The character and appearance of the area.

### **Reasons**

#### *Preliminary matter*

19. Planning permission was granted for a single storey rear extension to 16 and 18 Underne Avenue (Council ref: 21/2993/HSE approved on 29 July 2021). However, the rear extension has not been built at No 16, in breach of condition 5 which requires the development to be implemented in its entirety within 6 months of commencement of the development.

### **Living conditions**

#### *Light and outlook*

20. Barnet's Local Plan Supplementary Planning Document Residential Design Guidance, 2016 (Design SPD) advises that the depth of a single storey rear extension is normally considered acceptable at 3.5 metres for semi-detached properties. It is common ground that the rear extension exceeds this depth and is built along the boundary with 16 Underne Avenue.
21. With regard to the outlook from No 16, during my site visit I observed that the excessive depth, size, and bulk of the single storey rear extension built along the boundary with the neighbouring property at No 16, results in a visually intrusive and unneighbourly form of development for occupiers of this neighbouring property. Indeed, the outlook from the patio of No 16 was severely restricted by this extension resulting in an increased sense of enclosure for occupiers of this neighbouring property.
22. With regard to daylight to No 16, the living room windows towards the rear of No 16 are positioned away from the shared boundary with No 18. Combined with the overall large size of the windows, I am satisfied that the development does not result in any significant loss of daylight to these neighbouring windows.
23. The nearest adjacent window and door at No 16 are obscure glazed and serve a galley kitchen of less than 13sq.m in area. Whilst this is not considered to be a habitable room, I accept that it is used to prepare, cook, have meals and converse. To my mind good levels of natural light would be important for carrying out these day-to-day activities. However, no further documentary evidence has been submitted to illustrate that the development does not result in any demonstrable loss of daylight to this neighbouring property.
24. Therefore, in the absence of any substantive evidence, I am unable to conclude that the development does not result in any demonstrable loss of daylight to occupiers of No 16. However, the development fails to provide acceptable living conditions for occupiers of No 16 with regard to outlook.

25. Turning to No 20, the single storey rear extension constructed at No 18, is set away from the shared boundary with No 20 and is similar in depth to the existing extension at No 20. As such, the rear extension does not harm the living conditions of the occupiers in relation to loss of light or outlook.
26. However, the brick wall adjoining the raised patio, and the fence over 2 meters in height, along the boundary with No 20, owing to their excessive height and depth, projecting considerably beyond the rear building line results in a visually dominant and unneighbourly form of development for occupiers of No 20. This has resulted in unacceptable harm to the living conditions of the occupiers of this neighbouring property, with regard to outlook.
27. Therefore, whilst I find no harm in relation to light, the fence and brick wall adjoining the patio in excess of 2 meters fails to provide acceptable living conditions for occupiers of No 20, with regard to outlook.

#### *Privacy*

28. Turning to the matter of privacy for occupiers of Nos 16 and 20, I note that there are currently views of neighbouring rear gardens from existing ground and upper floor windows of all properties along Underne Avenue. Notwithstanding this, the raised platform, and steps to rear of property are in close proximity to the adjacent ground floor windows of both adjoining properties at Nos 16 and 20. Owing to the size and scale of the raised platform in combination with its elevated position, the unauthorised development has increased the degree of overlooking of these neighbouring windows which is detrimental to the privacy of the occupiers of these neighbouring properties.
29. Since the notice was served, the steps have been relocated to the centre of the garden, away from the boundaries with the adjacent properties. However, I observed during the site visit that this in itself does not prevent the harmful overlooking outlined above.
30. The appellant considers that opaque panels could be installed to prevent any loss of privacy, and that details of this screening could be secured by condition. Indeed, a drawing was presented during the Hearing illustrating how this may look. However, the allegation in the enforcement notice forms the basis of the deemed planning application (DPA), and that does not include the proposed opaque panels. Furthermore, the opaque panels proposed modifies the development substantially from that set out in the DPA, with regard to the character and appearance of the property and its impact on the living conditions of the neighbouring occupiers. As such, I consider that a condition requiring these details would not be reasonable in this case. Indeed, it is open to the appellant to apply for planning permission for these amended schemes if they so wish.
31. Similarly, the raised rear garden level has increased the degree of overlooking towards neighbouring ground floor windows and the rear gardens of Nos 16 and 20 which is detrimental to the privacy of the occupiers of these neighbouring properties. Whilst the boundary fence and the brick wall in excess of 2 meters help to mitigate this, I have found that both of these structures result in an unacceptable loss of outlook to the occupiers of the neighbouring property.

32. Consequently, and drawing all these threads together, I conclude that the development has resulted an unacceptably harmful effect on the living conditions of the occupiers of neighbouring properties at Nos 16 and 20 Underne Avenue with regards to light, outlook and privacy, in conflict with Policy DM01 of the Barnet Local Plan Development Management Policies DPD, 2012 (DPD), Policy CS5 of the Barnet's Local Plan Core Strategy DPD, 2012 (CS), Policy D3 of the London Plan, 2021 (London Plan), and the Design SPD. Amongst other things, these state that development proposals should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining and potential occupiers and users and should protect and enhance the gardens of residential properties.

### **Character and appearance**

33. The extensions and alterations relate to a semi-detached property, situated in a residential area characterised by similar semi-detached properties. The single storey flat roof rear extension is similar to other rear extensions along the Avenue. The materials of the rear extension, with the use of red brick matches those of the main dwelling and neighbouring properties ensuring it successfully integrates with the host building and area. Similarly, the raised patio, and steps are not dissimilar in appearance to other raised patios. Furthermore, the development preserves sufficient amenity space for occupiers of the site. It follows that the rear extension, patio with adjoining brick wall and steps do not harm the character and appearance of the host building and area.
34. Underne Avenue sits on a hill, with No 20 being located on the highest part of the hill. Whilst the land has been raised in the rear garden, this part of the development is contained within the existing boundary treatment and is not highly prominent from neighbouring properties. As such, this aspect of the development has also led to no harm.
35. With regards to the fencing, the Design SPD requires that garden walls, fences, railings should be sympathetic to the local character and within required standards. Given the overall height and scale of the fencing it forms a long and tall, incongruous feature in the garden, along the boundary with the neighbouring property at 20 Underne Avenue. This is at odds with the residential and open character of the area, which predominantly comprises more modest fences and boundary treatments between neighbouring rear gardens.

### *Conclusion*

36. Therefore, whilst I find no harm in relation to single storey rear extension, adjoining brick wall, raised patio, steps and the raised rear garden level, the fencing along the boundary with 20 Underne Avenue, in excess of 2 metres in height, harms the character and appearance of the area. Accordingly, the development conflicts with Policy CS5 of the CS, Policy DM01 of the DPD, the Design SPD, and Policy D3 of the London Plan. Amongst other things, these seek to ensure that developments respect, preserve or enhance local context and character.

### *Other matters*

37. The appellant states that under permitted development a 3m deep rear extension could be constructed without planning permission and therefore this

represents a legitimate fallback position. However, the current development extends well beyond 3m in depth and therefore results in greater harm and an uncomfortable sense of enclosure to neighbouring occupiers.

38. The appellant contends that the extension is lawful except there is a breach of condition 5 (which requires the extension to be built at No 16), and that there is the prospect that the extension would be built at No 16 in the future mitigating any harm. However, the owners and occupiers of No 16 made clear that they had not applied for planning permission in the first place and have no intentions of carrying out the approved scheme. As such I do not consider there to be a realistic prospect of this neighbouring extension being built.

### **Conclusion on ground (a)**

39. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning decisions to be made in accordance with the development plan unless material considerations indicate otherwise. I have found conflict with the development plan with regard to harm to the living conditions for the neighbouring occupiers of 16 and 20 Underne Avenue, and harm to the character and appearance of the area in respect of the fence. There are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.
40. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail.

### **Appeal on ground (f)**

41. The appeal on this ground is "that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters (i.e., the matters alleged in the notice) or, as the case may be, to remedy any injury to amenity which has been caused by any such breach".
42. The enforcement notice requires the removal of the unauthorised development and restoration of the land to its condition before the breach took place. Therefore, the purpose of the notice is to remedy the breach of planning control.
43. The appellant considers that the requirements under step 2 is excessive since the Council have no evidence as to what the previous levels of the garden were. However, the Council and both adjoining occupiers have provided detailed photographic evidence illustrating the change in levels, under the appeal on grounds b) and c) appeals. On the contrary, no documentary evidence has been provided by the appellant to demonstrate what the land levels were prior to the breach. It will be seen from my decision above, that the Council's and neighbouring occupiers' evidence appears to be the more precise and accurate representation of the land levels before the unauthorised development took place.
44. Therefore, as the notice does no more than seek remedy of the breach, it is not excessive. There are no lesser steps drawn to my attention or any obvious alternatives that would remedy the breach of planning control which is the purpose of the notice.
45. On this basis, the ground (f) appeal fails.

### **The Appeal on Ground (g)**

46. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant asks that the time for compliance is extended from 6 to 9 months, to seek quotes from builders, who are in short supply as a consequence of Brexit and higher demand for builders and carry out the necessary work.
47. I have found under the ground a) appeal that the development fails to provide acceptable living conditions for occupiers of No 16 and 20 Underne Avenue and results in harm to the character and appearance of the area. As such, the 9 months requested by the appellant to comply with the notice is disproportionately excessive to complete the requirements of the notice.
48. However, the time for completing the requirements should be what is reasonably considered necessary to complete the requirements. There is nothing before to suggest that the work is overly complex. Nevertheless, in my view, 7 months would strike a more reasonable and proportionate balance to carry out the remedial works. This would also provide additional time to obtain Building Regulations and Planning Permission for a revised scheme. I shall therefore extend the period from 6 to 7 months.
49. To this extent, the ground (g) appeal succeeds, and I will vary the notice accordingly.

### **Conclusion**

50. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and 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.

*R Satheesan*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Joe Henry, Henry Planning Limited  
Mr Murat Asiroglu, Appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr. Jim Tottle-Nugent, Planning & Enforcement Officer, London Borough Barnet  
Ms Asha Chhabhaiya, Senior Planning Officer, London Borough Barnet

### **INTERESTED PERSONS:**

|           |                       |
|-----------|-----------------------|
| Mr Sutton | Neighbouring resident |
| Ms Sutton | Neighbouring resident |
| Mr Yang   | Neighbouring resident |
| Ms Yang   | Neighbouring resident |

## **Documents submitted during the Hearing**

1. Drawing illustrating the proposed 1.7m high obscure privacy screen.