
Appeal Decisions

Site visit made on 24 May 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Appeal Ref: APP/N5090/C/22/3302628 ('Appeal A') **Former 176 Hendon Way, London NW2 1JN**

- 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 Meir Zloof against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0092/22, was issued on 21 June 2022.
- The breach of planning control as alleged in the notice is *Without planning permission*:
1. The construction of a single storey building consisting of three dwellings; 2. The permanent stationing of a shipping container; the erection of single storey structures; 4. The construction of a concrete hardstanding.
- The requirements of the notice, referenced to attached images, are to (1) demolish the single storey building consisting of three dwellings; (2) permanently remove the shipping container; (3) demolish the single storey structures; (4) remove areas of hardstanding from the land; and (5) permanently remove all constituent materials resulting from the works in (1) (3) and (4) above from the land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal Ref: APP/N5090/W/22/3300943 ('Appeal B') **176 Hendon Way, London NW2 1JN**

- 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 Mr Moshe Pinto against the decision of the Council of the London Borough of Barnet.
- The application Ref 22/1022/RCU, dated 23 February 2022, was refused by notice dated 16 May 2022.
- The development proposed is the temporary residential use of 3no single storey units.

Summary Decision: The appeal is dismissed.

Preliminary Matters

1. Although described slightly differently in the addresses given, both appeals relate to the same site. The different appellants are represented by the same agent, and there is some overlap of the subject matter of the appeals. Hence I consider both appeals in this single decision letter.

Main Issues

2. Appeal B concerns the planning merits of the current residential use of the site, the application having been refused by the Council essentially for reasons relating to the living conditions of the occupiers of the units. The effect of the development on the living conditions of the occupiers is therefore the main issue in this appeal. Subsumed within that overarching consideration are questions of the suitability of the residential environment, the adequacy of the internal floor area of each of the dwellings, the available daylight, sunlight and outlook, and the availability of private outdoor amenity space to the occupiers of each dwelling.
3. Although the notice, forming the subject matter of Appeal A, was issued for additional reasons including whether highway development proposals in the location would be prejudiced, there is no appeal on ground (a) or hence any deemed planning application in respect of that notice. Therefore these additional matters do not fall for consideration in relation to the planning merits.
4. Appeal B does not concern the entirety of the development enforced against forming the subject matter of Appeal A. Specifically, I understand Appeal B to seek planning permission for the residential use of the single storey units that are identified by the red edging to the aerial image accompanying the notice in Appeal A. The notice also alleges, and requires the removal of, additional development in the form of a shipping container and further single storey buildings, identified by green and blue edging respectively, as well as a concrete hardstanding.
5. Whether or not permission is granted on Appeal B, therefore, it is necessary to consider on Appeal A whether the steps required by the notice exceed what is necessary to achieve the purposes of the notice, and whether the time specified for compliance with its requirements, six months, falls short of what should reasonably be allowed.

Reasons

Appeal B

6. 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.
7. Policy CS5 provides that supplementary planning guidance will be provided through a Residential Design Guidance SPD. This was adopted in 2016. Additionally a Sustainable Design SPD sets out both internal and external design and layout requirements
8. 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 allow for adequate daylight, sunlight, privacy and outlook.
9. Policy DM02 requires development to make a positive contribution to the Borough, and residential development should demonstrate compliance with certain amenity standards.
 10. Residential floor space requirements are found in the London Plan, which also requires a design-led approach to optimise site capacity and requires high quality developments that respond to existing character.
 11. The site lies adjacent to the busy Hendon Way, a triple-carriageway A road, from which it is separated by fencing and a footway. Large advertising billboards appear at each end of the site facing onto the carriageway on both approaches. A bus stop lies just before reaching the site, and a subway. A supermarket lies opposite. An electricity supply building lies to the south. Away from the road, the streets behind the site consist of residential properties and occasional local shops, and further away some existing dwellings lie adjacent to the joining slip road to Hendon Way itself. The road immediately behind the site, Hamilton Road, lies some distance away with the dwellings on that road benefitting from long rear gardens, with the houses themselves some 40m away from Hendon Way.
 12. Although the site is well-connected to services and facilities, and transport links, it is away from other residential developments and not directly connected to them. The busy road and the surrounding commercial elements including the very large advertising displays above the site mean that its use for residential purposes is out of character with the location.
 13. Residential floor space standards are not met by two of the existing dwellings. The appellant states that the 'planning government and local guide lines' have been followed, but does not expressly contest the Council's calculations to the effect that the two single-person residential units fall short, by 3sqm, of the 39sqm required by the London Plan.
 14. There is some outdoor space evidently attributable to the dwellings on the site: I encountered children's toys during my site visit. However it is not obvious how, if at all, this space is attributable to each of the dwellings, rather than being communally available. Thus the requirement of the Sustainable Design SPD to provide sufficient private outdoor amenity space is not met.
 15. Each of the dwellings suffers from low levels of natural light, with each of them backing onto an area of tree cover to the east and with few windows onto the other aspects. The dwelling at the southern end of the site is particularly affected, as it is hard up against the site's southern boundary fencing and further tree cover, and overshadowed to the west by the billboard on the site's south-western corner. The Sustainable Design SPD requires that glazing to all habitable rooms should not normally be less than 20% of the internal floor area of the room, and habitable rooms should have a reasonable outlook. I do not find this to be the case.
 16. I therefore find that the dwellings do not comply with the requirements of the development plan for the area, and amount to an unsuitable residential environment for their respective occupiers.

17. It is suggested by the appellant that the number of dwellings could be reduced to two, with additional windows and defined garden areas with storage and parking to be provided. This would however have to be the subject of separate consideration, because the appeal before me seeks approval for the three dwellings that presently exist. Therefore I make no finding as to whether these shortcomings could be overcome by a reduction in the number of units or other alterations.
18. Neighbours have written both in support and against the development. Comments in support point out that it is making a good use of the site whilst it awaits regeneration. The appellant points out that unauthorised incursions have previously occurred, and suggests that an overnight presence is needed on the site to protect the property. Against, risks to pedestrian traffic are identified, as well as anti-social behaviour. It is suggested that the site should be turned into green space. None of these matters are sufficient to affect my overall conclusions that the residential use of the site in its present form does not comply with the development plan for the area, or provide a sufficient reason why a decision should be made otherwise than in accordance with the development plan. Therefore planning permission will be refused and Appeal B does not succeed.

Appeal A

19. Appeal A proceeds on grounds (f) and (g): that the requirements of the notice exceed what is necessary to remedy any breach of planning control, and that the period specified for compliance with the notice falls short of what should reasonably be allowed.
20. The appellant refers to the delayed road improvement scheme and suggests that this means that the structures do not need to be removed, and that the addition of more windows to the residential elements could overcome the planning concerns. As I have decided that permission should not be granted, it follows that the breach alleged in the notice can only be remedied by removing the development alleged, and thus the specified steps are not excessive.
21. Therefore the appeal on ground (f) will fail.
22. The appellant contends that the road construction, meaning the A41/Whitefield Avenue Junction as part of the Brent Cross/Cricklewood masterplan, will not take place in the foreseeable future. Little information is supplied as to progress by either party, although I have been supplied with an Inspector's decision from 2019 finding that she had no substantive evidence to doubt that the scheme would not be delivered within a reasonable timetable. An extension to a temporary permission was then refused on the grounds of prejudicing the implementation of that scheme. That was some four years ago, and I am not told that works are imminent. The appellant's contention that the developers of the scheme will not need part of the land in question (albeit I am not told which part) is not challenged by the Council.
23. Other matters are brought to my attention, including the interests of children presently living on the site, with one apparently due to sit public examinations next summer. I am bound to have regard to those interests as a primary consideration. Although I have found the residential living environment to be unsuitable, the risk of disrupting children's schooling mid-year, as would appear to result from the current compliance period, is a weighty consideration.

24. In view of these considerations and uncertainties, I find this an appropriate case to extend the period for compliance with the notice. I shall vary the notice to allow 12 months for compliance, which will coincide with the end of the next academic year in order that the children living on the site may make appropriate schooling arrangements.

25. Therefore the appeal on ground (g) succeeds to this extent.

Conclusions

26. For the reasons I have given above, I conclude that Appeal B should not succeed. As to Appeal A, I shall uphold the enforcement notice with a varied compliance period. The appeal on ground (g) succeeds to that extent.

Formal Decisions

Appeal A

27. The appeal is dismissed on ground (f) but allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of 6 months from paragraph 6 and substituted with 12 months as the period for compliance. Subject to this variation the enforcement notice is upheld.

Appeal B

28. The appeal is dismissed.

Laura Renaudon

INSPECTOR