
Appeal Decisions

Site visit made on 22 August 2023

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 September 2023

**Appeal Ref: APP/N5090/C/23/3314767 (Appeal A) &
APP/N5090/C/23/3314768 (Appeal B)
217 Edgwarebury Lane, Edgware HA8 8QJ**

- 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 Nayeem Noor (Appeal A) and Mr Jamil Noor (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice was issued on 13 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a first floor rear extension.
 - The requirements of the notice are: Demolish the first-floor rear extension.
 - The period for compliance with the requirements is 4 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. 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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Decisions

1. It is directed that the enforcement notice be:
 - Varied by deleting the words "4 months" within section 6 (time for compliance) and its replacement with "6 months".
2. Subject to this variation, the appeals are 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.

Procedural Matters

3. There was some uncertainty raised by the appellant during the site visit about whether another householder planning appeal¹ was before me. However, I have only been appointed to determine the enforcement notice appeals and understand that the householder appeal has been turned away as being out of time. Nevertheless, the ground (a) appeal is for the matters alleged in the notice or part of those matters alleged. The proposed drawing submitted as part of the householder appeal has also been submitted under the current enforcement appeal. If the ground (a) appeal should not succeed in relation to the development alleged, I shall consider if this proposed alternative scheme

¹ Appeal Ref: APP/N5090/D/23/3314776

forms part of the matters alleged and therefore can also be considered under the ground a) appeal, after dealing with the 'as built' scheme.'

4. Since no fee was paid for the deemed planning application under Appeal B (Appeal Ref: APP/N5090/C/23/3314768), the ground (a) appeal is proceeding under Appeal A (Appeal Ref: APP/N5090/C/23/3314767) only.

Appeal A only: Ground (a) appeal and the Deemed Planning Application

Main Issues

5. The main issues are the effect of the development on:
 - The character and appearance of the host building and area;
 - The living conditions of the occupiers of Nos 215 and 219 Edgwarebury Lane in terms of outlook and privacy.

Reasons

Character and appearance

6. The appeal property is a two-storey detached dwelling, situated in a residential area characterised predominantly by detached and semi-detached properties of various design and styles. Nevertheless, the use of traditional materials including brick, render, slate and tiles, together with the design and layouts of the properties which are well set back from the road behind landscaped front gardens with grass lawns and landscaped verges provides an attractive and verdant character to the area.
7. The appeal property has been previously extended with a full width ground floor rear extension and a rear dormer roof extension, which similarly extends the full width of the property with a flat roof.
8. Barnet's Local Plan Supplementary Planning Document Residential Design Guidance, 2016 (Design SPD) states that flat roofs on two storey rear extensions are not normally acceptable because they do not relate sympathetically to the house. Contrary to the above guidance the 'as built' first floor rear extension has been built with a flat roof.
9. My attention has been drawn to the planning history of the site where planning permission was approved for an alternative first floor rear extension², with a more sympathetic and aesthetically pleasing crown roof above the extension (approved on 15 July 2022). There is no question that that extant permission could be implemented, and therefore represents a legitimate fallback position against which to assess the current development. That development comprised a first-floor rear extension built approximately two thirds of the total width of the property and set back away from the shared boundary with No 219. This ensured that the development remained subservient to the host building, preserving the character and appearance, of the building and area, in addition to protecting the living conditions of the neighbouring occupier at 219.
10. In contrast, the existing 'as built' full width first floor rear extension with a flat roof, in combination with the existing full width ground floor rear extension and full width box rear dormer extends the building considerably with the mass and

² Council ref: 22/0298/HSE

bulk of the extension now projecting over a larger area of the ground floor rear extension. The excessive size and scale of the unauthorised development is accentuated by its visibility from neighbouring properties. Therefore, despite the current development being located to the rear of the property and away from any public vantage points, the effect of the scheme is overly dominant and diminishes unacceptably the character, appearance, and integrity of this building with consequent harm to the character and appearance of the area.

11. In support of their appeal the appellant refers to a number of approvals for extensions to properties nearby. I appreciate that No 247 Edgwarebury Lane has been recently extended with various extensions. However, these extensions are different in design and depth than the appeal scheme before me. For instance, No 217 contains a full width rear box dormer and a substantial single storey rear extension approximately 6m deep, neither of which exists at No 247. Furthermore, the extensions at No 247 appears to be the subject of a number of planning permissions, the full details of which are not before me. I also note the Inspector in the most recent appeal decision³ stated "*some houses have been significantly altered and extended in the last few years, especially at the northern end of the lane.*" However, No 217 is located further south along Edgwarebury Lane, and therefore the circumstances in that appeal are different to the appeal site before me.
12. With regard to the recent planning permission at No 215 Edgwarebury Lane, this neighbouring property benefits from a significantly wider plot size, and therefore that approved first floor rear extension is set back further away from both neighbouring properties. The first-floor rear extension also has a hipped roof sloping away from neighbouring properties which compliments the design of the host property. As such, that development has a satisfactory relationship with the host building and area generally. Therefore, the circumstances which led to those approvals are not directly comparable to the appeal scheme before me. In any event I have assessed the current appeal development on its own merits.
13. I therefore conclude that the 'as built' first floor rear extension harms the character and appearance of the host dwelling and area. Accordingly, the development conflicts 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), and the Design SPD. Amongst other things, these require that all development represent high quality design and seek to ensure that developments respect, preserve or enhance local context and character.

The living conditions of the occupiers of Nos 215 and 219 Edgwarebury Lane in terms of outlook and privacy

Outlook

14. The Design SPD advises that two storey rear extensions need to ensure they do not lead to: loss of light to, and outlook from windows and glazed doors positioned close to the extension; unacceptable sense of enclosure to house and garden; and an overbearing impact.

³ Appeal Refs: APP/N5090/C/21/3266577 & APP/N5090/W/20/3265943

15. With regard to the outlook from No 219 Edgwarebury Lane, during my site visit I observed that the garden patio level at No 219 was higher than that at No 217. Nevertheless, the excessive height and scale of the first-floor flat roof rear extension built close to the boundary with the neighbouring property at No 219, results in a visually intrusive and unneighbourly form of development for occupiers of this neighbouring property. Indeed, the outlook from the garden patio and ground floor living room of No 219 was restricted by this extension resulting in an increased sense of enclosure for the occupiers of this neighbouring property.
16. The part of the first-floor rear extension nearest to the boundary with No 215 has been previously approved under the extant permission, and therefore the 'as built' extension does not result in any further loss of outlook to occupiers of No 215 than the extant scheme.

Privacy

17. In relation to privacy, the Design SPD states that flat roofs should not normally be used as balconies as loss of privacy to immediate neighbours almost always results and also that care should be taken to ensure that extensions do not result in harmful loss of privacy by overlooking adjoining properties.
18. I appreciate that there are currently views of neighbouring rear gardens from the pre-existing upper floor windows of all properties along this side of Edgwarebury Lane. I also note that the extant planning permission for a rear extension also contained windows on a similar plane to the current development. Therefore, I am satisfied that the new windows at first floor level in the rear elevation do not result in any additional harmful loss of privacy due to overlooking.
19. However, the newly created flat roof of the first-floor rear extension has facilitated the creation of a roof terrace at second floor level which is accessed from the doors in the dormer window at second floor level. During the site visit I observed that this terrace provides new and additional views back towards neighbouring upper floor windows at both Nos 215 and 219. As such the development has increased the degree of overlooking of these neighbouring windows which is detrimental to the privacy of the occupiers of these neighbouring properties.
20. In recognition that the existing roof terrace could result in harm to the living conditions of neighbouring occupiers, the appellant is proposing to install a new railing to reduce the size of the terrace to prevent direct views towards neighbouring properties and that this could be secured by the imposition of a condition requiring further details of this inset terrace (including its position and size and screening) to be submitted to and approved in writing by the Council. Subject to a condition which limits the size and position of terrace, such there are no direct views towards neighbouring properties, I am satisfied the development would not result in any harmful overlooking or loss of privacy to neighbouring occupiers.
21. Consequently, subject to that condition, the development would not harm the living conditions of neighbouring occupiers of No 215 and 219 with regard to privacy. However, I have found that the 'as built' development has resulted in an unacceptably harmful effect on the living conditions of the occupiers of neighbouring property at No 219 Edgwarebury Lane with regard to outlook, in

conflict with Policy DM01 of the DPD, Policy CS5 of the 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 outlook for adjoining and potential occupiers and users and should protect and enhance the gardens of residential properties.

Other matters

22. A concern has been raised by a third party that the 'as built' development results in loss of daylight, sunlight and overshadowing to No 219. However, the appellant has submitted a daylight sunlight, and overshadowing assessment in accordance with the Building Research Establishment (BRE) guide 'Site Layout Planning for Daylight and Sunlight: a guide to good practice, 3rd Edition, under the recently refused planning application for the first-floor rear extension⁴. The Report concludes that all neighbouring windows at Nos 215 and 219 pass the relevant BRE diffuse daylight and direct sunlight tests, and the BRE overshadowing to gardens and open spaces test. The Council have also raised no objection on these grounds. Having considered all the evidence submitted, I find no reason to disagree with the findings of the report.

Alternative scheme

23. Section 177(1) of the Act allows me to grant planning permission in respect of the matters stated in the Notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the Notice relates. The appellant has submitted a further proposed drawing which he considers would overcome the harms in relation to character and appearance and living conditions of neighbours. This alternative drawing shows a proposed pitched lean-to roof to existing first floor extension incorporating an inset terrace. I consider that this alternative scheme, which involves revisions to the roof of the extension is part of the matters alleged and so I can therefore consider it.
24. However, I am not convinced that these changes would be sufficient to overcome the harms identified above, since it is the width, scale and size of the existing first-floor rear extension which is excessive and results in harm. The proposed changes with the proposed pitched lean to roof will further increase the overall height, size and scale of the extension. Therefore, in my judgement, the revised proposal would exacerbate the harm with regard to both the character and appearance of the host building and area, and to the living conditions of the neighbouring occupiers at No 219 in relation to loss of outlook. In this respect the revised proposal would also not accord with the aforementioned policies.

Conclusion on Ground (a) and the Deemed Planning Application

25. 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 character and appearance and the living conditions to neighbouring occupiers with regard to outlook. Lack of harm in respect of privacy and overlooking does not justify the harm I have identified above under the first main issue. Furthermore, the 'alternative scheme' also

⁴ Council Ref: 22/4546/RCU

fails to overcome these harms. Therefore, there are no material considerations that would lead me to a decision other than in accordance with the development plan in this case.

26. For the reasons given and with regard to all other matters raised, I conclude that the appeal on ground (a) should fail, and the deemed planning application should be refused.

The Appeals on Ground (g)

27. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellants ask that the time for compliance is extended from 4 to 12 months, since they have simultaneously appealed their householder application. However, as outlined earlier in this report that appeal was submitted late and has been turned away.

28. I have found under the ground a) appeal that the development fails to provide acceptable living conditions for occupiers of No 219 and results in harm to the character and appearance of the host building and area. As such, the 12 months requested by the appellants to comply with the notice is disproportionately excessive to complete the requirements of the notice.

29. 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, 6 months would strike a more reasonable and proportionate balance to carry out the remedial works. I shall therefore extend the period from 4 to 6 months.

30. To this extent, the ground (g) appeals succeed, and I will vary the notice accordingly.

Conclusions

31. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a 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