



Appeal Decision

Site visit made on 12 September 2022

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2023

Appeal Ref: APP/N5090/C/22/3291404

106 St Margarets Road, Edgware HA8 9UX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Abdul Wahid against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice, numbered ENF/1000/21, was issued on 15 December 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a rear raised patio with associated steps, and the erection of an outbuilding on top of the patio.
- The requirements of the notice are:
 - 1 Demolish the rear outbuilding that is erected on top of the rear patio
 - 2 Demolish the raised patio and associated steps from the rear of the property
 - 3 Permanently remove all constituent materials resulting from the works in 1. and 2. above from the property.
- The period for compliance with the requirements is:
3 months
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) 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.

Summary Decision: The appeal succeeds in part and the notice is corrected to delete the relevant allegation and requirement, but otherwise the appeal is dismissed and the enforcement notice is upheld as corrected, as set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice is corrected by:
 - a) The deletion of the following words from section 3 of the notice: '*..., and the erection of an outbuilding on top of the patio*'.;
 - b) The deletion of the following words from section 5 of the notice:
 1. *Demolish the rear outbuilding that is erected on top of the rear patio.*
 2. *Demolish the raised patio and associated steps from the rear of the property*
 3. *Permanently remove all constituent materials resulting from the works in 1 and 2. above from the property.*
 - c) The insertion of the following words at section 5 of the notice:
 1. *Demolish the raised patio and associated steps from the rear of the property*

2. Permanently remove all constituent materials resulting from the works in 1 above from the property.

2. Subject to these corrections, the appeal on ground (b) is allowed insofar as it relates to *'the erection of an outbuilding on top of the patio'* only, on land at 106 St Margarets Road, Edgware HA8 9UX.
3. The appeal is dismissed and the enforcement notice is upheld, as corrected, insofar as it relates to the *'the erection of a rear raised patio with associated steps'* on land at 106 St Margarets Road, Edgware HA8 9UX 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

4. The reasons for issuing the notice refer to Policies 7.4 and 7.6 of the London Plan (2016). However, a new London Plan was adopted in 2021 and the policies of the 2016 iteration are no longer extant. However, from other appeals I am determining elsewhere within London I am familiar with the content, provisions and policy numbering protocol of the London Plan 2021. As neither party have subsequently made their cases with regard to the provisions of the London Plan or its policies, be they of the 2016 or 2021 version, I have determined the appeal on the basis of the policies from Barnet's Local Plan Core Strategy (2012) and Development Management Policies DPD (2012) as cited on the notice and as provided to me.

The appeal on ground (b)

5. It is evident from the appellant's submissions that the appeal on ground (b) was made on the basis that what is referred to in the notice as the 'rear outbuilding' had not been erected within the last four years. Rather, that outbuilding was in fact an original detached garage, paired with a similar one at the neighbouring property, and which had subsequently and relatively recently, been converted into habitable space under a separate scheme¹. The appellant does not however dispute that the raised patio, an extension to a smaller raised patio, is unauthorised and has not been built in accordance with the plans included within an application for a single storey rear extension to the property².
6. The parties rely upon various photographs, maps and aerial images of the rear of the property to support their respective positions regarding the outbuilding. These provide a broad consensus that there has been an outbuilding in this broad location for a considerable period of time. They also show that the outbuilding is part of a pair with one at the neighbouring property at 104 St Margarets Road. None, however, seem to me to be of a sufficient scale or sufficient resolution to be able to clearly note the relationship between the respective rear elevations of the outbuilding at the appeal site, and that of the paired building at No. 104.
7. The Council rely upon one of the appellant's photographs³ to demonstrate that the outbuilding now in place is not the one that is shown on the various earlier photographs and maps. However, whilst I agree that the photograph in

¹ LPA Ref No: 20/4873/HSE

² LPA Ref No: 21/1312/PNH

³ Included as Figure 3 in the Council's Statement of Case / Image 7 in the appellant's Grounds of Appeal

question does appear to suggest the outbuilding at the appeal property extends further into the rear garden than the other half of the pair at No. 104, I am not persuaded that the matter is as clear cut as the Council suggest.

8. There is nevertheless, upon closer viewing, a distinct but very small difference in the alignment of the external faces of the rear elevations of the outbuilding at Nos. 104 and 106. From my observation during my visit to the site, this slight difference in the rear face of these structures is evident both above the patio surface, and below when viewed from the 'under-croft' area of the raised patio.
9. However, the difference between the external faces is very small and the comparison between what can be seen above the patio level and below it is, in my opinion, instructive. Here, the lower portion of the pre-existing garage is clearly visible and the general appearance of this area was, to my mind, consistent with an older structure to which the raised patio structure had been attached. It is also consistent in its appearance with the lower portion of this wall visible on the other side of the fence which separates the appeal property from No. 104.
10. That these lower areas, effectively hidden by the raised patio, differ in appearance from the upper level of the outbuilding seen above the patio deck is not surprising. The rear extension to the house and the outbuilding, have a crisp cream coloured render finish. This colouration, together with the higher roof line of the outbuilding give the impression in the photograph at Image 7 of the appellant's Grounds of Appeal that the outbuilding is a new structure upon the patio. The angle from which the photograph has been taken exacerbates this somewhat misleading, in my opinion, impression.
11. However, from evidence submitted and from my close observation of the outbuilding, its super-structure above the patio deck and the lower portions of its walls below, and comparison with the adjoining outbuilding, I am satisfied on the balance of probability that the outbuilding in question has not been constructed within the last four years. Rather, it is the longer-standing structure evidenced on aerial photographs which was subject to a proposal to convert and it is that which, rather than being constructed on the patio, has had the raised patio constructed around it.
12. As there is no dispute that the extended raised patio including the associated steps is unauthorised, the appeal on ground (b) fails in respect of these elements of the alleged works set out in the notice. However, I am satisfied on the balance of probabilities that the outbuilding is not newly constructed within the last four years as alleged, and that this breach of planning control has not, in fact, occurred. The appeal on ground (b) therefore succeeds in part insofar as it relates to the outbuilding. I am satisfied that the notice can be corrected by omitting reference to the outbuilding from within the allegation and by making the necessary consequential corrections to the notice's requirements.

The appeal on ground (a)

Main Issues

13. The main issues are the effects of the raised patio and steps upon:

- The character and appearance of the appeal property and the surrounding area; and
- The living conditions of occupiers of neighbouring properties, with particular regard to outlook and privacy.

Reasons

Character and appearance

14. The various photographs and aerial images submitted by both main parties demonstrate that the rears of properties along the southern side of St Margarets Road are much altered. In this respect, the appeal property is no different. There is a wide variety of extensions, mostly single storey, as well as dormer windows on many of the properties along the street.
15. Raised patio areas are also common given the prevailing fall in ground levels from front to rear. The deeper the patio areas and the further they extend rearwards into the garden, the higher they are above the surrounding garden ground levels. It is not disputed that the appeal property had a raised patio area with steps down into the garden prior to the construction of the extended patio area and I suspect that it would have been very little different from that which I was able to see over the fence at the neighbouring property at No. 108.
16. However, where other examples appear to be relatively modest in scale, the raised patio at the appeal property is rather more substantial. As built, it extends a considerable distance beyond what was previously in place and introduces a much larger raised platform further into the rear garden area and, in turn, a greater height above garden level.
17. The garden plots are otherwise reasonably generous in their depth and, despite the construction of the raised patio, the appeal property retains an appropriate balance between hard-surfaced areas and softer, landscaped and lawned areas. Nevertheless, the raised patio deck is an incongruously bulky and large rearward extension at the appeal property. Wrapping around the rear of the outbuilding as it does, it also deviates from the more modest prevailing pattern of relationships between patio areas and outbuildings.
18. Furthermore, given the continuing fall in ground levels beyond the rear of the properties, the result is a bulky retaining wall to the patio and to the steps leading down from the patio to the garden. By contrast, the submitted plans indicate that the height difference between garden level and that of the previous raised patio was softened by the steps down from it leading to the garden. The layout of the patio and orientation of the steps in the current instance preclude such a softening appearance.
19. Despite the appellant's contention, the raised patio the subject of this notice has not replaced a pre-existing patio. Rather, it has substantially extended it in terms of its projection into the garden and its height relative to garden boundary fences and neighbouring garden levels. Whilst the raised patio is not widely visible beyond the appeal site and its immediate neighbours, and cannot

be seen from the roadside, this does not negate its harmful effect on the character or appearance of the appeal property and the context in which it is seen. For the reasons set out above, the raised patio, by reason of its scale, projection and heights would fail to secure high quality design, respect local context and protect the character of residential gardens which, collectively, Core Strategy⁴ (2012) (CS) Policies CS1 and CS6, Development Management Policies⁵ (DMP) DM01 and DM06 and the Supplementary Planning Document: Residential Design Guidance (RDG) (2016) seek to secure.

Living conditions

20. It is inevitable within residential areas comprised of semi-detached dwellings that there will be a degree of intervisibility between properties, more so where ground levels change within and between the neighbouring properties. Using the example of the patio area at the rear of the neighbouring property, it is clear that it affords an elevated view across the top of the dividing fence between the appeal property and No. 108 and along the length of the bottom portion of the appeal site's garden.
21. However, because of the much greater depth of the raised patio at the appeal property, combined with the difference and fall in levels between patio and garden, the patio deck is almost level with the tops of the dividing fences on either side of No. 106. Even if I were to accept the appellant's suggestion of installing obscurely glazed privacy screens along the two sides of the raised patio, these would not overcome the implications of the greater projection into the rear garden or the increased relative height of the patio deck on intervisibility between Nos 104, 106 and 108 than those patios around it.
22. Moreover, whilst the screens may also prevent more direct overlooking of the patio and area immediately at the rear of, particularly, No. 108 the screen itself would add additional bulk, height and projection to the already substantial presence of the rear extension at the appeal property. This, combined with the existing outbuilding on the other side of No. 108's rear garden would result in an overpowering form of development, hemming in and constraining the outlook from the rear of that property.
23. Nor would any screen satisfactorily resolve overlooking between the appeal property and No. 104 which, due to the position of the stairs, would be likely to be the side of the patio from which more frequent views would be taken. Whilst the direct physical effects of any screen might be less keenly felt at the rear of No. 104 because of the presence of the adjoining half of the outbuilding, I am not persuaded that a screen would adequately resolve the potential for increased and harmful overlooking of that property's garden, even if other factors restrict the ability to look directly back towards the area immediately at the rear of the house itself.
24. CS Policies CS1 and CS5, DMP Policy DM01 and the RDG together seek to secure high quality development, one factor (amongst many) of which is that proposals should allow for adequate privacy and outlook for adjoining occupiers. For the reasons set out, the raised patio and steps fail to ensure this and as such are contrary to the collective provisions and aim of these policies. The incorporation of privacy screens, secured by conditions as suggested by

⁴ Barnet's Local Plan (Core Strategy) 2012

⁵ Barnet's Local Plan (Development Management Policies) Development Plan Document (2012)

the appellant, would not adequately or appropriately mitigate the harm to living conditions that I have identified.

Conclusion

25. For the reasons given above, I conclude that the appeal should succeed in part only and the notice is corrected to delete the relevant allegation and requirement in relation to the erection of an outbuilding on top of the patio, but otherwise I shall uphold the enforcement notice with corrections and refuse to grant planning permission for the erection of a rear raised patio with associated steps on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

G Robbie

INSPECTOR