



Appeal Decision

Hearing held on 7 November 2023

Site visit made on 7 November 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2023

Appeal Ref: APP/N5090/C/23/3320021

43 Uphill Grove, London NW7 4NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Sunil Patel against an enforcement notice issued by the London Borough of Barnet.
- The notice was issued on 27 February 2023.
- The breach of planning control as alleged in the notice is, without planning permission, (1) the erection of a new first floor rear extension built upon a pre-existing single storey rear extension. (2) construction of a single storey rear extension to the pre-existing single storey rear extension. (3) a roof extension including raising the ridge height and widening of the rear roofslope of the original roof, with 1no rooflight to the front elevation and a rear dormer. (4) the construction of a raised terrace with associated steps and; (5) the raising of the level of the rear garden.
- The requirements of the notice are to:
 - 1) Demolish the first floor rear extension built upon an existing single storey rear extension and demolish the new single storey rear extension to that same pre-existing extension.
 - 2) Restore the roof to the state in which it was prior to the breach of planning control by:
 - (a) returning the ridge height to the original roof ridge height (as depicted in Photograph 1 in attached images with this notice); and
 - (b) demolishing the rear dormer roof extension and restoring the roof back to its original specification with roof pitch and tiles to match (as depicted in Photograph 2 in attached images with this notice)
 - 3) Demolish the raised terrace and associated steps. Also, return the garden to its original levels (as depicted in Photograph 3 and its associated instructions; in attached images with this notice)
 - 4) Permanently remove from the property 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 sections 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.

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely, (1) The erection of a new first floor rear extension built upon a pre-existing single storey rear extension; (2) Construction of a single storey rear extension to the pre-existing single storey rear extension; (3) A roof extension including raising the ridge height and widening of the rear roof

slope of the original roof, with 1no rooflight to the front elevation and a rear dormer; (4) The construction of a raised terrace with associated steps, and; (5) The raising of the level of the rear garden; at Land at 43 Uphill Grove, as shown on the plan attached to the notice, and subject to the following conditions:

- 1) Within 3 months from the date of this permission, obscure glass screening shall be installed, to a height of 1.8m measured from the surface of the terrace, located along all edges of the terrace which face towards 41 Uphill Grove, including the edges either side of the terrace steps. The screening shall be retained in perpetuity.
- 2) The windows in the side elevation of the development which face towards 41 Uphill Grove shall be obscure glazed and shall be fixed, except for a top hung fanlight opening, and shall be permanently retained as such.
- 3) Notwithstanding the provisions of the Town and Country Planning, (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no windows, doors or similar openings shall be constructed in the side elevations of the development hereby permitted, other than those expressly authorised by this permission.

Application for Costs

2. An application for an award of costs has been made by Mr Sunil Patel against the London Borough of Barnet. The application is the subject of a separate decision.

Preliminary Matters

3. Plans submitted by the appellant prior to the hearing were titled 'As Built'. Appellant Appendix 5 (ref 20187/1427/2, dated 6 July 2021) was titled 'As Built Drawings' and showed elevations and floor plans. Appellant Appendix 6 (ref 2020/1427/2, dated 27 August 2021) was titled 'As Built Street Scene Drawing' and showed the front of the appeal site and the dwelling to either side. Following discussion at the Hearing, both parties agreed that the drawings in Appendix 5 did not accurately represent the as built situation at the site, either at the time the notice was served, or on the date of the Hearing. The appellant maintained that the street scene in Appendix 6 was accurate to the as built situation, but the Council stated their belief that the roof ridge as actually built was higher than that shown on the street scene drawing.
4. Regardless of the above, my decision is based on an assessment of the as built situation which I observed during my site visit. The parties agree that the fundamental elements of the development have not changed between the time the notice was issued and the time of my site visit.

The appeal on ground (b)

5. An appeal on ground (b) is that the matters stated in the notice have not occurred. Both parties agree that the appeal on ground (b) relates only to the raising of the levels within the garden. The appellant claims that the garden level has not been raised but has actually been lowered to a modest amount in the area adjacent to the terrace. The Council maintains that the garden level has been raised but have not stated by how much or in which areas of the garden.

6. During the site visit it was evident that work has been carried out in the garden, with the area having been flattened out and surfaced in artificial grass. The topography of the area is such that garden levels change between dwellings, with the garden at 45 Uphill Grove being higher than the appeal site and 41 Uphill Grove being lower. In this context and having considered the information provided by the appellant and the Council (both in their written submissions and verbally at the Hearing), alongside my on site assessment, I cannot be certain whether the garden levels have been changed to any significant extent, or not.
7. Therefore, I have not been presented with sufficient evidence to allow me to conclude that the garden levels have not been raised. Therefore, the appeal on ground (b) fails. However, regardless of this, the effect of the current garden level will be considered under the appeal on ground (a).

The appeal on ground (a) and the deemed planning application

8. The appeal on ground (a) is that in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. The terms of the deemed planning application are derived from the allegation set out in the notice. Hence, planning permission is sought for 5 elements, namely, (1) The erection of a new first floor rear extension built upon a pre-existing single storey rear extension; (2) Construction of a single storey rear extension to the pre-existing single storey rear extension; (3) A roof extension including raising the ridge height and widening of the rear roof slope of the original roof, with 1no rooflight to the front elevation and a rear dormer; (4) The construction of a raised terrace with associated steps, and; (5) The raising of the level of the rear garden.
9. The impact of the extensions (elements 1 to 3) is different to the impact of the terrace and garden (elements 4 and 5). In addition, they are separate and potentially severable elements of the development. For clarity, I will consider these elements in separate sub-sections.

Main Issues

10. The main issues are the effect of the development subject to the notice on:
 - The character and appearance of the host dwelling and the surrounding area; and
 - The living conditions of the occupants of neighbouring dwellings with regard to privacy and outlook.

Reasons – Character and Appearance

11. The appeal site contains a detached dwelling in a good sized plot, on a residential street. Uphill Grove consists of mostly detached dwellings of a similar scale to the appeal site, many of which have been altered and extended, including a variety of alterations and extensions to roof forms. The street sits on a slope, meaning there is a step down between dwellings, with higher numbered dwellings being on higher ground than lower numbered dwellings.

12. Many of the neighbouring dwellings have been significantly extended, and/or entirely rebuilt and feature a range of substantial one and two story rear projections. There are also a range of rear roof extensions, including other box dormers of a similar size and design to that at the appeal site.

Extensions

13. I have been presented with no substantive evidence that would allow me to conclude with any certainty on the precise amount that the roof ridge has been raised. Regardless of the precise amount, when viewed from the street to the front, the roof ridge at the appeal site now appears to be higher than the roof ridge at No 45, which is on higher ground. This is different to the prevailing form elsewhere along Uphill Grove where roof ridges generally step down from higher numbered dwellings to lower.
14. Despite this, the difference is modest and from some vantage points is not discernible. The roof is large, but on a large dwelling it does not appear excessive or top heavy. In the context of a street which lacks consistency in roof form, and where the slope of the street means there is no strong or consistent roof ridge line, the change to the roof ridge height at the appeal site, and the inclusion of a modest rooflight, does not have a detrimental impact on the streetscene.
15. The raising of the roof ridge facilitated, in part at least, the widening of the rear roof slope and construction of a rear dormer, along with the construction of the first floor rear extension. However, other than the raised roof ridge which has been considered above, these elements, along with the single storey extension, are to the rear of the dwelling and hence do not impact the streetscene.
16. The extensions to the rear are visible from the gardens of neighbours along Uphill Grove. The extensions may also be visible from dwellings along Uphill Road, which adjoin the site to the rear, but these dwellings have generous length gardens, with mature vegetation at the boundary, so any visibility would be limited.
17. Taken together, the extensions are of a considerable scale. Notwithstanding this, I do not consider them to be overly dominant or disproportionate to the scale of the original dwelling, the size of the plot, or the scale of surrounding dwellings. As such, the extensions do not have a detrimental impact on the character and appearance of the host dwelling, when viewed from within the site or from neighbouring properties.

Terrace and Garden

18. There are other terraces, with associated steps, in the area and the scale and design of the appeal terrace is in keeping with the dwelling it serves. Garden levels change between dwellings across Upland Grove. In this context, and having considered garden levels during my site visit, any changes which may have taken place at the appeal site appear to be modest. Therefore, the terrace and garden levels do not have a detrimental impact on character and appearance.

Conclusion on Character and Appearance

19. I conclude that the development does not cause unacceptable harm to the character and appearance of the host dwelling or the surrounding area. Consequently, the development complies with Policies CS1 and CS5 of the Barnet Local Plan Core Strategy Development Plan Document (adopted 2012) (CS); Policy DM01 of the Barnet Local Plan Development Management Policies Development Plan Document (adopted 2012) (DMP); and Policies D4 and D5 of the London Plan (2021) (LP). Together these policies seek to ensure high quality design which respects the context and complements locally distinctive characteristics, including the appearance, scale and height of surrounding buildings.
20. The Barnet Residential Design Guide Supplementary Planning Document (2016) (SPD) provides additional guidance but does not have the status of Policy. While aspects of the development may not fully comply with all elements of the guidance, overall, I find no significant conflict with the aims of the SPD and the impact of the extensions on character and appearance is acceptable.

Reasons – Living Conditions of Neighbouring Occupants

Extensions

21. The first floor rear extension does project beyond the two storey element of the dwelling at No 45. However, this is by a relatively modest amount and the first floor rear extension is set off from the main side elevation and the boundary with No 45. While the first floor rear extension is not set off from the side elevation facing No 41, it does not project beyond the two storey element of No 41. The single storey rear extension does not project beyond the parapet wall and single storey element at No 41 and does not project significantly beyond the single storey extension at No 45. The rear dormer is roughly in line with the rear dormer at No 41 and others in the area. Therefore, despite the scale of the extensions at the appeal site, because of the scale and location of built form at neighbouring dwellings, and the fact that the dwellings are detached, the extensions do not have an overbearing effect on neighbours and would not unacceptably dominate the outlook from rear facing windows or gardens.
22. Overlooking of neighbouring gardens to either side would have been possible from the first floor rear windows of the original dwelling at the appeal site. The extensions have changed the location of the rear facing windows, and added a dormer, but the level and quality of overlooking is not significantly different. The privacy of dwellings along Uphill Road, to the rear of the site, is protected by the generous separation distance, as well as the mature vegetation at the boundary.
23. There are 2 small windows in the side elevation facing No 41. At the hearing, the appellant confirmed that these serve bathrooms and are already obscure glazed and fixed, except for a top hung fanlight opening. This ensures that the privacy of No 41 is maintained. There are no windows in the side elevation facing No 45. To maintain neighbour privacy, it is necessary to ensure that this remains the case, and that the existing windows remain obscure and fixed and that no new windows or doors, which may enable additional overlooking, are installed. This can be secured by the imposition of suitable planning conditions.

Terrace and Garden

24. The terrace and garden are of a relatively standard design and layout and do not have an adverse impact on neighbouring outlook.
25. The neighbouring dwelling at No 45 is at a higher level than the appeal site and they have a solid wooden fence of sufficient height to ensure that overlooking from the raised terrace is not possible. However, due to the height, depth and width of the raised terrace, it enables overlooking of No 41, which is at a lower level than the appeal site. At the time of my site visit it was possible to look directly into the area of garden nearest to the house, where greatest privacy is generally to be expected. It was also possible to look into the rear living spaces of No 41, albeit at an acute angle. Planting in pots at the boundary provides some screening, but this cannot be relied upon as a long term solution to protecting neighbouring privacy.
26. Fencing could be erected at the boundary. However, to prevent overlooking from the raised terrace, any such fencing would need to be solid and of a significant height. This would result in an unacceptable impact on the amenity of No 41 in terms of outlook and shadowing.
27. An alternative solution would be to erect obscure glass screening on the terrace itself. Screening to a height of 1.8m measured from the surface of the terrace would be sufficient to prevent overlooking. Screening would need to be located along the edges of the terrace which face towards No 41, including the edges either side of the steps, to prevent overlooking from all areas of the terrace and steps. This screening would be set back from the boundary and would not block light or have an unacceptable visual impact on No 41. This can be secured by the imposition of a suitable condition and would reduce any overlooking to an acceptable level.
28. As previously discussed, the garden levels at the appeal site may have been changed, but only by a modest amount. The garden at No 45 is higher and screened by a good height fence. The garden at No 41 is lower, and it is possible to look into it from the garden at the appeal site, especially towards the rear. However, from my on site assessment, consideration of the presented evidence and discussion during the Hearing, it seems that this was the case prior to the development. Therefore, any changes which may have been made to garden levels at the appeal site have not significantly reduced the privacy of the garden at No 41. It is therefore not reasonable or necessary to impose a condition requiring the construction of a fence or a reduction in garden levels.
29. The neighbour at No 41 currently has a modest height fence. If they wanted to secure additional privacy along the length of their garden, they could install a higher fence. A permitted 2m high fence at No 41, even with the lower level of the garden, would prevent overlooking from the appeal site.

Conclusion on Living Conditions of Neighbouring Occupants

30. I conclude that, subject to conditions, the development does not cause unacceptable harm to the living conditions of the occupants of neighbouring dwellings with regard to privacy and outlook. Consequently, the development complies with Policy DM01 of the DMP and Policy D3 of the LP as well as guidance set out in the SPD. Together these policies seek to ensure that development ensures adequate privacy and outlook for adjoining occupiers.

Other Matters relating to Ground (a)

31. In a written submission and verbally at the Hearing, a third party noted that they have experienced additional surface water in the garden of a neighbouring property. The property is not adjacent to the appeal site and the appellants noted at the Hearing that an intervening property has recently had work done. This matter is not for me to consider under the provisions of this section 174 planning appeal.
32. I have considered the information presented regarding an appeal¹ at another site. While there are some similarities, there are significant differences between it and the development subject to this appeal. Consequently, it weighs neither in favour of, nor against, the development subject to this appeal.

Conditions

33. As part of their statement of common ground, the Council and the appellant suggested conditions, in the event the appeal on ground (a) is allowed. In addition, in their appeal statement, the appellant suggested a condition to secure screening between the raised terrace and No 41. These conditions were discussed at the Hearing, with the appellant indicating willingness to accept them and the Council raising no objections. I have considered and amended the suggested conditions as necessary in the interests of precision and clarity, in order to comply with advice in the Planning Practice Guidance.
34. As set out above, the impact of the raised terrace on the privacy of the occupants of No 41 can be mitigated to an acceptable level by the installation of obscure glass screening on the terrace. The appellant suggested allowing 4 months for this. However, given that I find the current overlooking unacceptable, a prompt resolution is necessary. I have therefore required installation within 3 months, which should be sufficient time to source and install the screen. Such a condition is both reasonable and necessary and is the most straightforward way of achieving the required outcome. The Council would be able to enforce against a breach of the condition should it not be complied with in the specified time.
35. As also set out above, to protect the privacy of neighbours, it is both reasonable and necessary to impose conditions to ensure the retention of obscure and fixed glazing and prevent the insertion of new windows and doors in the extensions.
36. A condition was suggested to restrict the use of the roof of the single storey extension to maintenance only. As the roof in this instance is pitched, its use as amenity space or for sitting out would not be practical. Therefore, I do not consider the suggested condition to be necessary, so have not imposed it. This was discussed and agreed at the Hearing.

Conclusion on ground (a) and the deemed planning application

37. The appeal on ground (a) succeeds and planning permission is granted, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, subject to conditions to ensure neighbouring privacy is maintained, as set out in the decision.

¹ APP/N5090/C/21/3285411 & 3285412 22 at Copthall Drive, Mill Hill, London NW7 2NB

The appeal on grounds (f) and (g)

38. The appeal on ground (f) is that the steps required by the notice exceed what is necessary. The appeal on ground (g) is that any time period specified in the notice falls short of what should reasonably be allowed.
39. As the appeal on ground (a) succeeds and I shall grant planning permission for the development described in the notice, grounds (f) and (g) therefore do not fall to be considered.

H Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Joe Henry – Agent for the Appellant

Mr Sunil Patel – Appellant

Mrs Deepa Patel – Wife of Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jim Tottle-Nugent – Planning enforcement officer

INTERESTED PARTIES:

Mr Terence McCarthy – Owner of neighbouring property

DOCUMENTS

No additional documents were submitted during the Hearing.