



Appeal Decisions

Inquiry held on 12 December 2023

Site Visit made on 12 December 2023

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Levelling Up, Housing and Communities

Decision date: 31st January 2024

Appeal A Ref: APP/N5090/C/22/3294117

Appeal B Ref: APP/N5090/C/22/3294118

143 Colindale Avenue, London NW9 5HB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeals are made by Deniz Erpolat (Appeal A) and Inayatullah Rahman (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/1158/21, was issued on 27 January 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the making of a material change of use land to the rear of the garden to storage use incidental to a restaurant/shisha and the construction of a building incidental to the making of that change.
- The requirements of the notice are:
 1. Demolish the building.
 2. Permanently remove all constituent material resulting from the necessary works carried out in point 2.
 3. Cease the use of the land for storage, or as part of a restaurant or shisha bar.
- The period for compliance with the requirements is 2 months.
- Appeal A 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.
- Appeal B is proceeding on the grounds set out in section 172(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decisions.

Appeal C Ref: APP/N5090/C/22/3294125

Appeal D Ref: APP/N5090/C/22/3294126

145 Colindale Avenue, London NW9 5HB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Deniz Erpolat (Appeal A) and Peter Styne (Appeal B) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/1159/21, was issued on 26 January 2022.
 - The breach of planning control as alleged in the notice is, without planning permission, the making of a material change of use land to the rear of the garden to storage use incidental to a restaurant/shisha and the construction of a building incidental to the making of that change.
 - The requirements of the notice are:
 1. Demolish the building.
-

2. Permanently remove all constituent material resulting from the necessary works carried out in point 2.
 3. Cease the use of the land for storage, or as part of a restaurant or shisha bar.
- The period for compliance with the requirements is 2 months.
 - Appeal A 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.
 - Appeal B is proceeding on the grounds set out in section 172(2)(g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and a variation in the terms set out below in the Formal Decisions.

Procedural Matters

1. Two appeals relating to land at 1 Charcot Road adjacent to the appeal sites were due to be heard at the Inquiry¹. However, both appeals were withdrawn, one before the Inquiry and one during. I will take no further action in respect of those appeals.
2. The four appeals before me are in respect of two different enforcement notices. The notices relate to two separate, but adjoining, areas of land. The notices each allege the same breach of planning control, that being the making of a material change of use and erection of a building to support the restaurant use in the adjacent building. The appeals all raise the same issues and were dealt with in the round by the parties at the Inquiry. I have therefore dealt with all four appeals in a single decision letter to avoid superfluous repetition. I have nevertheless considered each notice separately and concluded on each of the corresponding appeals accordingly.
3. Following the Inquiry, the National Planning Policy Framework (the Framework) was updated in December 2023. No changes made to the Framework were material to the matters at hand and it is therefore not been necessary to seek the views of the parties.

The Enforcement Notices

4. The appellants submit that both enforcement notices do not contain a plan or photographs. In both notices, paragraph 2 identifies the Land to which the notice relates. Neither notice refers to a plan. Nor are any photographs referred to in the notices.
5. S173(10) of the Act states that a notice shall specify such additional matters as may be prescribed. ENAR4(c)² states that a notice issued under S172 of the Act shall specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.
6. It is clear from both notices the address of the properties to which they relate. Moreover, the alleged breach makes clear which part of those properties the development is said to have taken place on. The notices therefore specify the precise boundaries of the land to which they relate. As a result, the absence of

¹ Appeal References: APP/N5090/C/22/3293910 and APP/N5090/W/22/3293863

² The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

a plan or photographs from the notices do not render either a nullity since they are not missing some vital component. Moreover, the omission of a plan or photographs is not an error or misdescription which requires correction. I find therefore that the notices are not invalid.

7. In both notices, the alleged breach of planning control includes the phrases, "the making of a material change of use land" and "to a restaurant/shisha". Such phrasing is grammatically incorrect, and the notices should be corrected accordingly. No injustice to the appellants or the LPA would arise.
8. The third requirement of both notices states, "cease the use of the land for storage, or as part of a restaurant or shisha bar". However, the notices are directed against a material change of use to a storage use which is incidental to restaurant/shisha use. They are not directed against a material change to restaurant/shisha use. The notices should therefore be varied to say, "cease the use of the land for storage incidental to restaurant/shisha use", in order to correctly reflect the alleged breaches. I am satisfied the notices can be corrected without injustice to the appellants or the LPA.
9. Likewise, the second requirement in both notices refers to "point 2". This is a misdescription. The notices ought to refer to the works carried out in the demolition of the building, which is point 1 of paragraph 5. I will correct both notices accordingly and can do so without causing injustice to the appellant or the LPA.

Appeals A and C on ground (a)

Main Issues

10. When an appeal on ground (a) is made, an application for planning permission is deemed to have been made for the development which comprises the breach of planning control stated in the notice. In both notices, the alleged breach comprises the material change of use of the Land to a storage use incidental to the adjacent restaurant use and the erection of outbuildings which are incidental to that use. In both cases, the outbuildings cover the whole of the Land against which the notices are directed. It is effectively the construction of the outbuildings which has led to the material change of use.
11. The main issues in respect of both appeals are therefore:
 - the effect of the developments on the character and appearance of the area;
 - whether the developments provide acceptable living conditions for current and future occupiers of 143 Colindale Avenue and 145 Colindale Avenue with particular regard to outdoor space; and,
 - the effect of the developments on the living conditions of neighbouring residents with particular regard to noise and disturbance.

Character and Appearance

12. 143 and 145 Colindale Avenue are a pair of two-storey, semi-detached properties located close to the junction of Colindale Avenue and Charcot Road. The notices are directed against two buildings, one in each garden of the appeal properties. The buildings are internally connected to one another and

are used for storage in connection with the adjacent restaurant on Charcot Road.

13. Policy DM01 of Barnet's Local Plan Development Management Policies 2012 (the DMP) states that development proposals should be based on an understanding of local characteristics, preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets. It goes on to state that development proposals should retain outdoor amenity space having regard to its character.
14. Paragraph 14.40 of the Barnet Local Plan Residential Design Guidance SPD (2016) (Residential SPD) states back garden buildings should not be too large or significantly reduce the size of a garden to become out of character with the area.
15. The LPA's position is that the area is predominately residential in character. The appeal sites do form part of a long row of semi-detached and terraced two-storey properties which are predominately put to residential use. Likewise, there are many multi-storey blocks of flats in the immediate vicinity. However, the majority of the ground floors in the blocks are occupied by commercial uses such as cafes, bars, restaurants and shops. Moreover, the appeal sites are close to Colindale underground station which sits upon a public plaza characterised by commercial uses and heavy pedestrian footfall. As a result, I find the character of the area is better described as mixed residential and commercial.
16. Nonetheless, whilst some gardens have been changed over time, there is a prevailing, linear pattern of tightly spaced properties with rear gardens of consistent length and width. Such a pattern is an important component of the residential element of the area's character. Both appeal properties contain rear gardens which have a depth consistent with the linear pattern of gardens on this part of Colindale Avenue.
17. Similarly, whilst my attention has been drawn to examples of larger outbuildings on this part of Colindale Avenue, in particular those to the rear of no 109 and no 111, the predominant character is of outbuildings which are subservient to the main house and do not dominate the host property. The LPA points to a significant number of such outbuildings.
18. Thus, whilst I note the presence of those larger outbuildings referred to by the appellant, their scale is such that they appear in contrast to the prevailing pattern of smaller, subservient garden buildings, rather than characteristic of it.
19. In this instance, both buildings here extend across the full width of the garden. Whilst the building at no 145 is smaller than that at no 143, both cover a considerable amount of the rear gardens of the host properties. Both gardens have been considerably reduced in size and as such sit at odds to the character and pattern of outdoor amenity space on this part of Colindale Avenue. Moreover, both buildings are of such scale that they appear as dominant and obtrusive additions to the host properties.
20. Given the location of the outbuildings to the rear of the properties, the visibility within the public realm is not substantial. However, I was able to see from my

site visit that the outbuildings are both partially visible in views from Colindale Road. Whilst the LPA has raised no issue with the appearance of the outbuildings in terms of the materials used, it is the scale and relationship with the host properties that results in them appearing as incongruous features.

21. I conclude, therefore, that both developments have a harmful effect on the character and appearance of the area. Consequently, both developments conflict with Policy DM01 of the DMP, as well as the guidance set out in the SPD. Moreover, there is conflict with Policy CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document 2012 (the CS) which states that development should create places and buildings of high quality design and protect and enhance the gardens of residential properties. There is also conflict with DMP Policy DM02 which states that development should comply with the guidance set out in the SPD.

Living Conditions of Occupiers

22. As set out above, the erection of the outbuildings and the material change of use of the Land to facilitate their use in association with the adjacent restaurant use, have had the effect of reducing the size of the rear gardens of both No 143 and No 145.
23. The Council's Local Plan Supplementary Planning Document: Sustainable Design and Construction 2016 (Design SPD) sets out minimum outdoor amenity space requirements in Table 2.3. Neither party was able to provide precise figures for the previous and current outdoor space for both properties. Nor was either party able to indicate the number of habitable rooms within the properties to determine which of the criteria in Table 2.3 of the Design SPD would apply. Nonetheless, the appellant accepted at the Inquiry that the resultant garden space for both properties was likely below the minimum standards set out in Table 2.3.
24. Setting aside the minimum standards, the Residential SPD makes clear that rear private gardens should provide adequate space for day to day uses such as a table and chairs for outdoor dining, clothes drying, relaxation and safe children's play where family accommodation is proposed.
25. In this instance, both developments have considerably reduced the amount of available outdoor space for residents. I was able to see from my site visit, and the evidence of the parties, that the remaining outdoor space is cramped and limited in scale. In comparison to the previous amount of outdoor space, what remains is insufficient to appropriately provide the adequate space for the day to day uses envisaged by the SPD.
26. I note that there have been no complaints regarding garden space by current occupiers. I also note that the extent of garden space is a matter of choice for residents and that in this situation, residents have chosen to erect lean-to structures within the rear gardens. However, this does not set aside the fact that the developments have considerably reduced the amount of outdoor space available to residents. Moreover, there is no indication whether the lean-to structures were erected before or after the developments subject of the notice. If before, then the residents would have been left in a situation where they would have had to remove the lean-to structures and lose the benefit of the covered space they offer in order to achieve more outdoor space.

27. I note the availability of public outdoor space at the nearby Colindale Park. However, this would not overcome the substantial loss of private outdoor space that has resulted from the developments.
28. I conclude, therefore, that the developments are harmful to the living conditions of current and future occupiers of the appeal properties with particular regard to outdoor space. Consequently, the developments conflict with Policies DM01 and DM02 of the DMP, as well as the guidance set out in the Design SPD and the Residential SPD.

Living Conditions of Neighbours

29. The closest residential properties to the developments is those of 143 and 145 Colindale Avenue. The rear garden of both properties abuts the buildings, whilst both properties contain windows at ground and first floor level which directly face the developments.
30. The LPA's concerns principally stem from the effect of the noise generated by the use of the buildings late at night and into the early hours of the morning. The appellant accepted at the Inquiry that staff will need to enter and exit the building throughout the opening hours of the restaurant and shisha operations which are up until 02:00 on weekends.
31. However, staff would only move between a rear door from the restaurant across a very narrow alleyway into the buildings. There is little scope for large numbers of staff to congregate externally for prolonged periods. Thus, any noise generated is principally derived from within the buildings themselves. I heard at the Inquiry that the buildings are primarily used for storage, including cold storage. The retrieval of items from the buildings is unlikely to be an intrinsically noisy activity. There are refrigerators and cold stores within the outbuildings. Whilst I appreciate my observations were during the day when background noise levels are higher, I was unable to ascertain any discernible degree of noise from outside the buildings due to the internal refrigeration. Indeed, to my mind, the principal source of noise was from the fans located on the restaurant building which do not form part of the notices before me.
32. Furthermore, the appeal sites are located in an area of mixed residential and commercial character, close to a busy road. Background noise levels are typically higher than may be found in predominantly residential areas. Ultimately, there is little evidence before me that the developments will result in harmful levels of noise for the occupiers of 143 and 145 Colindale Avenue, or indeed other residential properties further afield.
33. I conclude, therefore, that the developments will not harm the living conditions of neighbouring residents with particular regard to noise and disturbance. As such, the developments comply with DMP Policy DM04 insofar as it states proposals to locate development that is likely to generate unacceptable noise levels close to noise sensitive uses will not normally be permitted.
34. The enforcement notices cite CS Policy CS5 and DMP Policy DM01 in respect of this matter, however, neither policy makes reference to the impact on living conditions of neighbouring residents in respect of noise.

Other Matters

35. The appellant submits that if the notices are upheld and the outbuildings demolished, then the storage uses, including cold storage, that the buildings contain could not be accommodated within the restaurant building. As such, it is said that the business would have no option than to close, resulting in the loss of jobs for existing staff.
36. I accept that the loss of the buildings would inevitably result in the loss of storage space. However, the appellant has not provided any financial information which demonstrates the restaurant use would be unviable without the buildings. Nor has the appellant provided any evidence showing the loss of restaurant floor space that would arise from the relocation of the storage to areas currently used for dining. Indeed, it was indicated at the Inquiry that there has been no attempt to reconfigure the restaurant to accommodate the storage and that the appellant would not be sure of the impact until they had done so.
37. In the absence of such evidence, I cannot conclude that the potential loss of tables within the restaurant to accommodate the storage which currently takes place in the buildings would have a detrimental impact on the viability of the business.
38. Moreover, as the LPA points out, the outbuildings are in part used to store equipment and paraphernalia relating to the unauthorised shisha use in the building at 1 Charcot Road. The appellant withdrew the appeal in respect of the planning application for that building. Thus, there is no direct correlation between the current storage levels within the buildings, and that which would be needed to facilitate the lawful restaurant.
39. As a result, in the absence of substantive evidence which demonstrates the effect the loss of the buildings would have on the restaurant business, I afford the benefit of their retention to the appellant only limited weight.

Conclusions – Appeal A on ground (a)

40. Whilst I have found there will be no harm in respect of the effect of the development on the living conditions of neighbouring residents with regard to noise, I have found harm to the character and appearance of the area and to the living conditions of existing and future occupiers with regard to outdoor space. They are the prevailing considerations. I conclude, therefore, for the reasons given above that the appeal should not succeed. I shall uphold the enforcement notice with corrections and 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.

Conclusions – Appeal C on ground (a)

41. Whilst I have found there will be no harm in respect of the effect of the development on the living conditions of neighbouring residents with regard to noise, I have found harm to the character and appearance of the area and to the living conditions of existing and future occupiers with regard to outdoor space. They are the prevailing considerations. I conclude, therefore, for the reasons given above that the appeal should not succeed. I shall uphold the enforcement notice with corrections and 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.

Appeals A, B, C and D on ground (g)

42. Appeals on ground (g) are made on the basis that the time period specified in the notice for compliance falls short of what should reasonably be allowed. Both notices set a time period for two months for compliance.
43. In the Statement of Common Ground signed and dated on 8 December 2022, the appellant and the LPA indicated that they agreed an eight month time period for compliance in respect of both notices would be more appropriate. This remained the position of the parties at the Inquiry. On the basis of the evidence before me I see no reason to come to an alternative view. I consider that an eight month period provides a reasonable balance between the impact the loss of the buildings will have on the appellant's business in terms of the need to explore alternative storage arrangements whilst dealing with the planning harm with sufficient expediency. I will vary both notices accordingly.
44. The appeals on ground (g) succeed.

Formal Decisions

Appeal A

45. It is direction that the enforcement notice is corrected by:
- The insertion of the word "of the" between the words "use" and "land" in section 3 of the notice.
 - The insertion of the word "use" between the words "shisha" and "and" in section 3 of the notice.
 - The deletion of the words "cease the use of the land for storage, or as part of a restaurant or shisha bar" and the substitution of them with the words "cease the use of the land for storage incidental to restaurant/shisha use" in section 5(3) of the notice.
 - The deletion of the words "point 2" and the substitution of them with the words "point 1" in section 5(2) of the notice.
46. And varied by:
- The deletion of 2 months and the substitution of 8 months as the time for compliance.
47. Subject to the corrections and variation, the appeal is dismissed, 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.

Appeal B

48. It is directed that the enforcement notice is corrected by:

- The insertion of the word “of the” between the words “use” and “land” in section 3 of the notice.
- The insertion of the word “use” between the words “shisha” and “and” in section 3 of the notice.
- The deletion of the words “cease the use of the land for storage, or as part of a restaurant or shisha bar” and the substitution of them with the words “cease the use of the land for storage incidental to restaurant/shisha use” in section 5(3) of the notice.
- The deletion of the words “point 2” and the substitution of them with the words “point 1” in section 5(2) of the notice.

49. And varied by:

- the deletion of 2 months and the substitution of 8 months as the time for compliance.

50. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal C

51. It is direction that the enforcement notice is corrected by:

- The insertion of the word “of the” between the words “use” and “land” in section 3 of the notice.
- The insertion of the word “use” between the words “shisha” and “and” in section 3 of the notice.
- The deletion of the words “cease the use of the land for storage, or as part of a restaurant or shisha bar” and the substitution of them with the words “cease the use of the land for storage incidental to restaurant/shisha use” in section 5(3) of the notice.
- The deletion of the words “point 2” and the substitution of them with the words “point 1” in section 5(2) of the notice.

52. And varied by:

- the deletion of 2 months and the substitution of 8 months as the time for compliance.

53. Subject to the corrections and variation, the appeal is dismissed, 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.

Appeal D

54. It is directed that the enforcement notice is corrected by:

- The insertion of the word “of the” between the words “use” and “land” in section 3 of the notice.

- The insertion of the word “use” between the words “shisha” and “and” in section 3 of the notice.
- The deletion of the words “cease the use of the land for storage, or as part of a restaurant or shisha bar” and the substitution of them with the words “cease the use of the land for storage incidental to restaurant/shisha use” in section 5(3) of the notice.
- The deletion of the words “point 2” and the substitution of them with the words “point 1” in section 5(2) of the notice.

55. And varied by:

- the deletion of 2 months and the substitution of 8 months as the time for compliance.

56. Subject to the corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

J Whitfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mark Davies of Counsel

He called:

Deniz Erpolat
Alvin Ormonde

Appellant
Planning & Project Management Services

FOR THE LOCAL PLANNING AUTHORITY:

Daisy Noble of Counsel

She called:

John Sperling

Senior Planner, The London Borough of Barnet

INTERESTED PERSONS:

Cllr Gill Sargeant
Cllr Humayune Khalick
Ben Samuel

Ward Councillor, The London Borough of Barnet
Ward Councillor, The London Borough of Barnet
Local Resident

DOCUMENTS

- 1 Appendix JS20 to John Sperling's Proof of Evidence
- 2 LPA Closing Submissions
- 3 Appellant Closing Submissions