

Appeal Decisions

Site visit made on 17 September 2024

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2024

Appeal A Ref: APP/N5090/C/23/3324918

Land at 61 Finchley Lane, London, NW4 1BY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Arif Sufrin (Magenta Freehold Ltd) against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 23 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of 2no outbuildings to the rear of the property, shown edged in red on attached drawing number 1.
 - The requirements of the notice are to:
 1. Demolish the 2no outbuildings shown edged in red on attached drawing number 1.
 2. Permanently remove from the property all constituent materials resulting from the works in 1 above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(e) and (g) of the Town and Country Planning Act 1990 (as amended).
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Appeal B Ref: APP/N5090/W/24/3342741

61 Finchley Lane, Hendon, Barnet, London, NW4 1BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Ari Sufrin against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/2928/FUL.
 - The development proposed is part retrospective and part proposed planning permission for creation of a outbuilding.
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Decisions

Appeal A

1. The appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. The appeal is dismissed.

Appeal A

Preliminary Matters

3. I note the objections from neighbouring occupiers on matters relating to character and appearance, living conditions, and security. The question of need is also raised, as is the potential future use of the outbuildings. However, I am unable to consider such matters, insofar as they relate to the planning merits, because the appellant has not made an application for planning permission through a ground (a) appeal, which requires payment of a fee.

The Appeal on Ground (e)

4. An appeal on ground (e) is that the notice was not properly served on everyone with an interest in the land.
5. The enforcement notice relates to two outbuildings situated to the rear of an extended semi-detached property, which has been subdivided into flats.
6. The appellant asserts that the Council was aware that the outbuildings are used by the occupiers of the individual flats, meaning that not everybody with an interest in the land was served a copy of the notice, in breach of s172 of the 1990 Act.
7. However, the Council has provided evidence of an email purportedly to the appellant's agent requesting full contact details of any interested parties who should receive a copy of the enforcement notice but are unknown to the Council. The appellant does not dispute that he was given that opportunity to provide contact details for the occupiers of the individual flats and that he did not do so.
8. Moreover, it was held in *Newham LBC v Miah* [2016] EWHC 1043 (Admin) that a land registry address amounts to proper service if a Council has not been given another. To that end, the Council has provided Land Registry search documents which identify the proprietor of No 61 as Magenta Real Estate Ltd, who are included in the schedule of persons served with the notice, both at the registered address and the appeal site. I am therefore satisfied that the Council carried out adequate investigation prior to serving the enforcement notice.
9. In any case, the schedule of persons served with the notice also includes 13 other notices served to the appeal site address, one for a named occupant of Flat 1, and 12 generically addressed to the occupiers of No 61.
10. Moreover, s176(5) of the 1990 Act provides that where a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced. The appellant does not argue that he was not served with the notice and he has clearly been able to make an appeal against it, before it came into effect. There is no evidence of any other person being substantially prejudiced.

11. I therefore conclude that the appellant has not demonstrated that the notice was not properly served, or that any such failure gave rise to substantial prejudice. The appeal on ground (e) fails.

The Appeal on ground (g)

12. The ground (g) appeal is that the three months given to comply with the notice is too short. The appellant requests the period be extended to six months (but later five) on the basis that the owner of the property would need to serve notice on tenants who have 12 month assured tenancy agreements.
13. However, it is not explained what notice would need to be served on existing tenants. The buildings are not used for living accommodation and, although they may be used for incidental purposes, it is not shown that the tenancy agreements detail their provision.
14. In the absence of any supporting evidence which demonstrates otherwise, I find that the three-month period for compliance strikes a reasonable and proportionate balance between any difficulties and disruption the appellant and tenants may encounter, and the public interest in this case.
15. I note that the neighbouring occupiers consider one month to be sufficient but the period for compliance should never be reduced as the appellant would be worse off than had he not appealed.
16. The appeal on ground (g) fails.

Other Matters

17. The Council granted planning permission on 10 September 2024 for a single storey rear outbuilding at the appeal site (the approved scheme)¹. As that postdated final comments, I offered the parties opportunity to comment on that approval (for both Appeals A and B), insofar as it may or may not affect that before me.
18. Part of the Council's response is that the approved scheme '*still allows for two thirds of the demolition required by the conditions set in enforcement notice...*' and states that it does not see the point in requiring the full demolition of the current outbuildings, only for the appellant to build the approved scheme. On that basis the Council is happy for me to amend the conditions (presumably the requirements) stated in the notice to allow for a reduced demolition in accordance with the approved scheme. The neighbours have also confirmed that they would have no objection to me doing that, provided it doesn't delay matters.
19. However, s180(1) of the 1990 Act provides that where planning permission is granted after issuing an enforcement notice for any development already carried out, the enforcement notice shall cease to have effect insofar as it is inconsistent with the planning permission. This means that the approved scheme overrides the enforcement notice to the extent that it authorises what is being enforced against. Consequently, it is not necessary to correct the enforcement notice as suggested, which will continue to bite to those parts of

¹ Ref: 24/1479/FUL

the breach that do not form part of the approved scheme. Whether the appellant chooses wholesale or partial demolition to achieve the end result, is a matter for him.

Conclusion

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

Appeal B

Preliminary Matters

21. For the avoidance of doubt, I have considered all responses received relating to the approved scheme in my reasoning below.

Main Issues

22. The main issues are the effect of the proposed development on:

- the character and appearance of the area; and
- the living conditions of the occupiers of Nos 59 and 63 Finchley Lane, with particular regard to outlook, noise and disturbance.

Reasons

Character and appearance

23. As noted, the main building at the appeal site has been extended and subdivided into flats. The initial garden area to the rear of that building has also been subdivided and apportioned to a number of those flats. Beyond that fenced area are a number of shed like structures and a partly built 'U' shaped, single storey building which runs along part of the eastern side boundary, across the entire rear boundary and along part of the side boundary to No 59.

24. The existing plans indicate that the various buildings and parts thereof are allocated for storage to the individual flats. The remaining area is annotated as external amenity space for flats 3, 4, and 5. The appeal proposal would utilise part of the existing building along the rear boundary and would be positioned with one side adjacent to the boundary with No 59. The remainder of the building and all other existing outbuildings are shown to be removed.

25. I note the neighbours' concerns that the 'existing' drawing labels are misleading, but I am aware that the only extant planning permission for an outbuilding at the site is the recently approved scheme, which is similar in scale and design to the proposed single storey outbuilding. The main difference is that the approved outbuilding would be centrally positioned along the rear boundary of the appeal site, and therefore set in from the boundary to No 59.

26. Having regard to the responses received from both the appellant and the Council, I agree that the approved scheme represents a clear fallback position available to the appellant. Moreover, given that it is partly retrospective and that numerous planning applications have been made for outbuildings at the appeal site, there is a very real prospect of the approved scheme being implemented, should I dismiss this appeal. The fallback position therefore

amounts to a material consideration to which significant weight should be applied.

27. The Council's reason for refusing the appeal proposal states that the *'outbuilding, by reason of its excessive footprint, size, design and siting, would be a disproportionate, unsympathetic and incongruous form of overdevelopment which would fail to respect the appearance, scale, mass and pattern of surrounding buildings and spaces, to the detriment of the character and appearance of the host property and the wider locality...'*. However, save for siting, the proposed outbuilding is very similar to the approved scheme, such that the effect on character and appearance would not be materially different.
28. Although the approved scheme's architectural composition and central position along the rear boundary amount to improvements to that currently proposed, the benefits arising from the former are not, taken in isolation, sufficient to withhold planning permission for the latter.
29. The neighbouring occupants have provided photographs which show what appears to be either discarded or stored items/materials in the area adjacent to the existing outbuildings. By the time of my site visit, the area had been largely cleared and storage was in the main restricted to that in the buildings. Nevertheless, the general appearance of the site, when viewed from the first floor of the neighbouring property is unsightly, largely because of the size and appearance of the existing outbuildings and the unkempt nature of the remaining garden space.
30. However, assuming all residual buildings are removed, there would be little difference in those views between the approved scheme and that which is currently proposed. Moreover, the proposed plans show that the outbuilding would be no higher than the existing boundary fence to No 59. Consequently, it would not be readily seen from the rear garden of that property and thus would not be visually intrusive as stated by the Council.
31. I therefore find that the proposed outbuilding would not result in unacceptable harm to the character and appearance of the area, over and above that already approved, and thus would not conflict with London Plan Policy D3, Barnet's Local Plan Core Strategy 2012 Policies CS1 and CS5, Barnet's Local Plan Development Management Policies (LPDMP) Policy DM01, or the Residential Design Guidance Supplementary Planning Document (SPD). Those state, amongst other things, that proposals should preserve or enhance local character and respect the appearance, scale, mass, height and pattern of surrounding buildings, spaces and streets.

Living conditions

32. The use of the outbuilding as a communal gym for the occupiers of flats 3, 4 and 5 would likely generate significant comings and goings, much more so than other incidental uses such as storage. The intensity of use is also likely to be significantly greater than that which would normally be associated with an incidental gym use for one household. I am also mindful that the intensity of use could be further raised by opening the gym to the occupants of the other flats.

33. Moreover, it is likely that the windows of the outbuilding would be opened when users are exercising, and during warmer weather, the main door may also be left open. Noise typically generated by a gym use, such as that from exercising machines, weights being dropped, users talking and music being played, is therefore likely to be experienced by the occupiers of adjoining properties, potentially at unsociable times of the day.
34. In response to neighbours comments, the appellant has sought to confirm that the existing outbuilding has never been used for the purposes of short term lets, and because it is currently a shell, occupation would not be possible. However, the neighbours allege that the new flats at No 61 are being used as Airbnb's, not the outbuilding. The appellant does not comment in that regard. Occupiers of those flats are therefore likely to be more transitional in nature and to have a lesser stake in the community and neighbour relationships. Consequently, if Airbnb occupants are given access to the gym, they are less likely to be considerate of the living conditions of neighbouring occupiers, particularly in terms of noise generation in and around the outbuilding.
35. In any case, even if the use of the outbuilding was restricted to the occupants of the three identified flats, I find that its proposed use would result in significant noise disturbance to the occupants of No 59, particularly when using their adjacent garden space.
36. Whilst the approved scheme is similarly shown to be used as a communal gym, and no conditions are attached controlling or managing its use, there would be a material degree of mitigation arising from its central position away from the boundary to No 59, rather than being directly adjacent to it. The entrance to the outbuilding and the associated comings and goings for the approved scheme would also be further away from the boundary to No 59. Consequently, the fallback position would be materially less harmful in terms of noise and general disturbance than that currently proposed.
37. I note that the neighbours at No 59 state that the boundary fence is lower than that stated by the appellant. Be that as it may, the existing outbuilding sits below the fence line, so that it cannot be seen from the garden of No 59.
38. As the plans show that the proposed outbuilding would be commensurate with the height of the existing boundary enclosure to No 59, it would not be readily visible from the neighbouring garden either. It would not therefore have an overbearing effect or add to the existing sense of enclosure. Indeed, there is unlikely to be a discernible change in the outlook from the garden of No 59.
39. Although the building would be seen from the first floor of the dwelling at No 59, it would not appear unacceptably intrusive given the separation and the partial screening provided by the boundary trees, as well as the general context of other larger buildings in the area. Whilst the Council state that the use of roof tiles would exacerbate the physical harshness of the building, I am satisfied that external materials could be satisfactorily controlled by way of condition. That in combination with the existing boundary vegetation would further mitigate the visual presence of the building.

40. Although the outbuilding would result in a reduction of external amenity space available for flats 3, 4 and 5, that would be similarly so as a result of the approved scheme. Furthermore, the residual space is not shown to be deficient against any development plan standard, nor is it shown that the acceptability of any previously approved scheme relies on the space being kept available. Moreover, any harm arising would be mitigated if the outbuilding was to be used as a shared gym for the occupants of those flats.
41. I acknowledge that the wider use of the outbuilding by the occupants of the other flats would have some effect on the attractiveness of the adjacent amenity space, but the same would arise from the approved scheme. In any case, that part of the garden already has a communal allocation to flats 3, 4 and 5, rather than a private arrangement for individual flats.
42. The outbuilding would be some distance from the rear of the residential property at No 63, beyond the extent of its rear garden, and set away from the side boundary to what appears to be new development. Consequently, the outbuilding would have no material effect on the outlook of the occupants of No 63, either from the main dwelling or rear amenity space.
43. Nevertheless, I conclude that the proposed outbuilding would result in unacceptable harm to the living conditions of the occupants of No 59 through noise and general disturbance. The degree of harm arising would be materially greater than that already approved and thus would conflict with London Plan Policy D3, LMDMP Policy DM01, and the Residential Design Guidance SPD. Those state, amongst other things, that all development should ensure that it does not reduce the amenity value of neighbouring occupiers.

Other Matters

44. The neighbouring occupants of No 59 clearly have significant security concerns over the siting of the proposed outbuilding immediately adjacent to their boundary, as it would make it easier for anyone wishing to gain unlawful access to their property. They seek to highlight that they have four young daughters aged between 16 and 23 and a 19-year-old son. Their concern is that allowing the appeal proposal would expose them to a constant and significant security/crime risk, augmented by the appellant's purported illegal rental of the new flats at No 61 as Airbnb's. The neighbours also seek to highlight that the roof of the outbuilding allows easier access for foxes, which they consider a risk to their children and dog.
45. Although I understand and sympathise with those concerns, I have no evidence or suggestion of trespass or other crimes actually committed. Nevertheless, there is evidently a perceived security concern which undoubtedly impacts on the neighbours, contrary to LMDMP Policy DM01, which states that development proposals should create safe and secure environments and reduce opportunities for crime and minimise fear of the same.
46. However, the degree of harm arising would not be sufficient on its own to warrant withhold planning permission, not least because the same arguments could be applied to many other single storey buildings adjacent to neighbouring boundaries.

47. Although positioned directly adjacent to the boundary to No 59, the outbuilding is not shown to be attached to the fence so neighbouring occupiers would still have access to it on their side of the garden for any repair or maintenance work.
48. I note the neighbours contend that the appellant has flouted planning laws and continues to show scant regard for the planning process. I also note the concerns over 'anchoring' and incremental tactics, but I have considered the appeal on its own merits, in the knowledge that the only identified lawful fallback position is that which has recently been approved, rather than the existing arrangement of outbuildings.
49. I understand the concerns that the outbuilding is to be used for residential accommodation, but I am satisfied that is a matter which could be controlled by way of condition, as per the approved scheme. Moreover, although the description of development does not include the demolition of the other buildings to the rear of No 61, that too could be addressed by way of condition.
50. I note the neighbours question the need for the outbuilding and argue that its use as a gym stretches belief. However, I have not been made aware of any policy requirement for need to be demonstrated for an application of this nature. Moreover, a gym is clearly capable of being a use incidental to the residential use of the flats.
51. I note the objections received from occupants of other properties in Finchley Lane, Riverside Lodge and Garrik Way but I am satisfied all the issues raised have been addressed above.

Conclusion

52. For the reasons given above, and having considered all other matters raised, I conclude that the proposed outbuilding would be contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined otherwise than in accordance with the development plan. The appeal should be dismissed.

Richard S Jones

INSPECTOR