



Appeal Decision

Site visit made on 18 December 2024

by D Moore BSc (HONS), PGDip, MCD, MRTPI, IHBC

an Inspector appointed by the Secretary of State

Decision date: 29 January 2025

Appeal Ref: APP/N5090/C/23/3334966

38 Woolmead Avenue, London NW9 7AY

- The appeal is made under s174 of the Town and Country Planning Act 1990, as amended, (the 1990 Act). The appeal is made by Mr Daniel Stern against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 8 November 2023.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a rear outbuilding.
- The requirements of the notice are to:
 1. Demolish the outbuilding in the rear garden.
 2. Permanently remove all constituent materials resulting from the works in (1) above from the property.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the 1990 Act. 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 1990 Act.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

The ground (c) appeal

1. To succeed on ground (c), the appellant must show on the balance of probabilities that the matters alleged do not constitute a breach of planning control.
2. It is argued that the outbuilding falls within development 'permitted' under Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Under Class E, the provision of a building within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted, subject to conditions and limitations.
3. Development is not permitted by Class E under E.1.(e) if the height of the building would exceed (i) 4 metres in the case of a building with a dual-pitched roof; (ii) 2.5 metres in the case of a building within 2 metres of the boundary of the curtilage of the dwellinghouse; or (iii) 3 metres in any other case.
4. The outbuilding is situated within 2 metres of the boundary of the dwellinghouse and has a flat roof. The appellant says that the maximum height of the outbuilding does not exceed 2.5 metres. However, measurements taken at the site visit from the highest ground level immediately adjacent to the building to its highest point, showed the height of the structure to be 2.52 metres. Although this exceeds the limitation by only a marginal amount, the maximum permitted height is absolute and there is no room for discretion. Consequently, the outbuilding does not benefit from the permitted development rights and planning permission would have been required.

5. The Council maintains that No 38, the main house, is not in use as a single dwellinghouse and so the permitted development rights cannot apply. It is also argued that the outbuilding is not incidental to the enjoyment of the dwellinghouse as such. From my site visit it was not possible to establish the nature of the occupation of the dwellinghouse nor the outbuilding. However, it is not necessary to reach a conclusion on these matters given my findings as set out above.
6. I conclude that the appellant has not shown on the balance of probabilities that the matters alleged do not constitute a breach of planning control. The ground (c) appeal fails, therefore.

The ground (a) appeal and the deemed planning application

Main Issues

7. The terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for the construction of a rear outbuilding. The main issues are the effect of the development on (1) the character and appearance of the area; and (2) the living conditions of the adjoining occupiers, with regard to outlook.

Character and Appearance

8. The appeal property is an extended semi-detached house that is situated within a predominantly residential area. The rear gardens to the houses along the southern side of the road are long, and they back onto designated Metropolitan Open Land. I saw there were numerous sheds and structures in the rear gardens of other houses in the vicinity. Although some were comparable to the appeal building, the majority tended to be relatively small-scale and utilitarian in appearance.
9. The outbuilding subject to the notice is a substantial single-storey structure that, at the time of my visit, comprised an office/workspace, a store room and a toilet. Access to the building was via a locked gate at the side of the house. The outbuilding is sited in the corner of the garden close to the rear and side boundaries.
10. The structure is a well-built and substantial outbuilding, which occupies a significant proportion of the garden area. Its footprint is relatively large in comparison with the house and its overall scale is greater than the majority of the other garden buildings in the vicinity. Although sited towards the rear of the garden, the outbuilding is prominent in views from other properties and is visible from the adjoining open land.
11. The prevailing character of the area is detached or semi-detached houses with spacious rear gardens. Outbuildings are a feature of the area, but these are generally low-key having less of a visual impact. Garden buildings of a similar size and design as the appeal building are not common. Moreover, the outbuilding does not reflect the pattern of development in the area due to its siting and form. Large, single-storey buildings in rear gardens are not reflective of the characteristic two-storey houses with street frontages. Consequently, the outbuilding appears incongruous and out-of-character with the pattern of development.
12. I appreciate that there is vegetation and screening in the area, and the appellant has suggested a landscaping scheme, that could be secured by a planning

condition. However, this would not mitigate the effect of the outbuilding due to its overall size, scale and siting.

13. I accept that there would be sufficient garden space remaining for use by the occupants of the main house, but this would not address the concerns about effects on character and appearance as set out above.
14. The appellant argues the development has benefits, in terms of supporting home working. However, the house itself has been extended and it is not clear why home working cannot be accommodated without the addition of the outbuilding.
15. I conclude on this issue that the development would have an adverse effect on the character and appearance of the area. It would be contrary to Policies D3 and G3 of the London Plan (2021), Policies CS1, CS7 and CS5 of the Local Plan: Core Strategy (2012), Policies DM01 and DM15 of the Local Plan: Development Management Policies (2012), and the guidance of the Council's Supplementary Planning Document: Residential Design Guidance (2016) which, among other things, seek to promote high quality design and ensure development respects the character of the local area.

Living Conditions

16. The detached outbuilding is situated in the rear garden, approximately 15 metres from the rear of the house. The separation distance between the outbuilding and the habitable rooms of the adjoining properties is sufficient to minimise any dominant effect. The outbuilding is close to the neighbouring boundary, but it is single-storey and there is some screening provided by the boundary fence. Crucially, the rear gardens of the adjoining properties are spacious, and the structure would not be overbearing when considered in respect of its effect on the principal garden areas.
17. I conclude on this issue that the development would not have an adverse effect on the living conditions of adjoining occupiers with regard to outlook. It would accord with Policies CS1 and CS5 of the Core Strategy, Policy DM01 of the Local Plan and the Council's Supplementary Planning Document: Residential Design Guidance, which seek to resist development that would be overbearing or unduly dominant.

Other Matters

18. The Council explains that the site abuts the Welsh Harp and Brent Reservoir SSSI and expresses concern about its effect on ecology. However, the Council is not suggesting that there is any encroachment, and it is not clear what the adverse effects would be. In the absence of evidence, the Council's points are not substantiated.

Conclusion

19. I conclude that the development would have an adverse effect on the character and appearance of the area. Hence, the proposal would be contrary to the development plan taken as a whole. The ground (a) appeal must fail, therefore.

The ground (f) appeal

20. S173(4) of the 1990 Act sets out the two purposes of an enforcement notice (a) to remedy the breach of planning control that has occurred and (b) to remedy any injury to amenity caused by the breach. The requirements are to demolish the outbuilding and remove its constituent materials. The purpose is to remedy the breach of planning control. What must be considered is whether the steps required exceed what is necessary to achieve that purpose.
21. The appellant has offered a lesser step, which would comprise the planting of a hedge. I have considered this as part of the ground (a) appeal above. In any event, this is a mitigation measure, and it would not remedy the breach of planning control. There are no other steps offered that would remedy the breach and achieve the statutory purpose behind the notice. The ground (f) appeal must fail, therefore.

The ground (g) appeal

22. The ground (g) appeal is that the period for compliance with the requirements fall short of what should reasonably be allowed. The appellant is seeking a compliance period of eight months to allow time to secure a builder and for the works to be completed to a satisfactory standard.
23. I appreciate that it may take longer than four months to appoint a builder with availability, and to carry out the works as required. However, I consider six months would be reasonable and proportionate in the circumstances. I will vary the notice accordingly. The ground (g) appeal succeeds to this limited extent.

Conclusion

24. For the reasons given above, I conclude that the appeal should succeed on ground (g) only. I shall uphold the enforcement notice, with a variation, and refuse to grant planning permission on the application deemed to have been made under s177(5) of the 1990 Act.

Formal Decision

25. It is directed that the enforcement notice is varied by the deletion of four months and the substitution of six months as the period for compliance. Subject to this variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act.

D Moore

Inspector