



Appeal Decision

Site visit made on 3 June 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 27 June 2025

Appeal Ref: APP/N5090/C/23/3322584

318 Ballards Lane, London N12 0EY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Drilon Bardhoshi against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 13 April 2023.
- The breach of planning control as alleged in the notice is: *Without planning permission, the construction of a single storey rear extension with retractable roof.*
- The requirements of the notice are:
 - 1 Demolish the single storey rear extension with retractable roof
 - 2 Restore the property to the state in which it was prior to the breach as per drawings 116/EX/104 (Pre-Existing Site Plan) and 116/EX/121 (Pre-Existing Elevations) submitted under application reference 23/0171/FUL
 - 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: *3 Months after this notice takes effect.*
- The appeal is proceeding on the grounds set out in section 174(2)(a), (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.

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

Formal Decision

1. It is directed that the enforcement notice (EN) is varied by:
 - The deletion of paragraph 6 of the notice and its substitution with the following new paragraph 6:

TIME FOR COMPLIANCE

Six (6) calendar months after this Notice takes effect.
2. Subject to the 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 Town and Country Planning Act 1990 (the 1990 Act) as amended.

Preliminary Matters

3. Since the Council issued the EN, the new Barnet Local Plan 2023-2036 (BLP) has been adopted in March 2025. As such, I have taken it into account in my decision. In regard to this appeal the Council have clarified the relevant BLP policies are ECC02, HOU03, CDH01, CDH02 and CDH07. The appellant has had the opportunity to comment on these new policies.

Appeal on ground (a), the deemed planning application

4. The deemed planning application is for the erection of a single storey rear extension with retractable roof.

Main issues

5. The main issues are the effect of the development on i) the character and appearance of the surrounding area; and ii) the living conditions of neighbouring occupiers with specific regard to outlook, noise and disturbance, light and odour.

Reasons

Character and appearance

6. The appeal site is located to the rear of 318 Ballards Lane in North Finchley town centre with the host property in Class E use. This section of Ballards Lane is mixed use with commercial properties at the ground floor and residential units located in the floors above. The host premises is located in the North Finchley Secondary Retail Frontage. Here there is a range of shops, takeaways, restaurants and bars which are also near Woodberry Close and Rosemont Avenue to the rear, thus creating a sensitive relationship.
7. The rear of the commercial premises between 302-338 Ballards Lane are generally used for amenity and servicing and thus have a utilitarian feel and function. Several of the premises incorporate single storey extensions, outbuildings and lock-up garages to the rear, with a variety of styles, materials and finishes. Despite the eclectic nature to the appearance at the rear of these premises, single storey rear extensions are generally domestic in scale and depth retaining amenity space and thus breathing room between themselves and the residential properties located in Rosemont Avenue behind.
8. The appeal site has replaced the previous single storey rear extension with a longer rear extension, which now covers most of the rear amenity space. The extension culminates at the rear boundary of the site and is in line with the rear walls of Nos. 40 and 42 Rosemont Avenue, albeit off-set to the sides. The development also includes large plant, ducting and air conditioning condensers on the roof and at the end of the extension. The single storey extension and associated plant now occupy a significant proportion of the rear amenity space and is in close proximity to residents at Nos.40 and 42. This is at odds with the existing and less developed rear treatments between the properties located in this section of Ballards Lane and Rosemont Avenue behind.
9. Whilst it is acknowledged that Nos. 302-308 Ballards Lane have similar large single storey extensions that also encompass much of the rear amenity space, these are as a result of the land tapering between Ballards Lane and Rosemont Avenue in this location. However, these examples are located further away from the residential properties in Rosemont Avenue and whilst similar in scale are not directly comparable to the rhythm and character of those premises closer to these dwellinghouses. As such, these limited examples do not provide an overriding influence over the character or appearance of the area.
10. The appeal scheme provides an extension that appears to maximise the rear elevation providing unacceptable intensification in the amount of built development which does not compliment the spatial qualities of the area given the increase in

scale, depth and mass. This coupled with the provision of the plant and ducting at the roof level is at odds with its locality, and thus harms the character and appearance of the surrounding area.

Living conditions of neighbouring occupiers

Outlook

11. As stated above, the single storey rear extension occupies a significant portion of the rear amenity space at 318 Ballards Lane and has been constructed abutting the boundaries. As a result, the development looms significantly over these boundary fences with the adjoining properties, thus having a negative impact on outlook and appearing overbearing to the detriment of these occupiers.
12. Whilst it is acknowledged that there is an existing boundary fence which is relatively high and already provides a sense of enclosure, the increase in height and bulk of the extension coupled with the associated plant on the roof results in an oppressive presence, looming over the fence, resulting in a poor outlook. It is also acknowledged that the proposal is angled away from the properties in Rosemont Avenue, to reduce views to oblique ones. Nevertheless, due to its bulk and closeness to the rear elevation and rear amenity spaces at Nos. 40 and 42 Rosemont Avenue, the presence of the large rear extension is oppressive and overpowering and leaves occupants feeling hemmed in due to a heightened sense of enclosure, thus harming their living conditions.

Noise and disturbance

13. The host property has a lawful development certificate issued¹ for use as a restaurant, although there is contradictory evidence in regard to its use as a shisha bar. The appellant states that the premises is not used for such purposes, however information received from third parties, provides links to the appellants website which highlights the existing extension facilitating the use of shisha within the premises. Based on the evidence provided and on the balance of probabilities, it is likely the use of shisha is undertaken at the site, and as such I have adopted a precautionary approach.
14. I am aware under other legislation² that a significant proportion of the structure used needs to remain open when being used as a shisha bar, hence the need for the retractable roof and automated windows. There are times therefore, when the structure is not entirely enclosed leaving scope for sounds, smells and odour from activities inside to permeate outside of the premises.
15. Paragraph 198 of the National Planning Policy Framework (the Framework) is clear, that developments should amongst other aspects, avoid noise giving rise to significant adverse impacts on health and quality of life. Paragraph 200 also makes it clear that decisions should integrate effectively with existing businesses, and where the operation of an existing business could have a significant adverse effect on new development, the applicant (or 'agent of change') should provide suitable mitigation before the development is completed.

¹ London Borough of Barnet Planning Ref: 19/0867/191

² The Smokefree (Premises and Enforcement) Regulations 2006

16. Planning Practice Guidance (PPG) sets out further detailed guidance³, including that of the 'agent of change' principle. This includes taking into account current activities, but also those activities that businesses or other facilities are permitted to carry out, even if they are not occurring at the time of the application being made. The 'agent of change' will also need to define clearly the mitigation being proposed to address any potential significant adverse effects that are identified. Adopting this approach may not prevent all complaints from the local residents about noise or other effects but can help to achieve a satisfactory living and working environment and help to mitigate the risk of noise nuisance.
17. The appellants have submitted an acoustic assessment⁴ (AA) as part of their appeal submission. The AA highlights that the noise from the premises arising from music and patrons inside the extension is currently producing noise levels between 47-50dBA outside the nearest residential receptor windows, which is approximately 5-8dBA above the background levels⁵. Furthermore, the mechanical smoke extraction plant affixed to the roof of the extension are producing noise levels of approximately 59dBA, which is 17dBA above the background noise.
18. The AA also indicates that internal measures such as the installation of a sound limiter; installation of an internal lobby adjoining the emergency access at the rear of the premises; keeping the retractable roof closed; and additional (secondary) glazing to the automated windows could provide some sound reduction in respect of sound transmission occurring from music and patrons inside the premises. However, no details have been supplied in respect to any potential attenuation scheme associated with the mechanical extraction plant fixed to the roof.
19. Consequently, from the evidence before me, it is unclear whether the sound insulation measures proposed would be adequate, as there are no quantifiable calculations on how the internal noise level criteria would be achieved. As such, it cannot be guaranteed that the additional sound attenuation measures proposed would be sufficient to control the sound transmission. Therefore, I am not persuaded that there is sufficient detail on the measures to be employed that can realistically achieve appropriate living conditions for neighbouring occupants.
20. It is acknowledged that the existing occupiers have chosen to reside in a town centre location, thus should have an expectation of more vibrant activities in the evening and later into the night. I also acknowledge that the appellant suggests conditions could be used to ensure that the otherwise unacceptable development could be made acceptable. However, given the lack of further detailed technical attenuation information and its likelihood of success in mitigating noise at the appeal site, I cannot be sure that conditions would be sufficient to make the development acceptable and remedy the noise effects so that the deemed permission could be granted.
21. Furthermore, there are no restrictive planning conditions in place to control the use. The hours of operation appear, instead, to be regulated through the current Premises Licence⁶ and no condition providing alternative hours of operation have been suggested. It would therefore be unreasonable to impose a condition which

³ Paragraph: 009 Reference ID: 30-009-20190722

⁴ Acoustic assessment of noise emissions from a bar venue prepared by ACA Acoustics Ref: 230709-R001A dated 24/07/2023

⁵ LAeq 44dBA and LA90 42dB

⁶ London Borough of Barnet – Premises Licence Number: LAPRE1/22/66978

limits opening hours to the extent that it may affect the viability of the business, thus nullifying the benefit of any permission.

Air and light pollution

22. From the evidence before me, the shisha use within the extension also has the potential to cause disruption in terms of air (odour) and light pollution for the nearby residents. It is acknowledged that it may be possible to control some sources of lighting with the use of planning conditions. These could include preventing the retractable roof from opening; along with limiting the opening of windows; and/or the provision of coverings (such as blinds) to prevent sources of light from escaping. However, these measures would also have implications in respect to the requirements for shisha use, which highlights premises need to be ventilated.
23. In regard to air pollution and odour in particular, I have no details as to any assessment having been made as to odour, nor details to help demonstrate that any potential odour control measures could be effective, given the close proximity of the neighbours and their windows to the extension. This may mean that nearby residents would have to keep windows closed to reduce impacts on them, further diminishing the quality of life for these residents particularly during the warmer summer months.

Fallback

24. The appellant refers to a potential fallback position, should the appeal be unsuccessful, noting the planning history and in particular the Certificate of Lawfulness (19/0867/191) for the Class E use. This use is unfettered by any planning conditions and the current hours of operation are 1100hrs to 0000hrs Thursday to Sundays, with later closing on Fridays and Saturdays at 0130hrs would continue.
25. The appellant has indicated that the rear amenity area could be occupied with various paraphernalia which may not be deemed as development, such as tables, chairs and umbrellas, allowing the existing use to continue externally. This could be less desirable than the existing development and lead to further detrimental impact on the living conditions of the adjoining residents. Thus, this is more than a merely theoretical prospect in this instance.
26. This would represent a new chapter at the planning unit. However, I have been provided with limited details in respect to how such a use would operate. In this case, the use of the site would depend on the definable character of the site and what type of activities would be taking place upon it. Potentially, these would be subject to control and enforcement measures by way of planning regulations, but also through other statutory regulations such as Health and Safety, Licencing and Environmental Health. Consequently, whilst a realistic fallback position does exist, given this lack of detail, I can only give this limited weight in my considerations.

Conclusion on ground (a)

27. Accordingly, the extension is contrary to BLP policies CDH01, CDH02 and CDH07 which, among other things, require development to respond sensitively to the distinctive local character and design, in terms of building form, patterns of development, scale and massing, whilst also providing adequate amenity space that is fit for purpose. The proposal also fails to comply with paragraph 135(c) of the

Framework which advises that new development should be sympathetic to local character.

28. Furthermore, the extension also has a harmful effect upon the living conditions of neighbours, with particular regard to outlook, noise and disturbance, light and odour. This would be contrary to the relevant sections of BLP policy ECC02 and the Framework which collectively seek planning decisions to ensure healthy living conditions and create better places to live by mitigating impacts of pollutants, amongst other things.
29. The development is therefore unacceptable and the appeal on ground (a) fails.
30. However, I do not find conflict with BLP policy HOU03 as this policy relates to residential conversions and re-development of larger homes, which the development subject to the appeal is not. As such I find this policy irrelevant to the scheme before me.

Appeal on ground (f)

31. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. S173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, a) the remedying of the breach of planning control by discontinuing any use of the land or by restoring the land to its condition before the breach took place or b) remedying any injury to amenity which has been caused by the breach.
32. The requirements of the EN are clear, to demolish and completely remove the unauthorised development and restore the host property to its state prior to the breach taking place, as per the submitted drawings shown on the pre-existing plans and elevations referenced. Consequently, I am satisfied, that the purpose of the notice is to remedy the breach of planning control as set out under S173(4)(a) of the 1990 Act.
33. The appellant's case on this ground is that the Council requires the previous smaller rear extension to be rebuilt, which is unnecessary given the existing but larger single storey rear extension. As I have found above, the existing development does not provide adequate amenity space, nor does it respond sensitively to the local character in terms of design or building form.
34. Case law⁷ has established that it is open to me to decide whether there is any solution, short of a complete remedy of the breach, which is acceptable in planning and amenity terms, and whether there are clear and obvious alternatives that would overcome the planning harm at less cost and disruption to the appellant than its total demolition. No details of an alternative scheme have been provided, however, and in the absence of such, the appeal on ground (f) must fail.

Appeal on ground (g)

35. For an appeal on ground (g) to succeed, it is to be demonstrated that the period specified in the notice for compliance in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed.

⁷ Tapeacrown Ltd v FSS & Vale of White Horse DC [2006] EWCA Civ 1744

36. The EN currently requires the steps to be carried out within three months of the notice taking effect. Whilst the works required by the notice are relatively straightforward, it may take some additional time to resource suitable contractors for such works which could impact on the viability of the business in the interim. I therefore consider it reasonable to extend the period for compliance to six months.

37. To that extent, the appeal succeeds on ground (g).

Overall Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the varied EN and refuse to grant planning permission on the application deemed to have been made under S177(5) of the 1990 Act (as amended).

Robert Naylor

INSPECTOR