



Appeal Decision

Site visit made on 18 October 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 27th October 2025

Appeal Ref: APP/N5090/C/23/3328223

Land 11 Albemarle Road Barnet EN4 8EQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the “1990 Act”).
- The appeal is made by Mr Minesh Nitin Shah against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice was issued on 12th July 2023.
- The breach of planning control as alleged is the raising of ground levels to the rear garden of the property and the construction of associated retaining walls.
- The requirements of the enforcement notice are to: (1) restore the land to the state in which it was prior to the breach of planning control by (a) reducing ground levels aligned along the northern boundary of the rear garden to match those below the boundary fence with number 9; and, (b) Restoring the remainder of the garden to an even gradient sloping between the revised levels of the northern boundary and the existing levels on the southern boundary; and, (c) Removing the retaining walls erected along the northern and eastern boundaries of the site and 2) Permanently remove all constituent materials resulting from the works in 1 above from the property.
- The period for compliance is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (c), (a), (f) and (g) of the 1990 Act.

Summary of Decision: The enforcement notice is quashed and planning permission is granted in the terms set out below in the formal decision.

Ground (c)

1. For planning purposes, the term “development” has a specific meaning. Section 55(1) of the 1990 Act includes in that definition the carrying out of building, engineering or other operations on the land. Building operation includes other operations normally undertaken by a person carrying on business as a builder.
2. The removal of trees and shrubbery alone does not amount to a building operation. However, although no professional engineer was engaged, the evidence clearly shows the deployment of heavy plant and machinery to excavate existing ground, move earth around and levelling the ground. It seems to me that the operations were pre-planned and of an engineering nature. In addition, when the extent and nature of new retaining walls is considered in combination with the new ground level, fencing and the installation of planters, I consider that some kind of technical or landscaping knowledge and expertise was required. The kind of work involved is usually undertaken by someone who trades as a builder or landscaper and has significantly altered the land’s profile. As a matter of fact and degree, I find that the work involved in the raising of ground levels to the rear garden, and the construction of associated retaining walls, falls within the scope of s55(1) of the 1990 Act.
3. The appellant argues that the alleged development is permitted by virtue of article 3, schedule 2, part 1 Class F to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. I disagree. Although a patio area immediately adjacent to the dwelling can be regarded as a hard-surface, I do not consider

the grassed area can reasonably fall within that definition. The latter is covered with natural grass, requires specific seasonal care and is part of the soft landscaping whereas the former is designed for structural use such as walking or sitting out on.

4. Drawing all the above threads together, express planning permission is required for the alleged matters, and it has not been obtained. Ground (c) must fail.

Ground (a)

5. The **main issue** is the effect of the development on the living conditions of the neighbours having regard to loss of privacy and overlooking. No. 11 is a two-storey dwellinghouse located in a residential area. The street scene is characterised by similarly designed properties. Ground levels along the eastern side of Albemarle Road appear to slope downwards to the north and northeast where the level at no. 11 has been raised by about 0.55 metres, but rear gardens are reasonably wide and deep and there is sufficient space around the dwellings. I do not consider the raised garden at no. 11 results in an unacceptable loss of privacy, due to the location and siting of the property combined with the area's topography.
6. That said, standing on the raised garden at the rear of no. 11 allows unimpeded views, especially when looking back at the adjoining properties and standing at the site's boundaries. People using the garden are likely to be noticed. Views are reduced further away from the boundary and likely to diminish when sat down. However, given the existing topography combined with the layout of dwellings, rear gardens are already overlooked. For example, there are numerous windows to habitable rooms in rear elevations. Most of these openings are of similar scale and appearance. Observing from a window is likely to be different than being outside in the open air. Nonetheless, it is likely residents who utilise upper floors for human habitation would also be able to overlook adjoining gardens without significant visual interruption.
7. The perception of being overlooked has probably increased because the raised garden at no. 11 permits direct views into adjoining properties including kitchens. Nevertheless, in an urban environment such as this, overlooking is totally unavoidable. Given the built-form, design and setting of the properties combined with the sloping ground levels and existence of raised platforms. In my planning assessment, while the previous garden was lower compared to the current layout, there is already significant degree of overlooking in this locality.
8. Things have moved on since the appeal in that the appellant has carried out additional soft landscaping along the boundary with no. 9. Over time, the planting would soften the impact of the development and reduce direct overlooking from the raised garden provided details of type and height of planting is agreed. Upon careful consideration, it is my view that an appropriate alternative compromise—one which minimises both cost and disruption—would be to impose a planning condition specifically addressing the Council's concerns about soft landscaping along the boundaries. Such a condition would make the development acceptable in planning terms.
9. Should it not be possible to impose a suitably worded condition, planning permission would have to be refused. In situations where the development has already taken place, it is not feasible to impose a condition precedent or to require that outstanding details be agreed prior to the commencement or occupation of the development, regardless of the importance of those details. Therefore, when a condition is imposed that requires the submission and approval of details or a scheme for development which already exists, it is essential that the condition incorporates a sanction or enforcement mechanism. This is

necessary to ensure compliance if the required details are not submitted or approved as stipulated.

10. The key feature of the retrospective condition is that the operational development permitted must be removed if the required detail or scheme is not implemented in accordance with the submitted details within the prescribed timescale. Alternatively, it is submitted on time but not approved and an appeal against the Council's refusal to approve the details submitted pursuant to the condition is not made on time or an appeal is dismissed, or the scheme is submitted and approved but not implemented within the prescribed timescale.
11. I consider a suitably worded condition requiring the submission and implementation of soft landscaping scheme, which meets the six tests, can be imposed. Subject to this condition, and contrary to the Council's arguments, in my planning judgment, the development does not materially conflict with the aims of Policy CDH01 of the Barnet Local Plan (2025) and the objectives of supplementary planning document (2016), and design guidance found in the National Planning Policy Framework (2024).

Overall conclusions

12. For the above reasons and having regard to all other matters raised, including reference to other appeal decisions, I conclude that ground (c) fails. The deemed application on ground (a) should be allowed. As the notice will be quashed, ground (f) and (g) do not need to be considered.

Formal decision

13. 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, for the development already carried out, namely, the raising of ground levels to the rear garden of the property and the construction of associated retaining walls, subject to the following condition:
 - 1) The raising of ground levels to the rear garden of the property and the construction of associated retaining walls hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 6 months of the date of this decision a landscaping scheme, showing details of the type of plants, including specimen and overall growth height (known hereinafter as "the scheme"), shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been implemented and the development completed in accordance with the approved timetable. Upon implementation of the

approved scheme specified in this condition, that scheme shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

A U Ghafoor

INSPECTOR