



Appeal Decision

Site visit made on 6 July 2010

by **Roger Pritchard MA PhD MRTPI**

**an Inspector appointed by the Secretary of State
for Communities and Local Government**

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**Decision date:
20 July 2010**

Appeal Ref: APP/N5090/C/09/2117774 189 Golders Green Road, London, NW11 9BY

- 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 appeal is made by Rabbi Yehuda Halpern against an enforcement notice issued by the Council of the London Borough of Barnet.
- The Council's reference is ENF/00229/09.
- The notice was issued on 28 October 2009.
- The breach of planning control as alleged in the notice is –
 - (i) Without planning permission, unauthorised single storey building in rear garden; and
 - (ii) It appears to the Council that the above breach of planning control has occurred within the last four years.
- The requirements of the notice are to demolish the single storey building in the rear garden and permanently remove all constituent parts.
- The period for compliance with the requirements is three months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (a) of the Town and Country Planning Act 1990 as amended.

Decision

1. I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under s. 177(5) of the Town and Country Planning Act 1990 as amended, for the development already carried out, namely the erection of a single storey building in the rear garden at 189 Golders Green Road, London, NW11 9BY, as shown edged and hatched black on the plan attached to the enforcement notice, subject to the following condition:
 - 1) The building hereby permitted shall not be occupied at any time other than for purposes ancillary to the residential use of the dwelling known as 189 Golders Green Road.

Procedural Note

2. The appellant's agent mentioned in his submission some confusion over how the appellant should be addressed. The style I have adopted in the heading reflects that agreed with the parties at the site visit.

The appeal on ground (c)

3. The appellant's submission that the matters stated in the enforcement notice did not give rise to a breach of planning control relates to two issues.

4. The first is that the Council erred, as a matter of fact, in claiming that 189 Golders Green Road is sub-divided into two flats and, as such, benefits from no permitted developments rights under Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, as amended – henceforth referred to as the GPDO. The Council’s evidence for this claim is that Council Tax records for the property show that it is so sub-divided.
5. The appellant does not dispute that two Council Taxes apply to the property but submits that, in planning terms, it is not sub-divided and constitutes a single family dwelling house. In particular, the property has been the Halpern family residence for many years and is occupied by them in association with the appellant’s position as Assistant Rabbi at the adjoining synagogue. The property is owned by the Beth Shmuel Synagogue, is for the sole use of the Rabbi and his family, and cannot be let or sold separately. The appellant also states that the property had previously had a loft conversion, the lack of challenge to which by the Council demonstrated that it recognised that No 189 was in single family occupation.
6. The evidence of my site visit convinced me that the current position at 189 Golders Green Road is that the property is solely occupied by the appellant’s family. In coming to this view, I recognise that, although this is a substantial residential property, the appellant has a large, extended family, four generations of which may, on occasions, reside in it. That view was also reinforced by the lack of physical evidence of sub-division both externally and internally and the presence of single mains services, such as gas and electricity, with meters serving the whole of the property. I consider this evidence outweighs the presence of two Council Tax returns.
7. I therefore conclude, as a matter of fact and degree, that 189 Golders Green Road is in single family occupation and that, as such, it forms a single residential unit that may benefit from the permitted development rights afforded to such properties by the GPDO.
8. My conclusion above therefore brings into play the appellant’s second arm to his appeal on ground (c), namely that the single storey building in the rear garden benefited from such permitted development rights when constructed and is therefore lawful.
9. In particular, the appellant cites Class E of Part 1 of Schedule 2 of the GPDO and claims that the disputed building, though completed in 2009, was begun prior to 1 October 2008, i.e. before the Town and Country Planning (General Permitted Development) (Amendment) (No. 2)(England) Order 2008 came into force. The significance of this is that under the current Class E.1(d)(ii), as amended in October 2008, the height of the disputed building would take it beyond the limits of permitted development. Both parties agree this. However, prior to October 2009, the unamended Class E.1 would probably have brought the building within the scope of permitted development rights and made it lawful.
10. The Courts have held that where changes are made to the GPDO, the date on which development commences determines the permitted development rights against which the development should be judged.

11. However, in this case, the appellant and the Council dispute the date of commencement. Although both agree that completion was in 2009 after the GPDO amendment came into force, the appellant claims works began before 1 October 2008 whilst a Council officer, who visited the site on 12 March 2009, claimed that building had begun around three weeks earlier, i.e. in late February 2009, some five months after the amended GPDO came into force. The Council have included a contemporary photograph suggesting that works were underway at the time of the Officer's visit.
12. In a ground (c) appeal, the burden of proof lies with the appellant. No documentary or supporting evidence has been submitted to me to corroborate the appellant's claim that the relevant works began before 1 October 2008 such that the disputed building would have been lawful under the terms of the GPDO as it existed prior to that date. I therefore conclude that the burden of proof has not been discharged and that the appeal under ground (c) fails.

The appeal on ground (a)

13. The ground of appeal is that planning permission should be granted. The deemed planning application relates to the allegation and the works that have been carried out. The main issues are the effect of the single storey building in the rear garden of 189 Golders Green Road on the character and appearance of the surrounding area and the living conditions of the occupants of neighbouring properties.
14. The Council acknowledges that under the terms of the amended GPDO, to which I have referred above, the building would probably be lawful if its height were reduced by some 350mm. The Council claims, however, that this additional height, when added to the size, siting and bulk of the building, creates an obtrusive and dominant structure detrimental to the visual and residential amenity of adjoining properties.
15. I was made especially aware from my site visit of the degree to which the properties along the west side of Golders Green Road already have both substantial rear extensions and detached outbuildings in their rear gardens. I recognise that some of these structures reflect the mixed character of the street scene with non-residential and commercial uses intermingled with dwellings. Nevertheless, the proliferation of such additions in the immediate vicinity of the appeal site is such that they have become, in my view, a significant contributor to the character and appearance of the area.
16. The Council has commented that it has no record of most of these buildings receiving planning permission. However, there is also no record of enforcement action and it is impossible for me to assess which might have been constructed under permitted development rights or which, if any, represent past breaches of planning control. I can only comment that the effect has been to alter substantially the character and appearance of the rear of this part of Golders Green Road.
17. I accept that many of the outbuildings and extensions do not represent an exceptionally high quality of design, and I would include within that judgement the disputed building, which is of utilitarian appearance. However, in the context of the immediate area, I consider that it represents a structure sufficiently compatible with its surrounding environment as not to breach those

elements of Policies D1, GBEnv2 and H27 of the adopted London Borough of Barnet Unitary Development Plan (UDP) that seek to provide for good design.

18. Of more significance, in my view, should be the impact of the building on the living conditions of the occupants of neighbouring properties. With regard to those buildings on either side of No 189, the presence of similar structures, if of slightly smaller bulk, and the general orientation of extensions and additions has created a density of built forms that significantly limits the impact of an additional building. With regard to the adjacent properties in Golders Green Road, I therefore conclude that the impact of the disputed building on the living conditions of their occupants is sufficiently restricted so as not to breach the relevant parts of Policies D5, GBEnv2 and H27 of the adopted UDP.
19. I recognise that there will also be an impact on the rear of those properties in The Grove that back on to No 189. These properties, in my observation, are predominantly residential and still have largely open rear gardens. Nevertheless, a combination of the structures that already exist, the absence of windows on the facing elevation of the disputed building and its orientation to the north east, all limit its impact on the properties in The Grove in terms of any possible overlooking or overbearing. I therefore consider that the impact of the disputed building on the living conditions of residents of The Grove is also sufficiently limited as not to breach the relevant policies of the adopted UDP.

Conditions

20. The Council put no conditions to me that it would wish me to impose were planning permission granted. However, the appellant has suggested that, if permission is granted, a condition should be imposed to restrict the future use of the disputed building to purposes ancillary to the main dwelling. I agree. Such a condition, worded to meet the terms set out in Circular 11/95, *Use of Conditions in Planning Permission*, would provide an additional defence for the future living conditions of the occupants of neighbouring properties. I shall therefore impose such a condition.

Conclusion

21. For the reasons given above, I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under s.177(5) of the 1990 Act.

Roger Pritchard

INSPECTOR