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# Appeal Decision

Hearing and site visit held on 18 February 2014

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

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

**Decision date: 26 March 2014**

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**Appeal Ref: APP/N5090/C/13/2202037**

**Land at 24 Cranbourne Gardens, London NW11 0HP**

- 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 Mr A Mendlesohn against an enforcement notice issued by the Council of the London Borough of Barnet.
- The Council's reference is ENF/00274/13/F.
- The notice was issued on 17 June 2013.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a dwelling house in the rear garden.
- The requirements of the notice are to: (1) Demolition of the single storey dwelling house in the rear garden (2) The permanent removal from the property of all constituent materials from the resulting demolition as described above.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Decision.**

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## Matters concerning the notice

1. It is apparent that the allegation should state the following: *the construction of a building in the rear garden and its use as a dwelling house*. The requirement to demolish the single-storey dwelling house in the rear garden is clear. At the Hearing, the appeal parties ('the Parties') agreed that no injustice would be caused by the intended correction as it is clear as to the intention behind the notice. I will correct it.

## Grounds (b) and (c)

2. The nub of the appellant's main argument is that the building is required for an incidental purpose. It is claimed that the building is used as an annexe for the appellant's 45 year old son who suffers from autism and requires 24-hour care. This is reflected in the high-level location of the windows and the overall design and layout of the building. The contention is that the development benefits from a deemed planning permission by virtue of the GPDO<sup>1</sup>. For the following reasons, I disagree.
3. The building is a flat roof 'L-shaped' structure located within the curtilage of no. 24. It has a kitchen, toilet, shower, living and two bedrooms and it is accessed

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<sup>1</sup> Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995 as amended ('the GPDO').

separately, due to its location and disconnection from no. 24. The building has the facilities necessary for normal independent day-to-day living and it forms a self-contained unit and is used for residential purposes. I find that there is no functional relationship between the structure and the main house because of the separate living and sleeping facilities. Furthermore, the building can be separately accessed via a side passageway and it is physically disconnected from the main dwelling, due to its siting and positioning.

4. As a matter of fact and degree, a separate dwellinghouse has been created because of the structure's functional and physical separation. At the time when the notice was issued, the building had, as a matter of fact, been constructed and it amounted to a dwelling house.
5. Under ground (c), the argument is that the building is required for an incidental purpose. For the development to benefit from permitted development rights set out in Class E of the GPDO, all of the physical criteria need to be satisfied. At the Hearing, the Parties conceded that the building is located within 2m of the boundaries and it exceeds 2.5m in overall height. For this reason, it fails the physical criteria set out in paragraph E.1 (d) (ii) of Class E. Therefore, the building does not benefit from a deemed planning permission. Planning permission is required for the development.
6. For all of the above reasons, ground (b) and (c) must fail.

#### **Ground (a)**

7. The terms of the deemed planning permission are directly derived from the alleged breach. Planning permission is sought for the construction of a building in the rear garden and its use as a dwelling house. The **main issue** to consider is the effect of the development upon: (1) the character and appearance of the locality (2) the living conditions of existing and future occupiers having regard to outlook, privacy and amenity space.

#### *Character and appearance*

8. Policy 3.5 of The London Plan (July 2011) relates to the quality and design of housing developments. The REMA<sup>2</sup> does not materially alter this Policy and any minor alterations reflect guidance contained within the National Planning Policy Framework. Policy CS5 of the London Borough of Barnet Local Plan Core Strategy 2012 aims to protect and enhance Barnet's character to create high quality places. Policy DM01 of the Council's Development Management Policies 2012 (DPD) seeks to protect the Borough's character and Policy DM02 sets out development standards. These local policies are broadly consistent with advice contained in paragraphs 17 and 56 of the Framework.
9. No. 24 is a two-storey semi-detached dwelling situated within a mainly residential area. The gardens back onto properties situated in Bridge Lane. In this backland location, I concur with the Council's assessment that a separate dwelling is inappropriate to the appearance of the locality. However, outbuildings of various sizes and shapes are not totally out-of-keeping with the residential character of the locality. In my view, the development does not materially harm the character of the locality given the design, size and siting of the building. The location and layout of the building is of a high standard.

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<sup>2</sup> See the Revised Early Minor Alterations to The London Plan 2013 (REMA).

10. Notwithstanding the above, the Council cannot be criticised for taking enforcement action given that the building contains the necessary facilities for independent living. In planning terms, a self-contained dwelling in this reward location is inappropriate and incompatible with the settlement pattern. Nonetheless, the Parties agreed that the building has been constructed for the appellant's son who requires supervision and independent living. If the use of the building can be controlled by way of imposing planning conditions, the planning difficulties would be overcome. However, if suitably worded conditions cannot be imposed planning permission would have to be refused. I will return to this matter later.
11. Drawing all of the above points together, I conclude that a self-contained dwelling would be inappropriate in this location. On the other hand, subject to the imposition of suitably worded conditions, the use of the building as an annexe to the main dwelling does not have a materially harmful effect upon the character and appearance of the locality given the design, size and siting of the building. On this basis, the development complies with Policy 3.5 of The London Plan, CS Policy CS5 and DPD Policies DM01 and DM02.

#### *Living conditions*

12. The Council criticised the location of high level obscure glazed windows, because future occupiers would have reduced outlook, but the building is designed to accommodate the needs of the appellant's son given his medical condition. Provided such a use can be controlled by imposing conditions, the use of the building for incidental residential purposes does not materially harm future occupiers' outlook.
13. In terms of its design, the building includes five obscure glazed windows two of which are located in the main bedroom and kitchen and open at low level. However, the building is located at the bottom end of the garden close to existing boundaries which are defined by tall fences. I observed that direct views of the adjoining gardens are restricted by the location of the existing fences. Nonetheless, the building is visible from the adjoining properties given its scale in comparison to the height of the fences. But the development does not significantly inhibit neighbours' outlook because of the location and positioning of the building.
14. The rear garden is used for amenity purposes though it has not been subdivided. The Council acknowledged that should the building be used in connection with no. 24 as a dwellinghouse, there would be no need to provide separate amenity area for the building.
15. Taking all of the above points together, subject to the imposition of suitably worded conditions controlling the use of the building, I conclude that the development does not have an adverse effect upon the living conditions of existing and future occupiers because of the building's design and location. Accordingly, the development would comply with Policy 3.5 of The London Plan, DPD Policy DM01 and DM02, advice contained within paragraph 17 of the Framework, and section 2.4 of the Council's supplementary planning document (SPD) *Sustainable Design and Construction* 2013.

### *Other considerations*

16. One of the reasons for issuing the notice referred to the Council's concern that the dwelling has not been built to meet with level 3 of the code for sustainable development, which fails to comply with advice contained in section 2.19 of the SPD. However, the planning agent confirmed that the building was built as an outbuilding and it meets with building regulations. I am quite satisfied with the standard and quality of the work which is reflective of its use.

### *Conditions*

17. The PPG<sup>3</sup> states that when used properly, conditions can enhance the quality of development and enable development proposals to proceed where it would otherwise have been necessary to refuse planning permission, by mitigating the adverse effects of the development. That is echoed in paragraphs 203 to 206 to the Framework.
18. The development has already been carried out and I agree with the Council's assessment that the materials utilised on the external elevations do not harm the character and appearance of the locality.
19. There was much discussion about the possibility of controlling the use of the building so that it is not turned into a separate dwelling, which, given my findings above, is a legitimate planning concern. As the annexe is physically separate from the main dwelling, it is necessary to impose a planning condition so that its use shall be ancillary to the main dwelling house. In this context, the Council consider that a planning obligation pursuant to section 106 of the Town and Country Planning Act 1990 as amended would be required. The PPG advises that it may be possible to overcome a planning objection to a development equally well by imposing a condition on the planning permission or by entering into a planning obligation. In such cases, the use of a condition rather than seeking to deal with the matter by means of a planning obligation is reasonable.
20. I have considered the wording of the Council's suggested condition. However, there are no specific objections to the imposition of model condition no. 47 set out in Annex A of the Circular which is reasonable and enforceable.
21. The Council suggested a personal planning permission given the particular circumstances of this case. They also stated that a condition restricting the use of the property to use class C3 (a)<sup>4</sup> should be imposed. However, planning permissions run with the land and the presented circumstances are not exceptional enough to warrant a personal planning permission. I consider that the condition stipulating that the building shall not be occupied at any time other than for purposes ancillary to the residential use of the main dwelling would be more appropriate than specifying a personal permission or restricting the use of the property.

### *Conclusions on ground (a)*

22. The building contains the necessary facilities for day-to-day living. The use of the building as a separate dwelling is unacceptable in planning terms.

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<sup>3</sup> The Planning Practice Guidance 6 March 2014 (PPG). Apart from annex A (Model Conditions) of Circular 11/95: *The use of conditions in planning permissions*, this guidance has been cancelled.

<sup>4</sup> Schedule to the Town and Country Planning (Use Classes) Order 1987 as amended.

However, the use of the building can be controlled by way of a suitably worded planning condition. On balance, the development would comply with the cited local and national planning policies subject to the imposition of a planning condition restricting the building's use. For all of the above reasons, I conclude that the appeal under ground (a) should succeed.

### **Overall conclusions**

23. For the reasons given above and having considered all other matters, I conclude that the appeals on grounds (b) and (c) fail. However, the appeal on ground (a) and the deemed planning application will succeed and planning permission will be granted. Therefore, the appeal on grounds (f) and (g) does not need to be considered as the notice will be quashed given success under ground (a).

### **Formal Decision**

24. The enforcement notice is corrected by the deletion of the words in paragraph 3 (i) and the substitution therefor of the following words: *the construction of a building in the rear garden and its use as a dwelling house*.

25. Subject to the correction, the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the construction of a building in the rear garden and its use as a dwelling house on the land referred to in 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 24 Cranbourne Gardens, London NW11 0HP.

*A U Ghafoor*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Alvin Ormonde

Wiesenfield Associates on behalf of the appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Ramesh Depla

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} The Council of the London Borough of Barnet

Mark Springthorpe

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## **DOCUMENTS**

- 1 Hearing notification letter and those notified