


DELEGATED REPORT

ENFORCEMENT NOTICE

LOCATION:	Land at: 18 Underne Avenue London N14 7NE	REFERENCE:	ENF/1016/21
		OFFICER:	
		WARD:	Brunswick Park

CONTRAVENTION:

Without Planning Permission: the erection of a single storey rear extension with associated raised patio and steps (edged in red in the attached images); The erection of a wall adjoining the single storey rear extension built on top of the raised patio to a total height exceeding 2 metres (edged in yellow in the attached images); The raising of the level of the rear garden, (edged in blue in the attached images) and; The erection of boundary fencing (with 20 Underne) that exceeds 2 metres in height.

RECOMMENDATION:

To issue an ENFORCEMENT NOTICE and to serve copies thereof on the owners and occupiers of the premises, in respect of which the planning contravention has taken place requiring:-

- 1 Demolish the existing single storey rear extension and the raised patio terrace with associated steps. This includes the wall erected upon the patio to the side of the patio, neighbouring the property of 20 Underne Avenue.
- 2 Return the level of the garden to that which existed prior to the breach of planning control by:
 - a) On the North East boundary reduce the levels of the garden to match that on the adjacent land at number 16 Underne.
 - b) On the North West boundary reduce the levels of the garden to no more than 30 cm higher than the adjacent land at number 20 Underne.
 - c) Ensure that there is a smooth gradient between the two boundaries.
- 3 Reduce the height of the boundary fencing with No. 20 Underne to 2 metres in height.
- 4 Permanently remove from the property; of all constituent materials resulting from the works in 1, 2 and 3 above.

Within a period of 6 Months from the date on which the Notice takes effect. That the Notice shall take effect on a date to be specified therein not being less than 34 days from the date of issue.

That the Head of Legal Services to be instructed to take such action as may be necessary, including legal proceedings, to secure compliance with the Notice.

CONSTRAINTS:

None

REPRESENTATIONS:

None

EQUALITIES AND DIVERSITY ISSUES:

The Equality Act 2010 (the Act) came into force in April 2011. The general duty on public bodies is set out in Section 149 of the Act. The duty requires the Council to have due regard to the need to eliminate discrimination and promote equality in relation to those with protected characteristics such as race, disability, and gender including gender reassignment, religion or belief, sex, pregnancy or maternity and foster good relations between different groups when discharging its functions.

The enforcement action does not conflict with the requirements of the Equality Act and nor do they conflict with Barnet Council's equalities policy, or the commitments set in its equality scheme.

SITE VISITS:

11th February 2022 and 7th July 2022 by enforcement officers.

OFFICER REPORT:

An enforcement case was raised on 19th August 2021. It concerned several unauthorised developments to the rear of the above site.

The developments included the erection of 2no retaining walls to either side of a raised patio with steps. The raising of the ground level of the garden and the erection of a large outbuilding.

The LPA wrote to the owner of the above site on 4th December 2021 and stated that as planning permission would not be granted for these developments; this fact was checked with by contacting the planning case officer for a current application for the above site, (at that time), who on viewing these developments would not approve them.

The LPA requested the following actions to be made by early February.

- o The parapet boundary wall raised adjoining the neighbouring property of 16 Underne is reduced to match the height of the existing boundary (grey brick) wall.
- o The standalone wall built on the side neighbouring 20 Underne Aveue is demolished.
- o The raised levels to the rear garden are removed to return the level to its previous lawful state.
- o The development of the outbuilding is to be demolished as it exceeds permitted development rights in combination with the other developments for the rear of the site.
- o There is also the general point of planning breach; that regarding the cumulative developments of the single storey rear extension, raised levels and erection of an outbuilding, they all exceed permitted developments rights as they encompass more than 50% of the total curtilage of the above site.

A site inspection was made on 11th February 2021. The inspection revealed that the only aspect of the works required to carried out was regarding the parapet boundary wall raised

adjoining the neighbouring property of 16 Underne Avenue is reduced to match the height of the existing boundary (grey brick) wall. This wall had been reduced in accordance with the instructions depicted in the letter sent to the owner.

There is also an issue of a single storey rear extension that was developed in breach of the approved planning application consented for the above site, that was subject to conditions. A further planning application reference, 21/6700/RCU in regard to the site was made for the single storey rear extension and associated raised patio and steps, this has consequently been refused by the LPA.

On request of the owner's retain agent, a further site inspection was made on 7th July 2022 with the head of planning enforcement and 2no other enforcement officers.

It was agreed in regard to this site inspection that the works that had been made to the hardstanding and the outbuilding for the site, would most likely be allowed on appeal if included in a notice.

However, the issue of the single storey rear extension, associated raised patio and steps and retaining wall built on top of the raised patio, bordering No. 20 Underne. These were in breach of planning control and should be enforced with a notice.

A verbal agreement was made with the owner and his retained agent, that the raised levels for the garden would be allowed for a separate application to be submitted to the LPA to address this issue. However, no application has been forthcoming.

There has also been the recent issue of the replacement of the pre-existing lawful boundary fencing with the neighbouring property of 20 Underne. The replacement fencing is approximately 2.5 metres high and in breach of planning control and permitted development rights.

PLANNING APPRAISAL:

The application site contains a two-storey semi-detached dwellinghouse with front and rear amenity space. The site is not within a conservation area (designated as Article 2(3) land in The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended) and is not within an area covered by an Article 4 direction. There are no conditions attached to the site which remove permitted development rights.

Main issues for consideration

The main issues for consideration in this case are:

- Whether harm would be caused to the character and appearance of the existing building, the street scene and the wider locality;
- Whether harm would be caused to the living conditions of neighbouring residents.

Assessment of developments

Whether harm would be caused to the character and appearance of the existing building, the street scene and the wider locality:

Single storey rear extension

Any scheme for the site will need to respect the character and appearance of the local area, relate appropriately to the site's context and comply with development plan policies in these respects. This will include suitably addressing the requirements of development plan policies such as DM01, CS05 (both of the Barnet Local Plan), D1, D3 and D4 of the London Plan 2021.

The Council's SPD 'Residential Design Guidance' states that extensions should normally be subordinate to the original house, respect the original building and should not be overly dominant.

Policy DM01 requires that all development should preserve and enhance the local character of the area. A large outbuilding is under construction. With this structure in situ, this existing extension at this depth, is considered to result in a significant loss of rear amenity space, as well as appearing as disproportionate and unsympathetic to the host dwelling - the scale further resulting in an overbearing, bulky and dominant impact.

Clause 2.7.1 of the Development Managements policies state that: "Schemes which significantly harm the amenity of neighbouring occupiers will be refused planning permission. Protecting amenity helps to protect the wellbeing of the boroughs residents. It is important to ensure that developments do not significantly overshadow neighbouring buildings, block daylight, reduce sunlight, or result in a loss of privacy or outlook."

Barnet RGD states "Outdoor amenity space provides opportunities for recreation, leisure, tranquillity and overall quality of life as well as interaction with the natural environment. Back gardens and other outdoor amenity spaces contribute positively to Barnet's green character and spacious layout as well as helping to mitigate climate change."

The existing additions of a single storey rear extension, the raised patio with steps, the raised levels of the garden and the outbuilding will take up approx. 70% of the garden area. Private amenity space for the exclusive use of building occupants is a highly valued asset. It is felt that these existing developments considerably reduced access to suitable private amenity space, therefore the extensions are detrimental to the host property amenity space.

After consideration, the existing developments regarding design would be at odds with the character of the existing dwelling. Any harm caused by these developments is so significant as to be considered unacceptable in regard to the principal of design.

Whether harm would be caused to the living conditions of neighbouring residents:

It will be important that any scheme addresses the relevant development plan policies (for example policy DM01 of the Barnet Local Plan and policy D1 of the London Plan) in respect of the protection of the amenities of neighbouring occupiers. This will include taking a full account of all neighbouring sites.

16 Underne Avenue

This neighbour does not have any type of extensions in situ. The extension for the development site coupled with the raised patio extends outward along the boundary fence. These developments have a real impact on the level of harm that is experienced by this neighbour as a result of these developments. This includes the outbuilding that forms part of the boundary wall for this neighbour. By reason of these developments size, siting and rearward project they have an unacceptable relationship with this neighbour and have an overbearing impact.

Garden and raised patio level

On review, whilst minor mitigation measures have been put in place for the raised patio, which include railings projecting 1m above at the level of the existing extension, however this would not be enough to reduce any adverse impact. The overall terrace and gardens levels is an alien feature in the vicinity. Although not visible from the streetscene, the current levels are incongruous. No other examples of this current garden level are located in the immediate vicinity and given the pattern of development on this side of the street; the introduction of this element is considered to be unacceptable. Any consent to an element of this sort would only add precedence to a new established character for the area. This includes the wall erected upon the patio to the neighbouring property of 20 Underne Avenue.

The current garden and patio levels are considered to result in unacceptable harm to the local neighbouring residents (even those not attached to the dwelling). This is because the siting and positioning of the terrace (patio), would provide direct opportunity for overlooking into the neighbouring rear amenity spaces. The existing screening provides little or no prevention to the occupiers of the development site from directly viewing the neighbouring property from the sides. The terrace still therefore facilitates overlooking and an intrusion on the privacy of these neighbours on account of the siting of the terrace. Neighbours have a right to enjoy their rear garden without unacceptable levels of overlooking; the development is not considered to afford the neighbouring occupier sufficient levels of privacy.

As such, the existing raised patio and garden level are not considered to be an acceptable addition to the character of the existing dwelling and wider area and is therefore not acceptable under Policy DM01.

The raised height of the boundary fencing with No. 20 Underne.

The newly erected boundary fencing consists of an approximately 2.5-meter-high fencing replacing a pre-existing lawful fence to the boundary of the site with 20 Underne.

The Design Guidance Note No 9; Walls, Fences and Gates (1994) requires development for boundary treatment to be of a size, design and scale that respects the character of the host property and surrounding area. Design Guidance Note 9 notes that boundaries should reinforce the prevailing area, especially where a continuous uniform treatment forms a distinctive character.

The Council's approach to extensions as set out in Policy DM01 is to minimise their impact on the local environment and to ensure that occupiers of new developments as well as neighbouring occupiers enjoy a high standard of amenity. Policy DM01 states that all development should represent high quality design and should be designed to allow for adequate daylight, sunlight, privacy and outlook for adjoining occupiers. Policy DM02 states that where appropriate, development will be expected to demonstrate compliance to minimum amenity standards and make a positive contribution to the Borough. The development standards set out in Policy DM02 are regarded as key for Barnet to deliver the highest standards of urban design.

The London Plan 2021 (D3.D(11)) in regard to quality and character of development design, states the following; "respond to the existing character of a place by identifying the special and valued features and characteristics that are unique to the locality and respect, enhance and utilise the heritage assets and architectural features that contribute towards the local character."

Impact on of the High Fencing on Amenity for Neighbouring Property of 20 Underne

The resident of the neighbouring property of 20 Underne, now have their outlook further depreciated by the overly high fencing, for the above site, causing a sense of an overbearing, a visually intrusive and a dominating feature in regard to the resident of the neighbouring property of 20 Underne.

The Design Guidance Note No 9 (4); Walls, Fences and Gates (1994) states "High level boundary features between neighbouring front gardens are inappropriate in most situations and can be particularly unsightly".

Policy DM02 states that where appropriate, development will be expected to demonstrate compliance to minimum amenity standards and make a positive contribution to the Borough. The development standards set out in Policy DM02 are regarded as key for Barnet to deliver the highest standards of urban design.

Conclusion

Having taken all material considerations into account, it is considered that the above developments for the above site, are considered unacceptable and not in accordance with Barnet Planning policies.

JUSTIFICATION:

1 The existing single storey rear extension by virtue of its height, size, siting, design and excessive rearward projection is overbearing and visually obtrusive, resulting in serious loss of light, outlook and increased sense of enclosure detrimental of the visual and residential amenities of the neighbouring occupiers of 16 Underne Avenue contrary to Policies CS1 and CS5 of Barnet's Adopted Core Strategy DPD (2012); Policies DM01 of the Adopted Development Management Policies DPD (2012) and the LB Barnet: Residential Design Guidance SPD (2016)

2 The existing raised patio, associated steps and retaining wall, by reason of their height, siting and rearward projection, results in overlooking and loss of privacy detrimental to the amenities of the occupiers of neighbouring residents at Nos 16 and 20 Underne Avenue. The development is therefore contrary to policies D3 of the London Plan 2021, CS1 and CS5 of Barnet's Adopted Core Strategy (2012), policy DM01 of the Adopted Development Management Policies DPD (2012) and the Adopted Residential Design Guidance SPD (2016).

3 The raised level of the rear garden by reason of its excessive height constitutes an incongruous addition which subsumes its character and appearance, to the detriment of the character and appearance of the existing dwellinghouse and the general locality. It is also visually obtrusive to the occupiers of the neighbouring occupiers, contrary to policy DM01 of the Development Management Policies DPD, policy CS5 of the Barnet Core Strategy and the Supplementary Planning Document: Residential Design Guide (2016). Also, contrary to policy D3 of the London Plan 2021.

4 The boundary fence with the neighbouring property of 20 Underne, which is in excess of two metres by reason of its height and siting, represents a dominant and incongruous addition to the property which is out of keeping with the established character and appearance of the local area. The development is therefore found to be unacceptable and contrary to policies D1 and D4 of The London Plan (2021), policy CS5 of the Barnet Core Strategy (2012), policy DM01, DM02 and DM06 of

the Barnet Development Management Policies document (2012) and the Residential Design Guidance (2016).

Planner (ENF) _____ Date: _____

Acting for
Service Director – Planning and Building Control _____ Date: _____