
Appeal Decisions

Site visit made on 1 November 2016

by **Nigel Burrows BA MRTPI**

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

Decision date: 2 December 2016

Appeal A: Appeal Ref: APP/N5090/C/16/3146129 59 Elliot Road, London, NW4 3DN

- 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 Tse-Lin Liu against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/00551/15, was issued on 23 February 2016.
- The breach of planning control as alleged in the notice is the construction of a single storey front, side and rear extension.
- The requirements of the notice are:
 1. Demolish the single storey front, side and rear extension.
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.

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

Appeal B: APP/N5090/W/16/3145600 59 Elliot Road, London, NW4 3DN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Tse-Lin Liu against the decision of the Council of the London Borough of Barnet.
- The application Ref 15/03623/RCU, dated 6 June 2015, was refused by notice dated 18 January 2016.
- The development proposed is described as 'Single-Storey Rear Extension (retrospective).'

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the formal decision

Appeal C: APP/N5090/X/16/3145906 59 Elliot Road, London, NW4 3DN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Tse-Lin Liu against the decision of the Council of the London Borough of Barnet.
- The application Ref 15/03434/192, dated 2 June 2015, was refused by notice dated 15 January 2016.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is described as follows: "*The Builder built the loft slightly larger than permitted development rules. We would like to reduce its size according to new attached plans, so it will satisfy permitted planning rule*". [sic]

Summary of Decision: The appeal is dismissed

Background

1. The appeals relate to a two storey detached property situated on the south side of Elliot Road within a predominantly residential area of the London Borough of Barnet.
2. During 2014 the Council determined that prior approval was not required for a single storey rear extension to the property projecting 6.0 into the garden (ref: H/05395/14). However, the Council indicates the extension, as built, is about 6.2m deep and extends across the full width of the property. A planning application was refused in 2015 for development including a single storey side and rear extension, a hip to gable roof extension, a rear dormer and the conversion of a garage to habitable accommodation (ref: H/05399/14). However, construction works were apparently carried out whilst this application was under consideration. A subsequent application for the retention of a single storey rear extension was refused in January 2016 (ref: 15/03623/RCU).
3. The enforcement notice subject of Appeal A is directed at single storey extensions constructed on the front, side and rear elevations of the property. According to the Council the extensions were constructed as a single building project. Appeal B arises from the refusal of the retrospective application for the single storey rear extension. In effect, Appeal C appears to be concerned with the dormer upon the rear roof slope.¹

Appeal A: ground (a) and Appeal B

Main Issues

4. There are two main issues to be addressed in these appeals. The first is the effect of the development on the character and appearance of the property and the area. The second is its effect on the living conditions of neighbours, particularly their outlook.

Issue 1: Character and Appearance

5. I observed the front canopy extension is a subordinate addition to the property. It sits comfortably alongside the projecting two storey splayed bay and does not appear at odds with the architectural composition of the property. The fact the extension appears to be finished in matching materials helps to assimilate it into its context. I saw that it does not appear dissimilar to the front extensions and canopies on some of the neighbouring properties. Furthermore, the extension does not appear intrusive in the street scene, not least because of the set-back of the host dwelling from the highway.
6. Turning to the rear extension, this is a substantial enlargement with an extensive flat roof. I appreciate that in some circumstances it might be considered a disproportionate enlargement at ground floor level. However, in this particular instance, on balance I consider that it does not appear out of scale or harm the character or appearance of the dwelling. It does not intrude into the garden to an unacceptable degree, or harm the open character of the area. In reaching this conclusion, I have also borne in mind that it will be seen in the context of the large rear extension currently under construction at 57 Elliot Road. The Council has apparently determined that prior approval is not required for the extension of this property (and, similarly, for a new rear extension at 61 Elliot Road).
7. I observed the side extension is a relatively unobtrusive link between the front and rear additions to the property. Overall, I conclude these extensions do not harm the character and appearance of the host property or the surrounding area, as alleged by the Council. I further conclude that in this respect they do not conflict with the relevant development plan policies cited by the Council, including CS5 of its Core Strategy and policy DM01 of its Development Management Policies Development Plan Documents.

Issue 2: Living Conditions

8. The extension to the rear of the appeal property would not harm the outlook available

¹ As confirmed in paragraph 1 (a) of the written submissions lodged on the appellant's behalf

to the occupiers of 57 Elliot Road, bearing in mind that an extension of similar scale and depth is nearing completion to the rear of this property. The impact of the rear extension upon the occupiers of 61 Elliot Road is mitigated by the fact that the adjacent property is on a slightly higher plot and appears to have previously been extended to the rear. The additional projection of the appellant's extension to the rear of 61 Elliot Road would not be sufficient to harm the neighbours' outlook, or to create an unacceptable sense of enclosure along the boundary. The impact of the extension would be further reduced if a prior approval scheme is carried out at 61 Elliot Road.

9. The Council does not appear to allege the front or side extensions would harm the amenity of the neighbours. As matters stand, I conclude the extensions, as built, would not diminish the outlook available to the neighbouring residents to the extent that they would detract from their overall living conditions. As such they do not conflict with policy DM01.

Overall Conclusions

10. In view of my findings on ground (a), I conclude that Appeal A should succeed. The enforcement notice will therefore be quashed and permission will be granted on the deemed application. In the circumstances, it is unnecessary for me to deal with the ground (g) appeal. I further conclude that Appeal B should succeed for similar reasons.
11. The Council has suggested various planning conditions in the event of Appeals A or B being allowed. As the development has already been carried out, it would not be necessary to impose a standard condition concerning the implementation of the permissions, or requiring the works to be carried out in accordance with approved plans. A condition requiring matching materials is also unnecessary in this instance.
12. However, I agree that a condition prohibiting the use of the flat roof of the extensions for sitting out would be necessary to safeguard the privacy of neighbouring residents.

Appeal C

13. The main issue in this case is whether the refusal of the application for an LDC for the works described in the fifth bullet point of the heading for Appeal C was well-founded. I note the Council has described the works as 'Reduction to size of existing extensions'.
14. As previously noted, the alterations to the property include a hip to gable roof extension and a rear dormer. There is no dispute that these works involve development for the purposes of the T&CP Act and, amongst other things, they exceed the limitation of 50m³ set out in paragraph B.1 (d) (ii), Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (i.e. the GPDO).
15. The Council's stance is that planning permission is required to retain the works associated with the loft conversion - even if they are reduced in size. The appellant indicates the application is made under section 192 of the Act for proposed works - it is procedurally correct, as the works subject of the LDC have not been carried out. However, the appellant evidently intends to modify the existing dormer.² There is no firm evidence to demonstrate the proposal involves the construction of an entirely new dormer complying with the GPDO.
16. As the Council points out, permitted development rights under the GPDO cannot be claimed retrospectively. The position must be judged at the time the development was carried out, which is normally the date when the works commenced and not the date when an existing unlawful structure was subsequently altered or modified in some way.³
17. It is well established in planning law that the onus rests with the appellant to make out his or her case. I find that burden has not been satisfactorily discharged in this instance. On the evidence currently before me, I conclude that the Council's refusal to

² As confirmed in paragraph 1 (a) of the appellant's submissions

³ Article 3(5) of the GPDO indicates that the permission granted by Schedule 2 shall not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful.

grant a certificate of lawful development was well-founded. The appeal therefore fails.

18. I have taken into account all the other matters raised in the representations, including the discrepancies on the application drawings referred to by the Council, however, I find they do not alter or outweigh the main considerations that have led to my decision.

Formal Decisions

Appeal A: Appeal Ref: APP/N5090/C/16/3146129

19. 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 single storey front, side and rear extension at 59 Elliot Road, London, NW4 3DN, subject to the following condition:

1. The roof area of the extensions hereby permitted shall not be used as a balcony, roof garden or similar amenity area.

Appeal B: APP/N5090/W/16/3145600

20. The appeal is allowed and planning permission is granted for development described as 'Single-Storey Rear Extension (retrospective)' at 59 Elliot Road, London, NW4 3DN in accordance with the terms of the application Ref 15/03623/RCU, dated 6 June 2015, and the plans submitted therewith, subject to the following condition:

1. The roof area of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area.

Appeal C: APP/N5090/X/16/3145906

21. The appeal is dismissed.

Nigel Burrows

INSPECTOR