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## Appeal Decisions

Date of Hearing 17 December 2019

Site visit made on 17 December 2019

**by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA**

an Inspector appointed by the Secretary of State

Decision date: 08 July 2020

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**Appeal A: APP/N5090/C/18/3209042**

**Appeal B: APP/N5090/C/18/3209072**

**155 Chanctonbury Way, London NW12 7AE**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Ardian Rusta and Appeal B is made by Mrs Ervisa Rusta against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 10 July 2018.
- The breach of planning control as alleged in the notice is: building works not to the approved plans of planning permission reference 18/0129/FUL dated 29 February 2018.
- The requirements of the notice are:
  1. Demolish the dwellinghouse at no.155 Chanctonbury Way
  2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
- The period for compliance with the requirements is two months after this notice takes effect.
- Appeal A is proceeding on the grounds set out in section 174(2)(a)(f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2)(f) and (g) of the 1990 Act. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.

**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.**

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**Appeal C: APP/N5090/W/18/3218172**

**155 Chanctonbury Way, London NW12 7AE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under s73 of the 1990 Act for development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr and Mrs Rusta and Mr and Mrs Scott against the decision of the Council of the London Borough of Barnet.
  - The application Ref 18/4373/S73, dated 13 July 2018, was refused by notice dated 19 November 2018.
  - The application sought planning permission for: demolition of no 155 and erection of 1 no dwelling. Part single-part two-storey side and rear extension following demolition of existing side/rear extension and garage. Association [sic] changes to windows and door including relocation of front entrance to 157 Chanctonbury Avenue without complying with conditions attached to planning permission Ref 18/0129/FUL.
  - The condition in dispute is No 1 which states that: the development hereby permitted
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shall be carried out in accordance with the following approved plans:

PA\_001 (received 10/01/2018); PA\_002 (received 10/01/2018); PA\_003 (received 10/01/2018); PA\_004 (received 10/01/2018); PA\_005 (received 10/01/2018); PA\_006 (received 10/01/2018); PA\_007 (received 10/01/2018); PA\_008 (received 10/01/2018); PA\_009 (received 10/01/2018); PA\_010 (received 10/01/2018); PA\_012 (received 10/01/2018); PA\_013 (received 10/01/2018); PA\_014 (received 10/01/2018); and PA\_015 (received 10/01/2018); Baseline Impact Assessment (received 08/01/2018).

- The reasons given for the condition are: for the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with Policies CS NPPF [sic] and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy DM01 of the Local Development Plan Development Management Policies DPD (adopted September 2012).

**Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the Formal Decision.**

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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 5 May 2020.

### **Application for costs**

1. At the hearing an application for full awards of costs in respect of Appeals A, B and C was made by Mr and Mrs Rusta against the Council. This application is the subject of a separate Decision.

### **Procedural matters**

2. The appeals arise from works undertaken at 155 Chanctonbury Way, owned by Mr and Mrs Rusta, and No 157, owned by and Mr and Mrs Scott.
3. Two other appeals, by Mrs Scott (APP/N5090/C/18/3209172) and Mr Scott (APP/N5090/C/18/3209093) related to an enforcement notice requiring the demolition of No 157, but the Council withdrew that notice and I have no jurisdiction over those appeals. Appeal C however remains in the names of both Mr and Mrs Rusta and Mrs and Mrs Scott. No amendment has been sought to the appealed application in Appeal C.
4. On Appeals A and B, Mr and Mrs Rusta withdrew their appeals against the notice insofar as they were made on ground (c) and on ground (e), on 24 October 2019 and 2 December 2019 respectively. I note in this connection that at least as far back as 22 July 2019 the appellants through their professionally qualified representatives, stated that they "*accept that the changes they have made to no 155 go beyond the works approved under 18/0129/FUL as relating to their home*", further stating that "*these changes include only a range of non – material and minor amendments to that earlier permission*" (emphasis supplied).

### **Preliminary matter: is the notice a nullity?**

5. Under s173(1) of the 1990 Act an enforcement notice "*shall state- (a) the matters which appear to the local planning authority to constitute the breach of planning control*".

6. It is argued that the notice is a nullity because the breach of planning control is not clearly and fully detailed on its face. The classic test is found in *Miller-Mead v Minister of Housing and Local Government* [1963] 2 Q.B.196, namely does the notice tell the recipient fairly what they have done wrong and what they must do to put it right? A notice may be so hopelessly ambiguous and uncertain that it must be a nullity, whilst a defective notice might be corrected provided no injustice to any party results.
7. This distinction is preserved in later cases, albeit in *Oates v Secretary of State for Communities and Local Government* [2017] EWHC 2716 (Admin) the court reformulated the relevant principles and said (paragraph 61) that although the distinction continued to be good law in this area, "*the Court can and should avoid applying it in a way which is unduly technical and restrictive.*"
8. In *Oates* the court reflected upon and nuanced the key tenet in *Miller Mead* by holding that the relevant part of the notice "*must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it.*" Other relevant principles were that some uncertainty or other defect in the relevant section does not mean that there is, without more, non-compliance with the statutory requirement. And, whether a defect renders the notice a nullity must be viewed in context, in particular the importance or otherwise of that part of the notice which contains it, whether it is inextricably bound up with the remainder of the relevant section of the notice or not, and whether, in its absence, the enforcement notice would otherwise be valid.
9. Mr Symons for the appellants accepted that one should not look at the notice, as it were, "*hermetically sealed from the facts of the case*". However his case was that the notice was so hopelessly vague and uncertain in its description of what the actual breach was, that it could not be cured by any variation. For its part, the Council's planning officer thought that the notice could be varied if it were considered necessary but was unable to suggest how it might be varied.
10. A degree of uncertainty is inherent in any general description of a breach that does not particularise each element of the building works that are said not to be in accordance with the approved plans of the planning permission in question. The appellants attach especial importance to the need for precision in describing the breach, given not only that the remedy sought is complete demolition of the property, but also that planning permission had been given on several occasions for similar proposals and amendments over 2017/18.
11. There was also a lawful fallback position that predated the issue of the notice, in the form of permission Ref 18/0129/FUL dated 28 February 2018 which further made it inexplicable to the appellants why the notice should require demolition of their property but not detail the exact nature of the breach.
12. However the history of development at the site shows that the Council had particularised, in its delegated report of 9 July 2018 ref ENF/0763/18 recommending enforcement action, the variances (noted from several site inspections, the most recent being 27 June 2018) between the plans approved under permission 18/0129/FUL and what had been built. These are summarised further below.
13. An email was sent to the appellants on 29 June 2018, informing them that photographs and measurements of the development had been taken at the site

- visit earlier that week, and when compared to the approved plans for permission 18/0129/FUL inconsistencies were noted. These were set out in detail, as in the delegated report.
14. The appellants were then requested in the email to make the development comply with the terms of permission 18/0129/FUL by modifying the development to match the scheme shown on the numbered plans of the planning permission. Alternatively they could, according to the email, submit a planning application to vary the approved plans in that permission. If they failed to comply with this request within 28 days the Council stated they would initiate legal proceedings in respect of the unauthorized development.
  15. Much of the appellants' concern and frustration at events was focussed on the fact that 28 days were not given to them to seek regularisation of the development, but instead enforcement notices were issued on 10 July 2018. They were also aggrieved that, whilst notices were issued for both properties, approval had been given for the changes at No 157. Further, that the Council's concerns about trees near the property, were overcome by an appeal decision discharging the relevant condition attached to permission 18/0129/FUL.
  16. In the circumstances there can be little doubt that the appellants were kept fully informed as to the particular respects in which they were alleged to have developed the appeal site contrary to permission 18/0129/FUL.
  17. No informality, defect or error is a material one unless it is such as to produce injustice. So said Lord Denning in *Miller-Mead* at p221 of his judgment, quoted in *Sarodia v London Borough of Redbridge* [2017] EWHC 2347 (Admin), a case which the planning agent, Mr Watts included in the hearing statement to draw parallels between the present case and three specific circumstances in *Sarodia*.
  18. These were that the notice: (1) was internally inconsistent such that the recipient did not know what he was required to do, (2) left its recipient in a state of confusion, and (3) could not have been corrected as the amendments would be too extensive and to do so would cause injustice to the appellant.
  19. In the first place, the notice is clear as to what is required, it is the demolition of the property. Whether that is excessive is another matter, to be considered if needed under ground (f). I do not accept, from what I have read and heard that the appellants were, as claimed, confused about the particular nature of the alleged breach of planning control; this was carefully set out in various communications before the notice was issued. There was also a site inspection that preceded the email, in which an opportunity would have been available for the appellants to understand and engage with the Council over its concerns. The approach taken in the notice is reasonable rather than detailing in the allegation all the unauthorised work. The Council has to state the matters that appear to amount to the breach of planning control, as opposed to specifying the steps to be taken.
  20. In *Miller-Mead* the error did not go to the substance of the matter. Instead of referring to "residential caravans" the notice referred more widely and therefore excessively to "caravans." The error was not such as to invalidate the notice altogether. Lord Upjohn referred to the need for "proper and sufficient particularity" in the notice. In all the circumstances I cannot see how the appellants have been prejudiced or suffered injustice by the wording of the

allegation. I am satisfied that the notice fairly and appropriately states the matters which appeared to the Council to constitute the breach of planning control, namely building works not to the approved plans of permission 18/0129/FUL.

21. Accordingly I find that the notice is not a nullity.

### **Appeal A on ground (a) and Appeal C**

#### ***Preliminary matters: Appeal A and the DPA***

22. An appeal on ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged. The appellant is deemed to have made an application for planning permission (the DPA) in respect of these matters, namely building works as they existed at the appeal site when the notice was issued.

#### ***Preliminary matters: Appeal C***

23. On Appeal C, permission may be granted subject to conditions differing from those in 18/0129/FUL; unconditionally; or subject to the same conditions, in which case latter the appeal would be dismissed.

24. The application form listed Condition 15 of permission 18/0129/FUL as in dispute. However this condition was discharged by the appeal decision of 21 December 2018, Ref APP/N5090/W/18/319907, and no longer falls to be considered.

25. So far as No 157 is concerned, permission 18/7277/RCU granted on 7 February 2019, gave approval to the changes made during the construction process. These related to the front entrance door, alteration of fenestration on the front elevation of the side extension at ground and first floors, the glazed window on the flank elevation of the first floor, and the windows and doors at the Juliet balcony on the rear dormer.

26. However no amendment is sought in this appeal to remove references to No 157. Therefore the substance of what is applied for in this appeal is the same as in the DPA, but including development carried out at No 157 at the date of the application, 13 July 2018, but without complying with the plans in 18/0129/FUL granted on 28 February 2018. I was not made aware of any material differences between changes to the property as at 13 July 2018 and those approved under permission 18/7277/RCU on 7 February 2019. Moreover the Council has no objection to this part of the s78 appeal relating to No 157.

### ***Main issue***

27. Therefore the main issue is the effect of the development at No 155 on the character and appearance of the host building, the surrounding area and wider street scene.

### ***Reasons***

28. The appeal site comprises semi-detached properties at Nos 155 and 157 Chanctonbury Way close to the head of a cul-de-sac. Dwellings are set in

relatively spacious plots and the area consists mainly of two storey semi-detached properties, varying in form, character and appearance. The Council's Supplementary Planning Document: Residential Design Guide, 2016 (SPD) states that extensions should normally be subordinate to the original house, respect the original building and should not be overly dominant.

29. Before assessing the changes made to the development at No 155 it is useful to consider several previous planning permissions, starting with the grant on appeal of a refused application 17/049/HSE.

*A baseline was originally created by the Inspector's appeal decision*

30. A baseline is created by the appeal decision of 8 September 2017, Ref APP/N5090/D/17/3177417 granting permission (permission 3177417) for the refused application 17/049/HSE. The Council clearly set out that the proposed rear/side extensions breached guidelines for extensions that they should not look too bulky and prominent compared to the size of the host building. It said that when viewed from the rear they contributed to the excessive bulk of the two-storey rear extension. The Inspector disagreed, saying that they were only visible from the rear and adjacent dwellings, and were not overly bulky or prominent.
31. Before the appeal decision was issued, permission had been granted on 30 June 2017 under Ref 17/2939/HSE where the Council accepted that changes to the extensions "now appear to be proportionate additions to the existing dwellinghouses" and addressed the reasons for the previous refusal.

*Permission 17/6065/HSE approved basement in consolidated permission*

32. 17/6065/HSE was itself approval of an application, again for development already carried out, again for matters previously approved but with the main addition of a basement excavation below the footprint of the ground floor. The basement extension was approved as not having any visual impacts.
33. Significantly however, approval was given with a condition to ensure the extensions were completed in full once started to avoid adverse impacts on either of the appeal dwellings. Thus Condition 6 required demolition of all works constructed in accordance with the permission if within 12 months of commencement the development was not "*implemented in its entirety and completed in full in accordance with the plans hereby approved*".
34. Reading the officers' report on 17/6065/HSE the Council clearly felt constrained not only by the appeal permission but the earlier permission 17/2939/HSE granted in June 2017. This applied to the single storey rear extension of 5m depth which the Residential Design Guidance stated should not generally exceed 3.5m in depth. Similarly the wrap around elements of the side extensions clearly exceeded half the width of the original property, again conflicting with the guidance, and the first floor side extensions matched those proposed under the permission granted on appeal and the original permission 17/0497/HSE.
35. The position was somewhat different in my view, when it came to the first floor rear extensions. These were proposed as a continuous element across both properties but this was contrary to the extensions approved by 17/2939/HSE under which there would be a 6m gap between them to allow for a subordinate

and sympathetic appearance. Indeed they would also project past the first floor side extensions approved under that permission.

36. Drawing also on the fact that the appeal permission approved a continuous first floor rear extension of some 15m across both properties, the Council's report reasoned that the proposal sought to "integrate" the two designs by both projecting from the first floor side extension and extending across the full width of the properties. Reliance was placed on the Inspector's findings but clearly his decision did not relate to the amalgamation of both designs. Yet the Council decided there would be no materially adverse impact on the properties or the local area.
37. Regarding the loft conversion, there was already a full width dormer in place at No 157 which had also undergone a hip to gable extension. The dormer was assumed to be built under permitted development legislation and does not appear to have been analysed further. The dormer proposed at No 155 would be 2.6m wide, previously considered subordinate in accordance with the design guidance. Since the loft conversion works would not change from previously approved applications, these were also approved.

*Permission Ref 18/0129/FUL regularised the demolition of No 155*

38. Permission 17/6065/HSE had not authorised the demolition of No 155 but it was nevertheless completely demolished following its grant. The majority of works comprised in permission 18/0129/FUL had been permitted under previous permissions but approval was also given retrospectively to the demolition of No 155 and erection of one dwelling.
39. However the approved measurements for the rebuild of No 155 were clearly of concern to the Council and were set out as follows:
- Ground floor width to be between 9.54m and 11.53 and up to 14m in depth from the front to rear elevation.
  - First floor, up to 12m in depth from front elevation to rear elevation and up to 9.54m in width. Property to be stepped to the front elevation.
  - Gabled roof and rear dormer to match No 157
  - Basement extension 14m in depth, and between 9.57m and 11.55 in width. 2 lightwells 1mx2m flush to ground level to side elevation facing No 153.
40. So permission 18/0129/FUL now augmented the fall-back position, as it now permitted a larger form of development than the baseline set by permission 7417714.
41. It is also striking that the words "*to match No 157*" are used by the Council in relation to the proposed gable roof and dormer at No 155. In fact this element was approved in permission 18/0129/FUL as much smaller than its counterpart at No 157, as can be seen on the drawings. Now of course, the unauthorised development in situ includes the rear dormer that has indeed been expanded to match No 157.

*The s78/s73 application in Appeal C 18/4373/S73*

42. Construction did not proceed in accordance with 18/0129/FUL. The application the subject of Appeal C was therefore made to have the variations in situ approved. The Council's report on that application noted:
- Clear increase in width at No 155 at basement, ground, second floor and roof levels;
  - Especially at roof level, dormer has been built at full width and full depth of roof slope contrary to approved plans in 18/0129/FUL that were *"designed to have resulted in a development that would be subordinate in terms of the impact it would have on the dwelling-house"*; and
  - A slight increase in depth at ground floor at both No.155 and No.157 Chanctonbury Way.
43. In the report it was considered that the variations from the approved plans created incongruous and unsympathetic additions, failing to complement the main house at No 155 and No 157.
44. Also, whilst the variations in width and depth would result in *"relatively small changes when compared to the size of the development"* it was considered that *"the proposal would have a disproportionate effect on the street scene by narrowing the spaces between building still further."*
45. However it concluded that the changes to the existing rear fenestration at ground and first floors, considering the size of the existing development, did not materially detract from the character and appearance of Nos 155 and 157.

*The report recommending enforcement action 9 July 2018 ref ENF/0763/18*

46. In this report the differences between the approved scheme and the development in situ were also detailed by the Council, summarised as follows:
- 1) Light shafts were omitted from the basement of No 155; the external door was missing from the utility room of No 155; sliding French doors to the rear of both houses are wider than shown in the plans; and on the upper floors windows are larger in height and the rear dormer at No 155 is larger than shown.
  - 2) The roof profile of the side extension at No 155 differed from the plans in height and form, evident when viewed from the front and the side; and one large window has replaced two separate windows at first and second floors.
  - 3) The total width and depth of the buildings exceed the proposed measurements, narrowing the space between buildings.
  - 4) Condition 12 (relating to No 155) remains outstanding, lack of landscaping creates void out of keeping with rest of site and surrounding area.
47. The report concluded that the variations had created an incongruous and unsympathetic addition to the detriment of the character of the property, street scene and wider area. Also the width and depth of the two buildings had exceeded the approved measurements. Although relatively small, they had disproportionately affected the street scene by narrowing the gap between the

buildings. Also no details of landscaping as Condition 12 required, had been submitted, making it uncertain what development would result.

48. The Council report on the refused application 19/1514/RCU for permission for amendments and alterations to No 155 found some changes unacceptable but others unobjectionable. Those to the basement lightwell, and increase in the building's width were noted without apparently a final evaluation, although the lightwell's visibility was limited in the street scene and although the increase in width of the building was 0.4m based on the submitted drawings, a significant gap remained between 155 and 153. It was found overall that *"the proposed alterations and amendments would cumulatively constitute disproportionate, discordant and incongruous additions to the existing dwellinghouse"*.

*Application Ref 19/1514/RCU was specifically to retain development at No 155*

49. Application Ref 19/1514/RCU specifically sought to retain the development at No 155 but was refused. The Council's report noted several variations to which it had no objection individually. Other comments on the revised plans submitted during the application, which reflect the changes that have taken place on site, can be summarised as follows:

1. Amended roof form visible between Nos 153 and 155, increases bulk
2. Ridge of the extension not set down from the main ridge sufficiently (as approved) and front roof plane on the side extension is further forward than shown on the submitted drawings (or on the adjoining property)
3. Eaves lines on the two elements line up with each other on the front elevation as shown on the plans, but is not what has been built, adding to the disproportionate and incongruous appearance.
4. Larger rear dormer window (with Juliette balcony) than approved and, combined with the amended roof form is unacceptable.
5. Larger windows (vertical column) to flank wall (opaque glazing) - This is significant change to the approved development. Visible through the gap between Nos 155 and 153 and has an unacceptable non-domestic appearance. Cumulatively, with the amended roof form and alterations to the side extension element it has an unacceptable impact on the character and appearance of the dwellinghouse, streetscene and surrounding area.

### *Assessment*

50. The Council's main residual concerns in relation to the completed development at No 155, as relayed to me by the Council's officer during the hearing, can be reduced to the objections to the overall roof form, dormer extension and the flank window.
51. Mr and Mrs Rusta and Mr and Mrs Scott are said from the outset to have worked closely together to co-ordinate the design and final appearance and scale of the two houses. However the rear elevation additions of Nos 155 and 157 have been enlarged to a degree that significantly surpasses the earlier approved schemes that allowed for a uniform appearance but at a level that

- offered an appreciable degree of subservience in character and appearance to their hosts.
52. By no stretch of the imagination could this be said of the appearance of the rear elevations now in situ. Over a series of permissions the Council has allowed an incremental increase in the overall form, mass and bulk of development at the rear of the properties, to a degree where they could justifiably be criticised as inappropriately sized, dominant and an incongruous form of development. It has to be recognised however that those permissions represent a powerful fall-back position to the Council's criticisms of the DPA and the s78 proposal.
53. The dormer extension at the rear of No 155, which is the more troubling aspect of the unauthorised development in my view, is larger than approved under 18/0129/FUL but a similar large dormer exists at No 157 and the Council appears to accept it was built as permitted development. The SPD advises that dormer roof extensions should be subordinate features, not occupying more than half the width or half the depth of the roof slope.
54. The dormer extension works at No 155 have continued in breach of planning control which, if allowed to stand would consolidate what is in my opinion, overdevelopment of both rear elevations. Yet if enforcement action were upheld so as to reduce the dormer to a form and scale consistent with the approved plans, that would still not provide an overall subordinate appearance of all additions made to the main house.
55. Moreover the approved dormer is markedly inconsistent with the appearance of that at No 157 and the overall uniform appearance of the rear of both dwellings as built. It was the Council itself which was concerned to see a match between the two. On balance and taking into account also the overall effect where it can be seen with the side extension, given the history of what has been permitted thus far and from what I have seen on site, there is no material planning advantage to be gained by requiring adherence to the approved form of the dormer.
56. Then the Council points to the visible gap from the street scene between Nos 155 and 153, which it says has been narrowed by the additional works. So it has, however both properties do benefit from larger plots when compared to most others along Chanctonbury Way. I have considered the images of other properties in the street and seen the dwellings for myself. The photographs of the gap are not that helpful as they are taken from a viewpoint that maximises the appearance of its width.
57. The reality is that a dynamic view obtains and changes as one proceeds along the street, only opening out once past No 153. That said, the experience of walking around the appeal site and viewing No 153 and neighbouring properties, leads me to conclude that just sufficient space is preserved between Nos 155 and 153 not to unacceptably undermine their character or appearance or that of the street scene in general.
58. The elongated obscure glazed window on side elevation is visible from the street scene. The Council views its size and obscure glazing as excessive and non-domestic in appearance. I disagree. The window may be somewhat different in design from conventional side openings found in most of the

- dwellings nearby and probably wider afield. However it is a single individual feature of architectural interest and in the present context adds rather than detracts from the overall appearance of its host.
59. The Council also has concerns with the finished design in that the side extension is said to have a poorly finished flat roof section that increases the overall bulk, and whose ridge continues closer to the main ridge of the dwelling, whilst the front roof plane is further forward than the side element of No 157 and than is approved. The extension's eaves may sit slightly above those of its host but the cumulative impact does not make the side element unduly prominent or stark in the street scene. I accept that some side additions to dwellings around the turning head appear more subservient to the main dwelling, but the difference is mitigated by the reasonably uniform appearance of Nos 155 and 157 as a pair.
60. I acknowledge that the SPD advises side extensions ("normally") to follow the same pitch as the existing roof and to be set down from the ridge of the main roof. However the side element as built is not a significant incursion into its principles when viewed in context. The flat section of roof is quite small. It does not by itself or in combination with the other works, detract from the overall appearance of No 155 or the pair of semi-detached properties when viewed together. Overall there is no unacceptably adverse harm to the character of the area.
61. I conclude that the differences between what has been built and what was approved for Nos 155 and 157 under permission 18/0129/FUL fall short of the Council's description of them as resulting in incongruous, discordant and unsympathetic additions to the street scene. The differences are not materially or significantly different as to justify refusal of permission, taking into account the scale, massing, appearance and design of the pair of semi-detached dwellings in the context of permission 18/0129/FUL.
62. Therefore the development comprised in the DPA and the s78 proposal complies with the SPD, and the aims of Policy DM01 of the Barnet Development Management Policies DPD 2012, and Policy CS5 of the Barnet Core Strategy 2012. These policies aim to ensure, among other matters that development respects distinctive local character through high quality design, and respects the appearance, scale, mass, height and pattern of the host building, surrounding buildings, street scene and the general locality.
63. The submitted landscaping details were deemed inadequate and needed revision, however a landscaping condition would according to the Council be acceptable. I agree and whilst noting the appellants' submissions, having seen the extent of hard surfacing now in situ, consider this to be necessary to make the scheme acceptable. A scheme of hard and soft landscaping, submitted to and agreed in writing by the Council, would ensure a satisfactory appearance to the development in accordance with Policies CS5 and CS7 of the Local Plan Core Strategy DPD (adopted September 2012), Policy DM01 of the Development Management Policies DPD (adopted September 2012), the Sustainable Design and Construction SPD (adopted October 2016) and 7.21 of the London Plan 2016.

### *Conditions*

64. Planning Practice Guidance at Paragraph: 015 Reference ID: 17a-015-20140306 makes clear that decision notices for the grant of planning permission under section 73 should repeat the relevant conditions from the original planning permission, unless they have already been discharged.
65. In addition Paragraph 55 of the National Planning Policy Framework states that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
66. Whilst not substantially different, the drawings submitted under application 19/1514/RCU correct the following discrepancies from the S73 plans. The parties agree that the plans submitted under application Ref 19/1514/RCU most closely resemble what has been constructed on site and could be applied to any planning permission to be granted. A condition specifying the relevant drawings, including the substitute plan references is required to provide certainty.
67. Construction of the development that is the subject of the original permission has already commenced, so it is unnecessary to attach the original condition 2, which set a time limit for commencement.
68. Conditions 3, 7 and 8 and 13 and 14, related to development during the course of construction and are unnecessary. Condition 4 is needed to prevent the roof being used as this might affect adjoining occupiers' living conditions. Condition 5 is unnecessary given that the drawing annotates the glazing in the long side window as obscured, and that its position is unlikely to interfere unduly with living conditions of occupiers of No 153. Condition 6 is unnecessary given that any new openings that would materially affect the external appearance of the property would amount to development requiring planning permission.
69. Condition 9 is necessary to ensure maintenance of the specified details for the efficient use of water. Condition 10 likewise is required to maintain appropriate measures for carbon dioxide emission reduction.
70. Given the extent of development already completed, and in the interests of living conditions of neighbouring occupiers, and the fact that the owners may change over time, Condition 11 should exceptionally be retained which restricts permitted development at No 155.
71. As discussed, Condition 12 is needed to ensure the maintenance of a suitable landscaping scheme, however Condition 15 relating to tree protection is no longer necessary since the Council accepts that its concerns were overcome by the appeal decision that discharged the condition.

### **Conclusion on Appeals A and B**

72. For the reasons given above I conclude that Appeal A should succeed on ground (a) and planning permission will be granted. Appeals A and B on grounds (f) and (g) do not need to be considered.

### **Conclusion on Appeal C**

73. For the reasons given above I conclude that the appeal should be allowed.

### **Formal Decisions**

## Appeal A

74. 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 Act as amended for the development already carried out, namely building works not to the approved plans of planning permission reference 18/0129/FUL dated 28 February 2018 at 155 Chanctonbury Way, and as shown on the plans submitted to the Council under Ref 19/0514/RCU, subject to the following conditions:

1) The development hereby permitted shall be carried out in accordance with the following approved plans:

001 - Street scene (07.12.18)

EX-001 - Existing Ground and First Floor (Pre-Existing) (28.02.19)

EX-002 - Existing Second Floor and Roof Plan (Pre-Existing) (28.02.19)

EX-003 - Existing Elevations (Pre-Existing) (28.02.19)

PA\_001 - Location Plan as Constructed (28.02.19)

PA\_002 - Basement as Approved and as Constructed (28.02.19)

PA\_003 - Ground Floor as Approved and as Constructed (28.02.19)

PA\_004 - First Floor as Approved and as Constructed (28.02.19)

PA\_005 - Second Floor as Approved and as Constructed (28.02.19)

PA\_006 - Roof Plan as Approved and as Constructed (28.02.19)

PA\_007 - Front and Rear Elevations as Approved and as Constructed (28.02.19)

PA\_008 - Side Elevation as Approved and as Constructed (28.02.19)

PA\_009 - Landscape as Existing (28.02.19)

PA\_010 - Landscape as Proposed (28.02.19) - Covering letter, Maze Planning, dated 11th March 2019

PA\_001 Rev A received 23.5.19 - Location Plan as Constructed (28.02.19)

PA\_002 Rev A received 23.5.19 - Basement as Approved and as Constructed (28.02.19)

PA\_003 Rev A received 23.5.19 - Ground Floor as Approved and as Constructed (28.02.19)

PA\_004 Rev A received 23.5.19 - First Floor as Approved and as Constructed (28.02.19)

PA\_005 Rev A received 23.5.19 - Second Floor as Approved and as Constructed (28.02.19)

PA\_006 Rev A received 23.5.19 - Roof Plan as Approved and as Constructed (28.02.19)

PA\_007 Rev A received 23.5.19 - Front and Rear Elevations as Approved and as Constructed (28.02.19)

PA\_008 Rev A received 23.5.19 - Side Elevation as Approved and as Constructed (28.02.19)

PA\_009 received 23.5.19 - Landscape as Existing (28.02.19)

PA\_010 Rev A received 23.5.19 - Landscape as Proposed (28.02.19)

2) The roof of the extension hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting out area.

3) Prior to the first occupation of the new dwellinghouse (Use Class C3) hereby approved at No.155 Chanctonbury Way, the property shall have been

constructed to have 100% of the water supplied to them by the mains water infrastructure provided through a water meter or water meters and each new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day with a fittings based approach should be used to determine the water consumption of the proposed development. The development shall be maintained as such in perpetuity thereafter.

4) Prior to the first occupation of the development hereby approved at No.155 Chanctonbury Way, it shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 6 % in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations. The development shall be maintained as such in perpetuity thereafter

5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order), no development otherwise permitted by any of Classes A; B; C; D and E of Part 1 of Schedule 2 of that Order shall be carried out within the area of No.155 Chanctonbury Way.

6) a) Within 3 months of the date of this decision an updated scheme of hard and soft landscaping, pursuant to that submitted under application 19/1514/RCU, including details of existing trees to be retained and size, species, planting heights, densities and positions of any soft landscaping, shall be submitted to and agreed in writing by the Local Planning Authority.

b) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season which follows this decision, or as agreed with the council through the discharging of the condition. The scheme shall be implemented in accordance with the agreed details, including any measures agreed to ensure the health and well-being of any trees on the site or neighbouring sites.

c) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

## **Appeal C**

75. The appeal is allowed and planning permission is granted for demolition of No 155 and erection of 1 no dwelling. Part single-part two-storey side and rear extension following demolition of existing side/rear extension and garage. Associated changes to windows and door including relocation of front entrance to 157 Chanctonbury Avenue without complying with conditions attached to planning permission Ref 18/0129/FUL at 155 and 157 Chanctonbury Way in accordance with the terms of the application Ref 18/4373/S73 dated 13 July 2018, but subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:
  - 001 - Street scene (07.12.18)
  - EX-001 - Existing Ground and First Floor (Pre-Existing) (28.02.19)
  - EX-002 - Existing Second Floor and Roof Plan (Pre-Existing) (28.02.19)
  - EX-003 - Existing Elevations (Pre-Existing) (28.02.19)
  - PA\_001 - Location Plan as Constructed (28.02.19)
  - PA\_002 - Basement as Approved and as Constructed (28.02.19)
  - PA\_003 - Ground Floor as Approved and as Constructed (28.02.19)
  - PA\_004 - First Floor as Approved and as Constructed (28.02.19)
  - PA\_005 - Second Floor as Approved and as Constructed (28.02.19)
  - PA\_006 - Roof Plan as Approved and as Constructed (28.02.19)
  - PA\_007 - Front and Rear Elevations as Approved and as Constructed (28.02.19)
  - PA\_008 - Side Elevation as Approved and as Constructed (28.02.19)
  - PA\_009 - Landscape as Existing (28.02.19)
  - PA\_010 - Landscape as Proposed (28.02.19) - Covering letter, Maze Planning, dated 11th March 2019
  - PA\_001 Rev A received 23.5.19 - Location Plan as Constructed (28.02.19)
  - PA\_002 Rev A received 23.5.19 - Basement as Approved and as Constructed (28.02.19)
  - PA\_003 Rev A received 23.5.19 - Ground Floor as Approved and as Constructed (28.02.19)
  - PA\_004 Rev A received 23.5.19 - First Floor as Approved and as Constructed (28.02.19)
  - PA\_005 Rev A received 23.5.19 - Second Floor as Approved and as Constructed (28.02.19)
  - PA\_006 Rev A received 23.5.19 - Roof Plan as Approved and as Constructed (28.02.19)
  - PA\_007 Rev A received 23.5.19 - Front and Rear Elevations as Approved and as Constructed (28.02.19)
  - PA\_008 Rev A received 23.5.19 - Side Elevation as Approved and as Constructed (28.02.19)
  - PA\_009 received 23.5.19 - Landscape as Existing (28.02.19)
  - PA\_010 Rev A received 23.5.19 - Landscape as Proposed (28.02.19)
- 2) The roof of the extension hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting out area.
- 3) Prior to the first occupation of the new dwellinghouse (Use Class C3) hereby approved at No.155 Chanctonbury Way, the property shall have been constructed to have 100% of the water supplied to them by the mains water infrastructure provided through a water meter or water meters and each new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day with a fittings based approach should be used to determine the water consumption of the proposed development. The development shall be maintained as such in perpetuity thereafter.

- 4) Prior to the first occupation of the development hereby approved at No.155 Chanctonbury Way, it shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 6 % in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations. The development shall be maintained as such in perpetuity thereafter.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order), no development otherwise permitted by any of Classes A; B; C; D and E of Part 1 of Schedule 2 of that Order shall be carried out within the area of No.155 Chanctonbury Way.
- 6)
  - a) Within 3 months of the date of this decision an updated scheme of hard and soft landscaping, pursuant to that submitted under application 19/1514/RCU, including details of existing trees to be retained and size, species, planting heights, densities and positions of any soft landscaping, shall be submitted to and agreed in writing by the Local Planning Authority.
  - b) All work comprised in the approved scheme of landscaping shall be carried out before the end of the first planting and seeding season which follows this decision, or as agreed with the council through the discharging of the condition. The scheme shall be implemented in accordance with the agreed details, including any measures agreed to ensure the health and well-being of any trees on the site or neighbouring sites.
  - c) Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season.

*Grahame Kean*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

|                      |                          |
|----------------------|--------------------------|
| Zack Simons, Counsel | Landmark Chambers        |
| Chris Watts          | Maze Planning Limited    |
| Mark Sadler          | Kenneth, Elliot and Rowe |
| Paul Chrysophiades   | Domus Architects         |
| Ardian Rusta         | Appellant                |
| Russell Scott        | Appellant                |

### FOR THE LOCAL PLANNING AUTHORITY:

|                |                  |
|----------------|------------------|
| Sade Olokodana | Planning Officer |
|----------------|------------------|

## INTERESTED PERSONS

|                   |                |
|-------------------|----------------|
| Shahram Tajeakhsh | Local resident |
| Alex Taylor       | Local resident |
| David Morris      | Local resident |
| Mr Ross           | Estate agent   |