



Appeal Decisions

Site visit made on 18 January 2022

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2022

Appeal A Ref: APP/N5090/C/21/3266577

247 Edgwarebury Lane, Edgware, London HA8 8QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Doran Sharafian against an enforcement notice issued by London Borough of Barnet.
- The notice was issued on 16 December 2020.
- The breach of planning control as alleged in the notice is the erection of a two storey front extension, ground and first floor side and rear extensions including the conversion of the garage into a habitable room, a raised rear patio and pool, a rear roof terrace and a roof extension including rear dormer window and rooflights to side roof slopes.
- The requirements of the notice are 1. Either:
 - a. Restore the property to the state in which it was in prior to the breach as per the pre-existing drawing numbers 1907/P002, 1907/P003, 1907/P004 and 1907/P005 as part of a planning application reference 20/2548/RCU, decision date 20.11.2020 including, but not limited to, permanently removing from the property the front, rear, side and roof extensions, the rear patio and terrace and pool. OR
 - b. Make the development comply with the terms of planning permission reference 18/4659/HSE dated 23.10.2018, by modifying the development to match the scheme shown on plan numbers: EL/247/02 Rev A, EL/247/03 Rev A, EL/247/04 Rev A and EL/247/05 Rev A.
- 2. Permanently remove all constituent materials resulting from the works in 1 above from the property.
- The period for compliance with the requirements is four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f), (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning is granted in the terms set out below in the Formal Decision.

Appeal B Ref: APP/N5090/W/20/3265943

247 Edgwarebury Lane, Edgware, London HA8 8QL

- 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 Doran Sharafian against the decision of London Borough of Barnet.
- The application, Ref 20/2548/RCU, dated 16 June 2020, was refused by notice dated 21 November 2020.
- The development proposed is described as "A two storey front extension; ground and first floor side and rear extensions including conversion of garage into habitable room; raised rear patio and pool; roof extension including rear dormer window and rooflights to side roof slopes (RETROSPECTIVE APPLICATION)."

Summary Decision: The appeal is allowed, and planning permission is granted subject to conditions set out below in the Formal Decision.

Preliminary Matters

1. The Council's reasons for issuing the notice in December 2020 refer to policies from The London Plan 2016. These have now been replaced by The London Plan¹ published in 2021. The substance of the policies, as referred to in the notice, has not changed and therefore neither the appellant nor the Council will be prejudiced by my consideration of the 2021 policies in reaching my decision.
2. The allegation refers in part to a "raised rear patio and pool". The Officer report describes the pool as "sunken" and extending a further 4.5m from the end of the patio. However, at the site visit it appeared that the pool had been removed. Nevertheless, for the purposes of the appeal it is the development that existed at the time the notice was issued that is before me for my determination and I shall proceed on that basis.
3. The Council and the appellant dispute the height of the rear patio. It was agreed after measurements were taken by the parties that the height of the end of the patio adjacent to the garden is 0.55m; adjacent to No 249 it is 0.24m; and adjacent to No 245 it is 0.19m. In addition, the height of the side boundary fencing adjacent to the patio, when measuring the panels next to the host property, is 1.57m.
4. The Officer report on the planning application the subject of Appeal B highlights the differences in built form between a prior approved scheme and as built on site. The first difference is described as "Extension of the existing first floor on the southern elevation to project forward one metre to be flush with the existing first floor front most elevation. This will be connected in with the existing roof pitch." However, this does not appear to be a difference as it is shown on the approved plans. As it is not addressed in the allegation set out in the enforcement notice I have not taken it into account in my determination of the appeal.

Background

5. Both appeals relate to a detached dwelling. Planning permission was granted by the Council in 2018 ("The 2018 permission", reference 18/4659/HSE) for a ground and first floor side and rear extension with alterations to the roof and the conversion of the garage into a habitable room. The development as built differs from the approved plans in that the appellant included a dormer with an inset balcony, and rooflights within an altered roof design, as well as a two storey front extension and the rear patio and pool. Planning permission was refused for the "as built" scheme (Appeal B) and the Council duly issued an enforcement notice. Work is not complete on site but the unauthorised works are substantially complete and the property is being lived in by the appellant and his family.
6. The appellant has clarified that the ground (c) appeal against the enforcement notice relates only to the development of the patio.

Appeal A: The ground (c) appeal

7. This ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning

¹ The London Plan, The Spatial Development Strategy for Greater London, March 2021

permission. Under a ground (c) appeal, the onus of proof is on the appellant to show that there has not been a breach of planning control. In this case the appellant submits that development has taken place but no explicit planning permission is required for the rear patio as approval is given by the Town and Country Planning (General Permitted Development)(England) Order 2015 Schedule 2, Part 1, Class F² (the GPDO).

8. The meaning of development is set out in section 55 of the Town and Country Planning Act 1990 (the Act) and includes in the definition of the word "development" the carrying out of "building, engineering, mining or other operations in, on, over or under land". Section 55(1A) states that for the purposes of the Act building operation includes "(d) other operations normally undertaken by a person carrying on business as a builder". Section 57(i) states that subject to the provisions of the section, planning permission is required for the carrying out of any development of land.
9. The appellant accepts that operational development has taken place and relies on Class F of the GPDO. This states that hard surfaces incidental to the enjoyment of a dwelling house are permitted development, subject to various criteria. I have no doubt that the purpose of the hard surface is incidental to the enjoyment of the dwelling house. It is adjacent to the patio doors and at the site visit there was evidence that the hard surface is used for sitting out and play. This part of Class F is therefore met.
10. I also saw that the patio extends to the full width of the plot and is approximately 9m in length. It varies in height from 0.19m to 0.55m as the garden slopes gently downwards away from the house and, no doubt, the appellant wished for a level surface when he designed it. It has no retaining walls and is unfinished, in that it has not been tiled, and no step(s) has been formed to safely move from the patio level to the garden level. At present there is just a very small temporary ramp formed from hardcore.
11. It is my view that the variation in depth of the concrete is not of a significant scale that it could be said laying it amounts to an engineering operation and it appears there has been no excavation. Rather, the works involved to level the ground are incidental to the construction of the hard surface. In addition, the two conditions attached to Class F do not apply in this case as the hard surface has been formed to the rear of the property, not between a wall forming the principal elevation and the highway. As such, there is no limitation on the size of the hard surface, as set by the second condition.
12. The Council are concerned that the height of the hard surface exceeds 0.3m and refer to it as being a platform. It is my view that the patio is a hard surface, in that concrete has been laid on the ground, whereas platforms are suspended over the ground, such as decking, amounting to a raised level area. The word "Platform" is not defined in the GPDO but advice³ produced by the Ministry of Housing, Communities and Local Government in 2019 when addressing the interpretation of Class A⁴ defines "Raised" as being "in relation to a platform means a platform with a height greater than 0.3 metres". I find that as the development falls to be considered under Class F, references to

² The appellant refers to Class E which deals with buildings etc incidental to the enjoyment of a dwelling house. I believe this to be a typographical error.

³ Permitted development rights for householders – Technical guidance

⁴ Class A Enlargement, improvement or other alteration of a dwellinghouse

“platforms” and their height are not applicable in this case. In addition, there is no further guidance in the Government document when addressing the interpretation of Class F with regard to the height of a hard surface.

13. In conclusion, I find that what has been built is a hard surface that accords with all the relevant limitations and conditions of Class F. The appeal on ground (c) therefore succeeds. As such, the deemed planning application now only relates to the remaining matters.

The ground (a) appeal, the deemed planning application and the s78 appeal

Main Issues

14. The main issues are the effect of the development on the (i) character and appearance of the area; and (ii) the living conditions of neighbouring occupiers, having regard to overlooking and loss of privacy.

Reasons

Character and appearance

15. The appeal site comprises a detached house situated on the western side of Edgewarebury Lane. It has the benefit of a large front garden and a long rear garden backing onto public open space. Edgewarebury Lane is laid out with mainly detached houses accessed across wide grass verges planted with trees and shrubs in part. Some houses have been significantly altered and extended in the last few years, especially at the northern end of the lane, near the appeal site. The design of the housing is quite varied but it is largely post war with steeply pitched, hipped and gabled roofs, large windows and with a mixture of brick and rendered finishes.
16. The area has no particular designation by the Council but the layout of the houses set well back from the road and the quality of their design contribute towards the attractive character and appearance of the neighbourhood.
17. The Council’s concerns are focussed on where the development departs from the approved plans. With regard to the changes to the roof, these are described as an increase in pitch from 41 to 45 degrees, the addition of an enlarged crown roof and the addition of a two storey front extension with a gable roof. It is submitted that overall, this results in a disproportionate and incongruous addition to the host property and is harmful to adjacent properties and the wider street scene.
18. I find that this is not the case for the following reasons. There is no uniform roof pitch or design in the area other than a common feature being roofs are generally steep. The change in the extent of the crown roof is largely unnoticeable, views of the side elevations of the property are not prominent and are only glimpsed passing by. The two storey front extension provides a porch and an enlarged bedroom above. It is situated in the middle of the front elevation and amounts to an approximately 1m deep addition. The gable roof is at a lower height than the main roof ridge and, in my view, this feature adds architectural interest. In particular, it is reflective of smaller roof features found on several properties in the area where large main roofs are reduced in size visually by using a smaller hip or gable roof over for example a main bedroom area.

19. The adjacent properties retain their hipped roofs even though No 245 has been extended in a modest fashion with a side dormer at roof level. As such, the retention of hips to the four sides of the roof at the appeal site results in an acceptable relationship with neighbouring properties. In addition, the hipped roof shape allows for visual separation and views between the properties at roof level. Should I find that overall the scheme is acceptable, a condition could be imposed to require the submission of roof materials to be submitted to and approved by the Local Planning Authority. This would ensure that the roof design preserves the character and appearance of the area.
20. With regard to the sunken pool, this abutted the boundary fence with No 249. The only information I have regarding the size of it is a block plan view. It appeared to be a minor add-on to the hard surface area and, as such, akin to a garden pond. No case has been made by the Council as to the effect of this element on the character and appearance of the host property other than as being part of the larger hard surface area. On its own I find that it would have been acceptable and any harm caused to the character and appearance of the area would have been limited. This is on the basis that it was sunken and given its distance from the host property and situation in a large garden.
21. For these reasons I conclude, with the imposition of an appropriate condition, that the development does not result in harm to the character or appearance of the area. It therefore accords with Policies D3 and D4 of The London Plan, Policy CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document September 2012 (the CS) and Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document September 2012 (the DMP). These require, amongst other matters, that development should be based on an understanding of local characteristics and should preserve or enhance it. Furthermore, the development is consistent with the Council's Supplementary Planning Document (SPD⁵) which states respecting local character does not necessarily mean replicating it.

Living conditions

22. The appellant has included a dormer extension within the rear elevation of the property as well as flank rooflights and an inset balcony 2.92 sqm in area accessed via French windows within the dormer. Concerns have been raised by the Council and a third party that this results in undue overlooking and a loss of privacy. The SPD states that privacy is an important design issue and that all residents should feel at ease in their home. The position of the rooflights within the loft room is such that, even when standing immediately next to them, it is not possible to look down into neighbouring properties or gardens, only across the roofscape. I therefore find no harm caused to the living conditions of neighbouring occupiers by their addition.
23. With regard to the inset balcony, this was covered by tarpaulin at my site visit, so I was unable to stand on it and make a first-hand judgement as to whether it is possible to look down into or across neighbouring properties. However, the appellant appears to accept that it could result in harm to the living conditions of neighbouring occupiers. This is because he suggests that railings could be permanently fixed across the French windows to convert the balcony into a Juliet balcony and this could be achieved by the imposition of a condition. The Council raise no other concerns about the addition of the

⁵ Local Plan Supplementary Planning Document: Residential Design Guidance October 2016

dormer. I therefore find that the installation of railings would prevent anybody from standing on the balcony and looking down into neighbouring gardens. The view from within the loft room through the French windows would therefore be limited to views across the public open space.

24. For these reasons I conclude, with the imposition of an appropriate condition, that the development does not result in harm to the living conditions of neighbouring occupiers. It therefore accords with Policy DM01 of the DMP. This requires, amongst other matters, that development proposals should be designed to allow for adequate privacy for adjoining occupiers. It is also consistent with the SPD.
25. As such, the appeal on ground (a) succeeds and the appeals on grounds (f) and (g) therefore do not fall to be considered.

Other Matters

26. A third party raises several concerns about the accuracy of the site plan and block plan as well as the design of the development. The purpose of the site location and block plans is to show the location of the appeal site in respect of neighbouring properties. These plans are based on Ordnance Survey drawings which do not always show that properties in the wider area have been extended over the years. This is not the fault of the appellant and it is for the Local Planning Authority, and myself in determining this appeal, to make an assessment of the area at the site visit.
27. With regard to the overall design of the scheme, much of it has already been found to be acceptable by the Council when granting the 2018 permission in terms of the effects on neighbouring occupiers and the wider area. To passers-by, the implementation of the approved development in part may well have appeared more as a demolition job than simply adding an extension. This though is because the new first floor layout involved the removal of various walls. In the main, what has been built is similar to the 2018 permission. The Council's enforcement notice and the appellant's amended application addressed where the scheme departed from the approved plans.

Conditions

28. I have considered the need for the conditions put forward by the Council in the light of the advice in the Planning Practice Guidance. A condition requiring that the development is carried out in accordance with the approved plans is necessary for the s78 appeal, for the avoidance of doubt and in the interests of proper planning. A condition requiring the submission of finishing materials is also necessary for both appeals as the development is incomplete and the character and appearance of the area needs to be protected.
29. However, there is no need for a condition preventing or controlling the insertion of additional doors or windows within the approved side elevations. This is because the GPDO⁶ permits flank glazing provided it is obscure glazed and non-opening, thus protecting the amenities of neighbouring occupiers. The Council has powers to act on any development that ignores these very specific conditions. It is also unreasonable to impose a condition to require the installation of higher boundary fencing in respect of the s78 appeal given my finding on the ground (c) appeal.

⁶ Schedule 2, Part 1, Class A

30. Finally, given my findings on the inset balcony, it is necessary and reasonable to impose a condition requiring the submission of a scheme to prevent access to the inset balcony. This shall be submitted for the approval of the Local Planning Authority as the amended drawings accompanying the appeal do not show full details of the proposed Juliet balcony.⁷ This shall also be accompanied by a timetable for its implementation. As the development is incomplete, it is also necessary and reasonable to require the submission and approval of details of the finishing materials for the external appearance of the development. The purpose of the condition is to require the appellant to comply with a strict timetable for the prevention of access to the inset balcony and to finalise finishing materials. Both aspects of the condition need to be addressed in order to make the whole development and, in particular, the dormer, acceptable.
31. The condition is drafted in a particular form because unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter. This is because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission for the development where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Conclusions

Appeal A

32. Having regard to my findings on the ground (c) appeal, I will correct the enforcement notice in order to clarify the terms of the deemed planning application under section 177(5) of the 1990 Act. For the reasons given above, I conclude that the appeal should succeed on ground (a) and I shall grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act, which will now relate to the corrected application.

Appeal B

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

Formal Decisions

Appeal A

34. It is directed that the allegation in the enforcement notice is corrected by the deletion of the words "a raised rear patio and" and the substitution of the words "and the construction of a". Subject to this 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 Town and Country Planning Act 1990 for the development already carried out, namely, the erection of a two storey front extension, ground and first floor side

⁷ The drawings are unnumbered and section A-A does not show the railing.

and rear extensions, including the conversion of the garage into a habitable room, the construction of a pool, a rear roof terrace and a roof extension, including rear dormer window and rooflights to side roof slopes, at 247 Edgewarebury Lane, Edgeware HA8 8QL as shown on the plan attached to the notice and subject to the following condition:

- 1) The inset balcony hereby permitted shall not be used as a balcony, roof garden or similar amenity area and it shall be infilled within two months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - (i) Within two months of the date of this decision, a scheme to prevent access to the inset balcony and details of all finishing materials for the extensions shall have been submitted for the written approval of the Local Planning Authority. The scheme shall include a timetable for the implementation of the proposed Juliet balcony.
 - (ii) If within six months of the date of this decision the local planning authority refuse to approve the scheme and the details within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - (iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme and details shall have been approved by the Secretary of State.
 - (iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and the exterior of the building shall have been completed using the approved material finishes.

Upon implementation of the approved Juliet balcony scheme specified in this condition, that scheme shall thereafter remain in place.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal B

35. The appeal is allowed, and planning permission is granted for a two storey front extension; ground and first floor side and rear extensions including conversion of garage into habitable room; raised rear patio and pool; roof extension including rear dormer window and rooflights to side roof slopes at 247 Edgewarebury Lane, Edgeware HA8 8QL in accordance with the terms of the application Ref:20/2548/RCU, dated 16 June 2020, subject to the following conditions:

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans dated 4 June 2020: 1907/P001, 1907/P002, 1907/P003, 1907/P004, 1907/P005, 1907/P006, 1907/P007, 1907/P008, 1907/P009 and 1907/P010.

- 2) The inset balcony hereby permitted shall not be used as a balcony, roof garden or similar amenity area and it shall be infilled within two months of the date of failure to meet any one of the requirements set out in i) to iv) below:
- i) Within two months of the date of this decision, a scheme to prevent access to the inset balcony and details of all finishing materials for the extensions shall have been submitted for the written approval of the Local Planning Authority. The scheme shall include a timetable for the implementation of the proposed Juliet balcony.
 - ii) If within six months of the date of this decision the local planning authority refuse to approve the scheme and the details within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme and details shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable and the exterior of the building shall have been completed using the approved material finishes.

Upon implementation of the approved Juliet balcony scheme specified in this condition, that scheme shall thereafter remain in place.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

D Fleming

INSPECTOR