



Appeal Decisions

Site visit made on 22 September 2022

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th NOVEMBER 2022

Appeal A Ref: APP/H5960/C/21/3288524

Land at 13 Ramsdale Road, London SW17 9BP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Henry Jamieson against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The notice was issued on 29 October 2021.
 - The breach of planning control as alleged in the notice is: Without planning permission and within the last 4 years, the erection of a part single, part two-storey rear extension at the property.
 - The requirements of the notice are to:
 1. Cease the unauthorised use of the ground floor extension flat roof as balcony, roof garden, sitting out area or for any purpose of a similar nature;
 2. Install balustrade to the first-floor rear elevation door in accordance with the approved plans and conditions of permission ref: 2018/0249; and
 3. Remove from the site all debris arising from compliance with steps 1 and 2 above.
 - The period for compliance with the requirements is two months after the date on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b) and (c) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/H5960/W/21/3284214

Land at 13 Ramsdale Road, London SW17 9BP

- 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 Henry Jamieson against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2021/2489, dated 25 May 2021, was refused by notice dated 16 August 2021.
 - The application sought planning permission for the erection of part single, part two-storey rear extensions to both properties forming the pair of semi-detached dwellinghouses without complying with a condition attached to planning permission reference 2018/0249 dated 24 April 2018.
 - The condition in dispute is No 2 which states that: The development shall be carried out in accordance with the approved drawings and specifications, unless approved otherwise in writing by the local planning authority.
 - The reason for the condition is: To ensure a satisfactory standard of development, and to allow the local planning authority to review any potential changes to the scheme.
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Summary Decision: Appeal A succeeds on ground (b), but is dismissed on ground (c) and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision. Appeal B succeeds in the terms set out below in the Formal Decision.

Appeal A – The appeal against the enforcement notice

Ground (b) and Ground (c)

1. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appears to the Council to constitute the breach of planning control, have not occurred. In order to succeed on this ground, the appellant must demonstrate that the matters stated in the enforcement notice have not occurred. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control.
2. The notice refers to the erection of a part single, part two-storey rear extension at the property. The allegation includes that the extension has been erected **without the benefit of planning permission**. As such, I understand the appellant's reasons for making a ground (b) appeal. After all, it is his case that the extension has the benefit of the planning permission granted by reason of application reference 2018/0249. However, whether or not the extension at the property is permitted (i.e. whether or not the extension constitutes a breach of planning control) is a matter that ought to be considered under a ground (c) appeal.
3. The way in which the allegation is made in the notice has implications for my consideration of the ground (b) and ground (c) appeal. I have, therefore, chosen to consider these grounds of appeal together. Doing so would, in my judgement, be a logical way of considering the parties' respective cases made under these grounds of appeal.

Has the matter stated in the enforcement notice occurred?

4. Clearly, there is no dispute between the parties that a part single, part two-storey rear extension has been erected at the property. As I have no reason to disagree with this, I conclude that the erection of a part single, part two-storey rear extension has occurred. However, as noted above, the notice also alleges that this extension has been erected without planning permission. Whether or not this is correct is the matter in dispute between the parties.
5. It is the appellant's case that the extension has the benefit of the 2018/0249 permission granted for the erection of part single, part two-storey rear extensions to the appeal property and the neighbouring property at 15 Ramsdale Road.
6. In their statement the Council acknowledge that the majority of the development has been carried out in accordance with the 2018/0249 approved plans, but points to the lack of a balustrade across the patio doors in the rear elevation of the property at first floor, as shown on the approved plans. Indeed, when comparing the extension as built to the approved plans it is only the lack of a balustrade at first floor that the Council has drawn to my attention. Nevertheless, the breach of planning control alleged in the notice comprises the entirety of the part single, part two-storey rear extension at the appeal site. In addition, section 171A(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) has been referred to in section 1 of the notice, which is of the carrying out of development without the required planning permission.

7. Save for the omission of the balustrade, I have been given no reason to conclude that the development on site does not accord with the scheme approved by reason of the 2018/0249 permission. Having regard to the extent of development approved by reason of this permission, the balustrade across the first floor patio doors is a minor element of the overall scheme. Accordingly, the lack of a balustrade does not, in my judgement, render the entirety of the development (i.e. the part single, part two-storey rear extension) not in accordance with the permission. This is particularly so when the evidence I have indicates that all other elements of the development are in accordance with the permission. For this reason, I conclude that the part single, part two-storey extension has the benefit of the 2018/0249 permission.
8. In concluding as I have, I do not consider myself to be in conflict with the Council's position. After all, the Council also points to a breach of conditions 2 and 4 of the 2018/0249 permission in its evidence. Condition 2, as noted in the heading above, requires the development to be carried out in accordance with the approved drawings, whilst condition 4 prohibits the use of the roof of the permitted extensions as 'a balcony, roof garden, sitting out area or for any purpose of a similar nature'. The Council suggests that the lack of a balustrade is contrary to the requirements of condition 2, and that the extension roof has been used in breach of condition 4. If it were the case that the development did not have the benefit of the 2018/0249 permission, there could not be a breach of any of the conditions of this permission, as suggested by the Council.
9. Whilst the appellant may have submitted the planning application subject of Appeal B, this does not signify an acceptance by him that the matter stated in the enforcement notice, i.e. development without planning permission, has occurred. Section 73A of the 1990 Act allows planning permission to be granted for development carried out before the date of the planning application. Permission granted under this section can be for development carried out without planning permission¹, **or** for development carried out without complying with some condition subject to which planning permission was granted². I can see that, rather than seeking permission to retain development that does not have the benefit of planning permission, the Appeal B application simply seeks a variation to the approved scheme. Indeed, there is reference in the application to the condition to be changed. I can also see that the Council has determined the application on this basis.
10. In view of the above, I conclude that the breach of planning control alleged in the notice has not occurred, as a matter of fact and degree.

Has some other matter occurred?

11. My conclusion above does not automatically lead to a finding that the enforcement notice should be quashed. If it is the case that some other breach of planning control has occurred, the enforcement notice could be corrected³, rather than quashed. In this regard, the Council's reference to a breach of condition 2 and 4 of the 2018/0249 permission is noted. However, for me to correct the notice to allege such a breach of planning control, I must be satisfied that a failure to comply with these conditions has occurred. For me to

¹ Section 73A(2)(a).

² Section 73A(2)(c).

³ The powers transferred to Inspectors under section 176(1)(a) of the 1990 Act include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice.

consider this I must be satisfied that the parties' evidence responds to the matter of conditions 2 and 4 of the 2018/0249 permission, such that injustice would not be caused.

12. In this regard, whilst I note that the evidence of both parties under both ground (b) and (c) responds to the breach of planning control as alleged in the notice, the evidence also refers to the relevant conditions of the 2018/0249 permission. In particular, both parties have considered whether or not a failure to comply with these conditions has occurred. I am, therefore, satisfied that I am able to move on to consider whether or not the enforcement notice should be corrected to allege a breach of condition 2 and 4 of the 2018/0249 permission.
13. Condition 2 of the 2018/0249 permission requires the development to be carried out in accordance with the approved drawings and specifications. Whilst I can see that the 2018/0249 development is so advanced that it is now occupied and actively used, the appellant maintains that the development has not been completed otherwise than in accordance with the planning permission, but that he has simply not yet completed it.
14. In this regard, I note that the extension is a fairly recent development. It is not uncommon for features that finish a development to be added some time after its occupation, particularly when those features do not prevent the development from being used. Balustrades might be an example of this. I am, therefore, persuaded by the appellant's case that he has not yet finished carrying out the development.
15. In addition to the above, I note that condition 2 has not been drafted so as to require the completion of the development as approved within a particular time frame. There is also no requirement of the planning permission to otherwise construct the balustrade or prohibit the use of the 2018/0249 development until such time as the balustrade has been constructed. Furthermore, I have been given no reason to conclude that the balustrade could not be constructed.
16. Having regard to all of the above, I find no reason to conclude that a failure to comply with condition 2 has occurred, such that the notice should be corrected to make reference to a failure to comply with condition 2 of the 2018/0249 permission and allege a breach of planning control falling under section 171A(1)(b)⁴ of the 1990 Act. Whether or not the development is acceptable without the balustrade is a matter to be considered under Appeal B.
17. Turning to condition 4 of the 2018/0249 permission, this states:
 - (4) The roof of the extensions hereby permitted shall not be used as a balcony, roof garden, sitting out area or for any purpose of a similar nature without the prior written consent of the local planning authority.
18. The lack of a balustrade across the first floor patio doors or any barrier preventing access to the roof does not itself demonstrate that there has been a failure to comply with condition 4. I note that the appellant says that he is not able to use the roof of the single storey extension as a roof terrace; that this space is unsuitable for such a use as there is no safety rail.

⁴ Section 171A(1)(b) failing to comply with any condition or limitation subject to which planning permission has been granted.

19. Whilst it may be the case that the appellant does not intend to use the extension roof as a sitting out area in the future, I must consider whether or not a failure to comply with condition 4 has occurred. In this regard the Council has provided a photograph of the rear of the appeal property showing what appears to be an individual sat in a chair on the extension roof. Whilst the photograph is not dated, there is no suggestion that it was taken after the issue of the enforcement notice.
20. This evidence is inconsistent with the appellant's claim that he has not used the extension roof for sitting out, despite the unsafe nature of the roof for such a use. I acknowledge that the Council's evidence of the use of the extension roof in a manner prohibited by condition 4 is limited to a single incident. I do not, however, have sufficient evidence to doubt what is shown in the photograph. It may be that what is shown in the photograph is the only incident of a failure to comply with condition 4. However, a single incident of a breach of planning control still means that a breach of planning control has occurred.
21. The photographic evidence provided by the Council is sufficient for me to conclude that it is more likely than not that a failure to comply with condition 4 has occurred. There is, therefore, a reason to correct the notice to make reference to a breach of condition 4 of the 2018/0249 permission and allege a breach of planning control falling under section 171A(1)(b) of the 1990 Act.

Does this other matter constitute a breach of planning control?

22. As noted above, the appellant has referred to condition 4 of the 2018/0249 permission under his ground (c) appeal. His evidence in this regard is, however, primarily to suggest that there has not been a failure to comply with the condition. I have already considered this matter above and have concluded that a failure to comply with condition 4 has occurred.
23. I have not been made aware of any reason why a failure to comply with condition 4 would not be a breach of planning control, such that express planning permission would not be required to use the extension roof in a manner set out in condition 4. Furthermore, it has not been suggested that the necessary planning permission has otherwise been granted.
24. Accordingly, and on the balance of probability, the failure to comply with condition 4 of the 2018/0249 planning permission constitutes a breach of planning control.

If appropriate, how should the enforcement notice be corrected?

25. If I were to correct the notice to allege a failure to comply with condition 4 of the 2018/0249 permission alone, it would be necessary to remove requirement 2. The allegation would not be of a failure to comply with condition 2 and would not, therefore, be of a breach of planning control constituted by the failure to install the balustrade. Accordingly, the notice would not be correct if it were to still require the installation of the balustrade.
26. Furthermore, I see no reason why compliance with requirement 1 would result in any debris. As such, there is no need for requirement 3.

Can the enforcement notice be corrected?

27. To correct the notice, as indicated above, I must be satisfied that injustice would not be caused to either party. In concluding as I have so far, I am satisfied that the parties' respective cases made under both ground (b) and (c) respond to the matter of condition 2 and 4 of the 2018/0249 permission.
28. I note that the appellant maintains that he does not intend to use the extension roof in a manner that would be prohibited by condition 4. This is made plain in his evidence supporting Appeal B. It is, therefore, unlikely that an appeal on ground (a) would not have been made, had the notice alleged a failure to comply with condition 4. Furthermore, once the requirements of the notice are corrected as intended, I see no reason to conclude that the appellant is likely to have made a ground (f) or (g) appeal.
29. All things considered, I am satisfied that no injustice would be caused were I to correct the notice as follows:
- to allege a breach of planning control falling under section 171A(1)(b) of the 1990 Act;
 - to allege a failure to comply with condition 4 of the 2018/0249 planning permission; and
 - to delete requirements 2 and 3 of the notice.

Appeal A Conclusion

30. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. The appeal succeeds on ground (b) to that extent.
31. On the balance of probabilities, the appeal on ground (c) should not succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.
32. The enforcement notice will be corrected and upheld.

Appeal B - The appeal against the refusal of planning permission

Preliminary Matters

33. I have concluded on Appeal A that the 2018/0249 planning permission has been implemented and that the development on site has the benefit of this permission. The application subject of Appeal B seeks to vary Condition 2 of this permission by amending some of the drawings referred to in the condition. The Appeal B application proposes no change to the scheme approved by reason of the 2018/0249 permission, other than the omission of the balustrade across the patio doors at first floor level, referred to as a Juliette balcony.
34. On Appeal A I have concluded that a failure to comply with condition 2 has not occurred. Accordingly, I have dealt with Appeal B under section 73 of the 1990 Act. In doing so I shall consider only the question of the conditions subject to which planning permission was granted and will not re-consider the original application.
35. Although condition 2 of the 2018/0249 permission does not list the plans approved, these are listed elsewhere in the decision notice as drawings

numbered 01/PROP A03, 02/PROP A03, and 03/PROP A03. The most relevant of these (01/PROP A03) shows the approved rear elevation of both properties, as well as the approved front elevation and floor plans.

36. The application subject of Appeal B was submitted with a plan, which shows the floor plans, together with the front and rear elevations of the appeal site alone (i.e. 13 Ramsdale Road). This plan shows the rear elevation of the appeal property with the part single part two-story rear extension, without a balustrade across the first floor patio doors. However, the reference number of this plan (01/PROP A01) is identical to an earlier version of the 01/PROP A03 plan approved by reason of the 2018/0249 permission, which had also been submitted by the appellant with the appeal.
37. To avoid confusion, I asked for a version of the plan submitted with the application subject of Appeal B, but with a different reference number. Instead, I received what I assume is another version (revision A02) of the plan reference 01/PROP, showing both Nos 13 & 15.
38. So as not to delay matters further, I have disregarded this newly submitted plan. I will instead refer to the plan reference 01/PROP A01 submitted with the Appeal B application, but have attached at the end of this decision a copy of this plan. This should avoid any doubt as to the plan I have considered in this decision.

Main Issue

39. The main issue in this case is the effect of the development on the living conditions of the occupiers of adjoining residential properties.

Reasons

40. Important to how I consider the main issue in this case is the basis on which the variation to the planning permission is proposed. In this regard, I note the planting boxes with planting along the edge of the flat roof, adjacent to No 15. The appellant says that these are to provide a privacy screen between the rooflight in the single storey extension and the first floor windows in the rear elevation of No 15. The appellant suggests that the maintenance of these necessitate more regular access to the roof than was originally anticipated, and that ease of access to these will be facilitated by the omission of the first floor balustrade. It is also suggested that ease of access is needed to clean the roof lights within the roof of the single storey extension, as well as its gutters.
41. Of particular note is that the appellant does not propose the omission of the balustrade in order to use the extension roof as a sitting out area, as would be the case with a balcony or roof terrace. The appellant has explicitly said that condition 4 of the 2018/0249 permission would prevent this, and the Appeal B application does not propose the removal of this condition.
42. Whilst the Council appear to acknowledge the above, much of its objection to the proposed variation is to the use of the extension roof as a roof terrace.
43. I acknowledge that the omission of the balustrade would provide easy access to the extension roof and I note that the Council is concerned that this would result in the use of the extension roof as a roof terrace. I do not underestimate the concerns of interested parties in this regard, including the objections of neighbouring residents.

44. However, my decision must be made with regard to the evidence before me. As I note above, the appellant has said that the extension roof would not be used as a roof terrace and that such a use would be prohibited by condition. Having stepped out onto the extension roof, I can agree with the appellant's suggestion that the use of the extension roof as a roof terrace would be unsafe. Whilst I have concluded that, on the balance of probability, a failure to comply with condition 4 of the 2018/0249 permission has occurred, the evidence of the number of occurrences of this is limited. All things considered, it would be unreasonable for me to consider Appeal B otherwise than on the basis put forward by the appellant.
45. In this regard, the appellant suggests that the need for access to the roof is greater than anticipated. Access for maintenance would still result in direct views from the extension roof into the adjoining properties, including into the glass roof of the kitchen at 11 Ramsdale Road, the rear bedroom windows of No 15 and the gardens of both adjoining properties. However, having regard to the need for access to the roof, it is likely that anyone's presence on the roof would be for a short period and that any activity on the roof would be functional. It would, for example, be to water the limited number of plants on the roof or to clean the glass roof. Whilst these activities would still result in incidents of overlooking into the adjoining properties, these would be limited. Similarly, any noise and disturbance generated by the maintenance activities are likely to be minimal and for a short duration.
46. Relevant to my decision in this case is that the reason stated for condition 2 does not include to protect the privacy of neighbours and to prevent overlooking, which is the reason given for condition 4. This is not the intention of the condition. I also note that there is not a condition that specifically requires the balustrade to be retained following its construction. Had the balustrade been necessary to make the development acceptable in terms of its impact on the living conditions of neighbouring occupiers, conditions requiring its installation and retention should have been imposed on the 2018/0249 permission.
47. Having regard to all of the above, I conclude that the proposed variation of condition 2 of the 2018/0249 permission would not have an unacceptable effect on the living conditions of the occupiers of adjoining residential properties. I cannot, therefore, find conflict with Policy DMS1 (General development principles - Sustainable urban design and the quality of the environment) of the Wandsworth Local Plan Development Management Policies Document Adopted March 2016 (WLP). This informs that permission will not be granted for development that, amongst other matters, harms the privacy of the occupiers of nearby properties or results in unacceptable noise.
48. Although not referred to in the reason for refusal of the Appeal B application, my attention has been drawn to Policy DMH5 (Alterations and extensions) of the WLP. The relevance of this Policy to the main consideration in this case is limited as this Policy does not refer to matters of residential amenity. Nevertheless, I am unable to identify any conflict with this Policy and no particular part of the Policy has been drawn to my attention.

Other Matters

49. It may well be the case that access to the extension roof could be gained by another means, and that the plants could be watered without the need for

access to the roof. These matters do not, however, provide sufficient reason to dismiss the proposal in this appeal that is otherwise considered acceptable.

50. I have had regard to the appeal decisions drawn to my attention. Whilst I have been provided with limited details of the cases referred to by the Council, the development proposed in each case was for a roof terrace above an extension. That is not proposed in the case before me. For the reasons I have already given above, the effects of the development in this appeal would not be comparable to the matters considered in those other cases. As such, these appeal decisions provide little assistance in the determination of this appeal.

Conditions

51. This appeal decision grants a new planning permission. The Planning Practice Guidance: Use of Planning Conditions (PPG) makes it clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. I note the conditions suggested. Where necessary I have amended the wording in the interests of precision and clarity in order to comply with advice in the PPG.
52. In their list of suggested conditions, the Council have omitted the time limit condition, which is logical as the development has begun.
53. As the 2018/0249 permission relates to both the appeal site and the adjoining property at No 15, the planning permission I will grant will do the same. I have, therefore, drafted the plans condition so as to still make reference to the plans showing the development approved at No 15 by reason of the 2018/0249 permission, but to approve the modification to these plans with the drawing submitted with the Appeal B application.
54. I have imposed the materials condition suggested to ensure that any remaining elements of the development to be constructed are completed in a way that respects the character and appearance of the properties. The materials condition suggested is more detailed than that imposed on the 2018/0249 permission, but is, nevertheless, likely to achieve the same result. I have not included the requirement to retain these materials as this would make the condition more onerous than the original planning permission. It may also interfere with rights granted under The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. I have not been given a reason to impose such a restriction on the development.
55. The condition relating to the roof of the extension and obscure glazing are wholly necessary in order to protect the living conditions of adjoining occupiers. I have not, however, included the words 'without the prior written consent of the local planning authority' and 'unless approved otherwise by the local planning authority in writing', as suggested by the Council. These words suggest that changes to the development could be made in a way that would circumvent the statutory routes to vary conditions, depriving third parties of the opportunity to make representations on any changes to the approved scheme.

Appeal B Conclusion

56. For the reasons given above, and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should succeed and I shall exercise the powers transferred to me

accordingly. I will grant a new planning permission, substituting the disputed condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

Formal Decisions

Appeal A

57. It is directed that the enforcement notice is corrected by:

- The substitution of the reference '171A(1)(a)' after the words 'within Section' with the reference '171A(1)(b)' in part 1;
- The substitution of the words 'Without planning permission and within the last 4 years, the erection of a part single, part two-storey rear extension at the property' with the words 'The failure to comply with condition number 4 of the planning permission reference 2018/0249 dated 24 April 2018 for the erection of part single, part two-storey rear extensions to both properties forming the pair of semi-detached dwellinghouses at 13 and 15 Ramsdale Road SW17 9BP. Condition 4 states: The roof of the extensions hereby permitted shall not be used as a balcony, roof garden, sitting out area or for any purpose of a similar nature without the prior written consent of the local planning authority' in part 3; and
- The deletion in their entirety of requirements 2. and 3. in part 5.

58. Subject to the corrections pursuant to ground (b), the appeal is otherwise dismissed and the enforcement notice is upheld.

Appeal B

59. The appeal is allowed and planning permission is granted for the erection of part single, part two-storey rear extensions to both properties forming the pair of semi-detached dwellinghouses at 13 and 15 Ramsdale Road SW17 9BP in accordance with the application reference 2021/2489 dated 25 May 2021, without compliance with condition number 2 previously imposed on planning permission reference 2018/0249 dated 24 April 2018 and subject to the following conditions:

1. The development shall be carried out in accordance with the reports, specifications and drawings numbered 01/PROP revision A03, 02/PROP revision A03, and 03/PROP revision A03 approved by the Council on 24 April 2018 by reason of the planning permission reference 2018/0249 except insofar as the plans are modified by the drawing numbered 01/PROP revision A01 submitted with the application reference 2021/2489 dated 25 May 2021.
2. All external materials used in the construction of the development hereby approved shall match the type, texture, tone, colour, size and profile of those used on the existing building and shall be retained permanently.
3. The roof of the extensions hereby permitted shall not be used as a balcony, roof garden, sitting out area or for any purpose of a similar nature.

4. The windows in the first floor side elevations (east and west) shall be obscure-glazed, and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed and shall thereafter be so retained.

J Moss

INSPECTOR



Plan

This is the plan referred to as 01/PROP revision A01 in this decision.

by **J Moss BSc (Hons) DipTP MRTPI**

Land at 13 Ramsdale Road, London SW17 9BP

Appeal ref: APP/H5960/W/21/3284214

Scale: Not to scale

