



Appeal Decisions

Hearing held and Site Visit made on 6 December 2022

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2023

Appeals A and B Ref: APP/N5090/C/21/3285411 & 3285412

22 Copthall Drive, Mill Hill, London NW7 2NB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Mr Lee and Mrs Sophie Talson respectively against an enforcement notice issued by London Borough of Barnet.
 - The notice, numbered ENF/01532/17, was issued on 16 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a part single, part two storey side and rear extension, a roof extension involving a hip to gable extension, a rear dormer window and 1No. rooflight to the front elevation to facilitate a loft conversion.
 - The requirements of the notice are to: 1. Restore the property back into the state in which it was prior to the breach, as per existing plan numbers 1185/03 "Plans as existing" and 1185/04 "Elevations as existing" of lawful development certificate reference 17/1406/192, dated 20.03.2017, including, but not limited to, demolishing the part single, part two storey side and rear extension, the roof extension involving a hip to gable extension, and the rear dormer window; and 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is: 4 months after the notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (d), (f), and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Appeal C Ref: APP/N5090/W/22/3306409

22 Copthall Drive, Mill Hill, London NW7 2NB

- 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 & Mrs Talson against the decision of London Borough of Barnet.
- The application Ref 22/1455/HSE, dated 18 March 2022, was refused by notice dated 12 August 2022.
- The development proposed is a two-storey side and rear extension following demolition of the existing garage. New front porch. Roof extension to incorporate alterations to existing unauthorised roof extension.
- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.

Decisions

1. Appeals A & B are 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 1990 Act as amended for the development already carried out, namely the erection of a part single, part two storey side and rear extension, a roof extension involving a hip to gable extension, a rear dormer window and 1No. rooflight to the front elevation to facilitate a loft conversion at 22 Copthall Drive, Mill Hill, London NW7 2NB as shown on the plan attached to the notice and subject to the conditions in Schedule A below.
2. Appeal C is allowed and planning permission is granted for a two-storey side and rear extension following demolition of the existing garage, new front porch, and roof extension to incorporate alterations to the existing unauthorised roof extension at 22 Copthall Drive, London NW7 2NB in accordance with the terms of the application, Ref 22/1455/HSE, dated 18 March 2022, subject to the conditions in Schedule B below.

Appeals A & B

Reasons

Ground (d)

3. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
4. The notice was issued and served on 16 September 2021. The time limits for enforcement action are set out in section 171B of the 1990 Act. In respect of operational development, section 171B (1) sets out that no enforcement action may be taken after the end of the period of four (4) years beginning with the date on which the operations were substantially completed. That means that the works the subject of the notice must have been substantially completed by 15 September 2017.
5. The appellant argues that the works were substantially complete on 21 September 2017 and cites the Council's photographs that are contained in both parties' appeal statements (albeit the Council maintain these were taken on 22 September 2017). Either way, both dates are within the 4-year immunity period and so is clearly not evidence that the works were substantially complete by 15 September 2017.
6. In any case, it is clear from these photos that the works are not substantially complete because the roof is incomplete, the walls remain to be rendered, there are no windows or doors in the extensions, and scaffolding and plastic roof covering still surrounds the building, all of which makes the house or at least the majority of it uninhabitable at this date.
7. The appeal on ground (d) consequently fails.

Ground (a)

8. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated on the notice, planning permission ought to be granted.

9. The Council's reasons for issuing the notice essentially are that the roof extensions as built – the gables and near full width rear dormer –, when considered in combination with the other (non-contentious in themselves) side, rear and porch extensions, are disproportionate, discordant and consequently harmful to the design of the original house and to the character and appearance of the surrounding area, which is characterised by houses of similar design. And that, as such, the roof extensions are contrary to Policy D3 of the London Plan 2021 (LP), Policies CS1 and CS5 of the Barnet Core Strategy 2012 (CS), Policy DM01 of the Barnet Development Management Policies DPD, and to advice contained within its Residential Design Guidance SPD 2016.
10. Most of the neighbouring houses in this part of Copthall Drive have similar designs to that of the appeal property, with pitched and hipped roofs and hipped two-storey bay front projections. Slightly wider afield and running onto surrounding roads there is more variety and several prominent examples of extensions, including hip to gable and dormer roof extensions, that are comparable with what has been done at the appeal property, as I saw at the accompanied site visit. I acknowledge the roof extensions at Nos 15 and 28 Copthall Drive but also note the Council's comments that the side dormers at the latter have not been built in accordance with the approved plans, notwithstanding that it has not initiated any enforcement action against them.
11. The above development plan policies and the Council's Residential Design Guidance SPD set out that extensions including roof extensions to dwellings should accord with the distinctive character of the area in order to constitute good design, which is a requirement of these policies and guidance.
12. Although the curve in Copthall Drive to the north means that No 22 including its roof extensions are not prominent when approaching the property from that direction, they are prominent from the corner of Hillside Grove immediately to the south. From this viewpoint, as I and all the parties saw at the site visit, the hip to gable extension with the full width rear dormer are prominent and in my opinion at odds with the original design of No 22 and the designs of the neighbouring houses on that side of the road. For this reason, I agree with the Council that the roof extensions are harmful to the host dwelling and the character of the area, contrary to the above development plan policies and SPD guidance.
13. However, the appellants consider that there is a 'fall-back' position that in this case constitutes a material consideration sufficient to grant planning permission for the roof extensions that conflict with the development plan. This 'fall-back' is, essentially, that the appellants could and would build very similar permitted development roof extensions once they had removed the current roof extensions. This is illustrated by the Lawful Development Certificate (LDC) Ref 17/1406/192 granted on 20 March 2017. Taking into account the judgement in *Mansell*¹, I agree that the LDC scheme would constitute a legitimate 'fall-back', not least because of the family's need for such additional accommodation space.
14. The built roof extensions attacked by the notice and the proposed elevations in the LDC are slightly different. In particular, the rear dormer is set in slightly and equidistantly from the built-up side gables whereas the current dormer occupies nearly the whole width of the built-up rear roof profile. Nonetheless,

¹ *Mansell v Tonbridge & Malling BC* [2017] EWCA Civ 1314

these differences are slight and the LDC scheme, when viewed from the most prominent location in the street, the corner of the junction with Hillside Grove as indicated above, would be similarly prominent and at odds with the character of No 22 and most of its neighbours.

15. Since this LDC scheme, which is insubstantially different to the currently constructed development, is the scheme that would be likely to be built if I was to uphold the notice, there is no reason for me to do so, because the current development has no substantially greater harmful effect on the character of the original dwelling or the character of the area than the LDC scheme would have. Consequently, this 'fall-back' provides the material considerations to grant planning permission other than in accordance with the development plan in this specific case.
16. In deciding this I have considered the relevance of the planning permission Ref 21/6448/HSE granted on 20 January 2022. This permission deletes the existing second floor accommodation by retaining the original side hips of the main roof. I have considered whether this is necessary, given the prominence of the view of the house from the junction of Hillside Grove but have decided that it is not because of the 'fall-back' position as illustrated by the LDC.
17. Therefore, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out subject to the conditions as agreed between the parties at the Hearing and set out in Schedule A below.

Grounds (f) and (g)

18. As I have allowed the appeal and quashed the notice under ground (a), there is no need to consider grounds (f) and (g), that the steps required by the notice exceed what is necessary to remedy the breach of planning control and that the period for compliance falls short of what is reasonable.

Appeal C

Main Issue

19. This application was submitted following the grant of permission 21/6448/HSE in January 2022. It clearly comprises an attempt to maintain the new bedroom accommodation at second floor level, albeit reducing its size slightly because it seeks a hip to the two-storey side extension on the south side of the house rather than a gable of the whole existing roof including this extension. The rear dormer would therefore be less wide to this extent.
20. The main issue, as set out in the Council's refusal reason, is therefore whether these alternate roof extensions would be disproportionate, discordant and consequently harmful to the design of the original house and to the character and appearance of the surrounding area, which is characterised by houses of similar design.

Reasons

21. I have explained above why I consider the roof extensions as currently built and attacked by the enforcement notice are acceptable – because of the LDC 'fall-back' position, which is insubstantially different from them in terms of its effect on the character of the original dwelling and the character of the area.

22. The proposed design in this appeal seeks to reduce the width of the main roof by hipping the two-storey side extension. This would lessen the effect of the roof extensions on the character of the dwelling and on the street scene because it would retain a gabled element when viewed from the south. For this reason, there is clearly no objection to the roof design scheme proposed in this appeal, albeit having allowed the existing roof extensions in Appeals A and B above I understand that this scheme is obviously unlikely to be implemented.
23. For these reasons Appeal C is allowed subject to the conditions set out in Schedule B below.

Conditions

24. Proposed conditions for both schemes, the extensions as currently constructed the subject of Appeals A and B and the proposed scheme in Appeal C, were discussed at the Hearing. Schedule A below sets out the conditions in the former, and Schedule B the conditions in the latter including in both the reasons for imposing these conditions.
25. The only condition suggested by the Council that I have not included in either of these Schedules is the Council's Condition 5 as set out at the end of its statement in relation to Appeal C. This was that within three months, the doors in the rear elevation of the dormer shall be altered to be inward opening and a fixed, flush balustrade shall be installed to prevent egress and permanently retained as such.
26. I do not consider this condition to be necessary, notwithstanding that the doors are already shown on the plans as opening inwards, because the rear windows at first floor in the house already overlook the gardens of adjoining neighbours, as is usual in such suburban locations. I see no objection to residents egressing the second-floor bedroom accommodation onto this small area of flat roof patio in front of the rear dormer since any overlooking of neighbours' gardens would be no worse than it currently is from the first-floor rear windows of No 22.

Other Matters

27. In deciding these appeals I have taken into account the representations made at application stage in respect of Appeal C and at appeal in respect of all three appeals. In particular, the objections from the Mill Hill Preservation Society and two neighbours, and the three letters of support from three neighbours including the two immediately adjoining neighbours.

Overall Conclusion

28. For the above reasons all three appeals are allowed, subject to the conditions in the Schedules below.

Nick Fagan

INSPECTOR

Schedule A: List of Conditions re Appeals A & B

1. The main flat 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.
Reason: To ensure that the amenities of the occupiers of adjoining properties are not prejudiced by overlooking in accordance with policy DM01 of the Development Management Policies DPD (adopted September 2012).
2. Within three months, the windows in the first-floor flank elevation facing Nos. 20 and 24 Copthall Drive shall be glazed with obscure glass only and shall be permanently retained as such thereafter and shall be permanently fixed shut with only a fanlight opening.
Reason: To safeguard the privacy and amenities of occupiers of adjoining residential properties in accordance with Policy DM01 of the Development Management Policies DPD (adopted September 2012) and the Residential Design Guidance SPD (adopted 2016).
3. Notwithstanding the provisions of any development order made under Section 59 of the Town and Country Planning Act 1990 (or any Order revoking and re-enacting that Order) no windows or doors, other than those expressly authorised by this permission, shall be placed at any time in the flank elevations, of the extensions hereby approved, facing number 20 and 24 Copthall Drive.
Reason: To safeguard the privacy and amenities of occupiers of adjoining residential properties in accordance with policy DM01 of the Development Management Policies DPD (adopted September 2012).

Schedule B: List of Conditions re Appeal C

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
1185/30 - Site location plan
1185/31 - Site plan as previously existing
1185/32 - Floor plans as previously existing
1185/33 - Elevations as previously existing
1185/34 - Floor plans as currently existing
1185/35 - Elevations as currently existing and photographs
1185/36 - Floor plans as proposed
1185/37 - Elevations as proposed
Reason: 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 Policy CS1 of the Local Plan Core Strategy (adopted September 2012) and Policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012).
2. This development must be begun within three years from the date of this permission.
Reason: To comply with Section 51 of the Planning and Compulsory Purchase Act 2004.
3. The materials to be used in the external surfaces of the building shall match those used in the existing building.

Reason: To safeguard the visual amenities of the building and surrounding area in accordance with Policy DM01 of the Development Management Policies DPD (adopted September 2012) and Policy CS1 of the Local Plan Core Strategy (adopted September 2012).

4. The main flat 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.

Reason: To ensure that the amenities of the occupiers of adjoining properties are not prejudiced by overlooking in accordance with policy DM01 of the Development Management Policies DPD (adopted September 2012).

5. Within three months, the windows in the first floor flank elevation facing Nos. 20 and 24 Copthall Drive shall be glazed with obscure glass only and shall be permanently retained as such thereafter and shall be permanently fixed shut with only a fanlight opening.

Reason: To safeguard the privacy and amenities of occupiers of adjoining residential properties in accordance with Policy DM01 of the Development Management Policies DPD (adopted September 2012) and the Residential Design Guidance SPD (adopted 2016).

6. Notwithstanding the provisions of any development order made under Section 59 of the Town and Country Planning Act 1990 (or any Order revoking and re-enacting that Order) no windows or doors, other than those expressly authorised by this permission, shall be placed at any time in the flank elevations, of the extensions hereby approved, facing number 20 and 24 Copthall Drive.

Reason: To safeguard the privacy and amenities of occupiers of adjoining residential properties in accordance with policy DM01 of the Development Management Policies DPD (adopted September 2012).

End of Conditions

APPEARANCES

FOR THE APPELLANT:

- Joe Henry, Henry Planning
- Mr Lee and Mrs Sophie Talson
- Andrew Jaye (Mrs Talson's father)

FOR THE LOCAL PLANNING AUTHORITY:

- Erica Mason, Planning Case Officer for the Council
- Sam Amoako-Adofo, Enforcement Officer for the Council

DOCUMENTS SUBMITTED AT THE HEARING

1. 21/6448/HSE Planning Permission dated 20 January 2022
2. Approved elevations of that scheme – Drg No 1185/25 Rev A