



Appeal Decision

Site visit made on 12 September 2022

by **G Robbie BA(Hons) BPI MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 08 February 2023

Appeal Ref: APP/N5090/C/22/3291200

Land at 50 Galsworthy Road, London NW2 2SH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mrs Ruma Kabir against an enforcement notice issued by London Borough of Barnet.
- The notice, numbered ENF/0718/21, was issued on 16 December 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a part single, part two storey rear extension including a ground floor wooden and plastic canopy extension.
- The requirements of the notice are to:
 - 1 Demolish the part single, part two storey rear extensions [*sic*] and canopy extension, and restore the land to its condition prior to the breach of planning, in line with the following existing plans of permission reference 18/2006/PNH dated 01.05.2018, 'Existing rear elevation' from drawing number 2018-Galsworthy-P-R-01 Rev A3, 'Existing right elevation' and 'Existing left elevation' from drawing number 2018-Galsworthy-P-R-02, and 'Existing G/F', 'Existing F/F' and 'Existing Loft' from drawing number 2018-Galsworthy-P-R-03.
 - 2 Permanently remove all constituent materials resulting from the works in 1. above from the property.
- The period for compliance with the requirements are:
6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (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.

Summary Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Formal Decision

1. It is directed that the enforcement notice be corrected by:
 - 1) Replacing the word 'extensions' with 'extensions';And varied by:
 - 2) The deletion of '6 months' and its substitution with '9 months' as the period for compliance at section 6 of the notice.
2. Subject to this correction, the appeal is allowed insofar as it relates to the part single, part two storey rear extension as depicted on the plans referred to in condition 1 below 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 erection of a part single, part two storey extension at land at 50 Galsworthy Road, London NW2 2SH, subject to the conditions in the schedule below.

3. The appeal is dismissed and the enforcement notice is upheld, as corrected and varied, insofar as it relates to the remaining parts of the development subject to the notice and planning permission is refused in respect of the single storey rear extension including a ground floor wooden and plastic canopy extension (to the extent that they are not depicted on the plans referred to in condition 1, below) on land at 50 Galsworthy Road, London NW2 2SH on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

4. The notice's first requirement refers to 'extensions' but I shall correct the spelling in my decision and correct the notice accordingly. I am satisfied that the correction is minor and can be made without prejudice.
5. The appellant has clarified¹ that in relation to the appeal under ground (f) the alternative scheme to be considered should be that as set out under application reference 18/3899/HSE, not application reference 18/2006/PNH as originally stated². I have determined the appeal accordingly.
6. Both parties refer in their appeal submissions to the appeal property's recent planning history. The Council first determined that prior approval was not required for a '*Single storey rear extension with a proposed depth of 6 metres from original rear wall, eaves height of 2.7 metres and maximum height of 3 metres*'³ and then subsequently approved an application for a certificate of lawful use or development (proposed use or development) for a '*single storey rear extension following the demolition of an existing rear extension*'⁴ (hereafter referred to collectively as '*the single storey scheme*'). An application for planning permission was then granted for a part two storey rear extension following the demolition of existing single storey rear extension in August 2018⁵ (the '*two-storey scheme*').
7. It is common ground that the appellant has constructed both of the separately approved schemes, for which I have been provided with the plans and elevations in respect of each, and I have taken them into consideration in reaching a decision on the matter before me. A further timber framed canopy extension has also subsequently been added to the rear of the appeal property, to which neither of the previous approvals refer.
8. It is also common ground that the extensions as constructed – a combination of the single storey scheme and the two-storey scheme – are unauthorised and do not cumulatively benefit from the consents / permission previously granted, respectively. The Council are also clear in their submissions however that, taking each of those elements that have previously been approved individually, there would be no objection to their respective separate elements.
9. The notice requires the demolition of the part single, part two storey rear extension and the ground floor wooden and plastic canopy extension and the restoration of the land to its condition prior to the breach of planning. The

¹ Paddington Planning, March 2022 – '*Written Representations: Response to LPA Statement and Third Party Representation*'

² Paragraphs 6.1 – 6.8. Paddington Planning – '*Written Representations: Enforcement Appeal Statement Facts to Support Appeal under Grounds (a), (f) and (g)*'

³ LPA Ref No: 18/2006/PNH – Application dated 26 March 2018 – Date of Decision 1 May 2018

⁴ LPA Ref No: 18/2947/192 – Application dated 24 May 2018 – Date of Decision 7 June 2018

⁵ LPA Ref No: 18/3899/HSE – Application dated 5 July 2018 – Date of Decision 29 August 2018

latter helpfully being cross-referenced in the notice to plans submitted with the first of the appellant's previously submitted applications³.

10. Section 173(3) of the Act states that an enforcement notice shall specify the steps to be taken in order to achieve, wholly or partly, any of the purposes set out in section 173(4) of the Act. These include remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land.
11. The powers available under an appeal made on ground (a) allow me to consider granting planning permission for part of the development enforced against. The appellant has requested in the appeal submissions that the two-storey scheme previously approved be considered within the scope of this appeal as an alternative to what has been built. The appellant has also indicated a willingness, should it be deemed necessary to retain the larger portions of the extensions, to remove the wooden and plastic canopy extension. In order to give proper consideration to these alternatives I will deal with them within ground (a) although the appellant's case in these respects was, in part at least, initially set out within ground (f).

Appeal on Ground (a)

Main Issues

12. The main issues are:

- The effect of the development on the character and appearance of the appeal property and the surrounding area; and
- The effect of the development on the living conditions of occupiers of adjoining properties, with particular regard to daylight and sunlight, and outlook.

Reasons

Character and appearance

13. The rear extensions cannot be seen from public vantage points from the Galsworthy Road roadside. Nor can they be widely seen from opposing properties at the rear, where a dense and almost visually impenetrable belt of hedges, shrubs and trees separates those on Galsworthy Road from those beyond.
14. However, where the extensions are more clearly seen and understood is from nearby rear gardens of properties on this side of Galsworthy Road. From these aspects, the extensions are seen as a clear departure in terms of scale and form from the prevailing built form of the street's rear elevation. Those extensions and build-outs that are more commonplace are typically, smaller, single storey lean-to structures, akin to the 'existing' layout shown at the appeal property on the various submitted plans.
15. Despite the depth of the ground floor element of the extension, in longer views along the rears of properties in this part of Galsworthy Road, this element would not be unduly dominant or particularly disruptive. Successive boundary treatments, a mix of fences and hedge, or both, effectively shield and disguise views of rear elevations along the terrace. Views towards the appeal property

and the extensions from elsewhere along the rear of the terrace would be no different in this respect.

16. In this respect, it is the upper floor element of the works which are seen more widely and which have a greater impact upon the character and appearance of the street. However, taken in isolation, the upper floor element of the extension is neatly inset on either side from the plot's extremities and pulled back from the deeper ground floor element. As such, it retains a degree of subservience and, in isolation, would avoid overwhelming the property's rear elevation. The Council previously considered this approach to be successful in previously granting planning permission for the two storey scheme and, having viewed this element of the building 'as-built', I agree. The result being that the upper floor element of the extensions appears as a modest, well-proportioned and thoughtfully designed addition to the property and, in isolation, one which avoids harm to the character or appearance of either the host building or the surrounding area.
17. The ground floor element extends in the region of 6 metres from the rear of the main, two storey part of the building, and across almost the full width of the plot. It is a substantial element of the extensions. Whilst the garden boundary treatments minimise the extent to which this flat roofed structure is visible from along the street, it is nevertheless a large extension to the appeal property, and disproportionate to it in terms of its comparative footprint. Moreover, as it effectively wraps around the upper floor element, its scale and the extent of the exposed areas of flat roof highlight the cumulatively disproportionate scale of the extensions as a whole.
18. I have carefully considered the site's planning history and agree that the single storey flat roofed element of the building (excluding the upper floor elements) is effectively the scheme submitted as notification pursuant to paragraph A.1(g) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the Order). However, it is important to note that the process which resulted in the Council concluding that prior approval was not required, is not subject to a full consideration of its planning merits, nor was the Council's subsequent approval of a certificate of lawfulness for the proposed development.
19. Rather, both the application that determined that prior approval was not required³ and that which determined the lawfulness of that proposed development⁴, were subject to the required but somewhat mechanistic assessment against the relevant provisions of the Order. The assessment of these applications did not require consideration to be given to their effects on the character and appearance of the appeal property, or upon the surrounding area, nor did they require consideration be given to the effect upon the living conditions of occupiers of neighbouring residential properties.
20. It is not therefore the case, as the appellant suggests, that the site's planning history demonstrates a scale of works which are acceptable. As I have set out above, the extensions as built are an incongruously large and disproportionate addition to the rear of the appeal property. Taken together, the ground and first floor elements dominate the rear of the property. Whilst the upper floor element of the extensions is of relatively modest proportions, it nevertheless serves to exacerbate the effect of the ground floor element's scale and bulk and that of the structure as a whole when considered as a single entity.

21. Although the wooden and plastic canopy extension is a relatively lightweight structure, particularly in comparison with the more substantial and traditionally built brick extensions, it nevertheless adds further rearward projection and bulk to what has been built. The rear elevations of buildings along this side of Galsworthy Road are relatively simple in their arrangement with only limited build-outs. Cumulatively, the totality of what has been built in the case of the appeal property jars with the relative simplicity of the street's rear façade as a whole and overwhelms the appeal property's modest scale, proportions and character.
22. Policy DM01 of the Barnet Local Plan: Development Management Policies (2012) (DMP) and Policy CS5 of the Barnet Local Plan: Core Strategy (2012) (CS) set out the Council's approach to protecting the borough's character and amenity. Together, they state that all proposals should be of high quality design and, amongst other things, based upon an understanding of local characteristics. Proposals should preserve or enhance local character and respect the appearance, scale and mass of, and the space around, buildings.
23. The Council's 'Supplementary Planning Document: Residential Design Guidance' (2016) (RDG) provides guidance and advice on a range of development forms, including rear extensions. With regard to character and appearance, it suggests that a single storey extension with a depth of 3 metres on a terraced property would normally be considered acceptable. Beyond this, it advises that proposals should ensure that they do not appear too bulky or prominent compared to the size of the main building and garden.
24. Whilst the Council have previously considered the overall projection of the two storey element to avoid harm in this respect, the cumulative effect of the extensions as built, including the timber framed canopy structure, is such that the development fails to achieve the high quality design that CS Policy CS5 and DMP Policy DM01 seek to secure. Thus, in failing to respect the appearance and scale of the extensions in the context of the appeal building the development fails to understand or respect local character. The scheme is therefore contrary to the aims and principles of DMP Policy DM01 and CS Policy CS5 and the advice and guidance of the RDG.

Living conditions

25. The single storey element, which extends across almost the full width of the property, is a significant and imposing addition to the rear of the property. Although there is a shared walkway between the appeal property and the neighbouring property at No 48 which provides a degree of relief between the extension and the neighbouring property, there is no such arrangement between Nos 50 and 52.
26. The appellant's appeal submission helpfully demonstrates the ground floor's relationship with its two immediate neighbours with the application of a '45 degree' test. The Council have not challenged the application of this 'test' *per se* but have noted that it does not take into account the timber framed canopy.
27. Whilst the Council's RDG does not refer to the application of a '45 degree rule', it does advise that extensions should not be overbearing or unduly obtrusive, should avoid a loss of light or overshadowing of adjoining properties and avoid a loss of outlook, sense of enclosure or, more generally, an overbearing impact upon adjoining properties. Although the appellant's '45 degree' test

demonstrates that the ground floor extension would pass with regard to No. 52, but not with regard to No. 48, the lack of a policy imperative for its application, or inclusion within guidance, limits the weight that may be afforded to it.

28. With regard to No. 52, the extension's continuous projection along the boundary line would be a significant presence within view from the rear of that property. Although much shorter in its overall projection than the ground floor, the staggered first floor element of the extension adds additional bulk at a higher level. Located due south of the rear of No.52, the cumulative effect of both elements of the extension is to create a real and perceived sense of enclosure which would be harmful to the outlook from the rear of the property. The appellant's application of a '45 degree' test in this respect does not persuade me otherwise.
29. With regard to daylight and sunlight, the extension's location roughly due south of the rear of No. 52 would be such that the cumulative effect of both elements would be to bring forward earlier in the day the point at which the rear of No. 52 would be cast in to shadow. This too, would be harmful to the living conditions of occupiers of that property. Although I am satisfied there would be no loss of daylight or sunlight to No. 48 arising from the proposal, as with at No. 52, the ground floor extension curtails the outlook from the rear of the property and cumulatively both elements combine to result in an overbearing and dominant addition to the rear of No. 50 which would be harmful to the living conditions of occupiers of Nos. 48 and 52.
30. I have noted the absence of objection to the previous applications from occupiers of those properties which immediately adjoin the appeal property. However, the absence of objection from those most directly and closely related to the works does not persuade me as to absence of harm which, for the reasons I have set out, arise from the extensions that the notice seeks to attack.
31. DMP Policy DM01 sets out the Council's approach to protecting the borough's amenity and achieving high quality design, at DM01(e) stating that development should be designed to allow for adequate daylight, sunlight and outlook for adjoining and potential occupiers. The RDG expands on this to provide further guidance on matters of amenity in relation to extensions to properties. For the reasons I have set out, the extensions are obtrusive and overbearing upon the occupiers of neighbouring properties, causing harm to outlook and adversely affecting daylight and sunlight in relation to No. 52 and the outlook from No. 48. The development the notice seeks to attack is therefore in conflict with the aims and provisions of DMP policy DM01 and the RDG.
32. Whilst the further timber framed extension fails the appellant's '45 degree' test and adds yet further depth to the built extensions, it is essentially a lightweight, open sided structure. Having closely observed and considered this element's relationship with both of the adjoining neighbouring properties, I am satisfied that it has minimal additional impact upon those properties in terms of outlook, sunlight or daylight, beyond that already caused by the part single storey / part two storey extension. With regard to the matter of living conditions, the presence of the timber-framed element of the structure has not

been determinative to my decision. Nevertheless, for the reasons set out, the appeal on ground (a) in respect of the alleged breach fails.

Whether planning permission should be granted for any part of the matters stated in the notice

The two-storey scheme

33. The appeal on ground (a) sought planning permission for the matters stated in the notice as the breach of planning control; namely the development which has actually been built. However, section 177(1)(a) of the Act enables me to grant planning permission for the whole "or any part" of the matters stated in the notice.
34. Although there are outwardly elements of the previously approved two-storey scheme present within the extensions as built, the appellant accepts that the works carried out are unauthorised. The Council do not consider the two-storey scheme to be extant, and I have not been provided with any evidence to the contrary by the appellant. I cannot therefore ascribe weight to this as a fallback position.
35. Nevertheless, I have to consider whether any material changes have taken place since that permission was granted, such that permission should not now be granted for the same development. I have not been made aware of any such changes but, in any event, the first and fundamental question is whether the two-storey scheme can properly be regarded as part of the matters stated in the notice; i.e. part of the development actually built.
36. From a careful consideration of the submitted plans and from what I saw during my visit to the site, it seems to me that the upper floor element of the two-storey scheme can properly be regarded as part of the matters stated in the notice. Thus, its position on the rear of the main two storey element of the house, its position relative to the properties on either side, its dimensions and form and its general appearance at upper level are all sufficient to lead me to conclude that it can properly be regarded as such.
37. Clearly, however, the ground floor element of that two-storey scheme differs significantly from what has been built. Nevertheless, the two-storey scheme is effectively a truncated version of the matters stated in the notice; the ground floor having a depth of 3 metres instead of 6 metres, but otherwise extending across the width of the rear elevation in the same manner as that which has been built. The result would also be a part single storey / part two storey extension.
38. I am satisfied therefore that the development previously approved in 2018 as the two-storey scheme can reasonably and properly be regarded as being part of the development as built. Although the works required to retain the upper floor element of the extension, whilst removing the farthest 3 metres of the ground floor's 6 metre depth, would be extensive, they would be less so than those required to comply with the notice in full. In this respect, I tend to agree with the appellant's argument in questioning what useful planning purpose would be served by the removal of the extensions as built only to subsequently seek permission for a scheme identical to that which the Council had previously approved; namely the two-storey scheme.

Character and appearance

39. The parties are agreed that the purpose of the notice is to remedy the breach of planning control, not to remedy any injury to amenity which may have been caused by any such breach. The appellant has suggested, with clarification subsequently set out during the course of the appeal, that the two-storey scheme granted planning permission in August 2018 would provide an alternative scheme and which would, whilst short of a complete remedy to the breach, be acceptable in terms of character and appearance and amenity. This alternative scheme would additionally omit the wooden and plastic canopy extension which the notice also seeks to attack.
40. The two-storey scheme referred to by the appellant would result in a similar description of development to that which the notice seeks to attack; namely a part single storey / part two storey rear extension. The upper floor element of this two-storey scheme would be the same as that built in terms of its overall dimensions, position on the rear of the property and its appearance. The ground floor element, although truncated in overall depth and limited to the same overall depth as the upper floor element (3 metres), would be of a similar width to that currently in situ. As it would be wider than the upper floor element, it would also retain small areas of flat roof where the upper floor would be set in from the ground floor extension's extremities.
41. Thus, although the ground floor element would directly adjoin the garden boundary with No. 52, it would only project in the region of 3 metres from the rear of the house. The existing upper floor element, which also projects 3 metres from the rear of the house at its deepest point, is also inset from both sides of the ground floor element. Taking the two constituent elements of the two-storey scheme together, I consider it to be a more considered, modest addition to the rear of the appeal property. As such, it would avoid harm to the character and appearance of the host property or to that of the surrounding area.
42. For the reasons set out, the two-storey scheme would raise no conflict with the provisions of DMP Policy DM01 or CS Policy CS5, or the guidance set out in the RDG against which the Council considered the service of the notice to be necessary.

Living conditions

43. The two-storey scheme would significantly and usefully reduce the impact of the built additions upon the neighbouring properties on both sides of No. 50. Whilst it would not alter the scale, form, proportions or positioning on the main house of the upper floor element, the substantial reduction in ground floor projection would ensure that both that element, and the extension cumulatively, would sit more comfortably with those properties around it.
44. The shorter ground floor projection would avoid the creation of the sense of enclosure that I have found would be harmful in respect of the larger extension as built and would reduce the extent to which an extension would affect daylight and sunlight at No. 52. There would, therefore, be no harm arising in respect of the living conditions of occupiers of neighbouring properties, and therefore no conflict with DMP Policy DM01 or the guidance set out within the RDG as a consequence.

Conclusion on ground (a)

45. The appeal on ground (a) and the application deemed to have been made in relation to the works set out as the alleged breach in the notice fails for the reasons set out above. However, the appellant's suggested alternative scheme, akin to that previously granted planning permission by the Council, can reasonably be considered to be within the scope of part of the matters to which the notice relates. For the reasons I have set out above with regard to the two-storey scheme, I am satisfied this would overcome the objections raised by the Council and address my conclusions in respect of the failings of the as-built scheme.
46. Accordingly, the appeal on ground (a) in respect of the alternative two-storey scheme succeeds. This is, however, subject to a plans condition setting out the approved plans in relation to this element of the works. For clarity, those elements of the as-built works to be removed would be the constituent materials of the ground floor element of the as-built extension not falling within the scope of the two-storey scheme including the ground floor wooden and plastic canopy extension.
47. In adopting this approach I am satisfied that the two-storey scheme would avoid the harm to both character and appearance and living conditions that led the Council to the service of the notice. Whilst the success of the appeal on ground (a) would not address the breach of planning control, it reflects the intention of the enforcement process to be remedial rather than punitive. Given the particular circumstances in this case, as laid out by both parties, the success of the appeal under ground (a) subject to the condition as set out reflects a remedial, rather than punitive, approach.

Appeal on Ground (g)

48. The appeal on ground (g) is that the time given to comply with the requirements of the notice is too short. I accept that the required works as originally set out in the notice are extensive and are likely to require the input and involvement of specialist trades. That is likely to remain so in respect of the alternative works set out within the two-storey scheme. I accept too that the need to move out of the property and find alternative accommodation would be likely to add further disruption and potential for delay, over and above the period of the actual building works required by the notice.
49. Thus, the appellant seeks a fair balance and proportionate response to balancing wider public interest concerns with the needs of occupiers in requesting an increase in the compliance period from 6 months to 9 months. In this respect, I have also considered the appellant's convention rights under Article 8 of the European Convention on Human Rights⁶ as the notice's requirements amount to interference with those rights.
50. The Council's response to the appeal on ground (g) is somewhat non-committal but does indicate an acceptance to defer to judgement with regard to a compliance period longer than the notice's 6 months. Taking all these factors into account, it seems to me that a period of 6 months within which to make such arrangements, in addition to undertaking the works themselves, would be

⁶ As set out within the Human Rights Act 1998

a rather condensed time period and falls short of what should reasonably be allowed.

51. Instead, the extended period of 9 months sought by the appellant would adequately allow appropriate logistical and construction arrangements to be made to ensure implementation of, and compliance with, the requirements of the notice. I am satisfied that the variations I have set out with respect to the notice would not materially change this position, or the appellant's subsequent arguments in seeking a longer time period. The appeal on ground (g) therefore succeeds to that extent and I shall vary the notice accordingly.

Conditions

52. The Council previously granted conditional planning permission for a two-storey extension when it was considered as a planning application in 2018, for which I have been provided with a copy of that decision certificate. Given my conclusions in respect of the appeal under ground (a), I have considered the conditions set out within this previous permission against the provisions of the National Planning Policy Framework and Planning Practice Guidance. Where necessary, and to reflect the circumstances of the matter before me, I have amended the wording of those conditions.
53. Of the conditions previously imposed in relation to the two-storey scheme, a plans condition is necessary and reasonable for the reasons set out above. The matter of a time limit condition is considered by way of the appeal under ground (g) and the notice's requirements whilst a materials condition is not necessary as I am satisfied that the external materials employed in the construction of the elements of the as-built extension to be retained are satisfactory.
54. I have, however, imposed conditions regarding the use of the exposed areas of flat roof and the future insertion of additional doors and windows into the side elevations facing towards neighbouring properties. These are, I am satisfied, necessary in the interests of the living conditions of occupiers of those neighbouring properties.

Conclusion

55. For the reasons set out, and having regard to all other matters raised, I conclude that the appeal should succeed in part only. I shall therefore grant planning permission for part of the matter the subject of the enforcement notice, namely the part single, part two storey rear extension as depicted on the plans referred to in condition 1. The enforcement notice is otherwise upheld, as corrected and varied, and planning permission is refused on the other parts the subject of the enforcement notice which are not depicted on those same plans. It is not necessary for me to make any changes to the requirements of the notice as a result of this, since the provisions of section 180 of the Act mean that the requirements of the notice will cease to have effect so far as inconsistent with the planning permission I have granted.

G Robbie

INSPECTOR

Schedule of Conditions

Condition 1

The development hereby permitted shall be carried out in accordance with the proposed layouts and proposed elevations shown on the following approved plans: 2018-Galsworthy-P-DSR-01; 2018-Galsworthy-P-DSR-02; 2018-Galsworthy-P-DSR-03; and 2018-Galsworthy-P-DSR-04.

Condition 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.

Condition 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 shall be placed at any time in the side elevations facing towards 48 and 52 Galsworthy Road of the extension hereby approved.

****end of Schedule of Conditions****