



Appeal Decisions

Site visit made on 24 May 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 22 June 2023

Appeal Ref: APP/N5090/C/22/3300811 ('Appeal A')

143 Edgwarebury Lane, Edgware HA8 8ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Menachem Mendel Schtraks against an enforcement notice issued by the Council of the London Borough of Barnet.
- The enforcement notice, numbered ENF/0353/20, was issued on 29 April 2022.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a roof extension involving a side and rear dormer window.*
- The requirements of the notice are to (1) restore the property back to the state in which it was prior to the breach, by demolishing the roof extension involving a side and rear dormer window, and returning the building back to its form as per the existing elevations, drawing number 02143LC of application reference 18/7491/192, dated 16th January 2019; 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 three months.
- The appeal is proceeding on the grounds set out in section 174(2) (c) (f) and (g) of the Town and Country Planning Act 1990 as amended ('the 1990 Act'). Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act have lapsed.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal Ref: APP/N5090/C/22/3300812 ('Appeal B')

143 Edgwarebury Lane, Edgware HA8 8ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mrs Marilyn Lisa Rebecca Schtraks against an enforcement notice issued by the Council of the London Borough of Barnet.
- The appeal is against the same enforcement notice, and brought on the same grounds, as Appeal A.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by both appellants against the Council. This application is the subject of a separate Decision.

Main Issues

2. The nature of the works alleged in the notice is not disputed; the appeal concerns the construction of a substantial roof extension at the subject property. The grounds of appeal raise several issues.

3. The first ground of appeal is brought on ground (c): that the matters alleged in the notice do not constitute a breach of planning control. Here the appellants refer to a lawful development certificate granted on 16 January 2019 under reference 18/7491/192 concerning a roof extension involving a side and rear dormer window and two front facing rooflights. If that cannot be relied upon, it is necessary to consider whether what has been constructed amounts to development permitted by the operation of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the 2015 Order'). I shall also consider whether any extant express planning permissions are of relevance.
4. In relation to this ground of appeal, general planning considerations are irrelevant and what must be demonstrated by the appellants, to the standard of probability, is that the development as carried out has not constituted a breach of planning control.
5. If the appeals on that ground fail, the two remaining grounds of appeal concern the extent of the notice's requirements and the time stipulated for compliance. The first of these, under ground (f), requires me to consider the purposes for which the notice was issued, and whether the steps required by the notice to be taken exceed what is necessary to achieve those purposes. The second, under ground (g), requires me to consider whether the period of three months specified for compliance with the requirements falls short of what should reasonably be allowed.

Reasons

The appeals on ground (c)

The lawful development certificate

6. An application for a lawful development certificate relating to proposed use or development was registered by the Council on 19 December 2018 and granted on 16 January 2019. It certified as lawful the proposed construction of a roof extension involving a side and rear dormer window and two front facing rooflights. Whilst what has been built accords generally with this description, the certificate makes specific reference to the plans accompanying the application.
7. Those plans are somewhat difficult to resolve. Looking at the 'proposed elevations' drawing no. 04143LC, the north elevation and front elevation are potentially inconsistent. The north elevation, showing the development 'side on', shows the dormer itself to have a roof plane to the front, with the eaves around two thirds of the way up where the vertical extension meets the pre-existing roof edge. However, it is not clear on the front elevation plan that the extension is to be anything other than vertical; it refers to 'cladding' to match existing tiles and no eaves to the front are expressly depicted.
8. I find that the front elevation drawing must be interpreted in a way consistently with that of the north elevation. It is most unlikely that the Council would have granted a lawful development certificate for an entirely vertical dormer (unless one set so well back to the side that it would not meet the roof edge except at its upper extremity, but this in itself would be inconsistent with the north elevation drawing). This would plainly not constitute permitted development.

9. Unlike the 'as built' development, no windows are shown to the front on those plans. To interpret them consistently it is necessary to infer an eaves line on the proposed front elevation where the vertical dormer meets the roof hip, with a roof slope to the dormer consistent with that of the existing roof. The same applies to a lesser extent to the drawings in relation to the south elevation.
10. What has been constructed plainly does not accord with those plans, principally because the dormer extends beyond (i.e. forward of) the plane of the front roof slope whereas on the plans, having interpreted them as I have, it is shown not to do so. It is also depicted as being slightly stepped down from the pre-existing ridge line of the roof, whereas the construction appears of commensurate height. Other differences are apparent such as window treatments.
11. I have had regard to the submission of the appellants' architect, but I am unable to concur with the view expressed that the roof extension built conforms to the approved plans. The appellants have not demonstrated on the balance of probability that the development as constructed benefits from the lawful development certificate granted on 16 January 2019.

The 2015 Order

12. The parties appear in agreement that the relevant Class of the 2015 Order is Class B. Permission is granted by article 3 of, and Class B of Part 1 of Schedule 2 to, the 2015 Order for the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. This aptly describes the development that has taken place.
13. I am not informed of any relevant changes to the provisions of the 2015 Order since the works were carried out. The present provisions caveat the general permission granted by Class B by a number of prohibitions, found in paragraph B.1, and conditions, found in paragraph B.2.
14. Although the cubic content of the resulting roof space is queried by an interested party, the Council take no issue with any of the prohibitions found in paragraph B.1 save for that in paragraph (c). This provides that development is not permitted by Class B if any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway.
15. There is no apparent dispute between the parties as to what constitutes the principal elevation of the dwellinghouse. The house is a detached one, with a stepped principal elevation. As depicted on the 'before' drawings attached to the notice, to the left is a gabled front whose roof sections are to the sides and do not front the highway; to the centre, set slightly back, is a central section housing the front door with hipped roof above the first floor; and to the right, set further back still, is a further section with a further recessed hipped roof. The ridgeline of the roof is shown to meet that of the central section, where the ridge turns a short 'L' shape jutting forwards at the apex of the central section. To the far left is a much recessed single storey element but with a roof above leading in the direction of the apex; no plane of this section of roof fronts the highway.

16. Thus two roof planes of the stepped principal elevation of the house front the highway; the central and right sections. The right section is set further back than the central section.
17. The Council do not complain that the works carried out have resulted in any part of the dwellinghouse exceeding the height of the highest part of the existing roof. The interested party refers to a flue which does exceed the height of the roof; but the Council's complaint is not that the roof has been raised at any point or that the works have included the installation of a flue, which would contravene paragraph B.1(b) or (e) of the 2015 Order. The appellants appear to be at pains to demonstrate this point (as per their statement of 1 August 2022) but it is not one I understand to be in dispute.
18. The issue, as the Council point out, is that the extension has been 'wrapped around' the pre-existing roof and stands notably proud of the pre-existing roof plane of the recessed right hand section. I do not mean that it is higher, but that it is more forward. That it may not come forward of the plane of the central section (although it does, slightly) does not assist the appellants, because the prohibition of paragraph B.1(c) is not to extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway. When granting the lawful development certificate, the Council appear to have interpreted this to mean the 'adjacent' roof slope, much as in the same way as the Technical Guidance on Permitted Development Rights for Householders (MHCLG, September 2019) advises in respect of walls under Class A on page 15. Whether or not that is correct, the roof extension to the right hand side plainly projects beyond the adjacent recessed roof slope thus contravening the 2015 Order on any interpretation.
19. The resulting development therefore offends paragraph B.1(c) and thus does not benefit from the permission conferred by the 2015 Order. Having made this finding, for the purposes of the ground (c) appeals I do not consider it necessary to conclude on whether the flue offends paragraph B.1(b) or (e). Nor do I consider it necessary to conclude on whether the conditions of paragraph B.2 are met, including that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.

Any express planning permissions

20. The Council's summary of the planning history of the site reveals a number of fairly recent applications for permission or prior approval, as well as the lawful development certificate referred to.
21. One permission of potential relevance is that granted on 6 September 2019 under reference 19/1504/RCU. The permission is expressed to be for the retention of a single storey extension and construction of rear raised terrace and steps. It was subject to two conditions, the first of which required the development thereby permitted to be carried out in accordance with a set of approved plans. Those plans included no.s '132132-01REV.01 – Existing Plans' and '132132-02.REV.01 – Existing Elevations'. These plans have not been supplied to me.
22. Plans dated March and May 2019 have however been submitted as Exhibits 4 and 5 to the appellants' initial statement. These are however numbered '143143-01REV01' and '143143-02REV.01'. Although those plans do differ

somewhat from the plans applying to the lawful development certificate, they also do not reflect the development as built, principally because they do not, on the north and south elevations, depict any roof extensions to be forward of the adjoining pre-existing roof planes.

23. Because those plans both have different reference numbers from those listed in the permission, I am unable to be certain that they are the plans referred to in that permission. If they are, I would nonetheless conclude that the development as built does not accord with those plans, for the reasons previously given. Additionally although the roof works may be referenced in the plans, which may in turn be referenced in the conditional permission, they do not on the face of it fall within the ambit of the permission which is expressed to relate to development at the ground floor.

Conclusion on ground (c)

24. For the reasons given above I am unable to conclude that the appellants have demonstrated that the development as constructed benefits from any planning permission or lawful development certificate, or therefore that it does not constitute a breach of planning control. The appeals on ground (c) must therefore fail.

The appeals on ground (f)

25. The appellants contend that, especially in view of the planning history including the lawful development certificate, to require the entire demolition of the extension is disproportionate and unreasonable.
26. As there is no appeal on ground (a) I am unable to consider the planning merits of the development, whether in whole or in part. I must instead confine my considerations to the question whether the notice's requirements exceed its purposes.
27. Because the development as constructed does not accord with the lawful development certificate plans or with the permission conferred by the 2015 Order, it follows that it is unauthorised in its entirety. The Council's notice seeks to remedy the breach of planning control, and it is the Council's case that the breach can only be remedied by requiring the demolition of the extension and the restoration of the roof form to its former condition.
28. Section 173(3) of the 1990 Act provides (as relevant) that a notice shall specify the steps which the Council require to be taken in order to achieve, wholly or partly, the purpose of remedying the breach by making any development comply with the terms of any planning permission which has been granted in respect of the land or by restoring the land to its condition before the breach took place.
29. Although not put to me in terms by the parties, I have considered whether the breach could be remedied by seeking to make the development comply with the terms of the 6 September 2019 planning permission. As I do not appear to have been supplied with the plans approved under that permission, however, I am unable to conclude that the notice should be so amended. Additionally, the scope of that permission (described as relating only to a single storey extension and terrace and steps) does not appear to me realistically to extend to the roof works (if any) depicted on the accompanying plans.

30. The provisions of the 1990 Act do not expressly include remedying the breach by making the development comply with the plans accompanying an earlier lawful development certificate. Whilst it is the case that to remedy the breach would strictly require the demolition and restoration of the whole, I have considered whether the existence in this case of plans depicting development previously certified as lawful might reasonably affect the outcome of the appeals.
31. Section 192(4) provides that the lawfulness of any operations for which a certificate is in force shall be conclusively presumed unless there is a material change, before the operations are begun, in any of the matters relevant to determining such lawfulness. I am not informed of any relevant changes to the 2015 Order, or of whether the relevant permitted development rights applying to the property are affected for any other reason (save for their frustration by the unauthorised development itself). The Council concedes that the appellants' permitted development rights remain intact.
32. Therefore, if the existing development were to be removed and the roof restored, there appears no reason why the certificate could not be relied upon.
33. Therefore the proposed development previously certified as lawful by the Council strikes me as both a realistic fallback position and the archetypal 'obvious alternative' solution I am required to consider that could be achieved with less cost and disruption, bearing in mind that enforcement procedure is not punitive but remedial.
34. I shall therefore allow the ground (f) appeals to the extent of varying the notice to require, as an alternative to complete demolition and restoration, the development to be altered so as to comply with the plans approved under the lawful development certificate. The parties will no doubt have regard to my interpretation of those plans as set out above.

The appeals under ground (g)

35. The appellants' succinct case under ground (g) is that substantially more time would be required to arrange to complete any remedial works. Supporting correspondence from a contractor is supplied, suggesting an overall requirement of around nine months, but is prefaced with an assumption of having to 'undo' the roof extension. Given the variation to the notice to be made as a result of the appeals on ground (f) this wholesale reversion is no longer required.
36. Nonetheless the requirements of the notice are not negligible. At the least they will require the roof of the extension to be lowered, and the sides to be altered so as not to project beyond the roof plane. No chimney flue is depicted on those plans, and the cladding materials are shown to match the pre-existing roof. Window treatments differ from the existing.
37. Whichever alternative outcome is pursued as a result of my otherwise upholding the notice, I am satisfied that three months is most unlikely to be sufficient to achieve compliance, given realistic lead-in times for contractors. I shall vary the notice so as to extend the compliance period to six months.

Conclusion

38. For the reasons given above I conclude that the requirements of the notice are excessive and a reasonable period for compliance would be six months. I am varying the notice accordingly, prior to upholding it. The appeals under grounds (f) and (g) succeed to that extent.

Formal Decisions

39. The appeals are dismissed on ground (c) but succeed on grounds (f) and (g) and it is directed that the enforcement notice be varied by:

(1) Inserting, after paragraph 5(1):

“OR

1A Make alterations to the property so as to achieve compliance with the plans and drawings accompanying lawful development certificate application number 18/7491/192 namely:

02143LC – Existing Elevations
01143LC – Existing Plans
04143LC – Proposed Floor Plans
04143LC – Proposed Elevations
05143LC – Existing and Proposed Roof Plan
Site Location Plan
Block Plan”;

(2) Inserting, after “1.” and before “above” in paragraph 5(2):

“or, as the case may be, 1A”; and

(3) Deleting “3” and inserting “6” into paragraph 6.

40. Subject to these variations, and in relation to both appeals, the enforcement notice is upheld.

Laura Renaudon

INSPECTOR