



Appeal Decisions

Site visit made on 6 June 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal A Ref: APP/H5390/C/22/3302908

Land at 1 Firth Gardens, London, SW6 6QB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Nick Matthews against an enforcement notice issued by London Borough of Hammersmith and Fulham.
- The notice, numbered 2020/00662/COMPWK, was issued on 28 June 2022.
- The breach of planning control as alleged in the notice is without planning permission, the demolition of dwellinghouse with front facade retention and; erection of a part one, part two, part three storey plus-basement building including front and rear lightwells, roof terrace at second floor level, on top of the back addition, air source heat pump and hot water solar panel at roof level and bin store enclosure at front of the property, comprising 2 self-contained residential flats.
- The requirements of the notice are set out in Appendix 1 to this Decision Letter.
- The period for compliance with the requirements is 9 (nine) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (c) 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 of decision: Appeal A succeeds in part and planning permission for that part is granted but otherwise Appeal A fails and the enforcement notice is upheld with corrections as set out below in the Formal Decision.

Appeal B Ref: APP/H5390/W/22/3300914

1 Firth Gardens, London, SW6 6QB

- 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 Nick Matthews against the decision of London Borough of Hammersmith and Fulham.
- The application Ref 2021/01503/FUL, dated 31 July 2021, was refused by notice dated 20 December 2021.
- The development proposed is a retrospective application for demolition of dwelling house with front facade retention and; retention of part two, part three storey plus basement building with an external staircase from basement to ground floor level, roof terrace at second floor level, air source heat pump and hot water solar panel at roof level and bin store enclosure at front of the property (Amended description).

Summary of decision: Appeal B is dismissed.

Preliminary Matters

1. The appeals relate to an end of terrace property at No 1 Firth Gardens. The pre-existing plans show that it was a two-storey dwellinghouse with no basement and a pitched roof running parallel to the road. The main side elevation presented a gable end with chimney stack towards the rear of properties in Edgarley Terrace. A two storey outrigger that extended from the

main rear elevation of the dwelling, and which is referred to by the Council as the rear addition, straddled the boundary with No 3 Firth Gardens.

2. Planning permission was granted in March 2020 for the excavation of the front and rear garden to form lightwells in connection with the creation of a new basement at the property¹. I shall refer to this as the '2020 permission'.
3. Further to the Council issuing a Planning Contravention Notice in February 2021, the appellant submitted the retrospective planning application (subject to Appeal B). The Council issued the enforcement notice after refusing the application. The description of development for Appeal B is largely the same as that alleged in the notice subject to Appeal A and, as discussed below, it suggests that what took place – in short – was the demolition of the dwellinghouse (behind the front façade) and erection of a new building.

The Enforcement Notice and Appeal A

4. Under s176(1)(a) of the Town and Country Planning Act 1990 (the 1990 Act), I can correct any error, defect or misdescription in the enforcement notice so long as that would cause no injustice to the Council or the appellant. I am satisfied that I can correct the following minor errors in the notice without causing any injustice:
 - The allegation should refer to the scissor lift and stairwell that the notice requires removal of.
 - The 'clear window' described in requirement B.i) would be more accurately described as a 'glazed wall'.
 - The word 'obscure' should be removed from requirement B.ii) since some of the windows in question are not currently obscurely glazed.
 - Requirements C.ii) and C.iii) refer to drawing number P014 but that is likely to be a typo since the 2020 permission related to the drawing number P104A.
5. For Appeal A, the appellant has raised issues which amount to hidden ground (b) and (c) appeals. The Council and interested parties have had sight of those submissions and have had opportunity to comment. I will therefore determine the appeal with the additional grounds.
6. For both grounds (b) and (c) the onus lies with the appellant to make his case on the balance of probabilities.

Appeal A on Ground (b)

7. A ground (b) appeal is that the breach of planning control alleged in the enforcement notice has not occurred as a matter of fact.
8. The appellant's submissions on ground (b) relate solely to the part of the allegation which refers to the property as comprising two self-contained flats. He maintains that it is a single dwelling.
9. The property provides living accommodation over four floors. The Council does not seek to argue that the plans submitted for the retrospective planning application subject to Appeal B, do not reflect the arrangement at the time of

¹ Ref: 2020/00810/FUL

issuing the enforcement notice. Those show the upper three storeys conventionally laid out as a single dwelling house, rather than as a flat. That reflects my own observations, which is obviously later than the date of the enforcement notice.

10. The reasons for issuing the enforcement notice and the requirements refer to the creation of a self-contained basement flat. The basement does indeed contain a kitchen, bathroom, living and sleeping space. It therefore has the facilities required for day-to-day private domestic existence and is capable of being used as a self-contained dwelling. However, it does not necessarily follow that the basement is so used, or that there is a separate planning unit in the basement.
11. Whilst the basement can be accessed independently of the upper floors via the stairs positioned in front of the main building line, the hydraulic light well must be raised to do so. I saw that is a rather slow and somewhat inconvenient process. That arrangement would not allow easy access, so it is more likely that anyone accessing the basement would do so via the main dwelling. Indeed, there is a staircase within the property connecting the basement and the upper storeys. Although a neighbouring resident refers to a flat being advertised with access through the front roof light, I have no evidence to that effect.
12. The appellant also asserts that there is only one postal address, one post box, one doorbell, one Council tax listing and one heating and electrical system. I have no evidence which contradicts those statements, or indeed evidence of actual use of the basement as a self-contained flat.
13. Based on the evidence before me, I find it probable that, since the building was constructed, the basement has been physically and functionally connected to the upper floors as a matter of fact and degree. It follows that the building as a whole formed and forms a single residential planning unit. The alleged use of the building as two self-contained residential flats did not occur. Appeal A succeeds on ground (b) to that extent.
14. I will correct the notice by deleting all references to the use of the building for two self-contained residential flats, including the related requirements.

Appeal A on Ground (c)

15. A ground (c) appeal is that the matters alleged in the notice do not constitute a breach of planning control.
16. The appellant states that he undertook the works with the benefit of planning permission together with 'permitted development' rights. Under Article 3(1) and Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO), planning permission is granted, subject to limitations and conditions, for development within the curtilage of a dwellinghouse, including the enlargement, improvement or other alteration of a dwellinghouse (Class A) and the enlargement of a dwellinghouse consisting of an addition or alterations to its roof (Class B).
17. However, as indicated above, the enforcement notice alleges that the pre-existing house was demolished, save for retention of the front façade, and the a new building was erected – which extends not only behind but also above and below the retained façade. The appellant has not shown that to be wrong

or that the works which took place did not amount to the erection of new building as a matter of fact and degree.

18. As noted above, the 2020 permission related to the excavation of the front and rear garden to form lightwells in connection with the creation of a new basement at the property. The permission cannot be interpreted as authorising what is alleged by the notice.
19. It is also the case that the works which took place did not amount to the enlargement of the dwellinghouse through the addition of a basement. The basement was created as part of the single act of development involved in the erection of a part one, part two, part three storey plus basement building. The appellant has not shown that those works fall within the scope of Part 1 permitted development rights.
20. Moreover, Article 3(5) of the GPDO provides that the permission granted by Schedule 2 does not apply if, in the case of permission granted in connection with an existing building, the building operations involved in the construction of the building are unlawful. Since the appellant has not shown that the erection of the building as alleged was carried out with planning permission, any subsequent alterations or enlargements could not be permitted by the GPDO either.
21. Thus, the appellant has not demonstrated that, on the balance of probabilities, the development alleged to have taken place was authorised by the 2020 permission or is within the scope of Part 1 permitted development rights. I conclude that the matters constitute a breach of planning control. Appeal A therefore fails on ground (c).

Appeal A on Ground (a), the Deemed Planning Application and Appeal B

The Development and the Fallback Position

22. The matters contained in the corrected allegation for Appeal A are largely the same as those in the description of the retrospective planning application, subject to Appeal B. In both cases, then, planning permission is sought for the '...erection of a part one, part two, part three storey with basement building...'
23. It is possible in both enforcement and planning appeals to make a 'split decision' and grant planning permission for some parts of the development in question and not others. In order to make a split decision, the relevant parts of the development must be severable. It would not be possible, for example, to grant permission for the basement but not other storeys of the building. That is particularly relevant to Appeal B.
24. However, the situation is more complicated for Appeal A because the requirements of the enforcement notice, as set out in full in Appendix 1, do serve to disaggregate the building. Since the notice alleged 'the erection of...a building', it could have required the demolition of the whole in order to remedy the breach of planning control. As it is, however, the Council has opted to 'under-enforce' and require modifications designed to remedy the injury to amenity caused by the breach.
25. That brings s173(11) of the 1990 Act into effect, which is where an enforcement notice could have required buildings or works to be removed, but does not do so, and all the requirements of the notice have been complied

with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect of development consisting of the construction of the buildings or works.

26. That means that the parts of the building which are not specifically addressed by the requirements would, subject to compliance with the notice, benefit from a deemed planning permission. That therefore represents a 'fallback position' for the appellant. There is a very real prospect that, if Appeals A and B are refused, the appellant would comply with the notice and thus utilise that fallback position. In my deliberations on the planning merits, therefore, I shall focus on the differences between what is existing on the ground and proposed, and what would be granted unconditional planning permission if the enforcement notice is upheld and complied with.

Main Issues

27. The reasons for issuing the enforcement notice are also largely the same as the reasons for refusing the planning application, save for the additional flood risk issue of Appeal A, which I consider under 'other matters' below. Therefore, the main issues for both Appeal A and Appeal B are the effect of the development on:

- the character and appearance of the area; and
- the living conditions of the occupiers of neighbouring properties, with particular regard to noise, privacy, shadowing and outlook.

Reasons

Character and appearance

Rear addition/outrigger

28. The requirements of the notice in respect of the rear addition/outrigger include that the flat roof and parapet walls are removed and a mono-pitch roof is erected to match the 'mirrored' outrigger at No 3 Firth Gardens. Thus, I need to focus on the effects of the flat roof and parapet wall on the character and appearance of the area.
29. The terrace dwellings along Firth Gardens run in a back-to-back relationship with the terrace dwellings on Fulham Palace Road. Because of its end of the terrace position, No 1 is also perpendicular to the rear of residential properties fronting onto Edgarley Terrace.
30. The combined built form of those terraces visually encloses the interior of the block which is largely characterised by its respective rear outriggers. Those along Firth Road and Edgarley Terrace are two storey with a gable end whilst those along Fulham Palace Road are three storey with flat roofs. Although many of the properties have been altered at the rear, the symmetrical shape of the respective outriggers remain clearly evident, positively contributing to the character and appearance of the internal block.
31. The mono pitched roof slope of the former outrigger at No 1 combined with that of No 3 to create a pitched roof with a rear gable end. I consider that the existing flat roof and parapet walls result in the harmful loss of characteristic roof level symmetry with No 3. The flat roof and parapet walls also cause the outrigger as a whole to relate poorly to the host terrace and appear as a highly

prominent and discordant feature which disrupts the flow and rhythm of outriggers along this section of Firth Gardens. The harm arising is not mitigated by the design of the ground floor side extension to the outrigger or by the materials used.

32. If complied with, the requirements of the enforcement notice would essentially reinstate the pre-existing mono-pitched roof and symmetrical form of the outrigger. That fallback position would therefore amount to a significant improvement over the existing.
33. I therefore find that the flat roof and parapet walls of the outrigger result in unacceptable harm to the character and appearance of the appeal site and surroundings, contrary to Policies DC1, DC2 and DC4 of the Hammersmith and Fulham Local Plan (February 2018) (LP)². Those policies state, amongst other things, that all development within the Borough should create a high quality urban environment that respects and enhances its townscape context.

Front lightwell

34. The basement storey extends across the full width of the property and runs from the back edge of the footway to beyond the rear of the outrigger and underneath part of the rear garden space.
35. The notice requires that the scissor lift bicycle storage, stairwell and walk on glazing from the front lightwell are removed and that works are carried out to reduce the size of the lightwell as per the 2020 permission. Therefore, compliance with the enforcement notice would grant unconditional planning permission for the entire basement area below and behind the front building line, along with a smaller lightwell in front of it.
36. Except for the walk-on glazing to the front lightwell, it is not readily apparent that the basement has been excavated forward of the main front building line. The lightwell is not an overly dominant feature as the Council suggests. For the most part it is largely hidden from view by the solid front and side walls enclosing the front garden area. The lightwell can only be partly seen in views close to it and only fully seen by looking over the front wall. It is also obscure glazed so the stairwell below is not readily apparent. Moreover, the dark grey tiles covering the remainder of the front garden area appear similar and in keeping with that of neighbouring properties.
37. Even when it is raised, the lightwell is conspicuous because its height is barely above that of the front boundary wall. In any case, the electric mechanism for raising the lightwell is a relatively slow process such that its use is likely to be infrequent. For the vast majority of the time, it is likely to be in its flat, lowered position.
38. I appreciate that a larger lightwell erodes the remaining area available for planting, but front garden planting is not a characteristic feature of the street scene. The vast majority of front gardens are hard surfaced like the appeal property, so it does not look materially different. Moreover, the stairwell is hidden from view so does not give rise to a cluttered appearance. It would

² LP Policy DC2 is cited in reason for issuing the enforcement notice (c) subject to Appeal A but not in the corresponding reason for refusing the planning application (1) subject to Appeal B. The opposite is the case in respect of LP Policy DC4.

therefore be unreasonable to withhold planning permission for the front lightwell having regard to the above.

39. Similarly, the scissor lift bicycle storage beneath the path leading to the front door is not visible in its lowered position. In its raised position, the metal cage appears as a utilitarian and harmful feature, directly in front of the main front door. However, as access to the house cannot be achieved with it raised, the duration of it being in that position is likely to be very limited. In overall terms it provides an effective means of storage for a sustainable means of transport, that for the most part causes no harm to the setting of the house or the appearance of the front garden or street scene.
40. For the above reasons, I conclude that the scissor lift bicycle storage, stairwell and walk-on glazing to the front lightwell do not result in unacceptable harm to the character and appearance of the property or the street scene. I do not therefore find conflict with LP Policies DC1, DC2, DC4 or DC11 in that regard³. Those policies state, amongst other things, that basements will be permitted where they ensure that lightwells at the front of the property are as discreet as possible and allow the scale, character and appearance of the property, street or terrace to remain largely unchanged.
41. I am also satisfied that the scissor lift bicycle storage, stairwell and front lightwell (as it is) do not conflict with SPD principles BL1 or BL3, of the Hammersmith and Fulham Planning Guidance Supplementary Planning Document (SPD) which states that any application for a lightwell will be treated on its individual planning merits, taking into account local circumstances, impact and the proposed size of the excavated area.
42. The Council also cite conflict with Key Principle BL2 of the SPD. However, that relates to lightwells and basements for listed buildings and those within conservation areas, and as such is not relevant in the particular circumstances of this case.

Other character and appearance matters

43. I note the concerns expressed by a neighbour but the siting of the air source heat pump and hot water solar panel at roof level do not result in significant or unacceptable harm to the character and appearance of the area. Moreover, given the proximity of the appellant's own bedroom it is unlikely that he would install such equipment unless it was sufficiently quiet in operation.
44. Neighbouring occupants consider that the mansard roof extension is poorly designed and the brick used in the development is out of character with its context. However, the Council has not found unacceptable harm in either regard and I find no reason to disagree based on my own observations.
45. In any case, the requirements of the enforcement notice do not seek to address the rear mansard roof or the heat pump and solar panels, so compliance with the enforcement notice would result in planning permission for those matters.

³ LP Policy DC2 is cited in reason for issuing the enforcement notice (g) subject to Appeal A but not in the corresponding reason for refusing the planning application (5) subject to Appeal B. The opposite is the case in respect of LP Policy DC4.

Conclusion on Character and appearance

46. I conclude that the flat roof and parapet wall on the outrigger cause unacceptable harm to the character and appearance of the area, but the scissor lift bicycle storage, stairwell and front lightwell do not.

Living conditions

Roof terrace and first floor side window to the outrigger

47. The context of the appeal site is a relatively tight arrangement of residential properties. Although mutual overlooking between properties is inevitable, that is largely limited to transient views from rear upper floor windows, save for the few roof terraces to the rear of the properties on Fulham Palace Road.
48. I have already found that the flat roof and parapet walls to the outrigger cause unacceptable harm to the character and appearance of the surrounding area. However, it does not necessarily follow that the structure causes an unacceptable loss of outlook from nearby properties. The outrigger is set back from the rear boundary of No 26 Edgarley Terrace and is further again from No 369 Fulham Palace Road. It does not appear unacceptably overbearing or oppressive. Indeed the appellant's section drawing demonstrates that the 45 degree line⁴ taken from No 26 is not breached.
49. Since the notice allows for retention of the outrigger with a mono-pitched roof, the structure as it stands does not result in unacceptable additional overshadowing to nearby properties.
50. However, the flat roof and parapet walls were erected in order to create a second floor roof terrace on the outrigger. When standing there, I had clear and uninterrupted views into the rear of the dwellings and gardens of neighbouring properties in Fulham Palace Road and Edgarley Terrace. Part of the rear gardens of neighbouring properties in Firth Gardens could also be seen and I was also able to look back into, at close proximity, the roof level windows of No 3 Firth Gardens, and into first floor side elevation window of No 5 Firth Gardens.
51. Having viewed the terrace from properties in Edgarley Terrace I was able to see that it also heightens the perception if not likelihood of more sustained and obvious overlooking than that arising from mutual overlooking from existing windows. Although comparable overlooking is likely to be achieved from the small number of existing roof terraces along the rear of properties on Fulham Palace Road, I am unaware of their planning status and their existence does not justify allowing the additional harm arising in this case.
52. In an attempt to resolve the privacy issues, the appellant proposes to install screening around the roof terrace, either in the form of planters or obscure glazing. However, I have already found that the existing bulk and design of the outrigger results in unacceptable harm to the character and appearance of the area, and it seems to me that the measures proposed here would exacerbate that harm. The proposed alternatives would not therefore provide acceptable mitigation.

⁴ That is a tool is commonly used to assess the effect on scale and massing on neighbouring properties.

53. The notice also requires, again to remedy privacy concerns, that obscure glazing is fitted to the window on the flank wall of the outrigger. The window is sited at first floor level and is relatively large. I saw that, with clear glazing, this window allows for significant and harmful levels of overlooking into the rear of the dwellings and gardens of adjacent properties in Edgarley Terrace, particularly No 26.
54. Although there was a pre-existing clear-glazed window in roughly the same position in the original dwellinghouse on the site, it served a bathroom or non-habitable room. The existing window serves a bedroom, and the ordinary use of that room would be expected to cause a greater loss of privacy to adjacent occupiers. Moreover, the pre-existing window had a relatively thick glazing bar running down the middle, whereas this before me comprises a larger single glazed panel.
55. In any event, the pre-existing situation is not the fallback position. That latter is the requirement to replace the clear glazing with obscure glazing in the side window. That would result in significantly less overlooking.
56. The appellant argues that he has gone to great lengths to minimise and reduce overlooking. He states that the previous middle bedroom window, which was clear and openable, is now a fully obscured window, thus reducing overlooking and improving privacy. It is not clarified what room is being referred to but based on the photograph I have assumed it to be what is now serving a bathroom, where obscure glazing is the norm, rather than a deliberate attempt to reduce overlooking.
57. Moreover, the obscure glazed Juliet balcony referred to by the appellant is more likely to be to protect internal levels of privacy and would not prevent outward overlooking at standing height. In that regard, I have noted the overlooking concerns raised for the properties at Nos 26 and 28, but the effect is not dissimilar to the mutual overlooking achieved from windows between houses generally in such a tightly developed location. Nonetheless, I still conclude that the roof terrace and first floor flank wall window cause unacceptable harm to the occupiers of nearby properties.
58. The reasons for issuing the enforcement notice also object to the development on noise and disturbance grounds, despite the Council finding no such harm in its consideration of the planning application.
59. Due to its elevated position, the use of the terrace is more likely to make noise generated by users more noticeable, compared to a typical ground level amenity space. Although not particularly large, the terrace is of sufficient size to be able to accommodate modest social gatherings, which would be particularly disruptive given the proximity to a significant number of dwellings. I also find that noise emanating from the terrace would increase nearby occupiers' sense of being overlooked.
60. I therefore find that the roof terrace results in unacceptable harm to the living conditions of neighbouring residents, contrary to LP Policies DC2, DC4 and HO11 and Key Principle HS8, which state, amongst other things, that all

proposals must be designed to respect good neighbourliness and the principles of residential amenity⁵.

61. The Council also cites conflict with LP Policy DC1, but that primarily relates to design considerations and as such has limited relevance to this particular issue.

Windows

62. The notice requires the infilling with brick of four windows installed in the side elevation of the main part of the appeal dwelling, two at ground floor and two at first floor. All are high level whilst the first floor windows, serving a bathroom, are also obscure glazed. They do not therefore result in material harm through overlooking and loss of privacy.
63. Nevertheless, the four are concentrated quite close together and form part of the immediate and direct backdrop to the rear garden of No 24. Given that physical relationship there is unacceptable potential for light spillage and intrusion.
64. I saw that one of the ground floor windows was obscured by planting but that has been provided by the occupants of No 24. I cannot ensure that the planting is retained and yet its presence indicates a need to reduce intrusion from the windows. I consider that the visual harm caused by the four windows is unjustifiable when the rooms that they serve also have larger main windows facing to the front or back, that give occupiers of the appeal house adequate outlook and light.
65. The rear of No 26 faces directly towards the adjacent ground floor kitchen extension to the outrigger which has a fully glazed roof and glazing to the upper part of the wall along the full length of its side elevation.
66. Combined with the first floor side elevation window of the outrigger and the oblique view of the four windows on the side elevation of the main part of the house, the occupants of No 26 are also likely to experience unacceptable levels of light pollution and nuisance. The degree of harm is significantly greater than that which could have arisen from the pre-existing arrangement of windows and glazing.
67. Even if lights are switched on at similar times to the properties affected, neighbours have no control over timing and duration. The photograph provided by a neighbouring resident illustrates the intrusive nature of the light spillage from numerous lights to numerous rooms at the same time.
68. Given the greater separation and oblique angles, I am satisfied that neither the glazed wall nor four windows are likely to appear unacceptably intrusive from No 22, but that does not justify or outweigh the harm experienced by the occupiers of Nos 24 and 26.
69. The Council has cited conflict with LP Policy HO11 (detailed residential standards), however its criteria has limited relevance to this particular issue. The Council also cite conflict with LP Policy CC12 but that relates to proposals for external lighting, and as such is not directly relevant in this case, where the harm arising is from light emanating from inside the appeal dwelling.

⁵ LP Policy DC2 is cited in reason for issuing the enforcement notice (e) subject to Appeal A but not in the corresponding reason for refusing the planning application (3) subject to Appeal B. The opposite is the case in respect of LP Policy DC4.

70. Nevertheless, I find conflict with LP Policy DC2, which is evidently relevant as it requires proposals are designed to respect good neighbourliness and the principles of residential amenity.

Conclusion on Living Conditions

71. I conclude that the roof terrace on the outrigger, created by the flat roof and parapet walls, causes unacceptable harm to the living conditions of neighbouring residents, through loss of privacy if not also noise. The clear glazed first floor flank window in the outrigger also enables unacceptable overlooking, while the glazed wall and side windows cause unacceptable light spillage and visual intrusion.

Other Matters

72. The Council's final reason for issuing the enforcement notice, subject to Appeal A, which does not form part of its reasons for refusing the planning application subject to Appeal B, is that no evidence has been provided to demonstrate that the creation of the self-contained flat does not give rise to unacceptable flood risk. However, I have found under ground (b) that a self-contained flat has not been created in the basement.
73. Moreover, compliance with the enforcement notice would result in unconditional planning permission for the whole of the basement area below and behind the front building line, as well as a reduced area of lightwell in front of it.
74. The Council's officer report for the application subject to Appeal B states that an acceptable Flood Risk Assessment (FRA) had been submitted and that would be conditioned if approved. On that basis the application was considered acceptable in terms of flood risk. A copy of that FRA has not been provided in support of either appeal but the Council's position and the relatively limited extent of additional basement in question, do not point towards any material additional flood risk harm or the need for an FRA to be secured by way of condition.
75. The development does not result in a net increase in the amount of homes so cannot be said to be contributing to the Government's objective of significantly boosting supply, as set out in paragraph 60 of the National Planning Policy Framework. Moreover, having regard to the above findings, a number of aspects of the development do not meet the social and environmental objectives of sustainable development and thus do not benefit from a presumption in favour of the same.
76. In response to other matters raised by neighbouring residents, I have no evidence of any particular health and safety issues associated with the bicycle storage facility. Reference has been made to a neon/LED decorative light but that does not form part of the matters before me, and I make no comment on it. I also note the concerns of neighbouring residents regarding what they consider to be the appellant's disregard for planning legislation. Nevertheless, the enforcement procedure is intended to be remedial rather than punitive.

Conclusions

77. I have found that the flat roof and parapet walls of the outrigger cause unacceptable harm to the character and appearance of the area, and that the

roof terrace they create causes unacceptable harm to the living conditions of nearby occupiers. The glazed wall and flank windows also cause unacceptable harm to the living conditions of adjacent residents. None of these features are severable from the appeal building. Accordingly, I shall uphold the notice in respect of the whole building and also refuse to grant planning permission pursuant to Appeal B.

78. However, I have further found that the alleged scissor lift, stairwell and front lightwell cause no unacceptable planning harm to the character and appearance of the area. Since these features are severable from the building and described separately in the enforcement notice, I can make a split decision on Appeal A so as to grant planning permission for the scissor lift, stairwell and front lightwell.
79. However, it does not follow that I should correct the notice to delete the requirements related to the scissor lift, stairwell or front lightwell. By virtue of s180 of the 1990 Act, the requirements of the notice will cease to have effect so far as inconsistent with the planning permission.
80. I conclude that Appeal A should succeed in part only, and I will grant planning permission for the scissor lift, stairwell and front lightwell. It is not necessary to impose any conditions on the permission for those features.
81. Otherwise, I will uphold the notice with corrections and refuse to grant planning permission in respect of the development alleged.
82. I also conclude that Appeal B should be dismissed.

Decisions

Appeal A

83. It is directed that the enforcement notice is corrected by:
- Deleting the words ‘, comprising 2 self-contained residential flats’ from section 2.
 - Inserting the words ‘, scissor lift bicycle storage and stairwell’ between the words ‘enclosure’ and ‘at’ in section 2.
 - Deleting the words ‘clear window’ from requirement B.i) and substituting ‘glazed wall’.
 - Deleting the word ‘obscure’ from requirement B.ii).
 - Deleting plan reference ‘P014’ from requirement C.ii) and substituting ‘P104A’.
 - Deleting plan reference ‘P014’ from requirement C.iii) and substituting ‘P104A’.
 - Deleting the text of requirement ‘D. Basement self-contained flat’ in its entirety from section 4.
84. Subject to the corrections, Appeal A is allowed insofar as it relates to the scissor lift bicycle storage, stairwell and front lightwell 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 scissor lift bicycle storage, stairwell and front lightwell at land at 1 Firth Gardens, London, SW6 6QB.

85. Appeal A is dismissed and the enforcement notice is upheld as corrected insofar as it relates to the demolition of dwellinghouse with front facade retention and; erection of a part one, part two, part three storey plus basement building, roof terrace at second floor level, on top of the back addition, air source heat pump and hot water solar panel at roof level and bin store enclosure at front of the property. Planning permission is refused in respect of the demolition of dwellinghouse with front facade retention and; erection of a part one, part two, part three storey plus basement building, roof terrace at second floor level, on top of the back addition, air source heat pump and hot water solar panel at roof level and bin store enclosure at front of the property at Land at 1 Firth Gardens, London, SW6 6QB on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

86. The appeal is dismissed.

Richard S Jones

INSPECTOR

APPENDIX 1

The requirements of the enforcement notice are to:

A. Roof of two Storey back addition and terrace

- i) Remove the flat roof and parapet walls clad in slate to the two storey back addition.

AND

- ii) Erect a mono-pitched roof to the two-storey back edition. The angle of this roof shall match that of the roof of the mirrored back edition to the adjoining property No.3 Firth gardens.

AND

- iii) The mono pitched-roof required in clause A.ii) above, shall be clad in roof tiles which match the existing roof tiles to the front roof slope.

AND

- iv) Install a Juliet balcony to the patio doors to the rear elevation at second floor level.

AND

B. Windows

- i) Infill the ground floor clear window to the flank elevation of the ground floor single Storey edition located on the rear boundary of 26 Edgarley Terrace, using brick which matches the existing.

AND

- ii) Infill the four obscure windows to the flank main wall at ground and 1st floor levels located on the rear boundary of 24 Edgarley Terrace, using brick which matches the existing.

AND

- iii) Replace the clear glazed window located on the flank wall of the two-storey back edition at first floor level with obscure glazing.

AND

C. Front Lightwell

- i) Remove from the land the scissor lift bicycle storage, stairwell and walk-on glazing from the front lightwell.

AND

- ii) Reduce the size of the as-built front lightwell, infilling with soil, and re-build in the dimensions and design as shown on the approved drawings P100A; P101A, P102, P103, P014A and 105A of planning permission ref. 2020/00810/FUL.

AND

- iii) Install a metal grill over the front lightwell in accordance with the approved drawings P100A and P014A of planning permission ref. 2020/00810/FUL.

AND

D. Basement and self-contained flat

- i) Cease the use of the property as two self-contained residential units.

AND

- ii) Remove the kitchenette at basement level, including cupboards, sinks, boilers, worktops.

AND

- iii) Remove internal door locks from the bedroom and kitchenette doors leading to the basement hallway.