



Appeal Decision

Hearing held on 3 October and 7 December 2023

Site visit made on 7 December 2023

by J M Tweddle BSc(Hons) MSc(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th March 2024

Appeal Ref: APP/N5090/C/22/3297879

Land at 14 Corringham Road, London NW11 7BT

- The appeal is made under section 174 of the Town and Country Planning Act 1990, as amended.
 - The appeal is made by Mr Abhishek Agrawal against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice, numbered ENF/0569/21, was issued on 28 March 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a part single, part two-storey side and rear extension. Also, the creation of a roof extension, comprising of a hip to gable and rear dormer.
 - The requirements of the notice are to:
 1. Demolish the part single, part two-storey side and rear extension.
 2. Demolish the rear dormer and gable roof extensions to the main roof and restore the roof back to its original specification with roof pitch and tiles to match those in place prior to the breach of planning control.
 3. Permanently remove from the property all constituent materials resulting from the works in 1 and 2 above.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f), and (g) of the Town and Country Planning Act 1990, as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected by:
 - In Section 3 of the notice, deletion of the words '*Also, the creation of a roof extension, comprising of a hip to gable and rear dormer*'; and,
 - In Section 5 of the notice, deletion of requirement No.2 in its entirety: '*Demolish the rear dormer and gable roof extensions to the main roof and restore the roof back to its original specification with roof pitch and tiles to match those in place prior to the breach of planning control*'
2. Subject to these corrections, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act, as amended, for the development already carried out, namely the construction of a part single, part two-storey side and rear extension at 14 Corringham Road, London NW11 7BT as shown on the plan attached to the notice and subject to the following conditions:

- 1) The flat roof area of the single storey element of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity or sitting out area.
- 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows or doors shall be inserted in the first-floor side elevations of the extension hereby permitted.

Applications for costs

3. An application for costs was made by Mr Abhishek Agrawal against the Council of the London Borough of Barnet. This application is the subject of a separate decision.

Preliminary Matters

4. At the hearing the appellant confirmed their correct name to be Mr Abhishek Agrawal. I have therefore corrected this in the banner heading above and proceeded with the appeal on this basis.
5. The hearing opened on 3 October 2023 but was adjourned to enable the Local Planning Authority (LPA) and interested parties time to consider evidence from the appellant that had not previously been disclosed due to an administrative error. The hearing was reconvened on 7 December 2023.
6. A revised version of the National Planning Policy Framework (the Framework) was published by the Government on 19 December 2023 and is a material consideration in the determination of planning and enforcement appeals. However, the revisions to the Framework are not material to the matters raised in this appeal. Therefore, it was not necessary to invite submissions from the parties on this matter.

Background

7. A Certificate of Lawfulness for a proposed roof extension involving a rear dormer window, 3no front facing rooflights and a new side gable window was granted in November 2019 (the November 2019 CLD).
8. Planning permission was granted in December 2019 for a single storey rear extension and single storey front infill extension incorporating new front porch¹ (the December 2019 permission). In October 2020 planning permission was granted on appeal for a two-storey side/rear extension to the existing two storey outrigger² (the October 2020 permission). The approved plans for this permission show a slim two storey extension infilling the area to the east facing side of the existing two storey outrigger, with the roof slope of the outrigger extending over this new extension.
9. Pursuant to Section 73 of the 1990 Act, planning permission was granted in December 2020 as a variation of the December 2019 permission to increase the roof height of the approved single storey rear extension (the December 2020 permission). The approved plans for this consent show a flat roofed single

¹ LPA Application Ref. 19/5809/HSE

² LPA Application Ref. 19/5808/HSE & Appeal Ref. APP/N5090/D/20/3247832

storey extension wrapping around all three elevations of the property's existing two storey outrigger at ground floor level.

The appeal on ground (b)

10. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, that those matters have not occurred. To succeed on ground (b), in full or in part, it will need to be demonstrated that some or all of the matters alleged in the notice did not occur as a matter of fact.
11. The appellant's case in relation to the ground (b) appeal is confined to the 'hip to gable' element of the allegation. It is their view that a hip to gable roof extension has not occurred as a matter of fact because the gable roof is an original feature of the property.
12. On this narrow point, in its written submissions, and confirmed at the hearing, the LPA concede that an error was made when it referred to a hip to gable extension as part of the alleged breach of planning control. Therefore, they accept that this has not occurred as a matter of fact. I also note that the accompanying plans for the various permissions set out above show a gable roof arrangement on all of the existing drawings and this was not challenged as part of those previous applications.
13. Accordingly, the LPA invite me to exercise my powers of correction to strike this out of the description of the alleged breach of planning control, along with any associated reference to this in the requirements of the notice.
14. Therefore, I conclude that the appeal on ground (b) succeeds in part, and only to the extent set out above. I shall therefore correct the notice accordingly by removing any reference to a hip to gable extension from the allegation and the requirements.

The appeal on ground (c)

15. An appeal on ground (c) is made on the basis that the matters stated in the notice, if they occurred, do not constitute a breach of planning control.
16. This is a 'legal' ground of appeal, where the onus is on the appellant to make out their case, on the balance of probability. Their evidence should not be rejected simply because it is not corroborated. Instead, if there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
17. Following my finding in relation to the ground (b) appeal, the breach of planning control is twofold: (1) the construction of a part single, part two-storey side and rear extension; and, (2) the creation of a roof extension, comprising of a rear dormer. It is the LPA's view that these extensions were carried out as a single act of development with overlapping elements, and in the absence of any grant of planning permission.
18. The appellant maintains that the dormer extension was completed as a separate and independent building operation that meets all of the relevant limitations and conditions set out in Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015

- (as amended) (the GPDO). Therefore, in their view, the dormer extension is permitted development and so does not constitute a breach of planning control.
19. To support this view, the appellant has provided a project timeline indicating that the ground floor and loft extensions were completed in November 2020, whereas they state that the first floor extension to the side of the outrigger did not commence until May 2021. Photographic evidence appears to support this version of events, with photographs dated December 2020³ showing both the single storey flat roofed extension and the dormer extension to be substantially complete and the absence of any development to the side of the outrigger at first floor level.
 20. The LPA has provided four photographs in Appendix 1 of their statement that show various stages of construction at the appeal property. However, these photographs are not dated and therefore they provide no meaningful insight into the sequence of events on site, nor do they contradict the appellants version of events. However, a satellite image⁴ of the site, dated 30 March 2021, appears to show the rear single storey flat roofed extension and the dormer to be substantially complete. At that point in time there was no sign of the first-floor extension to the side of the outrigger. This supports the appellant's version of events.
 21. At the hearing the LPA accepted that the dormer and single-storey rear extension was constructed in 2020 and completed without the first-floor extension to the outrigger. Furthermore, the LPA accepted the dates set out in the appellant's Project Timeline and the associated version of events.
 22. However, the LPA considers that the development was simply 'rested' following completion of the single-storey and loft extensions, with the later extension to the outrigger being the final part of the 'whole development'. It argues that when this element was implemented it resulted in a form of development for which no planning permission exists because it involves overlapping elements that are not shown on the October 2020 or December 2020 permissions, resulting in consents that are impossible to implement together and thereby rendering each other void.
 23. In *Pilkington*⁵ it was held that there can be any number of planning permissions covering the same area of land, but that where the implementation of one planning permission (Permission A) makes it physically impossible to implement another planning permission (Permission B) in accordance with the terms of that permission then Permission B cannot be implemented because implementation of one will negate the other. However, the *Pilkington* principal does not apply where there is no physical impossibility of carrying out works that are permitted.
 24. In this case, the evidence suggests that the appellant initially implemented the December 2020 permission for the single storey rear extension, and that this was substantially complete by December 2020. At the same time, the dormer extension appears to have been completed. Upon their completion, these extensions were not physically connected in any way and therefore the addition

³ Figures 3 and 4 of the Appellant's Project Timeline

⁴ LPA Statement of Case, Appendix 2, Image 3

⁵ *Pilkington v SSE & Lancashire CC* [1973] 1 WLR 1527

of the dormer extension does not result in any physical barrier to the implementation of the December 2020 permission.

25. However, when the appellant implemented the first-floor extension to the side of the outrigger in May 2021, this resulted in a form of development that conflicts with that permitted by the December 2020 and October 2020 permissions. Ultimately, there is no set of plans approved by any grant of planning permission that illustrate a part single, part two-storey side and rear extension at the appeal property. Therefore, it has not been demonstrated, on the balance of probability, that these extensions do not constitute a breach of planning control.
26. In relation to the dormer extension, I have already found that this was completed in advance of works commencing on the extension to the outrigger. It was also established at the hearing that the dormer does not physically touch, intersect or overlap in any way with the extension to the side of the outrigger. Therefore, as a separate and distinct act of development, the question now is whether or not the dormer extension was permitted development, having regard to the provisions of the GPDO.
27. The LPA are concerned that the form and extent of the dormer, as constructed, does not conform to that shown on the approved drawing as part of the November 2019 CLD. However, that in itself does not render the dormer unlawful because an alternative form of extension may still conform to the relevant limitations and conditions set out in the GPDO.
28. The LPA has not cited conflict with any of the limitations or conditions set out in Schedule 2, Part 1, Class B of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), which permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Initially the LPA were concerned that the dormer extension was not 'fully embedded' within the roof of the appeal property because its side elevation is flush with the flank elevation of the house. However, there is nothing within the limitations or conditions set out in Class B that would prohibit this arrangement.
29. During the site visit I could see that the dormer extension is sufficiently set back from the eaves of the roof, with the parties agreeing that this would likely meet the 0.2 metre set back required by paragraph B.2(b)(i)(bb) of the GPDO. It was also common ground between the parties that the dormer extension would not exceed the volumetric threshold of 50 cubic metres as set by paragraph B.1(d)(ii) of the GPDO.
30. Consequently, the appellant has demonstrated, on the balance of probability, that the dormer extension, would have been permitted development at the time it was constructed. Therefore, the dormer extension does not constitute a breach of planning control and so the ground (c) appeal succeeds in part to this limited extent. I shall therefore correct the notice to remove any reference to this roof extension.

The appeal on ground (a)

31. The ground (a) appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. However, my findings in relation to the ground

(b) and (c) appeals have resulted in corrections to the alleged breach of planning control. Therefore, this has altered the scope of the deemed planning application which falls to be considered under the ground (a) appeal.

32. As a result, planning permission is sought only for a part single, part two-storey side and rear extension at the appeal site. There is no need for me to consider the merits of the dormer extension as I have already found this to be permitted development. Therefore, my reasoning is solely focused on the part single, part two storey side and rear extensions which comprise the flat roofed extension and the enlargement of the outrigger.

33. The main issues are the effect of the development on:

- the character and appearance of the host property and the surrounding area; and,
- the living conditions of the neighbouring residents at No.16 Corringham Road, with particular regard to their outlook.

Character and appearance

34. The appeal property is a semi-detached two storey dwelling with accommodation in the roof space and a two-storey outrigger to its rear. It is located at a bend in the road resulting in an oblique relationship with its neighbour at No.16 Corringham Road. The street scene and the wider surrounding area is characterised by Edwardian suburban properties built in a similar style but with some variation. Many of the houses on the street have been altered or extended over time.

35. The development has resulted in a large single storey extension that projects beyond the rear elevation of the two-storey outrigger and spans the entire width of the rear elevation of the dwelling. In addition, the outrigger has been enlarged at first floor level, bringing the outrigger level with the main east facing flank elevation of the property and close to the boundary with No.16.

36. The development is barely visible from the street and is predominantly experienced in views from neighbouring gardens to the rear. In such views, the development appears as a suitably subordinate form and scale of development that respects the original character and appearance of the host property. The extension does increase the overall massing of built form to the rear of the property. However, its subordinate scale reduces its overall bulk when viewed against the host property.

37. Furthermore, its design reflects that of a similar type of extension at the adjoining property at No.12, providing a degree of symmetry and uniformity in its overall composition. Therefore, the extension does not stand out as an overly assertive, prominent or discordant form of development.

38. For these reasons, I conclude that the development does not harm the character and appearance of the host property or the surrounding area. Therefore, there is no conflict with Policy DM01 of Barnet's Local Plan (Development Management Policies) Development Plan Document (2012) (the LPDMP), Policy CS5 of Barnet's Local Plan (Core Strategy) Development Plan Document (2012) (the Core Strategy), Policy D3 of the London Plan (2021) (the LP), or the guidance set out in the Residential Design Guide Supplementary Planning Document (2016) (the SPD). Together, amongst other

things, these policies and accompanying guidance seek to protect Barnet's character by achieving development that is of a high quality design.

Living conditions of neighbours

39. During the site visit I was able to view the development from the neighbouring property at No.16 Corringham Road. This has enabled me to fully assess and consider the effects of the development on these neighbouring occupiers.
40. Due to its oblique relationship, the original rear elevation of the appeal property projects well beyond the rear elevation of No.16. Prior to the unauthorised development taking place, the two-storey outrigger was stepped further back from the shared boundary with No.16 than the main side elevation of the property. Thus, providing a greater degree of separation.
41. The development has increased the overall massing of built form to the rear of the appeal property, and in doing so has brought this closer to the shared boundary with No.16. The guidance set out in the SPD seeks to avoid rear extensions that would cause a significant sense of enclosure or loss of outlook or light from the principal windows of neighbouring properties.
42. In this case the development maintains a narrow set back from the shared boundary with No.16 that is equivalent to the existing set back of the original two-storey side elevation of the main part of the house. Moreover, the single-storey element has a flat roof, and the two-storey addition has a sloped roof as a continuation of the existing roof slope of the outrigger. In combination, these design features reduce the overall bulk and visual presence of the development along the shared boundary.
43. The nearest principal window at No.16 serves a ground floor kitchen area. The outlook from this window is already directed towards the main two-storey side elevation of the appeal property and so is already limited due to the alignment of the two properties and its proximity to the shared boundary. However, this kitchen area benefits from a secondary outlook in the form of patio doors which provide a more extensive outlook over the garden. Whilst the development is visible in the view from these patio doors, it does not dominate the outlook.
44. The two-storey element of the development is visible from the nearest first floor window at No.16, which serves a home office. However, the outlook from this room is not significantly affected and extensive views beyond the form of the extension are still appreciable. Similarly, the development is also visible from the large rear facing bay windows on the ground floor of No.16. However, the outlook from these windows is largely unaffected because they are oriented more towards the large rear garden area.
45. The development would be visible from the rear garden at No.16, particularly the area closest to the rear elevation of the house. Nevertheless, its extensive size, length and general orientation prevents the appeal scheme from dominating the garden area or creating a harmful sense of enclosure.
46. Objectors are also concerned that the development results in a harmful loss of light to the rear of No.16. Nevertheless, the LPA have no concerns in this regard and the proposal is supported by a Daylight and Sunlight Report which finds that there is no undue loss of light or sunlight to neighbouring properties as a result of the development. I see no reason to take a different view.

47. Consequently, I find that the development does not significantly harm the living conditions of the neighbouring residents at No.16 Corringham Road, with particular regard to their outlook, and whilst also having regard to the neighbour's Human Rights considerations. Therefore, there is no conflict with policy DM01 of the LPDMP, policies CS1 and CS5 of the Core Strategy, policy D6 of the LP, or the guidance set out in the SPD, which together, seek to achieve high quality places with development proposals designed to allow for adequate levels of outlook and maintaining sufficient daylight and sunlight for surrounding housing.

Other Matters

48. Interested parties raise concerns with the fact that the development has been undertaken in the absence of any planning permission and therefore there has been a blatant disregard for planning rules and process. I agree that this is most unfortunate. However, this is not a reason to withhold planning permission. Instead, the development should be considered in light of its planning merits, or otherwise, and an appeal on ground (a) is a legitimate means to that end.
49. A neighbouring objector argues that the development has resulted in a loss of privacy to No.16. However, the LPA raise no concerns in this regard, and I note that the development does not include any side facing windows. In any case, I did not observe any unacceptable levels of overlooking from the appeal site. Nor is there any evidence before me to suggest that the development is resulting in unacceptable levels of noise or disturbance to neighbouring residents.
50. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its own individual merits, and therefore a generalised concern of this nature does not in itself justify withholding planning permission in this case.
51. My attention is drawn to a boundary dispute in which it is claimed that the development has resulted in an incursion onto the land within the ownership of No.16. The issue of property values has also been raised. However, it is a well-founded principal that the planning system is not concerned with private interests such as the value of property or matters of land ownership.
52. I have had regard to the various other comments and matters raised by interested parties who raise their objection to the appeal. However, these matters, taken individually or in combination, do not alter my assessment of the proposal and its essential planning merits. They do not therefore lead me away from my conclusion.

Conditions

53. I have carefully considered the list of conditions suggested by the LPA and set out in the Statement of Common Ground. A condition requiring the development to be carried out in accordance with a set of approved drawings and/or plans is not necessary because the development is already in situ and the deemed application seeks planning permission for the development that has been carried out.

54. A condition to require side facing windows to be obscure glazed is not necessary or reasonable because the development does include any side facing windows. Conditions to limit the use of the flat roof of the extension and to prohibit any additional windows at first floor level are necessary and reasonable to safeguard the privacy of neighbouring residents. However, I have reworded the suggested conditions in the interests of precision and enforceability, and as per the discussion at the hearing.

Conclusion

55. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice is incorrect. I have therefore corrected the notice, and so the appeal on ground (b) succeeds in part. On the balance of probabilities, the appeal on ground (c) also succeeds in part and I have corrected the notice accordingly.

56. For the reasons given above, I conclude that the appeal succeeds on ground (a). Therefore, I shall grant planning permission for the development as described in the notice, as corrected. Consequently, the appeal on grounds (f) and (g) do not fall to be considered.

J M Tweddle

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Joe Henry	Henry Planning Ltd
Mr Abhishek Agrawal	Appellant
Mrs Agrawal	Appellant's Wife

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jim Tottle-Nugent	Planning Enforcement Officer
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INTERESTED PARTIES:

Mr Yussuf Mwanza	Planning Consultant, MZA Planning, Representing Mrs Marion Lenhoff
Mrs Marion Lenhoff	Local Resident
Ms Mattea Lenhoff	Interested Party
Mr Michael Bright	Local Resident
Mr Robert Cohen	Local Resident
Ms Janis Morton	Local Resident
Ms Jane Raybould	Local Resident