



Appeal Decisions

Hearing held on 8 January 2025

Site visit made on 8 January 2025

by Mr James Blackwell LLB (Hons) PGDip, Solicitor

an Inspector appointed by the Secretary of State

Decision date: 24 January 2025

Appeal A: Appeal Ref: APP/N5090/C/24/3352665

Appeal B: Appeal Ref: APP/N5090/C/24/3352669

Appeal C: Appeal Ref: APP/N5090/C/24/3352670

Appeal D: Appeal Ref: APP/N5090/C/24/3352675

Houses A, B, C and D, Land rear of 18 Maxwellton Close, London NW7 3NA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Ms Michelle Bean of Xstro Estates Limited against enforcement notices issued by the Council of the London Borough of Barnet.
- The notices were issued on 20 August 2024.
- The breach of planning control as alleged in each notice is "Without planning permission, the construction of a two storey dwellinghouse with rooms in the roofspace".
- The requirements of each notice are to:
 1. Demolish the dwellinghouse
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
- The period for compliance with the requirements of each notice is 6 months from the date the notices take effect.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary Decisions: The appeals succeed in part and the enforcement notices are upheld with variations in the terms set out in the Formal Decisions.

Appeal E: Ref: APP/N5090/W/24/3352029

Land rear of 18 Maxwellton Close, London NW7 3NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Michelle Bean against the decision of the Council of the London Borough of Barnet.
- The application ref is 22/4570/S73.
- The development proposed is "Variation of condition 1 (Approved plans) pursuant to planning permission 18/1077/FUL dated 22/06/2018 for 'Erection of 4no. dwellinghouses with associated parking, access, cycle storage, and refuse and recycling store.' Amendments include alterations and extension to roofs including heightening, and addition of side dormer windows and rooflights".

Summary Decision: The appeal succeeds and planning permission is granted.

Preliminary Matters

1. Planning permission (reference 18/1077/FUL) was granted in June 2018 for the construction of four dwellings on land to the rear of 18 Maxwellton Close. This permission was subsequently varied in September 2019 by a S73 consent (reference 19/2908/S73) to include changes to the site layout. I shall refer to the 2018 permission, as varied, as the "2018 Permission".

2. The houses constructed pursuant to the 2018 Permission differ from the approved plans in a number of ways: the houses are taller than approved; and they also include dormer windows and rooflights. Due to the deviations from the approved plans, the Council says the as-built dwellings do not have planning permission. Appeals A, B, C and D relate to the enforcement notices which have been issued by the Council in respect of each of the dwellings.
3. The appellant submitted a S73 application to vary the 2018 Permission, to seek approval of the as-built scheme. This application was refused, and the refusal forms the basis of Appeal E. Given Appeal E concerns the same development subject to the enforcement appeals, I have addressed all the appeals together in the same decision notice. In terms of structure, I have dealt with Appeal E first, as its outcome affects the approach to the enforcement appeals.
4. The main issues relating to Appeal E include the effect of the development on the living conditions of no. 18 Maxwellton Close, particularly with regards to outlook. During the hearing, the appellant asked to submit a photo showing views of the development from the inside of this property, as it was not possible to gain access on my site visit. Despite being submitted late, I agreed to accept this photo into evidence, which the Council did not object to.
5. Since the appeal start dates, the National Planning Policy Framework has been updated. I have determined these appeals with regard to the latest version, published in December 2024. The Council's draft Local Plan (Barnet Local Plan 2024) is also at a late stage of examination, and is expected to soon be adopted by the Council. Where applicable, I have had regard to the relevant policies of the draft Local Plan insofar as they are relevant to the main issues in these appeals.

Appeal E

6. The main issues are:
 - the effect of the development on the character and appearance of the host properties and the surrounding area; and
 - the effect of the development on the living conditions of future and neighbouring occupiers of the development, with particular regard to privacy and outlook.

Reasons

Fallback

7. The Council contends that the 2018 Permission was not implemented, due to the extent of difference between the as-built scheme and the approved scheme. This argument is relevant to the fallback position, which feeds in to how the main issues should be assessed. I have therefore addressed this question first.
8. The case of *Commercial Land*¹ provides helpful guidance when assessing deviations from as-built plans and the implementation of a planning permission. In this case, Ousley J held that, in considering whether a material operation is 'comprised in the development' for the purposes of s56(2) of the 1990 Act, it is

¹ *Commercial Land Ltd v The Secretary of State for Transport, Local Government and the Regions and The Royal Borough of Kensington and Chelsea* [2002] EWHC 1264 (Admin); [2003] JPL 358

insufficient to simply consider the material differences between what has been built and what was approved. Similarities and the degree of compliance with the approved plans are also relevant, together with the extent to which the works are substantially useable in implementing the planning permission.

9. In this instance, the footprint of the as-built dwellings corresponds with the footprint of the dwellings approved under the 2018 Permission, and the houses are largely consistent with the approved plans up to (but excluding) their roofs. This means much of the development carried out, including the foundations, exterior walls, doors and fenestration, would have been substantially useable in implementing the 2018 Permission. As per *Commercial Land*, it therefore seems reasonable to conclude that a large proportion of the works comprised within the development would have also constituted a material operation for the purposes of implementing the 2018 Permission.
10. This conclusion is consistent with the *Hillside*² judgment, which held that the materiality of a departure from a permitted scheme must be considered in the “*context of the scheme as a whole*”. When considered in this way, I am satisfied that the works comprised in the as-built development represented implementation of the 2018 Permission. The 2018 Permission therefore remains extant, and in the event the appeals fail, the appellant is likely to alter the houses in line with this permission. It therefore represents a legitimate fallback, and I have assessed the main issues accordingly.

Character and Appearance

11. The appeal site comprises a parcel of land on the north-east side of Maxwellton Close, which is a residential street within the Hale ward of the Hendon area. The site, which was formerly part of the curtilage to no. 18, is situated discreetly at the very end of the cul-de-sac. To its rear, the site is flanked by a railway line and the M1 motorway.
12. In terms of height, Houses A, B and C are approximately 1.15m taller than approved, and House D is approximately 0.6m taller. Nonetheless, the houses remain broadly consistent in height with others along the street, which allows them to integrate effectively within the street scene, without appearing discordant or incongruous.
13. The houses’ position at the end of the cul-de-sac also means they are largely screened by no. 18. As a result, even though the appeal site is on a slight gradient, this has very little effect on how the height of the dwellings is appreciated, as only glimpsed views of them are possible along most of the road.
14. The dormers on Houses B, C and D are modest in size, and are discreetly sited within the roof space of the respective properties. Even where they are visible from the street, they do not appear overly dominant or excessive in scale. Roof dormers are also prevalent along Maxwellton Close and nearby roads, which means they are characteristic of the area in any event.
15. The dormer to House C does partially wrap around the front roof hip, which is discouraged by the Council’s Residential Design Guide (Design Guide). However,

² Hillside Parks Ltd v Snowdonia National Parks Authority [2022] UKSC 30

the protruding front gable feature largely screens this from view, which means it has limited effect on the overall appearance of the property.

16. Rooflights are also common within the area, which means the properties are not unique in incorporating such features. In terms of Houses A, B and C, the largest of the rooflights are sited on each of the property's rear roofscape, which means they are not readily appreciated from public vantage points along the road. Whilst there are also rooflights along the sides of each of the properties, these are much smaller, and commensurate with others in the area.
17. Overall, I am satisfied that the as-built dwellings are consistent with the prevailing character and appearance of the area, and do not cause harm in this regard. The development is consistent with Policy DM01 of the Council's Local Plan (Development Management Policies) DPD (2012) (DPD), Policy CS5 of the Council's Core Strategy (2012) (CS) and Policies D1 and D3 of the London Plan (2021), all of which seek to ensure development achieves a high-quality design, which respects site context in terms of scale, mass and height. The development is also consistent with the aims of the Design Guide, which broadly reflect the overarching design principles of these policies.

Living Conditions

18. Whilst detached, Houses B and C are spaced tightly together, which means there is limited intervening space between the roof dormers of these two properties. Nonetheless, the dormers are staggered which means they do not directly face one another. This limits the scope for overlooking between the two properties. The dormers serve staircases to the roof space and not habitable rooms, which further limits any corresponding impact on privacy. A condition requiring the windows to be obscure glazed will also help overcome any latent privacy concerns resulting from the proximity of these two windows.
19. The houses have been built on the same footprint as approved, which means the intervening space between the properties and no. 18 is unaltered. Notwithstanding the slight increases in the height of the dwellings, their effect on the outlook to no. 18 remains very similar. Given the position of the dormers, these features are also barely visible from no. 18, and again do not materially affect its outlook. The same is true of the rooflights.
20. I am therefore satisfied that the development does not harm the living conditions of the future occupiers of the development, nor those of any neighbouring occupiers. Once again, the development is consistent with Policy DM01 of the DPD, Policy CS5 of the CS and Policies D3 and D5 of the London Plan (2021), insofar as they seek to safeguard the living conditions of occupiers and neighbouring amenity. The development is also consistent with the objectives of the Design Guide in this regard.

Conditions

21. During the hearing, the parties agreed a list of conditions, which I have reviewed in line with the tests set out in the Framework and Planning Practice Guidance. These mostly reflect the conditions attached to the 2018 Permission.
22. I have included a plans condition (condition 1) to ensure certainty over the development approved.

23. I have included a condition requiring details of refuse/recycling to be approved prior to occupation, to ensure such provision does not harm the street scene (condition 2). I have also included conditions to secure the parking spaces (condition 3) and cycle parking facilities (condition 4) to serve the dwellings, to ensure adequate provision is made.
24. I have included a condition which restricts certain householder permitted development rights, which is justified given the constrained nature of the site (condition 5). A condition has also been included to restrict the replacement of doors and windows, which will help ensure the coherent design of the houses is retained (condition 6).
25. A condition to secure the approved landscaping scheme will help the site optimise its contribution to the character and appearance of the area (condition 7). For similar reasons, a condition has been included to secure means of enclosure and boundary treatments (condition 8).
26. A condition relating to water consumption has been included (condition 9) to encourage the efficient use of water throughout the development. I have also included a condition relating to carbon dioxide emissions (condition 10) to help minimise carbon dioxide emissions, thereby contributing to the long-term sustainability of the development.
27. A condition has been included to ensure the houses adhere to appropriate accessibility and adaptability standards, which will help the development meet the needs of current and future occupiers (condition 11).
28. A condition to secure the approved air pollution mitigation measures has been included to protect air quality and corresponding local amenity (condition 12). For similar reasons, a condition has been included to secure noise mitigation measures, to help protect residents from noise associated with the nearby road and railway (condition 13).
29. Conditions have been included which require certain windows within the elevations and roofs of the property to be obscure glazed, to ensure the privacy of occupiers and neighbouring occupiers is adequately protected (conditions 14 and 15).
30. Whilst the Council also suggested a condition requiring the internal layouts to be maintained and used in accordance with the approved layout plans, I do not consider this necessary to procure the acceptability of the scheme.

Conclusion

31. The as-built development is consistent with the development plan as a whole, and planning permission should be granted.

Appeal E - Formal Decision

32. The appeal is allowed and planning permission is granted for the Variation of condition 1 (Approved Plans) pursuant to planning permission 18/1077/FUL dated 22/06/2018 for 'Erection of 4no. dwellinghouses with associated parking, access, cycle storage, and refuse and recycling store.' Amendments include alterations and extension to roofs including heightening, and addition of side dormer windows and rooflights on Land rear of 18 Maxwellton Close, London NW7 3NA in

accordance with the terms of the application, Ref 22/4570/S73, subject to the conditions in the attached schedule.

Appeals A, B, C and D

33. For completeness, and notwithstanding the outcome of Appeal E, I have still considered the enforcement appeals fully. However, in practice, the outcome of these appeals will be of little consequence, as planning permission has been granted for the as-built scheme.
34. Appeals A, B, C and D were originally brought on grounds (a), (c), (f) and (g). However, the Appeal E application, which sought to vary the 2018 Permission, was for the same (as-built) development alleged in the enforcement notices. Given my conclusions with regard to implementation of the 2018 Permission, this application was validly made, and is a related application for the purpose of ss174(2A) – (2F) of the 1990 Act. This is because if granted or allowed on appeal, the application would give permission for the same development alleged in the enforcement notices. In accordance ss174(2A) – (2F), the appellant is therefore precluded from pursuing the enforcement appeals on ground (a). This means the enforcement appeals (Appeals A, B, C and D) proceed on grounds (c), (f) and (g) only.

Ground (c)

35. Pursuant to ground (c), the appellant says the alleged breach of planning control in each of the notices has not occurred. This is based on the contention that the dwellings are authorised by the 2018 Permission, and that any deviations between the as-built dwellings and the approved plans are immaterial. In turn, the appellant says the changes do not render the developments unlawful. To succeed on this ground, the evidential burden rests with the appellant to demonstrate their case, on the balance of probability. Planning merits are not relevant.
36. Notwithstanding my conclusion that the 2018 Permission has been implemented, it remains the case that the as-built development departs from the approved scheme in a number of key ways. In particular, Houses A, B and C are approximately 1.15m taller than approved, and House D is approximately 0.6m taller. Houses B, C and D also incorporate dormers in their roofs, and all of the dwellings include rooflights which were not approved.
37. These changes plainly go beyond the scope of non-material amendments, which mean they would require planning permission to be lawful. Without planning permission, the as-built dwellings constitute a breach of planning control, as alleged in the notices. The appeals on ground (c) therefore fail.

Ground (f)

38. Pursuant to ground (f), the appellant contends that the steps required to be taken in each of the notices exceed what is necessary to remedy the alleged breaches of planning control. Instead of demolition, they say the houses could be altered in accordance with a revised scheme to overcome the harm alleged by the Council. Alternatively, they say the dwellings could be altered to comply with the 2018 Permission.
39. Notwithstanding the outcome of Appeal E, the 2018 Permission remains extant, which means the appellant could alter the development to comply with that

permission. Whilst this is unlikely in practice (given permission has been granted for the as-built houses), this would be a more proportionate step than complete demolition of the houses, as required by the notices. I shall therefore vary the requirements to provide this option, and the appeals on ground (f) succeed to this extent.

40. In terms of the revised scheme, there is no need to consider this further, as planning permission has been granted for what has been built.

Ground (g)

41. Pursuant to ground (g), the appellant says the period for compliance with the requirements of each of the notices falls short of what should reasonably be allowed. However, as planning permission has been granted for the as-built dwellings, the appellant will not be required to carry out any steps in order to comply with the notices. In turn, there is no need to extend the periods for compliance. The appeals on ground (g) therefore fail.

Conclusion

42. For the reasons given, I conclude that the appeals on grounds (c) and (g) should fail. However, as set out, the requirements of the notices are excessive to remedy the alleged breaches of planning control, and I shall therefore vary the enforcement notices prior to upholding them. The appeals on ground (f) succeed to that extent.
43. Notwithstanding the outcome of the enforcement appeals, the planning permission granted pursuant to Appeal E gives consent for each of the as-built houses. This means planning permission has been granted for the totality of the development alleged in each of the enforcement notices. In these circumstances, pursuant to s180(1) of the 1990 Act, the notices will cease to have effect.

Appeals A, B, C and D - Formal Decisions

44. It is directed that each of the enforcement notices is varied by:

(a) the deletion of paragraph 5 and its substitution with the following new paragraph 5:

WHAT YOU ARE REQUIRED TO DO

1. Either:
 - a. Demolish the dwellinghouse; OR
 - b. Alter the dwellinghouse to comply with the terms of planning permission reference 19/2908/S73 dated 30 September 2019 including the conditions subject to which that permission was granted.
2. Permanently remove all constituent materials resulting from the works required by step (1)(a) or (b) above from the property.

45. Subject to these variations, each of the enforcement notices is upheld.

James Blackwell

INSPECTOR

SCHEDULE OF CONDITIONS (APPEAL E)

- 1) The development hereby permitted shall be retained in accordance with the following approved plans:
Site Location Plan
21007-PTN-20017 (Proposed Site Plan)
21007-PTN-20018 (Proposed Elevations)
21007-PLN-A-21011 (Unit A Loft Floor Plan)
21007-PLN-A-21002 (Unit A Proposed Elevations)
21007-PLN-B-21011 (Unit B Loft Floor Plan)
21007-PLN-B-21002 (Unit B Proposed Elevations)
21007-PLN-C-21009 (Unit C Loft Floor Plan)
21007-PLN-C-21002 (Unit C Proposed Elevations)
21007-PLN-D-21010 (Unit D Loft Floor Plan)
21007-PLN-D-21002 (Unit D Proposed Elevations)
- 2) Before the development hereby permitted is first occupied, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the Local Planning Authority.

The development shall be implemented in full accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.
- 3) Before the development hereby permitted is first occupied or the use first commences the parking spaces/garages shown on Drawing No. 4097-02 Rev B (Site Plan Proposed) shall be provided and shall not be used for any purpose other than the parking of vehicles in connection with the approved development.
- 4) Notwithstanding details submitted on 4097-02 Rev B (Site Plan Proposed), before the development hereby permitted is first occupied cycle parking spaces and cycle storage facilities shall be provided in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the details as approved under this condition and the spaces shall be permanently retained thereafter.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development otherwise permitted by any of Classes A, B, C and D of Part 1 of Schedule 2 of that Order shall be carried out within the area of the site hereby approved.
- 6) Notwithstanding the provisions of any development order made under Section 59 of the Town and Country Planning Act 1990 (or any Order revoking and re-enacting that Order) no windows or doors, other than those

expressly authorised by this permission, shall be placed at any time in the elevations of any building.

- 7) All work comprised in the 'Landscape Plan' approved under condition application 19/0860/CON shall be carried out before the end of the first planting and seeding season following occupation of any part of the buildings or completion of the development, whichever is sooner.

Any existing tree shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced with trees or shrubs of appropriate size and species in the next planting season

- 8) The site shall not be brought into use or first occupied until details of the means of enclosure, including boundary treatments, have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the details approved as part of this condition before the first occupation or the use is commenced and retained as such thereafter.
- 9) Prior to the first occupation of the new dwellinghouses hereby approved they shall all have been constructed to have 100% of the wholesome water supplied to them by the mains water infrastructure provided through a water meter or water meters. Each new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day with a fittings based approach which should be used to determine the water consumption of the proposed development. Any use of grey water and/or rain water systems needs to be separate from the potable (wholesome) water system and needs to meet the requirements and guidance set out in Part G of the Building Regulations. The development shall be maintained as such in perpetuity thereafter.
- 10) Prior to the first occupation of the development hereby approved it shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 6% in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations. The development shall be maintained as such in perpetuity thereafter.
- 11) Notwithstanding the details shown in the drawings submitted and otherwise hereby approved, prior to the first occupation of the new dwellinghouses permitted under this consent they shall all have been constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future). The development shall be maintained as such in perpetuity thereafter.
- 12) The air pollution mitigation scheme approved under 19/0860/CON shall be implemented in its entirety in accordance with details approved under this condition before any of the development is first occupied or the use commences and retained as such thereafter.

- 13) The noise measures approved under 19/0860/CON shall be implemented in their entirety prior to the commencement of the use/first occupation of the development and retained as such thereafter.
- 14) Before the dwellinghouses hereby permitted are first occupied the proposed first floor windows in the west elevation of 18D facing 18 Maxwellton Close, all the windows in the north elevation facing the proposed three detached dwellings (18A, 18B and 18C) and side dormers within 18B and 18C shall be glazed with obscure glass only and shall be permanently retained as such thereafter and shall be permanently fixed shut with only a fanlight opening.
- 15) Before the dwellinghouse 18A hereby permitted is first occupied the proposed first floor windows in the west and south elevations of this property which face 18 and 20 Maxwellton Close shall be glazed with obscure glass only and shall be permanently retained as such thereafter and shall be permanently fixed shut with only a fanlight opening.

APPEARANCES

FOR THE APPELLANT:

Joel Semakula of Counsel (Landmark Chambers)
Emily Hall BA (Hons) MSc MRTPI (WS Planning & Architecture)
Paresh Hirani BA (Hons) Architecture (Linear Insight Ltd)
Michelle Bean (Xstro Estates Ltd)

FOR THE LOCAL PLANNING AUTHORITY:

Robert Favell (Deputy Planning Manager)
Erica Mason (Senior Planning Officer)