



Appeal Decisions

Site visit made on 18 March 2025

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02nd April 2025

Appeal A Ref: APP/N5090/C/24/3337956

Appeal B Ref: APP/N5090/W/24/3340710

1 Woodfall Avenue, BARNET, EN5 2EZ

- **Appeal A** is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Michael Gu against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 12 January 2024.
- The breach of planning control as alleged in the notice is 'Without planning permission, the construction of a single storey rear extension at upper ground floor level, lower ground level basement extension with terrace area on the flat roof'.
- The requirements of the notice are to: 1. Demolish the single storey rear extension at upper ground floor level. Lower ground level basement extensions with terrace area on the flat roof. 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
- The period for compliance with the requirements is: three months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
- **Appeal B** is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by Mr Michael Gu against the Council of the London Borough of Barnet.
- The application Ref is 24/0129/RCU.
- The development proposed is Retrospective planning application for single storey rear extension at upper ground floor level. Lower ground level basement extension with terrace area on the flat roof, front and rear roof lights.

Decisions

Appeal A

1. It is directed that the enforcement notice is corrected and varied by:

in Step 1 of Section 5 of the Notice, the first full stop is replaced with a comma, and the capitalisation of the word 'lower' removed to become lower case;

the deletion of '3 Months' and its substitution with '5 months' as the time for compliance.
2. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

3. The appeal is allowed and planning permission is granted for a single storey rear extension at upper ground floor level and lower ground level basement extension with terrace area on the flat roof, front and rear roof lights at 1 Woodfall Avenue, Barnet, EN5 2EZ in accordance with the terms of the application 24/0129/RCU, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

4. As set out above, there are two appeals relating to the same site and the same development. Appeal A is against an enforcement notice. Appeal B relates to a planning application for a similar development that was not determined by the Council within the prescribed period. The Council have subsequently issued a statement for the purposes of Appeal B highlighting that it would have granted the application for planning permission subject to conditions. I have had regard to that statement, the reasons for serving the Notice, and third-party representations in framing the main issues in Appeal B.
5. In Appeal B, it was evident from my site visit that some minor deviations were apparent between the development and the submitted plans. For the avoidance of doubt, that appeal is determined on the basis of the plans as submitted with the planning application.
6. Since the appeals were registered, the Barnet Local Plan 2021-2036 was adopted by the Council on 4 March 2025. The policies contained within it supersede those referenced in the Notice and the main parties' statements. In addition to Policy CDH05: Extensions, the Council has directed me to Policy CDH01: Promoting High Quality Design as the most relevant policies. I have had regard to these, and any comments submitted in reaching my decisions.

APPEAL A

The Notice

7. Under s176(1)(a) of the Town and Country Planning Act 1990 as amended (the Act), I may correct any defect, error or misdescription in the enforcement notice, or vary the terms of the enforcement notice. I can only do so, however, where I am satisfied that this will not cause injustice to either the appellant or the Council.
8. Section 3 of the Notice describes the alleged breach of planning control. The same wording is used in step 1 of section 5 of the Notice except that the two elements of the development are referred to there in separate sentences. For consistency and clarity, the first full stop in step 1 should be replaced with a comma, and the capitalisation of the word 'lower' removed. I find no injustice would arise from that correction as it does not change the requirements of the Notice.

Ground (b)

9. An appeal on ground (b) is that the matter alleged in the notice has not occurred. The appellant highlights a discrepancy between reference to a 'raised patio' in the Council's stated reasons for issuing the Notice (section 4 of the Notice) and the alternative reference of a 'terrace area' used in sections 3 and 5, relating to the description of the alleged breach and the steps required to remedy it respectively.
10. While the alternative description is inconsistent, it is not fatal to the Notice. The allegation of operational development in section 3 sufficiently describes the development that has taken place. This was observed at the time of my site visit. Section 4 only clarifies the attributes of the development that allegedly cause planning harm and what that harm is.
11. As the description of the alleged breach reflects the development that has taken place on the site, the appeal on ground (b) fails.

Ground (f)

12. An appeal on ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, by requiring the removal of all of the extension, the Notice seeks to remedy the breach of planning control.
13. I recognise that s174(2A) of the Act prevented the appellant from submitting an appeal on ground (a) due to the timing of the service of the Notice and the submission of the application subject of Appeal B. However, as no ground (a) is pleaded on Appeal A, the planning merits lie beyond my considerations in the ground (f) appeal.
14. The appellant highlights that a resolution to the Council's concerns in relation to overlooking of neighbouring rear gardens is available. However, implementation of additional works would not remedy the breach of planning control as described in the Notice. Accordingly, the appeal on ground (f) also fails.

Ground (g)

15. The ground (g) appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The appellant seeks a nine-month period given the scale of the works and to minimise the effects on family life of the occupiers of the dwelling.
16. In balancing the public and private interests bound up in this case, I find that the period of three months given for compliance with the notice falls short of what is reasonable. The practicalities of arranging and carrying out works, including the requirement to remove demolition waste through the interior of the family dwelling (due to full enclosure of the rear of the plot), and making good the rear elevation, lead me to conclude that a period of five months would be reasonable in the case circumstances. The Notice is varied accordingly.

Conclusion on Appeal A

17. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall correct and vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

APPEAL B

Main Issue

18. The main issue is the effect of the potential use of the terrace created on the flat roof of the lower ground floor extension on the living conditions of nearby residents with particular regard to overlooking and loss of privacy.

Reasons

19. The stepped flat roofs of both elements of the extension potentially allow for their external use for sitting or standing. Although the previous arrangement at the rear of the dwelling was shown to include a terraced area, this was lower and set closer to the original rear elevation than the terrace shown on the plans submitted with the planning application.

20. At the time of my site visit, the elevated terrace afforded views over parts of the nearest residential gardens of properties fronting on to Vale Drive. Although some views were partially limited by trees, vegetation and outbuildings close to the appeal site's rear side boundary, views into the private amenity spaces of 22 and 24 Vale Drive were particularly notable.
21. I have little doubt that the extent of overlooking would be significantly greater than that experienced before the development took place. The downward views into those gardens could result in loss of privacy and to the extent that significant harm occurs to the living conditions of the occupiers of those dwellings.
22. If existing trees or vegetation close to the boundary were to fail or be removed, the overlooking effect would be wider. As measures that provide some mitigation, but which are outside of the control of the appellant, the effect of the development could become significantly greater.
23. To mitigate the overlooking effects, the appellant proposes a screen part way along the lower terrace. This would provide a physical barrier to access and a privacy screen to views from the remainder of the terrace. Although overlooking would not be completely prevented, it would not be materially greater than views previously afforded by the original rear facing windows of the dwelling. This extent of overlooking would be commensurate with that reasonably expected within residential estate settings.
24. The mitigation could be secured by condition to make the development acceptable in planning terms and accord with the requirements of Policies CDH01 and CDH05 of the Barnet Local Plan 2021-2036 as they require extensions to maintain good standards of amenity, including acceptable levels of privacy for neighbours.

Other Matters

25. The extension will cause some additional overshadowing of adjacent garden areas on Vale Drive. However, given the respective site orientations and shadowing caused by pre-existing development, this will only affect limited parts of the gardens and for a limited period in the day. It would not be to an extent to cause significant harm to the living conditions of occupiers of those properties.
26. There is little evidence to indicate that noise or odour from an extraction unit lying at some distance to properties fronting Vale Drive causes a significant effect on occupiers' living conditions. Furthermore, there is little to demonstrate that adverse effects on drainage or wildlife have resulted from the development.
27. The concerns of neighbours in relation to the quality of the construction that has taken place, and the potential structural implications for a neighbouring property, are matters regulated under other authority.
28. I note the appellant's concerns with the Council's assessment of the expediency in serving the Notice given the active dialogue between the main parties. However, that is not a matter for the appeals.

Conclusion on Appeal B

29. For the reasons given above, the appeal should be allowed.

Conditions

30. I have considered the suggested conditions from the Council and had regard to Paragraph 57 of the National Planning Policy Framework and the National Planning Practice Guidance in terms of the use of planning conditions. I have imposed a condition specifying the relevant drawings as this provides certainty.
31. A condition to restrict the use of flat roof areas which could cause overlooking is reasonable. A requirement to erect a privacy screen on the lower flat roof within 2 months and for the duration of the development thereafter is necessary to limit loss of privacy. The conditions are re-worded for clarity and to achieve their desired effects.
32. As the materials used in the construction of the extension are similar to those on the original parts of the building, a condition for matching materials is not necessary. A requirement for a flue to be covered with flue vents is imprecise and unnecessary.

Overall Conclusion

33. The enforcement notice is upheld with a correction and variation. Planning permission is granted on the s78 appeal against the Council's failure to determine planning application ref. 24/0129/RCU within the prescribed period. Under those circumstances s180 of the Act provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Thus, in this case, the Notice will cease to have effect as it requires the demolition of the extensions.

R Hitchcock

INSPECTOR

Schedule of Conditions to Planning Permission Ref. 24/0129/RCU

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan

Drawing No: A04 - Proposed plans received by the local planning authority on 15/03/24

Drawing No: A05 - Proposed elevations received by the local planning authority on 15/03/24.

- 2) The roof of the upper ground floor level extension and the flat roof area hatched red on approved plan no. A04 shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or be used as a balcony, roof garden or similar amenity or sitting out area.
- 3) Within 2 months of the date of this decision, the timber screen shown on the approved plans shall be installed and be retained thereafter for the duration of the development.

END.