



Appeal Decisions

Site visit made on 8 April 2025

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 April 2025

Appeal A Ref: APP/U5360/W/24/3336305

179 Chatsworth Road, Hackney, London E5 0LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") against a refusal to grant planning permission under section 73 of the 1990 Act for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Artur Kapllaj against the decision of the Council of the London Borough of Hackney.
 - The application Ref is 2023/2408.
 - The application sought planning permission for the *"Demolition of existing single-storey rear extension and outbuildings at ground floor level; insertion of rooflight into each roofslope; amalgamation of two residential units into one self-contained dwelling"* without complying with a condition attached to planning permission Ref 2021/3396, dated 4 February 2022.
 - The condition in dispute is number 1 which states: The development hereby permitted shall only be carried out and completed strictly in accordance with the submitted plans hereby approved and any subsequent approval of details.
 - The reason given for the condition is: To ensure that the development hereby permitted is carried out in full accordance with the plans hereby approved.
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Appeal B Ref: APP/U5360/C/23/3334534

179 Chatsworth Road, Hackney, London E5 0LA

- The appeal is made under section 174 of the 1990 Act.
 - The appeal is made by Mr Artur Kapllaj of A Kapllaj Limited against an enforcement notice ("EN") issued by the Council of the London Borough of Hackney.
 - The notice was issued on 31 October 2023.
 - The breach of planning control as alleged in the notice is: *"Without planning permission, the operational development consisting of changes to the rear parapet wall atop the two storey rear outrigger, the installation of two new casement windows on the first floor rear elevation and a partly bricked-up first floor window on the northern elevation"*.
 - The requirements of the notice are to:
 1. Reinstate the parapet around the balcony to its previous height and design including the red brick details on the piers and the railings.
 2. Remove the two casement windows on the first floor rear elevation.
 3. Reinstate two sash windows on the first floor rear elevation, of the same size, design, location and materials as the sash windows previously in situ, such that the sash windows are placed under the lintels.
 4. Remove the bricks that have bricked up the 1st floor window on the northern elevation and reinstate the window to its previous size, design and materials, and reintroduce the red brick window surrounds.
 5. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above; and
 6. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
 - The period for compliance with the requirements is: 6 months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the 1990 Act.
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Decisions

1. **Appeal A:** The appeal is dismissed.
2. **Appeal B:** It is directed that the EN is corrected by:
 - the deletion of the words “...consisting of changes to the rear parapet wall atop the two storey rear outrigger...” and their substitution with the words “...consisting of changes to the parapet wall atop the two storey rear outrigger...” in Section 2 – The Breach of Planning Control Alleged.
 - the deletion of the words “Reinstate the parapet around the balcony to its previous height...” and their substitution with the words “Reinstate the parapet wall atop the two storey rear outrigger to its previous height...” in criterion 1 of Section 5 – What you are Required to do.
3. Subject to the corrections, Appeal B is dismissed and the EN is upheld.

Matters Concerning the Notice

4. The alleged breach of planning control refers to the “*rear parapet wall*” that has been constructed on top of a two-storey rear outrigger. It is clear from the Council's submissions, that the EN is concerned with the whole of the parapet wall, not just the rear section. The appellant's submissions also refer to the whole of the parapet wall. Consequently, to ensure the alleged breach is clear, Section 3 of the EN should be corrected to omit the word “*rear*” from “...consisting of changes to the rear parapet wall atop the two storey rear outrigger...” [my emphasis].
5. Criterion 1 of Section 5 of the EN uses different terminology to describe the parapet wall to that used within Section 3. To ensure consistency within the EN, the words within criterion 1 should reflect the words used within the alleged breach.
6. I am satisfied that the notice can be corrected in these respects without causing injustice.

Preliminary Matters – Appeal A

7. A revised National Planning Policy Framework (“the Framework”) has been published since the EN was issued. However, it does not raise any new issues that are determinative to the purposes of the appeal and therefore injustice to the parties does not arise. However, I have referenced the revised paragraph numbers where necessary.
8. The appellant has submitted an amended drawing with their appeal statement that reinstates the first floor side window to its original form and has requested I accept the drawing if it would assist in the outcome of the appeal. However, should I dismiss the development under Appeal A, one of the requirements of the EN is for the first floor side window to be reinstated. Therefore, it is not necessary for me to accept the amended drawing. I have determined the appeal on this basis.

Background

9. The appeal property had been previously subdivided into two dwellings. Planning permission¹ was subsequently granted, subject to conditions, to convert the

¹ Planning Ref 2021/3396

property back to one dwelling (“the original planning permission”). The original planning permission also included the insertion of a rooflight into each roof slope and the demolition of a single storey rear extension and outbuildings.

10. As well as implementing the original planning permission, works were also undertaken to change the height and design of a parapet wall that surrounded the top of a two-storey outrigger to the rear of the dwelling; the replacement of two first floor sash windows within the dwelling’s rear elevation with two casement windows; and the repositioning and partial bricking up of a first floor window within the dwelling’s side elevation.
11. The appellant submitted a planning application² that sought to vary condition 1 of the planning permission (“the approved plans condition”) to retain the aforementioned changes. This was refused by the Council and is the subject of Appeal A. The Council were aware the property was being advertised for sale therefore, they issued an EN against the development, which is the subject of Appeal B.

Appeal A – The s78 Appeal

Main Issues

12. The main issues are:

- a) whether the development can be considered under s73 of the 1990 Act; and
- b) the effect of the development on the character and appearance of the surrounding area, including the setting of the Lea Bridge Conservation Area (“the CA”).

Reasons

Can a s73 Planning Application be Utilised?

13. I acknowledge that the Council could have refused to validate the planning application if they considered the application had been made incorrectly. However, the planning application was determined, and the validity of the planning application is a reason for refusal. Consequently, I must address this matter.
14. The original planning permission’s description of development specified the change of use from two dwellings to one. It also included external alterations to facilitate the change of use which were described as the insertion of rooflights and the demolition of a single storey rear extension and outbuildings. While I recognise that descriptions of development do not necessarily specify every element of a proposed development, I have not been directed to any approved drawings that proposed alterations to the parapet wall or the first floor windows as part of the original planning permission.
15. The appellant asserts that the alterations were required due to internal changes to the dwelling’s layout, particularly to provide a level floor plan to the first floor when converting the two flats into a single dwelling. However, this has not been substantiated with evidence. Furthermore, it is unclear how internal alterations to the first floor would necessitate alterations to the height and design of the parapet wall.

² Planning Ref 2023/2408

16. Case Law has determined that if amending a condition would result in conflict between it and the description of development, then the amendment is beyond the powers of s73 of the 1990 Act and a fresh planning application would be required.
17. From the evidence before me, it is my judgement that the alterations to the parapet wall and the first floor windows did not form part of the original planning permission to convert the two flats into one dwelling. Instead, they were additional works that fell outside the scope and description of development of the original planning permission. Therefore, to amend the approved plans condition to include these alterations would conflict with the description of development and thus go beyond the scope of s73 of the 1990 Act.
18. For these reasons, I do not consider that the development can be considered under s73 of the 1990 Act.
19. However, the planning application form is titled “*Application for Removal or Variation of a Condition following Grant of Planning Permission or Listed Building Consent*”. It does not specify the section of the 1990 Act under which the planning application is made. Furthermore, the planning application form states that the development was completed on 7 February 2022.
20. S73A makes provision for planning permission to be granted retrospectively for development already carried out without planning permission or without complying with a condition on a previous planning permission. Consequently, even though I have found that the development cannot be considered under s73 of the 1990 Act, s73A allows me to consider whether planning permission should be granted for the development.
21. Therefore, I will proceed to determine the effect of the development on the character and appearance of the surrounding area, including the setting of the CA.

Character and Appearance, including the Setting of the CA

22. The appeal property consists of a Victorian end-of-terrace two-storey dwelling fronting Chatsworth Road. The original two-storey rear outrigger has been extended across the full width of the dwelling and has a flat roof with a parapet wall. A hip-to-gable roof extension with a rear flat-roofed dormer has been constructed. The dwelling is sited on the corner of Chatsworth Road and Fletching Road and open space, forming part of the CA, is adjacent to both roads.
23. The parapet wall’s increase in height and solid design has created a large expanse of brickwork above the first floor windows. It has increased the bulk and massing of the extension, creating a “top-heavy” appearance that is incongruous with the original proportions of the host dwelling. The alterations to the first floor windows increase and emphasise the large expanse of brickwork which detracts from the character and appearance of the host dwelling. Furthermore, the infilled half of the first floor side window with bricks that are flush with the wall and the retention of the wider stone header and cill appears alien.
24. The rear elevations of the other dwellings in the terrace have a two-storey outrigger with a pitched roof and a vertically proportioned first floor window. Although not identical, they are similar in their character and appearance. Consequently, the development erodes the rhythm and uniformity of the terrace.

25. I acknowledge that prior to the development the rear elevation of the host dwelling contrasted with the character and appearance of the rear elevations of the other properties in the terrace. However, the first floor rear windows matched those in the terrace, and the crenelations and the lower height of the parapet wall reduced the rear extension's bulk and massing.
26. The surrounding area typically comprises terraces of two-storey dwellings, with windows that have a vertical emphasis. The development is highly visible from the surrounding roads and at the time of my site visit, it could be seen from a significant distance across the adjacent open space. I appreciate that trees bound the edges of the open space, however, the height of the lower branches affords views of the development even when in leaf. As such, the incongruous development detracts from the character and appearance of the surrounding built environment.
27. I have been directed to photographs of two buildings with fenestration that the appellant asserts create an irregular rhythm in the surrounding area. I have been provided with the address of one building, which appears to be a new build rather than a Victorian terrace and is located on a different street to the appeal site. Therefore, it is not directly comparable to the development. No address has been provided of the other building and therefore I am unable to determine whether it is directly comparable. In any event, I must determine each case on its own merits.
28. The appeal site is located adjacent to the CA. The CA predominantly encompasses the open spaces either side of the A104. It extends up to, and partially includes, the River Lea to the northeast and is bounded along its northern, western and southern boundaries by roads lined with predominantly two-storey terraced dwellings that overlook the open space. The setting of the CA nearest to the appeal site comprises a defined boundary of built development primarily consisting of two-storey terraced dwellings.
29. The development has altered an existing two-storey rear extension, including its height and massing. However, it has not exceeded the overall height of the host dwelling or the neighbouring properties, nor has it extended closer to the CA. The development does not alter the built-up edge to the CA and consequently, in my judgement, it conserves its setting. As the development does not harm the setting of the CA, I am not required to undertake a balancing exercise, as required by paragraph 215 of the Framework and Policy LP3 of the Hackney Local Plan 2033, adopted 2020 ("HLP").
30. For these reasons, the development does not harm the setting of the CA and therefore, it complies with Policy HC1 of the London Plan, adopted 2021 ("LP"). However, it does harm the character and appearance of the surrounding area. It therefore conflicts with Policy D3 of the LP and Policy LP1 of the HLP which, amongst other things, seek to ensure development enhances local context by delivering buildings that positively respond to local distinctiveness through their scale, appearance and shape with due regard to existing forms and proportions.
31. The Council's second reason for refusal references Policy D1 of the LP, however, this policy sets out the requirements for producing area character assessments and planning for growth. It is therefore not directly applicable to the development.

Other Matters

32. The appellant asserts that the parapet wall is required for safety reasons. However, I do not have substantive evidence before me to demonstrate that a lower parapet wall would be insufficient. The appellant considers a parapet wall of an alternative design or material could be more harmful to the character and appearance of the surrounding area. However, this has not been substantiated with evidence.
33. I acknowledge that double-glazed windows can improve the energy efficiency of a dwelling. However, it has not been demonstrated that improvements in energy efficiency could not have been achieved by the insertion of double-glazed units into the existing window openings. The appellant asserts that the windows were altered due to changes made to the internal floor height to create a level first floor to assist with movement around the property. However, this has not been substantiated with evidence.
34. The appellant has raised concern regarding the Council's inconsistent approach to development adjacent to the CA. However, I have determined the appeal on its own merits having regard to all material considerations.
35. I appreciate that the alterations to the parapet wall have a negligible effect on the living conditions of the occupiers of neighbouring properties, with particular reference to outlook and light as the parapet wall is not immediately adjacent to neighbouring windows. However, this is a neutral matter as all developments should not affect the living conditions of the occupiers of neighbouring properties.

Conclusion on Appeal A

36. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that Appeal A should be dismissed.

Appeal B on Ground (f)

37. An appeal under 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.
38. In appealing under ground (f) the appellant asserts that the development accords with the relevant planning policies in the development plan; it has limited impact on the surrounding area; and it improves energy efficiency. However, these are matters that fall outside the scope of ground (f). Instead, I have considered these matters in respect of Appeal A.
39. The appellant states that the requirements of the EN are excessive and that lesser steps would overcome the alleged breach of planning control. However, they do not provide any lesser steps for consideration.
40. The EN requires the reinstatement of the parapet wall to its previous height and design, and the reinstatement of three first floor windows to their previous size, design, location and materials with the reintroduction of the red brick window surround to the first floor window in the side elevation. The purpose of the EN is

clearly to remedy the breach of planning control and no lesser steps would achieve that purpose.

41. Consequently, the steps required by the EN are not excessive to remedy the breach of planning control and therefore, the appeal on ground (f) should fail.

Appeal B on Ground (g)

42. An appeal under ground (g) is that the period specified for compliance with the EN falls short of what should reasonably be allowed. The period for compliance specified in the EN is 6 months. The appellant requests a period of 12 months.
43. The appellant asserts that a retrospective planning application³ was submitted in October 2023 and time should be allowed for the application and any potential appeal to be determined before the EN takes effect. In the intervening period, the Council has subsequently refused the planning application. That refusal is the subject of Appeal A, and I have found that Appeal A should be dismissed.
44. The appellant also asserts that 6 months is an unreasonable timeframe in which to complete the required works given the scale and nature of the work involved, the “*current construction market*”, and the dwelling being occupied.
45. I have not been provided with substantive evidence to suggest that the works to the parapet wall and the windows would be excessive or time-consuming. I acknowledge that the work could be disruptive to occupiers of the dwelling. However, the works to reinstate the parapet wall would be wholly external and I have no substantive evidence before me that the alterations to the windows cannot be undertaken while the dwelling is occupied. While I acknowledge that construction workers could be in high demand, I have limited evidence to suggest that it is unlikely the necessary works could not be achieved within 6 months.
46. As such, I find that the 6-month compliance period afforded by the EN does not fall short of what is reasonable. Therefore, the appeal on ground (g) should fail.

Overall Conclusion on Appeal B

47. For the reasons given above, I conclude that Appeal B should not succeed. I shall uphold the EN with corrections.

A Berry

INSPECTOR

³ Planning Ref 2023/2408