



Appeal Decisions

Site visit made on 30 April 2025

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 9 JUNE 2025

Appeal A Ref: APP/N5090/C/24/3337124

Land at 51 Hartland Drive, Edgware, HA8 8RJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs V Pyzowski against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 11 December 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, 1) the erection of a rear canopy enclosure on the rear patio. 2) The provision of a swimming pool, with associated raised walled structures to the level of the patio.
 - The requirements of the notice are: 1) Permanently remove from the property the enclosed canopy installed upon the unlawful existing raised patio (highlighted in yellow on Image No.1 included in the notice); 2) Demolish the swimming pool (the demolition to extend to the knocking down of all structures within the area highlighted in red on Image No.2 included in the notice; 3) Permanently remove from the property of all constituent materials resulting from the works in 1 and 2 above.
 - The period for compliance with the requirements: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) 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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Appeal B Ref: APP/N5090/W/24/3337103

51 Hartland Drive, Edgware, Barnet, HA8 8RJ

- 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 Mrs V Pyzowski against the decision of the Council of the London Borough of Barnet.
 - The application Ref is 23/2562/RCU.
The development proposed is Erection of a rear raised patio area with associated steps. Associated boundary fencing/walls incorporating a walled and roofed structure (shed) and a canopy enclosure on the rear patio. Provision of a swimming pool. (Retrospective). Proposed installation of balustrade and clear glass screening to swimming pool.
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Appeal A Decision

1. It is directed that the enforcement notice is varied by in paragraph 6 the deletion of the words "2 months" and their substitution with the words "Five (5) months".
2. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Decision

3. The appeal is dismissed.

Appeal A – The appeal on ground (c)

4. The appeal on ground (c) is that the matters alleged do not constitute a breach of planning control. The onus is on the appellant to make their case on the balance of probability.
5. S191 of the Town and Country Planning Act 1990 states that building operations are lawful at any time if (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
6. The appellant submits that the swimming pool is permitted development under Schedule 2, Part 1, Class E of the GPDO¹. This grants deemed planning permission for *'any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such'* within the curtilage of a dwellinghouse, and subject to the limitations in E.1.
7. The Council submits that as the swimming pool is adjoined to the patio, and the patio is joined to the host property, the swimming pool cannot be 'incidental' to the host property. The stipulation in Class E though is that the *purpose* of the swimming pool is incidental to the enjoyment of the dwellinghouse. While the appellant has not provided detail as to the proposed use, it is very likely that this would be a typical home leisure type of incidental use.
8. The LPA also contends that the swimming pool breaches the limitation in E.1(h) which excludes from Class E development which includes *'the construction or provision of a verandah, balcony or raised platform'* on the basis that the swimming pool is attached to the raised patio and is part of a cumulative unauthorised development which was the subject of a previous enforcement notice².
9. In my view, if the swimming pool was built as a single operation in conjunction with the patio, the raised platform comprised in the patio would be included as part of the swimming pool's construction and so there would be a breach of E.1(h). The onus is on the appellant to make their case and no substantive evidence is provided which would enable me to conclude that the construction of the swimming pool and patio was not a single operation.
10. The Council also points to a breach of the limitation in E.1(b) which states that development is not lawful if *'the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)'*. The Council submits that just over 50% of the rear garden would be so covered. However, the limitation relates to the extent of the curtilage, which would also include the front garden. Neither party sets out a detailed position as to the proportion of curtilage covered.
11. I find then on the evidence before me that the swimming pool does not represent PD under Class E and thus is a breach of planning control. The ground (c) appeal fails.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015

² Which was upheld in Appeals referenced APP/N5090/C/21/3289212 and APP/N5090/C/21/3289213 ('2022 Appeals')

Appeal A – The appeal on ground (a) and the deemed planning application (DPA) and Appeal B: s78 Appeal

Preliminary Matters

12. Since the appeals were registered, the Barnet Local Plan 2021-2036 was adopted by the Council on 4 March 2025 (LP). The policies contained within it supersede those referenced in the decision notice and enforcement notice and I have had regard to the new policies in reaching my decisions.
13. The revised National Planning Policy Framework 2024 came into force during the course of the appeal. The revisions made have not had a direct bearing on the issues which are pertinent to these appeals.
14. As regards Appeal B, I have taken the description of development from the decision notice as referenced in the appeal form since this better reflects the development which was the subject of the Appeal B planning application.

Main Issues

15. The Appeal B application was retrospective as regards the erection of the raised patio and steps, boundary fencing/walls, shed, canopy enclosure and swimming pool (and associated walling). It also proposed installation of a balustrade and clear glass screening to the swimming pool. The DPA relates only to the canopy enclosure and swimming pool and associated walling. I deal with both schemes together in view of this overlap, distinguishing between them as necessary.
16. The main issues then are the effect on the character and appearance of the host property and area and on the living conditions of neighbouring occupants.

Reasons

Character and appearance

17. The appeal property is a dwelling which has previously been extended by means of a part single, part two storey side and rear extension. The host property's rear garden also contains a fairly large pre-existing outbuilding, along with an outdoor kitchen area. While many other houses in the surrounding area have extensions in various forms, along with sheds and similar garden structures, it is not typical for rear gardens to be dominated by built development.
18. The retrospective development comprised in the Appeal B planning application comprises extensive structures within the host property's rear garden by means of a large raised patio and associated steps, boundary fencing/walling incorporating a shed structure and canopy enclosure on the rear patio, along with a swimming pool with surrounding walling. Proposed additions were for a balustrade and glass screening to the swimming pool.
19. The Appeal B development has cumulatively introduced significant bulk into the modest-sized rear garden of the host property. This has resulted in a cluttered appearance and a sense that the garden has become dominated by built development, harmfully detracting from the original character of the property and pattern of development in the area. While this effect is not visible from public vantage points from the road, it is apparent in views from upper floor windows of surrounding properties.

20. The Appeal A DPA relates only to the canopy enclosure and swimming pool and so has a reduced effect in terms of massing and visual clutter. However, the solid pillars, scale and siting of the canopy structure on the elevated patio means that this structure alone has a notably harmful effect in these respects. Imposing a condition to prevent the canopy structure being enclosed would reduce the massing effect but the cluttered appearance would remain. A condition to require the swimming pool/walling to be painted would do little to reduce the visual impact of this structure.
21. I conclude then on the first main issue that both the Appeal A and Appeal B developments have a harmful effect on the character and appearance of the host property and area. There is conflict in this way with Policy D3 of the London Plan 2021 ('London Plan') and Policies GSS01 and CDH01 of the LP which seek to ensure that new development positively responds to local distinctiveness, uses a design-led approach and responds sensitively to distinctive local character.

Living conditions

22. As regards the Appeal B development, the Council submits that the raised patio and steps result in a loss of privacy and that the shed and canopy structure positioned on the patio result in a harmful loss of outlook to the occupiers of adjacent properties at 49 and 53 Hartland Drive. As regards the Appeal A DPA, the basis for the Council's concern is the effect of the canopy structure (no living conditions harm is alleged as regards the swimming pool).
23. As to the raised patio, the height of the existing structures and boundary treatments adjacent to the boundaries with neighbouring properties prevent any harmful level of overlooking from the raised patio. I share the Council's view though that the height of these same existing structures and boundary treatments, along with their position alongside the shared boundaries results in visually intrusive development and a harmful sense of enclosure to the occupants of adjoining properties. As regards No 53 though, the enclosing effect of the patio shed structure is lessened given the location of No 53's log store close to the shared boundary..
24. With respect to No 49, the appellant submits that this property's canopy structure screens the appellant's canopy. However, the Council explains that No 49's canopy is prevented from being enclosed by a planning condition and so cannot screen the appeal canopy. A similar condition for the appeal canopy structure would not reduce the sense of enclosure bearing in mind the presence of the boundary wall. Without a specific proposal, I cannot see how a higher obscured glazed screen provided close to No 49 would materially improve the situation.
25. I find then on the second main issue that the Appeal A development and Appeal B development result in harm to the living conditions of the occupants of neighbouring properties. There is conflict thus with Policy D3 of the London Plan and with Policies GSS01 and CDH01 of the LP which indicate that new development should deliver appropriate outlook, privacy and amenity for adjoining and potential occupants through good design.

Fallback/Split decision

26. The appellant cites a fallback position in relation to the construction of a swimming pool under Class E PD rights. Plainly the appellant is motivated to have a swimming pool and there is a fairly strong prospect that an alternative swimming pool would be built if planning permission were refused for the existing pool. While I do not have calculations of the ground coverage by Class E structures relative to the curtilage³, there is likely scope for the appellant to construct an alternative swimming pool once the existing pool were removed. This would result in a similar level of visual harm to that caused by the existing pool. This fallback offers then significant weight in favour of granting permission for the existing swimming pool.
27. The appellant also references a fallback position⁴ for the provision of hard surfacing for any purpose incidental to the enjoyment of the dwellinghouse. In my view, if planning permission were refused for the patio, it is very likely that the appellant would rely on PD rights to construct a patio area. There is a reasonable prospect that a larger hard surface would be constructed per these PD rights. However, such hard surfaces would not be raised as per the existing patio and so would not result in the same level of harm. Further, additional hard surfacing could be constructed along with the development which is the subject of these appeals. This fallback offers very little weight in support of the development in these appeals.
28. I have found that the fallback position under Class E for the construction of an alternative swimming pool offers significant support in favour of permitting this part of the development. However, on the available evidence and given the nature of the construction of the patio and swimming pool, I am not satisfied that these are physically severable. It is not therefore possible for me to issue a split decision in this instance.

Other Matters

29. The fact that the appellant has constructed development which is the subject of Appeals A and B without planning permission does not affect its acceptability in planning merits terms. There is no substantive evidence to indicate any safety issues stemming from the development before me and Building Regulations matters are dealt with under a separate regime.

Appeal A ground (a) and the DPA and Appeal B Conclusion

30. The Appeal A and Appeal B developments result in harm to the character and appearance of the host property and area and to the living conditions of neighbouring occupants. For these reasons, they conflict with the development plan read as a whole. On the available evidence, there are no material considerations that warrant a decision other than in accordance with the plan. The Appeal A ground (a) appeal and DPA and Appeal B should therefore be dismissed.

Appeal A – the appeal on ground (g)

31. The appeal on ground (g) is that the time for compliance (two months) falls short of what is reasonable. The appellant requests a period of four months in order to be able to seek quotes from builders and to appoint a builder within their available time frame.

³ Per the limitation in E.1.(b) of Class E

⁴ Under Schedule 2, Part 1 Class F of the GPDO

32. I note the Council's comment that there has not been compliance with the notice which was the subject of the 2022 Appeals. I appreciate also the time lapsed since the date of the notice. However, the appellant was entitled to assume a prospect of success on the ground (a) and (c) appeals. Further, given the existence of PD rights, the appellant may wish to explore an alternative scheme with the Council. In my view a period of five months would strike a reasonable balance between bringing ongoing harm to an end whilst also affording the appellant adequate time to explore a revised scheme, seek quotes, schedule the works and have these carried out. The ground (g) appeal succeeds.

Appeal A – Overall Conclusion

33. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Appeal B – Overall Conclusion

34. For the reasons given above the appeal should be dismissed.

V Bond

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/N5090/C/24/3337124	Mrs V Pyzowski
Appeal B	APP/N5090/W/24/3337103	Mrs V Pyzowski