



Appeal Decision

Site visit made on 16 July 2025

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th July 2025

Appeal Ref: APP/U5360/C/24/3337099

16 Listria Park, Hackney, London N16 5SN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeal is made by Mr Naftali Gluck of Bestlane Estates Ltd against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The notice was issued on 29 November 2023.
 - The breach of planning control as alleged in the notice is the erection of a rear roof extension to both the main roof slope and outrigger and a ground floor rear side extension.
 - The requirements of the notice are: 1. Remove the roof extension of the outrigger; 2. Remove the rear roof dormer; 3. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above; 4. 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 the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), and (g) of the Act. 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.
-

Formal Decision

1. It is directed that the enforcement notice is varied by the deletion of the text '6 months' at Paragraph 6 of the enforcement notice and the substitution of the text '9 months'. 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 Act.

Preliminary Matters and Background

2. I was able to carry out an unaccompanied site visit, where I saw the site and its surroundings from public land.
3. The notice does not require the removal of the ground floor extension, and the Council has confirmed this was intentional. I do not therefore consider this part of the breach of planning control further.
4. A certificate of lawful use or development¹ (LDC) was issued by the Council in respect of the site on 14 April 2021, confirming the lawfulness of a proposal described as 'erection of rear dormer window on the main rear roof slope and above the two-storey outrigger and two front roof lights' (the LDC Scheme). It is not disputed that the extension constructed to the main roof and the outrigger is different to the LDC Scheme.

¹ The Council's ref: 2021/0502

5. The LDC was granted on the basis that the LDC Scheme benefited from the planning permission granted by Article 3(1) and Classes B and C of Part 1, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) on the date of the application. There is no dispute that the roof and outrigger extension carried out does not benefit from any planning permissions granted by the GPDO because its volume exceeds 40 cubic metres (m³).
6. There is nothing before me which shows the appellant would not be entitled to rely on the planning permissions granted by the GPDO to carry out the LDC Scheme following compliance with the notice. Furthermore, I am satisfied that there is a greater than theoretical possibility that such development might take place in those circumstances. The LDC Scheme therefore comprises a fallback position for the appellant, and the carrying out of such works would not be deemed unlawful on account of Article 3(5) of the GPDO following compliance with the notice. The Council has misinterpreted Article 3(5) and misapplied *Evans*², as the fallback position is what the appellant could do once the notice has been complied with, after the unauthorised works have been removed³. I shall therefore give due consideration to the appellant's fallback position as an alternative to the former condition of the site.

Ground (a) and the deemed application for planning permission

Main Issues

7. The main issues are:
 - The effect of the development on the character and appearance of the area;
 - Whether the development mitigates climate change and promotes biodiversity; and
 - The effect of the development on the living conditions of occupiers of 18 Listria Park (No.18), with particular regard to privacy.

Reasons

Character and Appearance

8. The area is residential in character, with Listria Park and Martaban Road mainly comprised of attractive two-storey Victorian terraced houses. This contrasts with the mix of uses and building heights and styles along Manor Road.
9. The site is a mid-terrace two-storey house with rooms in the roof. It backs onto a large open area which serves a nearby block of flats. The development dominates the rear roof slope and is visible from the neighbouring flats, Manor Road, part of the eastern extent of Listria Park, and rear facing windows of some properties on Martaban Road. Views from the nearby block of flats and the eastern extent of Listria Park are clear and largely unobstructed, while views from Manor Road and properties on Martaban Road are oblique or restricted.

² *Evans v SSCLG* [2014] EWHC 4111 (Admin)

³ apart from the ground floor rear side extension, which shall be treated as having planning permission under the provisions of section 173(11) of the Act

10. The extension over the outrigger is significantly larger than a similar extension to 14 Listeria Park and far less sympathetic to the pleasant form of the terrace. There are a number of roof extensions over the main roofs and/or outriggers to terraced houses in the locality, but even in this context the development is seen and experienced as an odd feature on account of its combined bulk resulting from its excessive height, width and depth on top of an otherwise modest terraced house.
11. The development does not therefore comprise high quality design and it has a significant harmful effect on the character and appearance of the area, contrary to Policy D3 of the London Plan (2021) (LP) and Policy LP1 of the Hackney Local Plan 2033 (2020) (HLP). These require, amongst other things, development to be of the highest architectural and urban design quality, which responds to local character and context, and which is compatible with the existing townscape. The development does not conflict with Policy D4 of the LP because it focuses on the strategic delivery of good design.
12. The LDC Scheme would also have an adverse effect on the character and appearance of the area. However, the level of that harm would be much lower on account of the smaller scale of the rear outrigger extension in particular. The outrigger extension of the LDC Scheme would be notably lower in height and shorter in depth than that which has been constructed. I therefore find that this fallback position would be a moderate, but clearly appreciable, improvement compared to the development carried out in terms of their effects on the character and appearance of the area. It has not been shown how any other roof extension comprising a fallback position would cause comparable harm to the character and appearance of the area.

Climate change and biodiversity

13. Policy SI4 of the LP and Policies LP54 and LP55 of the HLP seek to mitigate the impacts of climate change by addressing the adverse effects of the urban heat island effect, amongst other things. This can be achieved through design, layout, orientation, materials and green infrastructure being used to avoid overheating and maximise sustainability. Policy GG6 of the LP encourages development to be energy and resource efficient and resilient to the effects of climate change.
14. Alongside the above, Policy LP47 of the HLP requires all development to protect and where possible enhance biodiversity, with Policy LP54 also providing strong support for climate change mitigation measures which deliver biodiversity benefits.
15. The development does not include high proportions of glazing, and it is naturally ventilated by openable windows. The extension has also been constructed using modern materials, with lighting, energy, and water fittings which accord with current building regulations. There is scope for bird and/or bat boxes to be fitted to the development, which could be required by condition. These factors are claimed to ensure the development accords with the above policies, but there are no technical reports or documents to demonstrate this is the case, or to show that bird/bat boxes would be appropriate in this instance. That said, the circumstances of the development and the site ensure there would be opportunities to enhance biodiversity, details of which could be required by condition.
16. Insufficient information has been provided to show the development complies with Policies SI4 and GG6 of the LP and Policies LP47, LP54, and LP55 of the HLP, or that it would be capable of complying with them, other than Policy LP47. I am

mindful that fallback positions open to the appellant would create the same situation in these regards, without the opportunity to secure biodiversity enhancement.

Living Conditions

17. It is claimed that alterations have been made to ensure the side facing window in the outrigger extension accords with Condition B.2(c) of Class B, Part 1, Schedule 2 of the GPDO. Evidence has not been provided to confirm this is the case.
18. The side window faces directly towards No. 18 and there are clear opportunities for overlooking from that window, which would cause unacceptable harm to the living conditions of occupiers of No.18. However, the privacy of those occupiers would not be harmed if this window is retained as obscure glazed and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room it serves, consistent with Condition B.2(c). This could be required by condition, even though the development has already been carried out. There are no other privacy concerns arising from the development.
19. The development is therefore capable of complying with Policy LP2 of the HLP and Policy D3 of the LP in so far as granting planning permission could ensure neighbouring residents retain acceptable levels of privacy.

Other considerations

20. The development harms the character and appearance of the area, fails to mitigate climate change and promote biodiversity, and has the potential to cause unacceptable harm to the living conditions of occupiers of No.18. The development could promote biodiversity and avoid causing unacceptable harm to the living conditions of occupiers of No.18 through the use of planning conditions. However, it would remain in conflict with Policies D3, SI4 and GG6 of the LP and Policies LP1, LP54, and LP55 of the HLP.
21. The fallback position would also conflict with the above policies, without having the opportunity to promote biodiversity, but the level of harm it would cause to the character and appearance of the area would be notably lower. This would be on account of the reduced size of the outrigger extension, which would be more sympathetic to the design of the terrace and similar to extensions nearby. The benefits amounting from securing biodiversity enhancements in this case would not outweigh the harm caused by the development compared to the LDC Scheme.
22. Plans⁴ show the extension to the main roof has a volume of 18.11m³ and the extension to the outrigger has a volume of 26m³, whereas those parts of the LDC Scheme were proposed to have volumes of 18.4m³ and 21.58m³ respectively. Overall, there is a small difference between the volume of the LDC Scheme and what has been built. There would be very little difference externally between the extension to the main roof constructed and that part of the LDC Scheme. The extension to the outrigger constructed, however, has a much greater harmful effect on the character and appearance of the area compared to that which would be caused by the LDC Scheme. The LDC Scheme does not therefore justify planning permission being granted for the development.

⁴ Plan refs: LP.16.EX.104 Rev 0 dated 16 October 2023 and 508 P07 Rev A dated 29 January 2021

23. I am aware that reducing the volume of the development to ensure it does not exceed 40m³ would also be consistent with an unspecified fallback position for the same reasons the LDC Scheme could be carried out after compliance with the notice. There is a lack of information before me to show how the volume of the development could be reduced in that manner, or whether that is physically possible.
24. I have considered whether I could issue a split decision granting planning permission for the extension to the main roof on the basis of the fallback position, and refuse planning permission for the extension to the outrigger. I cannot, as the plans⁵ show these two elements of the development are fundamentally integrated, with a stairwell crossing between the two. I do not therefore see how these components of the development could be severable or how I could grant planning permission for part of the breach constituted by the matters stated in the notice.
25. Similarly, I am not satisfied that the LDC Scheme or any similar roof extension scheme not exceeding 40m³ could comprise part of those matters either. This is because it is entirely unclear how the development could be altered to reflect such schemes without substantial demolition, rebuilding, and re-arrangement. For example, there is limited information to show whether the height, width, and/or depth of the extension to the outrigger needs to be, or could be, extended or reduced to reflect such schemes. It is also unclear whether there would be implications for floorplan layouts, noting the differences between those of the LDC Scheme and what has been constructed.

Conclusion on Ground (a) and the deemed application for planning permission

26. The development is contrary to the development plan as a whole and there are no material considerations, including the fallback options open to the appellant, which indicate planning permission should be granted for it.
27. The appeal under ground (a) therefore fails and the deemed application for planning permission is refused.

Ground (f)

28. To succeed under this ground of appeal the appellant needs to show that the steps required to be taken exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity which has been caused.
29. The notice requires the removal of the development, the making good of any damage caused to the property, and the removal of any resulting items. The purpose of the notice is therefore to remedy the breach, rather than any injury to amenity, and I need to consider whether this could be achieved with less cost and disruption.
30. The GPDO does not grant planning permission retrospectively. Requiring alterations to be carried out to ensure the development would accord with the LDC Scheme, or otherwise not exceed 40m³ in volume, would not therefore remedy the breach. Varying the notice in that manner would effectively grant planning permission for that other development under the provisions of section 173(11) of the Act. Furthermore, it is unclear whether the necessary conditions to make the

⁵ Plan refs: LP.16.EX.101 Rev 0 and LP.16.EX.103 Rev 0 dated 16 October 2023

development acceptable could be specified within the requirements of the notice in a precise, reasonable and enforceable manner.

31. Although it would be reasonable for the development to be altered to reduce its volume to no more than 40m³ as an alternative to demolishing the whole of the development and then erecting a new extension which does not exceed this volume, there are no obvious alternatives as to how the breach could be remedied with less cost and disruption. I am mindful that planning enforcement should be remedial rather than punitive, but I am constrained on this point by the purpose of the notice and Article 3(5)(a) of the GPDO which prevents the planning permission granted by Article 3(1) and Class B from being capable of implementation until the notice is complied with.
32. It would be a matter for the main parties to discuss outside of the appeal process whether the development could be altered to reflect a fallback position in practice, which would certainly be the most sustainable solution.
33. The appeal under ground (f) therefore fails.

Ground (g)

34. To succeed under this ground the appellant needs to show that six months falls short of what should reasonably be allowed for the notice to be complied with. It is requested that nine months is allowed.
35. There is little information before me to show that the notice could not be complied with within six months. I appreciate that the appellant may want to seek a new LDC for alterations to the development, but there may be little merit in submitting such an application prior to the notice being complied with, as the GPDO does not grant planning permission for parts of a development retrospectively.
36. The development provides living accommodation forming part of a House in Multiple Occupation. It is therefore likely that at least one person will have to seek alternative accommodation while the notice is being complied with, or while other alterations are carried out in agreement with the Council. There is also scope for the main parties to discuss the possibility of an alternative process whereby the volume of the development is reduced to no more than 40m³ and the side facing window is retained as specified by Condition B.2(c) of Class B, Part 1, Schedule 2 of the GPDO. I see no reasons why nine months would not be a reasonable period to address these issues, considering that further applications may be necessary to deal with this matter in an efficient manner.
37. The appeal under ground (g) therefore succeeds.

Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed, except to that extent outlined above in respect of ground (g). 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 Act.

L Douglas

INSPECTOR