



Appeal Decision

Site visit made on 2 September 2025

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

an Inspector appointed by the Secretary of State

Decision date: 22nd September 2025

Appeal Ref: APP/R2330/C/24/3346647

18 Moorside Drive, Clayton Le Moors, BB5 5XD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
 - The appeal is made by Mr Umar Hussain against an enforcement notice ("EN") issued by Hyndburn Borough Council.
 - The EN was issued on 28 May 2024.
 - The breach of planning control as alleged in the EN is: The development is not in accordance with the approved plans, planning application ref 11/22/0203.
 - The development to which the permission relates is: Householder: Erection of first floor side extension and alterations to rear elevation.
 - The condition in question is no 2 which states: The development shall be carried out in accordance with the following documents: (a) The planning application form and location plan received by Hyndburn Borough Council on 18 May 2022. (b) Existing site plan, proposed site plan and Existing and Proposed Plans and Elevations, Drawn by ZM, Drawing Numbers A101 and A102 dated 30.08.2022.
 - The EN alleges that the condition has not been complied with in that: The extensions have not been built in accordance with the approved plans.
 - The requirements of the EN are:
 - i) Remove the unauthorised roof structure.
 - ii) Implement the development as approved under planning ref 11/22/0203. The planning permission included the following plans:
 - 1. DRW No. A101 Existing – This plan illustrates the existing property.
 - 2. DRW No. A101 Proposed (Layouts) – This plan illustrates the proposed layout of the front, rear and side extension elevations.
 - 3. DRW No. A102 Floor Plans
 - OR
 - iii) Return the property to the previous condition as shown in the supporting document (DRW No. A101 Existing) to the application 11/22/0203.
 - The period for compliance with the requirements is: 2 (two) calendar months from the date on which the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 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 1990 Act.
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Decision

1. It is directed that the EN is corrected and varied by:
 - *the deletion of the words "...within paragraph (a) of Section 171A(1) of the above Act..." and their substitution with the words "...within paragraph (b) of Section 171A(1) of the above Act..." in section 1;*
 - *the deletion of the words "The development is not in accordance with the approved plans, planning application ref 11/22/0203." and their substitution with the words "The failure to comply with condition 2 imposed on planning permission ref 11/22/0203 granted on 2 September 2022" in section 2; and*

- *the deletion of the words:*

- i) *Remove the unauthorised roof structure.*
- ii) *Implement the development as approved under planning ref 11/22/0203*
The planning permission included the following plans:
 1. *DRW No. A101 Existing – This plan illustrates the existing property.*
 2. *DRW No. A101 Proposed (Layouts) – This plan illustrates the proposed layout of the front, rear and side extension elevations.*
 3. *DRW No. A102 Floor Plans.*

OR

- iii) *Return the property to the previous condition as shown in the supporting document (DRW No. A101 Existing) to the application 11/22/0203.*

and their substitution with the words:

- i) *Modify the development so it accords with the terms and conditions of planning permission ref: 11/21/0567; or*
- ii) *Modify the development so it accords with the terms and conditions of planning permission ref: 11/22/0203; or*
- iii) *Return the property to its previous condition as shown in drawing ref: “A101 Existing” submitted with planning ref: 11/22/0203.*

within section 5; and

- *the deletion of “2 (two) calendar months from the date on which the notice takes effect” and its substitution with “5 (five) calendar months from the date on which the notice takes effect” as the period for compliance.*

Subject to the corrections and variations, the EN is upheld.

Matters Concerning the Notice

2. Paragraph 1 of the EN states “...it appears to them that there has been a breach of planning control, within paragraph (a) of Section 171A(1)...” However, the breach of planning control described in the EN is the failure to comply with a condition subject to which planning permission has been granted. Therefore, the correct section of the 1990 Act is s171A(1)(b) rather than (a) as stated within the EN. As this correction is for precision, I am satisfied that it would not prejudice either party.
3. The breach of planning control described in the EN is “*The development is not in accordance with the approved plans, planning application ref 11/22/0203*”. It does not specify which condition has been breached. For precision, these matters should be included within the breach. I am satisfied that I can correct this error without prejudice to either party as it would not alter the substance of the breach.

Appeal on Ground (a) and the Deemed Planning Permission

4. An appeal under ground (a) is that planning permission should be granted for the matters alleged. The **main issues** are the effect of the development on:

- a) the character and appearance of the surrounding area; and
- b) the living conditions of the occupiers of neighbouring properties, regarding outlook and light.

Reasons

Background

5. The property comprises a detached, two-storey dwelling with an attached garage. It has been extended with a two-storey side/rear extension and a first floor side extension. The replacement roof has a steeper pitch and higher ridge than the original roof. All the extensions and roof alterations are incomplete as the appellant stopped work at the Council's recommendation.
6. The appellant has submitted a drawing to show the dwelling's finished appearance. However, success on ground (a) and the deemed planning permission can only relate to the partially completed works. Planning permission cannot be granted for works that would allow the extensions and roof alterations to be completed. Consequently, I can only assess the effect of the partially completed extensions and roof alterations on the main issues identified above.

Character and Appearance

7. The dwelling is sited at the end of a row of four dwellings. Prior to the construction of the partially completed extensions and roof alterations, the dwelling had a similar appearance to the dwelling at the opposite end of the row, with the two dwellings in the middle having a similar appearance to each other. The appeal site is at the end of a cu-de-sac and forms part of a larger housing development. The dwellings within the cul-de-sac are predominantly detached, two-storeys in height with either dual-pitched or hipped roofs. The dwellings' materials and designs are mixed however they comprise a series of repeating house types.
8. The unfinished appearance of the extensions and roof alterations are unsightly and significantly detract from the surrounding area. Consequently, it would be inappropriate to grant planning permission for a partially completed development.
9. Although incomplete, the roof frame has been erected which allows its scale and appearance to be appreciated. Notwithstanding the unsightly appearance of the unfinished roof, it is significantly taller and steeper than the roofs of the dwellings in the surrounding area and as such, appears incongruous. This is further emphasised by the appeal site's location at the end of the row where a direct comparison can be made with the roofs of the adjacent dwellings. The proximity of an electricity pylon to the appeal site does not alter my view.
10. I acknowledge the previous Inspector's comments¹ that the dismissed scheme would not be readily apparent from public vantage points, and that the additional bulk and change in roof form would not be materially harmful to the surrounding area. However, the Council's measurements indicate that the dismissed scheme's roof was 0.64m lower than the partially constructed roof alterations (which has not been disputed by the appellant), and it had a different roof shape. Consequently, it is not directly comparable to the appeal scheme.

¹ Appeal Ref: APP/R2330/D/21/3273300

11. In contrast to the previous Inspector's comments, the alterations to the roof are highly visible from the development's arterial road, the cul-de-sac in which the dwelling is sited, and from the road/footpath to the rear. As such, the incongruous appearance of the roof alterations causes significant harm to, and detracts from, the surrounding area.
12. Photographs have been submitted that the appellant asserts demonstrate a variety of dwelling heights in the vicinity of the appeal site. I acknowledge there are differences between the dwellings' ridge heights. However, this is largely due to their stepped appearance as the dwellings have been constructed on sloping land. Furthermore, the partially completed roof is significantly taller than the roofs depicted in the photographs, and it has a much steeper pitch. Consequently, the examples are not directly comparable to the appeal scheme. In any event, I must determine each case on its own merits.
13. For these reasons, the development harms the character and appearance of the surrounding area. It therefore conflicts with Policy Env6 of The Core Strategy, adopted 2012 ("CS") and Policy DM26 of the Development Management DPD, adopted 2018 ("DPD") which, amongst other things, seek to ensure that new developments maintain and enhance local distinctiveness and deliver high quality design by taking into consideration scale and appearance.

Living Conditions – Outlook and Light

14. The dwelling at 16 Moorside Drive has been extended to the rear with a single storey full width extension. The partially constructed two-storey rear extension extends a similar distance from the rear elevation of the appeal property as the extension at No 16. Furthermore, the dwelling at the appeal site is angled slightly away from No 16 and is located due west of it. Consequently, I do not share the Council's view that the partially constructed extensions and roof alterations have a detrimental effect on the living conditions of the occupiers of No 16 regarding outlook or light.
15. The dwelling at 29 Hazel Grove is located to the southwest of the appeal site. The windows in the rear elevation of No 29 directly face the driveway and front garden of the appeal site. Views of the partially constructed extensions and roof alterations from No 29's rear windows are oblique. Consequently, I do not share the Council's view that they have a detrimental effect on the living conditions of the occupiers of No 29 regarding outlook or light.
16. The dwelling at 27 Hazel Grove is located to the southwest of the appeal site, and its rear garden abuts the appeal site's western side boundary. Consequently, the partially completed extensions and roof alterations are likely to result in some loss of sunlight to No 27's rear garden. However, this would be for a short period in the morning and would not affect the area immediately to the rear of the dwelling that would be more frequently used.
17. The partially completed extensions and roof alterations are also unlikely to affect the daylight levels of No 27 to an unacceptable degree due to their siting and proximity to the dwelling. As such, I do not accept that the partially constructed extensions and roof alterations would have a detrimental effect on the living conditions of the occupiers of No 27 regarding light.

18. The windows in the rear elevation of No 27 directly face toward the unfinished first floor side extension and part of the unfinished roof, which are both within proximity of the shared boundary. Furthermore, the partially completed roof is significantly taller and steeper than the original roof and, although it slopes away from No 27, it extends a considerable distance along the shared boundary. As such, the partially completed extensions and roof alterations have a dominant and overbearing effect on No 27's rear windows and rear garden.
19. The appellant states that the *"as-built scheme accords with the required distance between dwellings"* and references the Householder Design Guide Supplementary Planning Document, adopted 2009 ("SPD"). This has not been disputed by the Council. While the distances have been adhered to, an SPD provides guidance and therefore the circumstances of a particular case also need to be evaluated. In this instance, for the reasons detailed above, I have found that the partially completed extensions and roof alterations would have a significantly detrimental effect on the living conditions of the occupiers of No 27. Furthermore, the SPD's distances do not account for an increase in the height and massing of a roof.
20. The appellant asserts that the partially completed extensions and roof alterations are no more harmful to the living conditions of the occupiers of the neighbouring properties in respect of outlook and "overbearingness" than the extensions and alterations granted planning permission under references 11/21/0567 ("the 2021 permission") and 11/22/0203 ("the 2022 permission").
21. However, according to the Council's figures (which have not been disputed by the appellant), the 2021 permission has a ridge height of 6.4m and the 2022 permission has a ridge height of 6.5m. In contrast, the ridge height of the partially completed roof is 7.64m. The 2021 permission does not include a first floor side extension or a two-storey side extension. Furthermore, the first floor extension approved by the 2022 permission does not extend as close to No 27 as the partially constructed first floor side extension. Consequently, I do not agree with the appellant's views on this matter.
22. The appellant has stated that they would be willing to accept a condition that requires the windows in the western side elevation to be obscure glazed. However, the Council has not raised concern regarding privacy.
23. For these reasons, I have found that the development does not harm the living conditions of the occupiers of 29 Hazel Grove or 16 Moorside Drive. However, it does harm the living conditions of the occupiers of 27 Hazel Grove regarding outlook. It therefore conflicts with Policy Env7 of the CS and Policy DM29 of the DPD which, amongst other things, state that development will be required to protect the amenity of surrounding existing and future residents and should not result in an unacceptable increase in the sense of enclosure or loss of outlook.

Other Matters

24. The appellant asserts that various extensions and alterations could be done to the property under permitted development allowances as a 'fallback' scheme. However, I am unclear from the information before me whether permitted development rights are intact on the property.
25. Even if they are intact, aspects of the partially constructed extensions and roof alterations would not comprise permitted development, including the increase in

the ridge height and the first floor side extension. Consequently, a permitted development fallback scheme would be less harmful than the partially constructed extensions and roof alterations.

Conclusion on Ground (a) and the Deemed Planning Permission

26. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal on ground (a) should be dismissed, and the deemed planning permission should be refused.

Appeal on Ground (f)

27. An appeal under ground (f) is that the steps required by the EN to be taken, or the activities required by the EN 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.
28. The requirements detailed within the EN include three steps. Both steps ii) and iii) require the removal of the unauthorised roof structure therefore, step i) is unnecessary and should be omitted from the EN. This would not prejudice either party as it is clear from the remaining steps that the unauthorised roof structure would need to be removed.
29. The drawings listed within step ii) of the requirements are inconsistent with those contained within Condition 2 of the 2022 permission. Therefore, it is unclear whether the drawings listed within step ii) are correct. Condition 2 of the decision notice details the approved drawings and therefore, it is not necessary for step ii) to list them, and their omission from step ii) would not prejudice either party.
30. The appellant states that there are several technical defects with the EN but does not outline what they are.
31. I have been directed to an appeal at 10 Thirsk Road, Mitcham² (“the Mitcham appeal”) that the appellant suggests is of relevance to this appeal, namely that the Inspector stated that the EN “*cannot require the original roof form to be reinstated...*”
32. The appeal involved a rear dormer that had been constructed over the party walls of the properties to either side. Both parties agreed that the dormer would be permitted development if the walls of the dormer were inset from the party walls. The requirement of the EN to demolish the structure was considered excessive by the Inspector as the breach of planning control could be remedied if it was modified to bring it within permitted development limits.
33. In contrast to the Mitcham appeal, I do not have a permitted development scheme before me that has been agreed by both parties, and as previously stated, I am unclear whether permitted development rights can be exercised on the property. Also, to modify the breach of planning control to a permitted development scheme would be significantly more complex than that required by the Mitcham appeal.
34. In addition, article 3(5) of the Town and Country Planning (General Permitted Development) (England) Order 2015 prevents permitted development limits from

² Appeal Ref: APP/T5720/C/05/2004639

being applied retrospectively. Consequently, the whole unauthorised development would need to be demolished before permitted development rights could be exercised. As such, I am unable to include a requirement that the partially constructed development is modified to bring it within permitted development limits. Furthermore, it is not for me to scout around for an alternative scheme that has not been put forward by either party.

35. Planning permission has been granted for extensions and alterations to the dwelling under the 2021 permission and the 2022 permission. The appellant asserts that the requirements of the EN should allow for either the 2021 or the 2022 planning permission to be implemented, rather than just the 2022 permission. The Council had the opportunity to comment upon this matter within their appeal submissions but did not do so.
36. The information before me suggests that the footprint of the ground floor side and rear extensions approved under the 2021 and 2022 permissions match what has been constructed on site. As such, I am satisfied that a lawful start has commenced on both permissions and therefore, they are extant.
37. Whether the appellant would choose to implement the 2021 permission is doubtful, as it is smaller than the 2022 permission and it would require more of the partially constructed first floor to be demolished than the 2022 permission. Nevertheless, I agree with the appellant that it should be an option that is open to them. Consequently, the requirements of the EN should include a step that requires the modification of the scheme to comply with the terms and conditions of the 2021 permission.
38. Step ii) of the requirements seeks to implement the 2022 permission. However, as I have determined that the permission has commenced, step ii) should be varied to require the unfinished development to be modified to comply with the terms and conditions of the planning permission. As this is for precision, I am satisfied that it would not cause injustice to either party.
39. As such, the appeal on ground (f) succeeds to a limited extent.

Appeal on Ground (g)

40. 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 two months.
41. The Council consider two months is a reasonable period as the appellant is not considered to be in financial difficulty; there are several builders already working on the development and therefore, time is not required to arrange contractors; and there are acceptable/approved plans in place that can be implemented immediately.
42. In addition, they consider the partially constructed extensions and roof alterations are causing harm to the living conditions of the occupiers of neighbouring properties through the flapping of materials covering the incomplete structures in windy conditions, and concern over the safety of the partially completed structures.
43. The appellant states that *“a period of 18 months (with a minimum period of 12 months)”* would be more appropriate given the work and cost involved in

complying with the EN's requirements. It is unclear why two different periods have been suggested by the appellant.

44. The appellant suggests that it would take longer than two months for the Council to grant a Lawful Development Certificate ("LDC") or for planning permission to be granted for a "*hybrid scheme*" comprising a mix of what has been constructed together with new/amended elements.
45. I saw during my site visit that the partially completed extensions do not comply with either the 2021 or 2022 permissions as windows have been omitted, new openings have been created or are different in size, and the first floor side extension is wider. Consequently, if the appellant wanted to retain these elements, planning permission would be required.
46. I agree with the appellant that two months would not be reasonable for a planning application or LDC to be submitted and approved, for a contractor to be appointed, and for the approved hybrid scheme to be implemented. Notwithstanding this, a period of either 12 or 18 months proposed by the appellant, is a lengthy period for the harm identified in the EN to persist.
47. I consider that extending the time for compliance to five calendar months would strike a more appropriate balance between remedying the planning harm identified in the EN as soon as practicable and allowing the appellant a more appropriate timeframe in which to undertake the requirements of the EN.
48. The appeal on ground (g) therefore succeeds to this limited extent and I will vary the EN accordingly.

Overall Conclusion

49. For the reasons given above, I conclude that the requirements of the EN are excessive to remedy the breach of planning control and the injury to amenity and the period for compliance with the EN falls short of what is reasonable. I shall correct and vary the EN prior to upholding it. The appeal on grounds (f) and (g) succeeds to that extent.

A Berry

INSPECTOR