



Appeal Decisions

Site visit made on 20 January 2026

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17th June 2026

Appeal A Ref: APP/N5090/C/24/3343007

Land at 34 St Marys Avenue, London N3 1SN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mrs Katie Wood against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 12 March 2024.
- The breach of planning control as alleged in the notice is the erection of a two-storey plus rooms in roofspace semi-detached dwellinghouse, other than in accordance with the terms of planning permission reference 21/5028/FUL.
- The requirements of the notice are to:
 1. Remedy the breach of planning control by altering the development so that it complies with the terms (including conditions and limitations) of planning permission reference 21/5028/FUL, granted 16.06.2022. The final dwellinghouse to match that shown in plans PA-NB-00 P01, PA-NB-01 P01, PA-NB-02 P01, PA-NB-03 P01, PA-NB-04 P00, PA-NB-05 P00, PA-00 P05, PA-01 P05, PA-02 P07, PA-03 P05, PA-04 P07, PA-05 P07, Sustainability Statement, Flood map, and Design and Access Statement of that permission.
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
- 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) 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.

Summary Decision: The appeal is allowed, planning permission is granted and the enforcement notice is quashed.

Appeal B Ref: APP/N5090/W/24/3343109

34 St Marys Avenue, Finchley, Barnet, London N3 1SN

- 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 Katie Wood against the decision of the Council of the London Borough of Barnet.
- The application Ref is 23/3278/S73.
- The development proposed is the variation of condition 1 (Approved Plans) of planning permission reference 21/5028/FUL dated 16/06/22 for 'Demolition of existing house and the erection of a new two-storey plus rooms in roofspace semi-detached dwellinghouse. Associated amenity space, refuse storage and provision of off-street parking.' Variation to include alterations to the roof design, increase in front porch height, alterations to fenestration, amendments to part single, part two storey rear extension involving extension to depth and height, and the insertion of solar panels.

Summary Decision: The appeal is allowed and planning permission is granted

Initial Preliminary Matters

1. The most relevant planning history for the appeal site includes the planning permission mentioned in the header above, Council reference 21/5028/FUL, for the 'Demolition of existing house and the erection of a new two-storey plus rooms in

roofspace semi-detached dwellinghouse. Associated amenity space, refuse storage and provision of off-street parking'. I will refer to this hereafter as 'the 2022 Permission'.

2. A number of bundles of plans were submitted with both appeals. These include the plans approved pursuant to the 2022 Permission, as well as the plans submitted with the application subject of Appeal B.
3. A bundle of plans was also submitted which the appellant suggests is the 'as built' scheme. I wrote to the parties about this bundle to ask whether or not it is agreed that these plans reflect what has been erected on site. The Council say that these plans broadly correspond to what is on site. It indicated that revision 10 of the roof plan (plan number 231-03 REV 10), rather than revision 9 which was also provided in the bundle, reflects the as built scheme. The primary difference between the two plans is the addition of solar panels on the roof of the building, which I observed on the site visit.
4. Notwithstanding the above, it is suggested by interested parties that none of the plans before me accurately reflect what has been erected on site. I will come to this point later in my decision.
5. On a separate matter, since the appeals were made a new local plan for the area has been adopted and now forms part of the development plan. This is the Barnet Local Plan 2021-2036, adopted March 2025 (BLP). As such, certain of the policies referred to in the evidence, in the enforcement notice on Appeal A, and the decision notice on Appeal B have been superseded. In addition to this, there have been amendments to the National Planning Policy Framework (the Framework) in December 2024. There has also been a recent consultation on further proposed changes to the Framework.
6. I must determine the appeals having regard to the current development plan and national policies. As such, I sought from the parties a list and copies of the relevant policies of the BLP and a list of the policies that have been superseded. I also sought any comments the parties may have on the effect of the changes to local policy and national guidance on their respective cases. I have had regard to the responses I have received in the determination of the appeals.

The Notice – Appeal A

7. I wrote to the parties to draw to their attention the powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act). These include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority. I advised the parties of my concern with regard to the validity of the notice. More specifically, whether or not the notice correctly describes the breach of planning control that has occurred.
8. Part 1 of the enforcement notice refers to section 171A(1)(a), which is the section of the 1990 Act relevant to a breach of planning control comprising the carrying out of development without the required planning permission. However, the allegation is of 'The erection of a two-storey plus rooms in roofspace semi-detached

dwellinghouse, **other than in accordance with the terms of planning permission reference 21/5028/FUL**' (my emphasis).

9. The terms of the 2022 Permission include condition 1, which requires the development to be carried out in accordance with the approved plans listed in the condition. These include the details of the replacement dwellinghouse.
10. Having regard to this, the submissions made by the parties and the requirements of the notice, which in short is for the alteration of the development so that it complies with the scheme approved pursuant to the 2022 Permission, I advised the parties of my concerns that the allegation of development without planning permission was not correct; that it should allege a failure to comply with a condition subject to which planning permission has been granted. This would be a breach of planning control falling within section 171A(1)(b) of the 1990 Act.
11. I asked for the parties' comments on the above, particularly as I was concerned that if the breach of planning control alleged in the notice was correct, the 2022 Permission may not be extant and no longer capable of being complied with. In these circumstances, the enforcement notice would be invalid as its requirements could not be complied with.
12. I have noted the parties' representations on this matter. Having considered the matter further, I am satisfied that the 2022 Permission is extant and that the requirements of the notice do not render it invalid. I say this because the 2002 Permission granted consent for two operations; the first, the demolition of the former dwelling, and the second, the erection of a new dwelling. I have been given no reason to doubt that the demolition of the former dwelling has occurred and that the demolition was carried out in accordance with the 2022 Permission, including its conditions. It is for this reason that I am satisfied that the 2022 Permission has been implemented and is, therefore, extant. This would be the position, even if a new dwelling had not been erected on site.
13. Notwithstanding the above, the notice does not concern itself with the demolition of the former dwelling. It relates only to the erection of a new dwelling. I must, therefore, still be satisfied that the allegation as put in the notice is correct.
14. In their response to my note, the appellant acknowledges that there has been a breach of planning control, but says that the breach in this case is a failure to comply with a condition (i.e. condition 1 of the 2022 Permission), which is a breach of planning control falling within section 171A(1)(b) of the 1990 Act. They say that this is the basis on which they have made the application subject of Appeal B. In this regard they point to limited deviations from the approved scheme, which include the roof form of the dwelling and the porch.
15. On a separate point, the appellant has referred to the development in evidence as 'extensions and alterations to an existing dwelling'. This is not, of course, the development that is the subject of the notice, which is the erection of a new dwelling. I assume that this is an error in the appellant's evidence, given that they have not made an appeal on ground (b) and do not suggest that what has occurred is alterations and extensions to an existing dwelling, rather than the erection of a new dwelling. Indeed, they are firmly of the view that the development in this case has the benefit of the 2022 Permission, which grants permission for the erection of a new dwelling, not for alterations and extensions to an existing dwelling.

16. As for the Council, it suggests that an allegation of a breach comprising development without planning permission is correct. It says that 'the as-built scheme departs from the approved plans and thus lacks permission in its current form'.
17. Where permission has been granted subject to a condition requiring that the development is carried out in accordance with the approved plans, and the development deviates from the approved plans to the extent that a breach of planning control has occurred, it does not automatically follow that what has occurred is development without planning permission (a breach falling within section 171A(1)(a) of the 1990 Act). In these circumstances the breach of planning control might well be a breach of the plans condition (a breach falling within section 171A(1)(b)). Much will depend on the extent of the differences between what has been built and what was approved, considered in the context of the development as a whole.
18. The parties agree that a new dwelling has been erected on site. There is no dispute between the parties that the vast majority of the development complies with the scheme approved pursuant to the 2022 Permission. The reasons for the issue of the notice refer only to the roof design and the front porch. This tells me that these are the only elements of the overall development that, in the Council's view, deviate from the approved scheme. This is not disputed by the appellant. Having inspected the site, I can agree with this, although I noted that only part of the roof form has been constructed out of accordance with approved scheme.
19. In addition to the above, I have had regard to the representations of interested parties, where it is suggested that other elements of the scheme deviate from the approved scheme, including the dimensions of the two storey and single storey rear projections. Whilst I note these claims, these suggested additional deviations from the approved scheme were not obvious to me on site. I am also mindful that they are not corroborated by, for example, a detailed survey of the building.
20. Nevertheless, taking all the above into account, I am satisfied that, on balance, the notice correctly identifies the breach of planning control that has occurred. I say this not least because some of the deviations include larger elements when compared to what was approved.
21. Notwithstanding my conclusion above, I would add that, even if I were to conclude that the breach falls within section 171A(1)(b) of the 1990 Act, this would be of little consequence to the requirements of the notice, as the 2022 Permission is extant and the requirement to comply with the approved scheme would be appropriate in either case. Furthermore, I see no reason why the parties' respective cases would differ in these circumstances.

Ground (a) on Appeal A and the Deemed Application for Planning Permission on Appeal B

Preliminary Matters

22. Appeal A has been made on ground (a), which includes a deemed planning application for the matter that is the subject of the enforcement notice.
23. I have noted the representations of all parties, which concentrate on the discrepancies between the approved scheme and that erected on site. I have also

noted the concerns of interested parties, that the as built plans before me (as well as those subject of Appeal B) do not accurately reflect the development as erected on site.

24. To be clear, the deemed planning application before me on Appeal A is for the dwelling, as erected on site, rather than that shown on any of the plans. If allowed, a new planning permission for the whole of the development, as built on site, would be granted, without reference to any of the plans before me.
25. The subject of Appeal B is slightly different. Appeal B relates to an application for planning permission made under section 73A of the 1990 Act, for development carried out without complying with some condition subject to which planning permission was granted (section 73A(2)(c)). Accordingly, what is before me on Appeal B is, in effect, a proposal to vary the terms of condition 1 of the 2022 Permission, substituting the plans listed with alternative plans that propose a different scheme of development. From hereafter I will refer to the scheme subject of Appeal B as the 'Appeal B Scheme' and the plans submitted with the application subject of Appeal B as the 'Appeal B Plans'.
26. On its face, there appears to be little difference between what has been erected on site and what is shown on the Appeal B Plans. However, I note above the matters raised by the interested parties, which include that what is shown on the Appeal B Plans does not accord with what has been constructed on site. If there is any material difference between the two, this will be of little consequence to the outcome of Appeal B. This is because, in the event that Appeal B is allowed, the development permitted will be that shown on the Appeal B Plans, rather than what is on site. It is not, therefore, necessary for me to consider whether or not what is on site accords with the Appeal B Plans.

Main Issues

27. Having regard to the Council's reason for refusal of the planning application and the substantive reasons for issuing the enforcement notice, the main issues are the effect of the development (Appeal A) and the effect of varying condition 1 of the 2022 Permission (Appeal B) on:
- the character and appearance of the surrounding area; and
 - the living conditions of neighbouring occupiers.
28. As I have noted above, the difference between the development as built (as subject of Appeal A) and that shown on the Appeal B Plans is limited. Accordingly, I have considered the appeals together, but have distinguish between the two where appropriate.

Reasons

Policies and Guidance

29. The development plan for the area includes the BLP and the London Plan, adopted March 2021 (LP). The Council has confirmed that policies of the BLP supersede those referred to in the enforcement notice and decision notice from the Barnet's Local Plan Core strategy and Development Management Policies, both dated September 2012. The parties have drawn to my attention a number of policies within the BLP and the LP.

30. The requirements of Policy CDH01 (Promoting High Quality Design) of BLP include that all new development should consider local context; be of a high architectural and urban design quality; respond sensitively to the distinctive local character and design, building form, patterns of development, scale, massing, roof form and height of the existing context; and provide a good standard of amenity that is consistent with other policies in the Plan and will allow for acceptable levels of daylight, sunlight, privacy and outlook for adjoining and potential occupants and nearby users impacted by the development.
31. Policy D3 (Optimising site capacity through the design-led approach) of the LP informs, amongst other matters, that development proposals should enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape. It also requires that development delivers appropriate outlook, privacy and amenity.
32. BLP Policy GSS01 (Delivering Sustainable Growth) is primarily a strategic policy, directing growth within the Borough. This does, however, refer to small sites, self-build and custom house building, and refers to the design led approach, required by LP Policy D3.
33. Policy HOU03 (Residential Conversions and Re-development of Larger Homes) of the BLP informs that the Council will optimise the potential for housing delivery from residential conversions and the re-development of larger homes, subject to certain criteria. Criteria D states that proposals will be supported, provided that they do not have an unacceptable impact upon the surrounding character of the area and where there is no unacceptable impact on the amenity of occupiers of neighbouring properties.
34. Policy D1 (London's form, character and capacity for growth) of the LP refers to area assessments to be undertaken by the London Boroughs and to what is required in the preparation of development plans. Whilst the aim of this Policy is to deliver 'Good Growth' via good design, it does not include any requirements that inform the decision making process. The relevance of this policy to the appeals before me is not obvious.
35. Policy D4 (Delivering good design) of the LP is a detailed design policy that concentrates on the design process for new development. I can see that the aim of the Policy is to secure design quality in new development. However, having regard to the particular requirements of the policy, I have some difficulty in applying this to the development before me.
36. I have been provided with BLP Policy CDH04, which relates to tall buildings, as defined in the Policy. The development does not, however, comply with this definition. The appellant has also referred to BLP Policy CDH05 (Extensions). As this policy relates explicitly to extensions to existing buildings, rather than the erection of new buildings, it is of little relevance to the appeals before me, both of which relate to the erection of a new dwelling.
37. I have been provided with the Barnet London Borough Supplementary Planning Document: Residential Design Guidance, dated October 2016 (SPD). Part 2 of the SPD is of particular relevance as this relates to new residential development. Also of relevance is the advice on good design set out in the Framework.

Character and Appearance

38. The appeal site is occupied by one of a pair of semi-detached dwellinghouses. The dwellinghouse occupying the appeal site is a new construction, following the demolition of the former dwelling. The dwelling occupies a rectangular plot and pedestrian access is provided to the rear garden via a walkway along the boundary of the site shared with 36 St Marys Avenue.
39. The appeal site is located in a residential area characterised by large detached and semi-detached dwellings. There is variation in the design of the detached dwellings and semi-detached pairs within the vicinity of the appeal site, and almost all within this part of St Mary's Avenue appear to have been extended and altered in some form. Nevertheless, there is a common theme in some of the external materials used and certain architectural features.
40. The 2022 Permission granted consent for the demolition of the former dwelling and the erection of a replacement dwelling. The as built dwelling accords with the approved scheme in so far as the appearance and proportions of the main front elevation (including the two storey bay window, first floor bay window and front projecting gable) mirrors that of the adjoining dwelling at 32 St Marys Avenue, save for differences in certain materials (e.g. the colour of window frames).
41. The symmetry between the front elevation of the two dwellings ends with the front porch element, which in the case of the appeal building has a flat roof with a parapet detail. Although large for a domestic porch, there is no suggestion that, as constructed, it has a footprint larger than that shown on the approved plans. The difference between what has been built and what was approved is the height of this porch element.
42. The porch is a large feature on the front elevation of the building. Whilst the Council suggest that it is dominant and overbearing, its depth and width replicates that of the permitted scheme. Its finished height is, however, excessive and results in a bland façade above the main entranceway. Indeed, the unnecessary height of the porch is made more obvious when considered next to the adjoining dwelling at No 36, which sits at a slightly lower level than the appeal building.
43. Nevertheless, the design of the porch replicates that of the approved scheme (save for the finished height) and similar flat roof elements are present within the street scene, where there is also variety in the design of porches, whether they be original or additions. Furthermore, the simple appearance of the porch and the finished materials (matching those used on the remainder of the dwelling) improve this boxy element of the scheme.
44. For these reasons, I am not persuaded that the height of the porch, when compared with that permitted, renders this element of the scheme unacceptable and out of character with other development within the surrounding area. I conclude the same with regard to this element of the Appeal B Scheme, the dimensions and location of which are broadly similar to what has been erected on site. Although the porch element in both the Appeal A and Appeal B Scheme are not additions to an existing building, they are not out of accord with the advice given in paragraphs 14.51 to 14.55 of the SPD.
45. Turning to the roof of the dwelling, the main section of the roof form of both the Appeal A and B schemes has been designed so as to replicate the ridge height and

former hipped gable of the roof of the original dwelling. There is no suggestion that this part of the roof is out of accord with the approved scheme.

46. The roof form departs from the approved scheme in the part of the roof closest to No 36. This has a greater volume and scale, when compared with the approved scheme. It projects further towards No 36 and it does not incorporate the approved dormer feature.
47. Nevertheless, this part of the roof appears to accord with the approved scheme in that, when viewed from the street, it has a substantial set back from the main section of the roof, which I describe above. It appears, therefore, as a subordinate part of the overall roof form. Whilst I note the suggestion that this element overhangs the side elevation, the vertical part of the gable end is set in from the finished eaves.
48. The pitch of this section of the roof (front and back) replicates that of the main roof section, as does the pitch of the part hipped gable end. In this regard, although again not an extension to an existing dwelling, this part of the scheme accords with the SPD advice on dormer extensions.
49. The Council suggest that the finished roof form unbalances the semi-detached pair. In this regard, I note that the roof of the adjoining dwelling appears to have been extended and altered to the side with a complicated, and rather bulky, part pitched and part flat roofed dormer. Despite this, what appears to be the form of the original roof of this property is still legible and, as I note above, is replicated in the appeal building and the Appeal B Scheme. This has resulted in the retention of a degree of balance between the semi-detached pair. Having regard to the dormer extension at No 32 and the finished roof form of the appeal building, I cannot agree that this balance has been adversely affected by either of the appeal schemes. Furthermore, a degree of separation between the appeal building and No 36 is retained.
50. I acknowledge that the part hipped, part flat gable end of this part of the roof of the appeal building and Appeal B Scheme is not a design I observed elsewhere within the street. There is, however, substantial variety in roof extensions within the immediate area. That includes the side dormer at No 32, described above, and the prominent flat roof dormer extensions on the side roof slopes of a property opposite the appeal site.
51. I acknowledge that, in view of the level difference between the appeal site and No 36, the finished roof form is more prominent when viewed from the west. However, having regard to the degree of set back in the roof form and the inclusion of a part hipped gable feature, I find the finished roof form no more prominent than other roof extensions in the street, including those referred to above.
52. All of the above considered, I conclude that the development as built does not have an unacceptable effect on the character and appearance of the area, by reason of its finished roof form. I conclude the same with regard to the Appeal B Scheme, having regard to the limited difference between the two.
53. Moving on to the remainder of the dwelling, the depth of the first floor rear projection and the finished height of the single storey rear projection are referred to by the interested parties. The Appeal B Scheme appears to propose a very minor enlargement of both elements, when compared with the approved scheme. The

interested parties suggests that there is a more substantial difference between what was approved for these elements and what has been erected on site. I note, however, that the Council has not referred to these elements in making its case.

54. Whilst the development before me is not an extension to an existing dwelling, I have had regard to the SPD guidance on rear extensions drawn to my attention. This informs that two storey rear extensions, which are closer than 2 metres to a neighbouring boundary and project more than 3 metres in depth, are not normally considered acceptable. Whilst this element of the scheme might project more than 3 metres beyond the rear elevation of No 36, it does not project more than 3 metres beyond the main rear elevation of the appeal building, the location of which aligns with the main rear elevation of No 32. Even if it were an extension, this element would not fail to accord with the 3 metres specified in the SPD guidance.
55. Notwithstanding this, I do not regard these rear elements as overtly bulky or dominant parts of the scheme. I say the same with regard to these elements of the Appeal B Scheme. Views of these rear elements of the building are limited to the adjoining properties and I noted that such two storey and single storey flat roof additions are not uncommon in the area. Furthermore, the design and appearance of the dwelling as constructed and the Appeal B Scheme otherwise broadly accord with the approved scheme.
56. The as built development includes a number of solar panels. These are also shown on the Appeal B Plans. These are located on the rear roof slopes of the building and, as such, have little effect on the appearance of the building within the street scene.
57. There is reference to air conditioning units attached to the dwelling. At the time of my visit, these were not present on the building and the evidence suggests that this was the case at the time the notice was issued. These do not, therefore, form part of the scheme on Appeal A. Furthermore, they are not shown on the Appeal B Plans.
58. All of the above considered, I conclude that, on balance, the development as constructed does not have an unacceptable effect on the character and appearance of the surrounding area. I also conclude that the Appeal B Scheme would be acceptable in terms of its effect on the character and appearance of the area. Accordingly, neither scheme conflicts with the good design requirements of Policies CDH01, GSS01 and HOU03 of BLP, nor Policy D3 of the LP. I also find no conflict with the design advice in the Framework. Nor with the SPD, including the sections referred to above and the advice in chapter 6 on enhancing local character in the design aspects of new residential development in Barnet.

Living Conditions

59. I took time during the site visit to view the appeal site and the appeal dwelling from the adjoining property at No 36, including from its garden and private spaces. As I have already noted above, the ground level of No 36 is below that at the appeal site, which I understand was the case prior to the construction of the dwelling subject of Appeal A. Indeed, the plans of the former dwelling on the appeal site demonstrate the degree of elevation of the former building above No 36.
60. The porch element of the as built scheme is closest to the integral garage of No 36 and its finished height is notable when viewed from the front garden of that

property. However, this part of the property at No 36 is not part of its private garden; it is open to the public realm and appears to be primarily used for parking vehicles. The porch is also set back off the boundary with No 36. I do not, therefore, regard this element of either scheme as overbearing.

61. In view of its forward projection, the porch can also be viewed from the front facing window and secondary window in the room above the integral garage at No 36. Whilst the porch dominates the view from the secondary window, the view of the appeal building from the forward facing windows in No 36 is at a side angle. As such, the development has little effect on the outlook from this primary window, which is predominantly over St Marys Avenue. In view of the similarities between the Appeal A and B schemes, I find the same with regard to the likely effect of this front element of the Appeal B Scheme.
62. The overall elevated height of the dwelling is notable from the rear garden area of No 36. However, the main ridge line and eaves level of the appeal building match that of the adjoining dwelling at No 32, which was the case with the former dwelling and the approved scheme. The indication is, therefore, that the main body of the appeal building matches that of the former dwelling and approved scheme in terms of its finished height.
63. Whilst the side gable of the dwelling is particularly notable from the garden of No 36, I cannot regard this as an overbearing element of the scheme. It is not directly adjacent to the rear garden of No 36 and direct views of it from within No 36 are limited. The approved plans show obscure glazing in the first and second floor windows facing No 36. This would mitigate any privacy implications resulting from direct views into the side window and roof lights of No 36.
64. As for the first floor rear projection and single storey element, I have noted above the SPD guidance on rear extensions, which advises, amongst other matters, that rear extensions should not cause a significant sense of enclosure, or loss of outlook from, or light to, principal windows of habitable rooms of neighbouring properties; create an unacceptable sense of enclosure to a house and garden; or have an overbearing impact.
65. I am mindful of the existing difference in ground levels between the two properties and the location of the main rear elevation of the appeal building, which appears to accord with that of the approved scheme. Furthermore, the appeal dwelling, including its rear projecting elements, is set off the boundary with No 36 and is separated from the dwelling at No 36 by the walkways to the side of both dwellings. I have concluded above that both elements are neither bulky nor do they dominate the remainder of the development. For these reasons, I do not find these elements of the scheme overbearing. Neither do they create an unacceptable sense of enclosure or effect the outlook from No 36.
66. Even if the difference between the approved and as built scheme is of the magnitude suggested, these elements do not render the scheme as a whole unacceptable in terms of its effect on the privacy of the adjoining occupiers or their enjoyment of their property. I conclude the same with regard to the Appeal B Scheme, not least because this proposes very minor variations when compared with the approved scheme.
67. As I note above, air conditioning units do not form part of either scheme of development before me. Nevertheless, I observed electrical wiring in two locations

on the side elevation of the appeal building. If air conditioning units were located on this side elevation of the building, close to the bedroom windows of No 36, they may have an adverse effect on the living conditions of the neighbouring occupiers. However, if the installation of such units were regarded as an alteration to the dwellinghouse, they would be controlled by reason of the condition suggested by the Council, which would remove certain of the permitted development rights granted by The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 2015 Order).

68. Similarly, if the flat roof of the single storey element were used as a sitting out area, this is likely to result in overlooking, which would have a detrimental effect on the privacy of the occupiers of both Nos 32 and 36. Again, the harm caused by this would be overcome with a condition prohibiting its use, as suggested by the Council.
69. All of the above considered, I conclude that the development as constructed does not have an unacceptable effect on the living conditions of neighbouring occupiers. I also conclude the same with regard to the Appeal B Scheme. Accordingly, neither scheme conflicts with the relevant requirements of Policies CDH01 and HOU03 of the BLP, nor Policy D3 of the LP. I also find no conflict with the Framework. Neither do the schemes conflict with the advice in chapter 7 of the SPD on safeguarding residential amenity.

Other Matters

70. Whilst I note the comments of interested parties who suggest that what has occurred is an abuse of the planning system. Both the Framework and the Planning Practice Guidance on Enforcement and post-permission matters tells us that enforcement action is discretionary and that it should be exercised proportionately and in the public's interests. It is intended to be remedial rather than punitive.
71. Despite the obvious deviations of the as built development from the approved scheme, the evidence before me does not indicate that what has been done was an intentional breach of planning control, such that it should be regarded as a material consideration in this case.
72. I have found the development as built to be acceptable on its merits, having regard to the particular circumstances of this case. These circumstances include the substantial variety in the design, form, location and levels of dwellings and alterations to them in the immediate area. And that the development has not unbalanced this particular pair of semi-detached properties, having regard to the existing extensions and alterations to No 32. In different circumstances I may have determined that the scheme in both appeals would be unacceptable. Accordingly, I find it unlikely that my determination in these appeals would set an undesirable precedent for similar development elsewhere.

Conditions

73. I have had regard to the conditions imposed on the extant planning permission. I also note the list of suggested conditions. I consider each of these, as follows, and where necessary I have amended the wording suggested in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance: Use of Planning Conditions (PPG).

74. The deemed planning permission will not be granted on Appeal A for development as shown on any plans submitted with the appeal. Instead, it will be for the development that is alleged in the notice, as carried out on site at the time the enforcement notice was issued. It is not, therefore, appropriate to impose a condition on the permission granted on Appeal A requiring the development to be completed in accordance with the plans listed. Such a condition is, however, necessary for the permission granted on Appeal B. This is because I have regarded the Appeal B Scheme as proposed development. For this reason, a time limit condition is also necessary.
75. As the development subject of Appeal A is substantially complete and found to be acceptable, it is not necessary to impose the conditions suggested regarding materials, levels, the management of demolition and construction and the control of the hours of construction. These conditions are, however, necessary for the development permitted on Appeal B in order to ensure that it is in keeping with the character and appearance of the surrounding area and the living conditions of the nearby occupiers are protected.
76. The suggested conditions regarding carbon emissions, the supply of water, and water saving and efficiency, as well as the conditions that require measures to meet and achieve the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 might be more onerous than would otherwise be required in this case under the building regulations legislation. I am, however, satisfied that these comply with the requirements of LP Policies SI 2 (Minimising greenhouse gas emissions), SI 5 (Water infrastructure) and D7 (Accessible housing), which are referred to in the reasons given for these suggested conditions. Accordingly, having regard to these Policies, these conditions are necessary and reasonable to mitigate the effects of climate change; as well as ensuring the development is inclusive and meets the long term needs of its occupiers. These conditions are no more onerous than those imposed on the 2022 Permission.
77. The landscaping conditions suggested require a scheme to be submitted only in respect of the land to the front of the dwelling. This is necessary for Appeal B, as landscaping is an essential element of good design. As for the landscaping of the Appeal A scheme, the development has resulted in the retention of the mature tree on the land to the front of the dwelling. As such, whilst I do not consider the submission of further details of hard and soft landscaping to be necessary, the requirement to maintain this is necessary and reasonable, bringing this in line with requirements of the landscaping condition for Appeal A.
78. The conditions relating to the provision of cycle storage are necessary as they will assist in promoting the use of more sustainable modes of transport. The provision of appropriate refuse storage will improve the visual amenity of the area and is, therefore, necessary. The provisions and retention of off street parking is also necessary in the interests of highway safety.
79. The conditions regarding the glazing in the windows of the upper floors of the side elevation and the use of the flat roof of the rear single storey element are reasonable and necessary, in the interests of protecting the privacy of the neighbouring occupiers.
80. The advice in the PPG is that the use of conditions restricting the future use of permitted development rights granted by the 2015 Order may not pass the test of

reasonableness or necessity. However, this case is an exception with regard to the classes of permitted development that would allow for the enlargement, improvement or alterations of the dwelling, including additions or alterations to its roof and the provision of a porch (Classes A to D of Part 1 of Article 3, Schedule 2 of the 2015 Order). The development that is the subject of both Appeals A and B have the appearance of a scheme of substantial extension and alteration of the existing dwelling. However, what will be permitted in both cases will be a new dwelling, not an extended dwelling. As such, it would enjoy the full suite of relevant permitted development rights, including those for extensions, granted by the 2015 Order.

81. Having regard to the confines of the site, the close relationship between the appeal building and the neighbouring dwellings, and the effect of the development subject of both appeals on the character and appearance of the surrounding area, any enlargement, improvement or alteration to the dwelling that might be permitted by the 2015 Order is likely to have an adverse effect on the living conditions of neighbouring occupiers and on the character and appearance of the surrounding area. The removal of the relevant permitted development rights is, therefore, necessary and justified in this case. The condition I intend to impose would also prevent the addition of windows in the side elevation of the dwelling facing No 36.
82. Finally, I do not consider the removal of the permitted development rights granted by Class E of Part 1 of Article 3, Schedule 2 of the 2015 Order to be necessary. Neither appeal scheme includes the provision of any outbuildings and I see no reason why the provision of such buildings, etc. incidental to the enjoyment of the dwellinghouse would have the potential to have the same effect in this case as the development permitted by the Classes of the 2015 Order referred to above.

Planning Balance and Conclusions

83. I have concluded that the development subject of both Appeals A and B accords with the development plan when read as a whole. There are no material considerations of sufficient weight that indicate my determination should be made otherwise than in accordance with the development plan. Accordingly, I conclude that planning permission ought to be granted, and that the ground (a) appeal on Appeal A and Appeal B should succeed.

Overall Conclusions – Both Appeals

84. For the reasons given above, I conclude that Appeal A should succeed on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.
85. In these circumstances the appeal on ground (g) does not fall to be considered.
86. For the reasons given above, I conclude that Appeal B should be allowed.

Formal Decision – Appeal A

87. Appeal A is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development already carried out, namely the erection of a two-storey plus rooms in roofspace semi-detached dwellinghouse on land at 34 St Marys Avenue, London N3 1SN as shown on the plan attached to the notice and

subject to the conditions in the schedule attached to this decision, entitled 'Schedule of Conditions - Appeal A'.

Formal Decision – Appeal B

88. The appeal is allowed and planning permission is granted for the demolition of the existing house and the erection of a new two-storey plus rooms in roofspace semi-detached dwellinghouse with associated amenity space, refuse storage and provision of off-street parking at 34 St Marys Avenue, Finchley, Barnet, London N3 1SN in accordance with the terms of the application, Ref 23/3278/S73, without compliance with condition number 1 previously imposed on planning permission Ref 21/5028/FUL dated 16 June 2022 and subject to the conditions in the schedule attached to this decision, entitled 'Schedule of Conditions - Appeal B'.

J Moss

INSPECTOR

Schedule of Conditions - Appeal A

1. Within 6 months of the date of this decision all of the water supplied by the mains water infrastructure to the development hereby permitted shall be provided through a water meter. The water supply shall be retained as such thereafter in perpetuity.
2. Within 6 months of the date of this decision the development hereby permitted shall accommodate and be fitted with water saving and efficiency measures that comply with Regulation 36(2)(b) and Part G2 of the Building Regulations 2010 to ensure that a maximum of 105 litres of water is consumed per person per day. The water saving and efficiency measures shall be retained as such thereafter in perpetuity.
3. Within 6 months of the date of this decision the development hereby permitted shall accommodate and be fitted with carbon emission reduction measures which achieve an improvement in carbon emissions of a minimum of 10% when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the Building Regulations 2010. The carbon emission reduction measures shall be retained as such thereafter in perpetuity.
4. Within 6 months of the date of this decision the development hereby permitted shall accommodate and be fitted with measures that meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future). The development shall be retained as such thereafter in perpetuity.
5. Within 6 months of the date of this decision cycle storage shall be provided in accordance with the details approved on 14/10/2022 pursuant to application

reference 22/4210/CON. The cycle storage shall be retained thereafter in perpetuity and used for no purpose other than for the storage of cycles.

6. Within 6 months of the date of this decision refuse storage shall be provided in accordance with the details approved on 14/10/2022 pursuant to application reference 22/4210/CON. The refuse storage shall be retained thereafter in perpetuity and used for no purpose other than for the storage of refuse.
7. Within 6 months of the date of this decision all windows at first and second floor in the elevation of the development hereby permitted facing no. 36 St Marys Avenue shall be glazed with obscure glass only and shall be non-opening, save for a top hung fanlight opening. The windows shall be retained as such thereafter in perpetuity.
8. The parking spaces to the front of the development hereby permitted and access to them shall be retained in perpetuity and used only for the parking of vehicles associated with the development hereby permitted.
9. The planting to the front of the development hereby permitted, including the existing mature tree, shall be retained and any planting which is removed, dies, becomes severely damaged or diseased within five years of the date of this decision shall be replaced in the next planting season with trees or shrubs of appropriate size and species.
10. The flat roof elements of the development hereby permitted shall only be used for the repair and maintenance of the building and shall not at any time be used as a balcony, roof garden or similar amenity or sitting out area.
11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by Classes A to D of Part 1 of Article 3, Schedule 2 of that Order shall be undertaken.

Schedule of Conditions - Appeal B

1. The development hereby permitted shall begin not later than three years from the date of this permission.
2. The development hereby permitted shall be carried out in accordance with drawings numbered: 231-01 REV 05, 231-03 REV 10, 231-04 REV 06, 231-05 REV 08 and 231-33 REV 1.
3. The development hereby permitted shall be carried out in accordance with the 'Demolition and Construction Management and Logistics Plan' approved on 02/08/22 pursuant to application reference 22/3249/CON.
4. Demolition and construction works shall take place only between 8.00am to 6.00pm on Monday to Friday, 8.00 am to 1.00 pm on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

5. The materials used in the development hereby permitted shall accord with those approved on 14/10/2022 pursuant to application reference 22/4210/CON.
6. All levels of the development hereby permitted shall accord with the details approved on 02/05/2023 pursuant to application reference 23/0960/CON.
7. All of the water supplied by the mains water infrastructure to the development hereby permitted shall be provided through a water meter. The development hereby permitted shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) and Part G 2 of the Building Regulations 2010 to ensure that a maximum of 105 litres of water is consumed per person per day. The water supply and water saving and efficiency measures shall be retained thereafter in perpetuity.
8. The development hereby permitted shall be constructed incorporating carbon emission reduction measures which achieve an improvement in carbon emissions of a minimum of 10% when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the Building Regulations 2010. The carbon emission reduction measures shall be retained thereafter in perpetuity.
9. Notwithstanding the details in the drawings hereby approved, the development shall be constructed to meet and achieve all the relevant criteria of Part M4(2) of Schedule 1 to the Building Regulations 2010 (or the equivalent standard in such measure of accessibility and adaptability for house design which may replace that scheme in future). The development shall be retained as such thereafter in perpetuity.
10. Prior to the occupation of the development hereby permitted, cycle storage shall be provided in accordance with the details approved on 14/10/2022 pursuant to application reference 22/4210/CON. The cycle storage shall be retained thereafter in perpetuity and used for no purpose other than for the storage of cycles.
11. Prior to the occupation of the development hereby permitted refuse storage shall be provided in accordance with the details approved on 14/10/2022 pursuant to application reference 22/4210/CON. The refuse storage shall be retained thereafter in perpetuity and used for no purpose other than for the storage of refuse.
12. Prior to the occupation of the development hereby permitted all windows at first and second floor in the elevation facing no. 36 St Marys Avenue shall be glazed with obscure glass only and shall be non-opening, save for a top hung fanlight opening. The windows shall be retained as such thereafter in perpetuity.
13. Prior to the occupation of the development hereby permitted the parking spaces within the parking area and the access to the parking area from public highway shall be provided in accordance with the approved details shown on drawing number 231-01 REV 05. The access to the parking spaces shall be retained at all times. The parking spaces shall thereafter be used for no purpose other than for the parking of vehicles associated with the development hereby permitted.

14. Prior to the occupation of the development hereby permitted a scheme of hard and soft landscaping to the front forecourt area, including details of existing trees to be retained and size, species, planting heights, densities and positions of any soft landscaping, shall be submitted to and approved in writing by the Local Planning Authority.
15. All planting and work comprised in the approved scheme of hard and soft landscaping shall be carried out before the end of the first planting and seeding season following occupation or completion of the development, whichever is sooner; and any existing trees shown to be retained or trees or shrubs to be planted as part of the approved landscaping scheme which are removed, die, become severely damaged or diseased within five years of the completion of development shall be replaced in the next planting season with trees or shrubs of appropriate size and species.
16. The flat roof elements of the development hereby permitted shall only be used for the repair and maintenance of the building and shall not at any time be used as a balcony, roof garden or similar amenity or sitting out area.
17. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by Classes A to D of Part 1 of Article 3, Schedule 2 of that Order shall be undertaken.