



Appeal Decision

Site visit made on 25 March 2026

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 28th July 2026

Appeal Ref: APP/N5090/C/24/3356822

1 Stockton Gardens, London, NW7 3AB

- The appeal is made under Section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Marjan Delzendeh against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 24 October 2024.
- The breach of planning control as alleged in the notice is 'Without planning permission, the construction of a part single part two storey side and rear extension, a rear dormer roof extension, and the installation of 3 no air conditioning units on the side elevation of the property'.
- The requirements of the notice are
 1. Demolish the part single part two storey side and rear extension, rear dormer roof extension and 3 no air conditioning units on the side elevation of the property.
 2. Restore the property to the state it was shown in on the existing plan (Drawing number 2020/R/01/102 (Rev E)) from application 20/2679/HSE.
 3. Permanently remove from the property of all constituent materials resulting from the works in 1 above.
- The period for compliance with the requirements is 8 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (the Act)(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

Decision

1. It is directed that the enforcement notice is varied by:
 - Deleting requirement 3 in full and adding the following wording
 - 'OR as an alternative to demolition of the part single part two storey side and rear extension referred to in requirement 1
 - 3. Amend the appeal property to comply with the terms of planning permission (ref: 20/2679/HSE) dated 10 August 2020, including the conditions and limitations subject to which that permission was granted.
 - 4. Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice'.
2. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary Matters

3. Since the enforcement notice was issued, the Barnet Local Plan 2021-2036 (the Local Plan) was adopted by the Council in March 2025. This replaces the Barnet Local Plan (Core Strategy) 2012 and the Barnet Local Plan (Development Management Policies) 2012 which were referred to in the enforcement notice. I have therefore considered the relevant policies within the Local Plan which were initially provided in the Council's statement.

4. The Supplementary Planning Document Residential Design Guidance 2016 (SPD) was replaced with the Sustainable Design and Development Guidance SPD (2026) (SPD 2026) on the 16 June 2026. The parties were given an opportunity to comment upon its replacement and the Local Plan. Comments were received from the Council which addressed the differences between the two SPD documents. Whilst an SPD is not afforded the same weight as policy, it is nevertheless a useful tool in assessing development.
5. The Council has provided a list of a number of policies which are said to replace the superseded policies referred to in the enforcement notice. However, not all of those policies are relevant to this appeal. I will therefore refer to the most relevant policies together with the 2026 SPD in this decision.

Relevant Planning History

6. Planning permission was granted on 10 August 2020 (the 2020 planning permission) for part single part two storey rear and side extension subject to conditions¹.
7. A lawful development certificate (LDC) was granted on the 13 November 2020 for a roof extension involving hip to gable, rear dormer window with Juliette balcony and 2 no front facing roof lights².
8. Planning permission was refused on 12 September 2024³ for Single storey rear extension and installation of 3 no. air conditioning units to side elevation (Retrospective Application)³
9. The enforcement notice was issued after the refusal to grant retrospective planning permission for the single storey rear extension and 3 air conditioning units. In addition to those matters, the notice attacks the two storey side extension and a rear dormer.

The appeal under ground (a) and the deemed planning application (the DPA)

10. The main issues are:
 - (i) the effect of the development on the character and appearance of the appeal property and the surrounding area;
 - (ii) the effect of the part single part two storey side and rear extension on the living conditions of occupiers of 1A and 3 Stockton Gardens with particular regard to visual intrusion
 - (iii) the effect of the air conditioning units on the living conditions of neighbouring occupiers with particular regard to noise.

Reasons

11. Stockton Gardens is a short residential cul de sac which is made up of pairs of two storey semi-detached dwellings apart from a detached dwelling at No 1A. Whilst the semi-detached dwellings largely retain characteristic bay windows to the front at both ground and first floor levels, there are some differences in terms of roof styles and frontages. Some dwellings retain original integral garages at ground

¹ Ref 20/2679/HSE

² Ref 20/4771/192

³ Ref 24/2523/RCU

floor level whilst others have been converted to provide living space. Where side extensions are two storey, they are identifiable as extensions with either setbacks or different roof heights. The largely consistent design features along this tree lined street results in a pleasant character.

12. The appeal property is a two-storey semi-detached dwelling with No 3 being the adjoining property. No 3 retains its original features at the front with an integral garage and has a modest rear extension at the back. No 1A is to the other side of the appeal dwelling. The position of the appeal site close to the corner of the street means that the rear gardens of three properties on Hankins Lane back onto the side boundary of the appeal site. The appeal property therefore shares boundaries with five other dwellings.

(i) Character and appearance of the development

the part single part two storey side and rear extension

13. The Council's reason for issuing the notice refers to the size, siting and excessive rear projection. The single storey rear extension is around 5 metres deep, 9 metres wide with a maximum height of 3.2 metres. The extension also includes a wooden block canopy feature which extends beyond the rear wall of the extension itself adding bulk and additional depth. An aerial image dated 5 April 2020 shows that there was a rear extension prior to the development taking place which was roughly in line with the rear extension at No 3.
14. The rear extension is directly on the boundary with No 3 and is almost twice the depth of the previous extension. Its size is out of proportion with the original building and is also incongruous in relation to the adjoining semi-detached dwelling which has a modest extension.
15. The Council has no objection to the principle of a single storey element and a single storey extension existed before the development was carried out. The appellant has referred to the appeal rear extension having an additional 2 metres in comparison to what was approved in 2020 being a marginal increase. The 2020 planning permission did include extending across the rear but the appeal rear extension is not comparable particularly in terms of size to what is shown on the approved plan. The increase is not marginal particularly when the canopy block adds volume and bulk. The extent of the development to the rear would be visible from other properties particularly those properties which share boundaries with the appeal site.
16. Whilst the garden depth is around 20 metres, the size of the garden is not by itself a decisive factor in assessing the merits of the development. The SPD 2026 refers to a maximum depth of 3.5 metres from the original rear wall for rear extensions to semi-detached properties and the rear extension is at least 5 metres deep. The SPD 2016 also referred to a 3.5 metre guideline and that element of the guidance therefore remains unchanged. As part of the works at the side, the original roof element to the side has increased in height so that there is one continuous roof ridge line with no set down over the side extension. The thrust of the 2026 SPD is similar to the 2016 SPD in stating that extensions should be subordinate to the original dwelling with a set down.

17. The as-built two storey side extension with no set down unbalances the symmetry of the original pair of houses, which impacts adversely on the existing street scene of Stockton Gardens.
18. The appellant has stated that 21 Hankins Lane has a two storey extension therefore showing that a two storey extension reflects an established character of the area and sets a precedent for similar extensions. However, the principle of having a two storey extension at the appeal property is not disputed and the 2020 planning permission included a two storey extension. However, the appellant has not constructed what was approved under the 2020 planning permission and significantly the roof design is not the same and results in an extension which is not subordinate and policy compliant.
19. The two storey extension at Hankins Lane is not, in any event, comparable to the appeal extension as the roof line over the extension is set down at the front. It remains the case that each appeal has to be assessed on its own merits and particular circumstances. One dwelling of a different design in a different location does not establish a precedent or alter the established character of the area.
20. For the reasons given, the part single part two storey side and rear extension is not subordinate to the original appeal dwelling. It is therefore incongruous and out of keeping with the original dwelling and with the character and appearance of the area. I therefore find that the part single part two storey side extension and rear extension does harm the character and appearance of the appeal property and the surrounding area.

The rear dormer

21. The rear dormer is viewed in the context of an enlarged roof at the rear due to the extent of the development. It occupies at least two thirds of the extended roof.
22. The dormer has a modest set back from the eaves. The appellant refers to a marginal gap between the roof ridge and the roof of the dormer but no part of the ridge is now visible in views from the rear garden. The dormer is also located in close proximity to the roof of the adjoining semi -detached dwelling at No 3 which retains its original roof and has no rear dormer
23. Whilst any rear dormer at the appeal property would create some imbalance with No 3, the size, siting and height of the appeal dormer dominates the enlarged roof area of the appeal property and is incongruous next to the unaltered roof of No 3. The dormer is not a subordinate addition and the degree of set in from the roof of the adjoining property at No 3 is minimal. The scale, design and location of the dormer overwhelms the appeal property at roof level with its top heavy appearance. It significantly detracts from the character and appearance of the dwelling.
24. There are some changes in the 2026 SPD with regard to rear dormers with more simplified guidance. The 2026 SPD states that rear dormers should be inset from eaves, ridges and edges of the original roof by a minimum of 0.5 metres. Whilst the 2016 (SPD) referred to a 1 metre set in from the side of the adjoining property, the development still does not meet the less restrictive guidance.
25. The principle of a rear dormer at the appeal site is not in issue. An LDC was granted in 2020 which included a rear dormer with other works. The LDC was

granted as the combination of the hip to gable extension, two storey side extension and dormer window was just under the permitted development limit of 50 cubic metres for a semi-detached house. The LDC establishes that the works including the dormer would have been lawful if built in accordance with all of the approved details. However, the appeal dormer and the LDC dormer are not of the same design or size and the appeal dormer is not permitted development.

26. Whilst other dormers can be seen in the aerial photographs provided, I do not consider that the scale of the appeal dormer which dominates the enlarged roof forms part of the existing character of the area. Similarly, the presence of a rear dormer on Hankins Lane does not mean that the appeal dormer is acceptable. For the reasons given, I do find that the rear dormer does harm the character and appearance of the appeal property and the area.
27. I have found that the rear dormer and the part single part two storey side and rear extension do harm the character and appearance of the area and the appeal property. These elements of the development are therefore in conflict with Policies GSS01 and CDH01 of the Barnet Local Plan, Policy D3 of the London Plan 2021 and the SPD 2026. The policies, and guidance, seek to ensure that all new developments should be of a high design quality, which respect local character and setting.

Air conditioning units

28. Three air conditioning units are located on the side elevation of the two storey side extension above a plastic canopy which is over the two side doors at ground level. Standing on the pavement directly in front of the appeal site, when looking towards side access of the appeal property, there are views of the side of an air conditioning above the side door. However, as the appeal property has a generous frontage, public views would be very limited for people walking past the appeal property. I do therefore find that the air conditioning units do not cause harm to the character and appearance of the area or the appeal property.
 29. I have not found that the air conditioning units do harm the character and appearance of the appeal property or the appeal property. There is therefore no conflict with Policies GSS01 and CDH01 of the Barnet Local Plan and Policy D3 of the London Plan 2021
- (ii) the part single part two storey side and rear extension - living conditions – visual intrusion
30. The rear extension is directly along the boundary of the adjoining semi-detached property at No 3. Prior to the development taking place, there was a rear extension of a more modest design with less depth and without a canopy feature. Whilst there is a boundary fence between No 3 and the appeal property, the height of the fence does not screen the development due to the excessive depth of the extension and its bulk. The photographs⁴ provided by the appellant shows the extent to which the rear extension exceeds the height of the boundary fence as well as showing the bulk and scale of the wooden canopy element. The rear extension is visually intrusive and does therefore harm the living conditions of occupiers of No 3.

⁴ Pages 10 and 14 of Appendix B

31. To the other side of the appeal property, the detached garage of No 1A which has a pitched roof is located on the shared boundary. The new roof elements bring built development at the side of the appeal property closer to the shared boundary between the appeal property and No 1A. However, as the dwelling at No 1A is located beyond the single storey garage, I do not find that the development at the side does harm the living conditions of occupiers of No 1A with regard to visual intrusion.
32. I do therefore find harm from visual intrusion for occupiers of No 3 but not No 1A with regard to the part single part two storey side and rear extension. Accordingly, the rear extension part of the development conflicts with Policy D3 of the London Plan (2021) and Policies GSS01 and CDH01 of the Local Plan, insofar as they seek high quality sustainable development that provides a good standard of amenity for neighbouring occupiers.

(iii) Living conditions – air conditioning units - noise

33. The 3 air conditioning units are located in an elevated location in close proximity of the shared boundary with No1 A. The pitched roof of the detached garage of No 1A is to the other side of the boundary fence with a patio and garden area beyond the garage. The location of the air conditioning units is largely opposite the garden and patio.
34. Third party comments from nearby occupiers including Hankins Lane refer to noise emitting from the air conditioning units. Air conditioning units are more likely to be switched on in summer months when nearby occupiers will wish to use their outdoor space and have windows open.
35. It is for the appellant not the Council to provide the technical information to indicate that the air conditioning units which are located in a residential area are not harmful to nearby occupiers. When the 2024 planning refusal was issued, the Council's Scientific Officer set out in detail what was required in a noise impact assessment and it included all the units operating together at maximum capacity.
36. The appellant has submitted a Noise Impact Assessment as part of this appeal. The Assessment states that the units were not operating during the survey period. The noise data therefore relies upon a predicted rather than verified noise level. The conclusion is therefore based upon manufacturer's sound data without an assessment of what cumulative noise is generated when 3 units are in actual operation. The basis upon which tonal noise was discounted is not clear when third parties have referred to an audible humming noise.
37. Whilst the appellant's proposed mitigation is a condition requiring the installation of 3 separate acoustic enclosures, within 6 months, the issues of tonal noise and actual cumulative noise need to be addressed. On the evidence before me, I cannot be certain that the air conditioning units would not give rise to unacceptable noise impacts on nearby residential occupiers.
38. The air conditioning units are therefore in conflict with Policy EEC02 of the Local Plan which, amongst other things, refers to avoiding unacceptable noise levels.

Conclusion on ground (a) and planning balance

39. I have found that apart from the air conditioning units, the development does harm the character and appearance of the area and the appeal property. I have also

found harm to living conditions of nearby occupiers in respect of the air conditioning units with regard to noise and the rear extension with regard to visual intrusion. The development therefore conflicts with the development plan as a whole. I am mindful that the appellant will have incurred considerable expense in creating additional living space. However, there are no material considerations before me that justify making a decision other than in accordance with the development plan. I therefore conclude that the appeal on ground (a) and the application for deemed planning permission does not succeed.

The appeal under ground (f)

40. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, 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. An appeal under ground (f) is limited to consideration of whether the requirements of the notice exceed what is necessary having regard to the purpose of the notice.
41. The first requirement is to demolish all of the development. The second requirement is to restore the property to the state it was shown in on the existing plan (Drawing number 2020/R/01/102 (Rev E)). The drawing is an approved plan for the 2020 planning permission and shows both existing and proposed development. The purpose of the notice is therefore to remedy the breach of planning control.
42. The appellant considers that total demolition is excessive and that an alternative to total demolition is amending the existing development to comply with the 2020 planning permission. The 2020 planning permission does not include approval for either the rear dormer or the air conditioning units.
43. Remedying the breach of planning control does include making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land by discontinuing any use of the land or by restoring the land to its condition before the breach took place⁵.
44. If there is an extant planning permission, the breach of planning control could therefore also be resolved by the development being altered to comply with the terms and conditions of that planning permission. The Council's view is that the appellant did not provide any evidence to prove the said approved scheme was carried out within the three year time limit condition which is condition 2 of the 2020 planning permission.
45. However the issue is not whether or not the approved scheme was carried out but whether it was lawfully implemented. It is possible to commence a development for the purpose of Section 56 of the Act and thereby meet a deadline forming a condition of the permission, and then later to deviate from the planning permission in a manner that later becomes an enforcement issue, without retrospectively altering the fact that the commencement of the development had occurred for s56. Consideration then has to be given to whether the development commenced for section 56 purposes, what were the differences that then occurred and what is the significance of those differences.

⁵ Section 173(4) of the Act

46. The appellant indicates that the 2020 planning permission was lawfully implemented and substantially completed. A two storey side extension and single storey rear extension have been constructed although those elements have not been built in accordance with the approved plan. The Council in its delegated report states that the top roof of the constructed two storey side extension has not been built in accordance with the previous approved planning application 20/2679/HSE'. That statement contradicts the Council's position that the 2020 planning permission was not implemented.
47. The footprint of the development at the side as constructed appears to overlap with the footprint of the planning permission and there is therefore an element of development common to both the permission and the enforcement notice. The development as constructed has a larger ground floor footprint than that approved by the planning permission but the side extension is at the core of the development. The aerial photographs dated 30 March 2021 shows that work was carried out after the issue of the planning permission on 10 August 2020. The appellant carried out works following the grant of planning permission and the end result includes deviations from, and additions to, what was approved.
48. Nevertheless, as a matter of fact and degree, and exercising planning judgement, I do consider that the 2020 planning permission was implemented and the extent of any differences does not prevent altering the development to comply with that permission. Altering the development to comply with the 2020 planning permission and its conditions would still require the removal of the air conditioning units and the rear dormer as those elements of the development are not part of the approved plan.
49. Condition 1 of the 2020 planning permission requires the development to be carried out in accordance with the approved plans. Drawing number 2020/R/01/102 (Rev E) is the only approved plan which shows existing and proposed elevations and floors. Any amendments, additions or changes to that approved plan would require further planning applications and appropriate third party consultation.
50. Amending the development to comply with the 2020 planning permission would, as an alternative option to complete demolition, remedy the breach. It would also be less disruptive to neighbours as well as less costly for the appellant. I will add the alternative requirement to allow the development to be altered in accordance with the 2020 planning permission whilst making clear that the rear dormer and air conditioning units are not part of that permission. The ground (f) appeal therefore succeeds to that extent.

Conclusion

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

E Griffin

INSPECTOR