



# Appeal Decisions

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**Decision date:**  
27 November 2007

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## **Appeal A Ref: APP/X5210/X/07/2037640**

### **10 Chalcot Road, London NW1 8LH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr P Eden of Highcom Properties against the decision of the Council of the London Borough of Camden.
- The application Ref 2006/4177/P, dated 7 September 2006, was refused by notice dated 3 November 2006.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is alterations including erection of a mansard roof and a first floor rear extension, with second floor roof terrace.

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## **Appeal B Ref: APP/X5210/A/07/2037632**

### **10 Chalcot Road, London NW1 8LH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr P Eden of Highcom Properties against the decision of the Council of the London Borough of Camden.
- The application Ref 2006/4475/P, dated 25 September 2006, was refused by notice dated 24 November 2006.
- The development proposed is change of use including works of conversion into a single family dwelling including erection of a mansard roof and a first floor rear extension.

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## **Appeal C Ref: APP/X5210/A/07/2037633**

### **10 Chalcot Road, London NW1 8LH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr P Eden of Highcom Properties against the decision of the Council of the London Borough of Camden.
  - The application Ref 2006/4143/P, dated 7 September 2006, was refused by notice dated 3 November 2006.
  - The development proposed is change of use including works of conversion into a single family dwelling including erection of a mansard roof and a first floor rear extension, with second floor roof terrace.
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## **Decisions**

### ***Appeal A***

1. I dismiss the appeal.

### ***Appeal B***

2. I dismiss the appeal insofar as it relates to the first floor rear extension and refuse planning permission for its retention. I allow the appeal insofar as it relates to the conversion to a single family dwelling and construction of the mansard roof, and I grant planning permission for conversion to a single family dwelling and retention of a mansard roof at 10 Chalcot Road, London NW1 8LH in accordance with the terms of the application, Ref 2006/4475/P, dated 25 September 2006 and the plans submitted with it so far as relevant to that part of the development hereby permitted.

### ***Appeal C***

3. I dismiss the appeal insofar as it relates to the first floor rear extension and second floor roof terrace and refuse planning permission for their retention. I allow the appeal insofar as it relates to the conversion to a single family dwelling and construction of the mansard roof and I grant planning permission for conversion to a single family dwelling and retention of a mansard roof at 10 Chalcot Road, London NW1 8LH in accordance with the terms of the application, Ref 2006/4143/P, dated 7 September 2006 and the plans submitted with it so far as relevant to that part of the development hereby permitted.

## **Procedural Matters**

4. Although the applications subject of Appeals B and C refer to “proposed” development, it is understood by all concerned that what is sought is retrospective permission to retain the development which has already been carried out. The Council does not object to the conversion of the property to a single dwellinghouse or to the mansard roof, for which it has granted planning permission. I see no reason to take a different view. I shall determine these appeals on that basis, focusing on the planning merits of the first floor rear extension and the second floor roof terrace.

### **Appeal A: the LDC Appeal**

5. There appears to be no dispute that the mansard roof element of the development subject of this appeal has been constructed in accordance with planning permission 2004/1518/P granted on 16 June 2004, and that the change of use to a single family dwelling is in accordance with that permission. Moreover, in determining Appeals B and C on a split decision basis I have confirmed that position by granting further permissions for those elements of the development. In determining Appeal A, however, I have looked at the description of the development in the round, and do not intend to issue a LDC in respect of the conversion to single family dwelling and construction of the mansard roof. That causes no prejudice to the appellant.

6. The burden of proof rests with the appellant to show that construction of the first floor rear extension and the second floor roof terrace does not constitute a breach of planning control.
7. The situation with respect to the planning status of the works carried out to this property is confused. Planning permission was granted on 16 June 2004 by the Council for *"Change of use including works of conversion into a single family dwelling including erection of a mansard roof and a first floor rear extension, with second floor roof terrace. Drawing Nos: Site Plan, 743 PL 01 (Rev P2), 02 (Rev P4), 03 (Rev P4)"*. However, the intention was not to permit the first floor rear extension and second floor roof terrace, which are not shown on the drawings referred to in the permission. Those revised drawings had been submitted specifically to overcome the Council's concern about the adverse impact on residential amenity of the extension and roof terrace, as the then applicant was well aware. Nevertheless, as a result of error by the Council, on its face the permission appears to permit the first floor rear extension and second floor roof terrace.
8. Having said that, the developer also appears to have erred in relying on drawings shown on the Council's web site when carrying out the development. The drawings on the web site were the superseded drawings showing the first floor rear extension and second floor roof terrace, rather than the approved drawings referred to in the permission, from which latter drawings those elements of the proposal had been deleted. The Council draws attention to the disclaimer on the web site which warns users that the information provided is not guaranteed to be accurate, complete or up to date; and it is acknowledged by the appellant (at paragraph 3 of Richard Langham's Opinion) that the numbers of the plans on the Council's web site are not those specified in the planning permission.
9. In this unsatisfactory situation, where the wording of the permission and the drawings to which that permission specifically refers are inconsistent, I have to decide how the 2004 planning permission should be interpreted. In determining the appeal I have had regard to the legal opinion submitted by the appellant, and to the judgements referred to in that opinion. The opinion appears to be based, at least in part, on the premise that the 2004 planning permission is clear on its face and not ambiguous. I cannot accept that the permission is not ambiguous. The description of the development as including a first floor rear extension and second floor roof terrace is clearly at odds with the content of the amended drawings specifically referred to in the permission, in that the extension and roof terrace have been deleted from those approved drawings.
10. Reliance is placed on the judgement in *Dunfermline District Council v Secretary of State for Scotland [Court of Session: Inner House, Lord Hope (Lord President), Lords Brand and Dervaid, December 1989]* for the proposition that if a planning permission on its face permits alternative forms of development the developer has a choice as to which development is built. In that case the permission granted by the local planning authority approved two inconsistent plans, and it was held that the appellant had the right to choose which one to implement. Reference is also made to the judgement in *Polhill Garden Centre Ltd. v Secretary of State for the Environment & Sevenoaks DC [Q.B.D., Deputy Judge Spence, June 1998]*. I understand that it was held that it is not essential

for a planning permission to be accompanied by detailed plans of all aspects of the proposed development. In the case before me, however, the planning permission is accompanied by detailed plans, to which specific reference is made in the wording of the permission. For that reason I believe the present case can be distinguished from *Polhill Garden Centre Ltd.* However, so far as that judgement is concerned it was also held that, in construing a planning permission which was clear and unambiguous on its face, regard should be had only to the permission itself; but if there was an ambiguity it was permissible to look at extrinsic material. In this case I have already expressed my view that the 2004 permission is ambiguous on its face.

11. In my judgement *Dunfermline* can be distinguished from the appeal before me in that the 2004 planning permission relating to the present appeal site granted approval for only one set of specified drawings, rather than the two alternative drawings as in *Dunfermline*. Those specified drawings did not show the first floor rear extension nor the second floor roof terrace, which were thus not part of the approved scheme. It is also relevant that the approved revised drawings were deliberately submitted to overcome the Council's concern about the first floor rear extension and the second floor roof terrace. From the Council's Statement that should have been evident from an inspection of the application file (see paragraph 14 below).
12. I consider that, notwithstanding the reference in the permission to the first floor rear extension and second floor roof terrace, the permission granted is for the development as shown amended by the revised plans, because they are specifically mentioned in the words of the permission. They might in a sense be regarded as extrinsic material (of the kind referred to in *Polhill Garden Centre Ltd.*) which assists in construing an ambiguous planning permission. The first floor rear extension and second floor roof terrace do not, therefore, benefit from the 2004 permission.
13. To round matters off it is acknowledged by the appellant, and I agree, that the first floor rear extension and second floor roof terrace are not development permitted by The Town and Country Planning (General Permitted Development) Order 1995.
14. The appellant alleges that "*there are no revised plans available to see*". However, I see no good reason to doubt the Council's assertion that "*the approved plans are retained by the Council and form part of the application and indeed the statutory register of decisions. This file and all the relevant documents, including the decision notice, plans and delegated report are available.*"
15. For the reasons given above and having regard to all other matters raised, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of alterations including erection of a mansard roof and a first floor rear extension with second floor roof terrace was well-founded and that the appeal should fail. I shall exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

## **Appeal B**

### *Main Issue*

16. The main issue is the effect of the development on the level of amenity neighbours might reasonably expect to enjoy.

### *Reasons*

17. The two neighbouring properties, Nos. 9 and 11, are most directly affected by the development. No. 11 suffers potentially the greatest impact, given that the unauthorised works abut the common boundary, whereas they are set about 2 metres from the boundary with No. 9. My main concerns are the effect on outlook, lighting and privacy, and I shall consider these in turn.
18. The appeal property has a basement with a rear extension, over which a ground floor extension has been built. Adding the first floor extension has significantly increased the height and bulk of the rear extension as a whole. In my opinion that gives the extension an overbearing unneighbourly appearance when viewed from the neighbouring dwellings. That adds in a harmful manner to the already strong sense of enclosure arising from the restricted depth of private amenity space, the proximity of the Utopia Village buildings to the rear, and the relationship with the rear of the terrace at Nos. 1 to 13 Egbert Street. That is particularly the case in respect of the outlook from No. 11, given that the extension abuts the common boundary, and taking account also of the glass roof of the conservatory at No. 11 through which the height and mass of the extension must be visible.
19. In considering the matter of daylighting and sunlighting I have had regard to the report submitted by the appellant. I regard theoretical studies such as this to be indicative only, and feel that the perception of those affected by the development has also to be taken into account. In this case the occupants of No. 11 say they have no objection, but the occupants of No. 9 do object. From my inspection of the site it seems inevitable to me that the height and bulk of the first floor extension, together with its relationship to the adjoining dwellings, will have some adverse impact on lighting of those properties by deepening the light wells compared with the situation prior to the development taking place. That is borne out by the comments from the occupants of No. 9. The fact that the neighbours at No. 11 do not object indicates that subjectively they are more tolerant of the situation. What concerns me is the fact that the development will have a lasting impact on lighting, lowering the level of amenity future occupants of the neighbouring dwellings would enjoy. In reaching that view I have taken account of the fact that in this tightly developed location daylighting and sunlighting to the rear of the terrace were already significantly constrained before the development took place. To my mind that adds to the importance of avoiding development which would further impinge on lighting.
20. So far as privacy is concerned I doubt that the development gives rise to a significantly greater degree of overlooking than would have occurred in any event from upper floor windows. This is not a factor which weighs against the development.

21. On balance I consider the development has had a significant and unacceptable impact on residential amenity, in conflict with the London Borough of Camden Replacement Unitary Development Plan (RUDP) policy SD6.
22. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

### **Appeal C**

23. All my concerns in respect of the development subject of Appeal B apply with equal weight to this appeal. I would add that the railings around the roof terrace increase the overall height of the rear extension, adding marginally to its overbearing appearance.
24. There is, however, the additional matter of overlooking from the second floor roof terrace. I found there were clear views at short distance into rear windows of No. 11. Although the view into the nearest window is at an oblique angle, that angle is very small and it would be possible to see substantial parts of the interior. That might perhaps explain why the blinds to that window were closed at the time of my inspection. In my view there is a serious loss of privacy. There is also increased overlooking of the private rear amenity areas of neighbouring dwellings, over and above that arising from the presence of other roof terraces in the locality. My concerns about overlooking are borne out by the objection at application stage from occupants of No. 9. I note that the occupants of No. 11 do not object. Nevertheless, I consider that the development would cause long term diminution to an unacceptable degree to the level of amenity afforded to future occupants of that property. With the above points in mind I am surprised that the Council does not regard overlooking as a matter for concern. It has, however, been raised by others and I am, therefore, entitled to consider it as an issue.
25. On balance I find the development causes significant loss of residential amenity, in conflict with RUDP policy SD6, and is thereby unacceptable.
26. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

### **Other Matters in Respect of Appeals B and C**

27. The appellant submits that the circumstances surrounding the matters subject of Appeal A are material considerations to be taken into account in determination of Appeals B and C. I have had regard to those circumstances but, in the light of my conclusion and decision in respect of Appeal A, I give those circumstances little weight in respect of the two other appeals.
28. I have indicated above that I am aware of similar developments elsewhere in the locality. I have not, however, been able to make a close inspection, nor am I aware in every case of their planning status. In that situation I have determined the appeals before me on their own merits.

*Neil Roberts*

Inspector