
Appeal Decision

Site visit made on 14 September 2016

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 October 2016

Appeal Ref : APP/N5660/C/16/3142298

Land at 35A Cornwall Road, London, SE1 8TJ.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Milko Ostendorf against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The notice was issued on 3 December 2015.
- The breach of planning control as alleged in the notice is without planning permission, the installation of a louvred balustrade around the entire roof of the premises at third floor/roof level ('the unauthorised balustrade').
- The requirements of the notice are (a) remove the unauthorised balustrade from the premises or (b) alter the unauthorised balustrade to fully accord with the details approved in application reference 15/03899/DET; and (c) remove all associated waste and debris from the premises, resulting from compliance with above steps.
- The period for compliance with the requirements is two 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 as amended.

Summary of Decision: the appeal is dismissed and the enforcement notice upheld

Preliminary Matter

1. The appeal form indicated an appeal under ground (g) but it was confirmed by the Appellant in correspondence during the course of the appeal that ground (g) was not proceeding. I have determined the appeal accordingly.

Ground (a) appeal and deemed application

Main Issues

2. The main issues in the determination of this appeal are the effect of the development on (i) the character and appearance of the host property and surrounding area having regard to its location in a Conservation Area and (ii) the living conditions of occupiers of nearby properties with particular regard to outlook.

Character and appearance

3. The appeal site is a substantial 2/3 storey former industrial building that has been converted into residential use. The property faces a courtyard to the rear used for parking and access. It lies behind residential properties at 34-38 Cornwall Road and also adjoins 13 and 14/16 Theed Street.

4. The site falls within the Waterloo Conservation Area (the Conservation Area) and has been identified by the Council in its conservation area statement as making a positive contribution to the area. The Conservation Area is characterised by a mix of 19th and 20th century development of various architectural styles and land uses. The site is also near the Roupell Street Conservation Area which is comprised of denser small scale residential development.
5. The unauthorised development comprises a balustrade at roof level. It is made up of individual horizontal louvred panels between steel frames. It is located primarily around two decked areas. The decks have different level parapets and the roof of the larger north terrace sits higher than the roof of the smaller west terrace. The height of the balustrade as built exceeds 1.8m.
6. Planning permission ref 11/02392/FUL (the Permission) has been granted for an extension of existing single storey glazed sun room/study at third floor level to provide an enlarged sun room/study together with the formation of a roof terrace with a 1.8m high louvred screen/balustrade at the appeal site. To ensure that the balustrade is appropriate aesthetically and is adequate to prevent overlooking of neighbouring residential properties condition 3 of the Permission requires that further detailed drawings of the louvred balustrade be approved by the Council before any works commence on site and that development thereafter shall be in accordance with the approved details.
7. An application to discharge condition 3 of the Permission (reference 15/03899/DET) sought consent to retain the frame of the balustrade but to remove 6 of the individual louvred panels on the west terrace and 12 on the north terrace. This application was approved but the individual panels have not been removed. Planning permission has been refused for the development as built (reference 15/00041/DET).
8. The development plan (which includes the London Plan and the Lambeth Local Plan (the Local Plan)) mirrors the National Planning Policy Framework (the Framework) in emphasising the importance of protecting visual amenity and heritage assets, including conservation areas. Policy Q2 of the Local Plan states that development will be supported if certain criteria are met including not unacceptably compromising the visual amenity from adjoining sites and the public realm. Policy Q22 of the Local Plan requires that development affecting conservation areas will be permitted where it preserves or enhances the character or appearance of that area by respecting and reinforcing the established positive characteristic of the area and protecting its setting. I have taken into account as a material consideration the Building, Alterations and Extensions Supplementary Planning Document (the SPD).
9. The balustrade is partially but clearly visible from the street at the corner of Cornwall Road and Theed Street. It is visible from neighbouring residential properties in Cornwall Road as described in the representations of neighbours and the photographs and drawings before me and from the private commercial courtyard at no 13 Theed Street. It was clear to me from my site visit that the balustrade is a prominent visual feature. Its height creates a dominant appearance and gives the appearance of an additional storey. Similar balustrades are not characteristic of the area. By reason of its height it causes harm to the character and appearance of the host dwelling and the surrounding area. In giving special attention to the desirability of preserving and enhancing

the character and appearance of the Conservation Area I consider that the balustrade by reason of its height fails to preserve or enhance the character and appearance of the Conservation Area. It causes substantial harm to a designated heritage asset and no substantial public benefits outweigh that harm.

10. My attention is drawn to other properties nearby including the neighbouring flat roof extension and the roof extension in Exton Street granted on appeal. I do not have the full details of these other properties before me and I have determined this appeal on its particular facts. I do not find the prevalence of development similar to the balustrade the subject of this appeal so widespread as to be characteristic of the area.
11. The Appellant has been granted consent for the removal of 6 louvres on the west terrace and 12 louvres on the north terrace (as approved in application reference 15/03899/DET). The Appellant argues that this fallback position is more harmful in design terms than the development as built as it denudes the top part of the balustrade giving it an incongruous part finished and non-uniform appearance when viewed from the appeal site and insofar as it is visible from neighbouring properties. I disagree. The west and north terraces are viewed as separate from each other and the removal of different number of louvres from each would not read as incongruous but would address the identified harm. The development as carried out by reason of the increased height is more harmful to the character and appearance of the area than the fallback position.
12. For the reasons given I conclude that the development by reason of its height causes harm to the character and appearance of the host building and the surrounding area. It fails to preserve or enhance the character or appearance of the Conservation Area and does not accord with relevant development plan policies (including policy Q22 of the Local Plan) or the Framework.

Living conditions

13. Development plan policies including Policy Q2 of the Local Plan seek to protect the amenity of neighbours.
14. I note the representations of neighbours both for and against the development. From my site visit and the submitted photographs and drawings I consider that the height of the balustrade as built creates an undue sense of enclosure for occupiers of nearby properties in particular the residential properties in Cornwall Road. It creates an adverse outlook that harms their living conditions. The development as carried out is more harmful to the living conditions of neighbours with regard to outlook than the removal of louvres in accordance with permission reference 15/03899/DET.
15. For the reason given I conclude that the development causes harm to the living conditions of occupiers of nearby properties by reason of loss of outlook and fails to accord with relevant development plan policies (including policy Q2 of the Local Plan).

Other matters

16. The Council refers to the breach of planning control as intentional but the Appellant says that a genuine error led to the installation exceeding 1.8 metres. There is insufficient evidence before me to cast doubt on the

Appellant's version of events. I note the Appellant's comments about the structural integrity of the balustrade and the cost of replacement but these matters do not lead me to alter my conclusions on the main issues.

17. Some neighbours object to use of the sun roof and raise matters other than the height of the balustrade. But this appeal concerns only the balustrade and therefore I have not taken into account these other matters. Similarly, concerns expressed about the use of the roof terrace are not for me to comment on.

Conclusion on ground (a) and the deemed application

18. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. No conditions are suggested by either party and I do not consider that any could overcome the identified harm. For the reasons given I conclude that the appeal under ground (a) should not succeed and that planning permission should not be granted.

Ground (f) appeal

19. This ground of appeal is whether having regard to the purpose for which the notice was issued, the steps exceed what is necessary to meet that purpose.
20. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy any breach of planning control which has occurred. The second is to remedy any injury to amenity which has been caused by the breach.
21. The notice provides for removal of the balustrade or compliance with permission reference 15/03899/DET. It seems clear to me that its purpose therefore includes remedying the injury to amenity.
22. The Appellant argues that compliance with 15/03899/DET is excessive. He suggests a lesser step of removal of the minimum number of louvres (and not more than 6 on any part of the roof) in order to maintain as far as possible the design integrity of the structure and that the louvres that provide screening from no 13 Theed Street should be retained to preserve the Appellant's amenity. But I do not consider that this option would adequately remedy the injury to amenity caused by the breach of planning control. The removal of 6 louvres as opposed to 12 louvres on the north terrace would not remedy the identified harm by reason of its height and I consider that compliance with 15/03899/DET adequately addresses the potential for overlooking in relation to no 13 Theed Street. I conclude that the proposed lesser steps would not fully remedy the injury to amenity and therefore not meet the purpose of the notice.
23. Consequently, the appeal on ground (f) fails.

Formal Decision

24. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector