
Appeal Decision

Site visit made on 28 November 2016

by R J Perrins MA MCMI Arbor TechArborA

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

Decision date: 14 December 2016

Appeal Ref: APP/N5660/C/16/3152272
29 Gubyon Avenue, London SE24 0DU

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 Gary Cady against an enforcement notice issued by the Council of the London Borough of Lambeth.

The enforcement notice, numbered 13/00435/3DEV, was issued on 3 May 2016.

The breach of planning control as alleged in the notice is without planning permission, the erection of timber decking and steps ("the unauthorised decking and steps") on the roof of the rear ground-floor extension to facilitate the use of the flat roof as a first floor rear roof terrace.

The requirements of the notice are:

- a) Remove the unauthorised decking and steps from the roof of the ground floor extension at the premises.
- b) Remove all associated waste and debris from the premises resulting from compliance with above step.

The period for compliance with the requirements is two months.

The appeal is proceeding on the grounds set out in section 174(2), (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. 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.

The appeal on ground (c)

2. The appeal on this ground is that there has been no breach of planning control in respect of the steps embraced by the notice. The appellant sets out that the works are not a material alteration and the steps replaced an existing set which were referred to an appeal decision in 2001 for *proposed railings on flat roof to extension* (ref:APP/N5660/A/01/1071454). In addition the steps did not form part of the deliberations of the Inspector in the more recent appeal for a certificate of lawfulness for a *flat roof* dated 25 March 2015 (ref:APP/N5660/X/14/2217466) and which found the roof covering subject of the enforcement notice not to be permitted development.
 3. I accept that the steps did not form part of the most recent Inspector's considerations and that there were steps in situ in 2001. However, there is no record of what the previous steps looked like and, if they were a replacement, whether the current steps have resulted in a material alteration to the external appearance of the property as defined in Section 55 of the Act.
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4. Moreover it seems to me, as the steps sit on top of the existing cladding, that they were likely to have been part of the works carried out to the roof as a whole and which the appellant considers to have been maintenance. In addition, my colleague in 2015 set out that there was a gap of some two and a half years between the removal of old wooden tiles and replacement with the cladding we see today. It seems reasonable to find, on the balance of probability, and without evidence to the contrary, that removal and replacement of the steps would have followed a similar pattern. Thus, as there is nothing before me to suggest there was not a significant period prior to their erection when no steps existed, as a matter of fact and degree, the steps would have resulted in a material alteration.
5. For these reasons the appeal on ground (c) fails

The appeal on ground (a)

6. I consider the main issues in this case to be the effect of the development on the living conditions of occupiers of adjoining properties by way of overlooking and loss of privacy and the effect on the character and appearance of the dwelling and locality.
7. Turning to the first issue, and whilst some time has passed since the appeal in 2001, the considerations remain the same. The aims of Lambeth Local Plan (2015) Policy Q2 seek, amongst other things, development which provides acceptable standards of privacy. There can be no dispute, as found by the Inspector in 2001, and as I saw from my site visit that the current development allows clear views into habitable rooms of the adjoining properties resulting in unacceptable harm to occupiers of those properties contrary to Policy Q2.
8. I accept there are no longer railings (as considered in 2001) however, I must temper the weight I give to the appellant's assertion that he has not used or intends to use the roof as a terrace. I say that given a number of representations from local residents suggest it has been used by the appellant and his family. Whilst those statements have not been tested they nevertheless weigh in the balance and, whilst the appellant asserts he will not use the roof in the future, I have to consider all future occupiers of the property in any event.
9. Regarding that latter point, I accept that the Inspector, in the appeal example provided by the appellant (ref: APP/N1160/A/14/2212318), restricted the use of a roof. However I do not have details of that development but it seems wholly unlikely it would be comparable to that being considered here. The roof in this case is clad in decking that one normally associates with gardens and is readily accessible even without the steps. It seems to me, given the available space and elevated views to the south-west, that it would be a very attractive proposition for any occupier of the property to have to avoid. The example planning condition cited restricts the use of a roof where it is not clear what access was to be provided or what the finish of the roof would be. I am not therefore convinced that a condition would prevent the use of this particular roof in the future.
10. The second issue concerns the appearance of the development and I accept that the appellant sought to improve the appearance of the rear extension and that the previous timber treatment well may have been unsightly. In addition

the site is not a conservation area, the property is not listed and ground floor extensions are not uncommon in the locality.

11. However, the appellant accepts the timber cladding is not a traditional roof treatment and it can be seen from the street; during my site visit I was able to see the cladding on the extension when stood on the pavement outside 1 Sharcroft Avenue. From that vantage point, and undoubtedly when views are taken from surrounding properties, the cladding more akin to areas of decking, is an odd addition to the more traditional architectural features found at first floor level in the locality. It is an incongruous addition to the extension which leads the viewer to question how it came to be and has led to unacceptable harm to the character and appearance of the host property and locality.
12. I understand concerns about what the roof may look like underneath the cladding but again there is no evidence to suggest that what is there would be more unsightly. For these reasons I find the development is also at odds with Policies Q7 and Q11 of the Local Plan which seek, amongst other things, quality design which respects the character of the area.

The appeal on ground (f)

13. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified seek to achieve the restoration of the land to its condition before the breach took place.
14. In my view the requirements are entirely appropriate to achieve the objective of restoring the land to its condition before the breach took place and there are no lesser steps that could be taken to achieve that objective. I conclude that no good reason is advanced by the appellant as to why the requirements of the Notice exceed what is necessary to restore the land to its condition before the breach took place and, for the reasons explained above, this is the limited scope of a ground (f) appeal in a case such as this. Further, the appellant relies on their ground (c) case in respect of the steps yet that has failed and no alternative lesser steps have been suggested by the appellant. This ground of appeal must therefore fail.

The appeal on ground (g)

15. It is claimed that 4 months are needed to comply with the notice and for the appellant to secure the services of a builder. However, I do not consider the works required to be complex in nature and I find that two months would be sufficient. Should any new circumstances be explained to the Council they have the powers under s173A(1)(b) to extend the compliance period whether or not the notice has taken effect.
16. Thus the appeal on ground (g) also fails.

Richard Perrins

Inspector