
Appeal Decisions

Site visit made on 16 January 2017

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 13 February 2017

Appeal A: APP/H5390/C/16/3147128

74 Netherwood Road, London W14 0BG

- 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 R Weston against an enforcement notice issued by the Council of the London Borough of Hammersmith & Fulham.
 - The enforcement notice was issued on 11 February 2016.
 - The Council's reference is 2015/01065/TERRAC.
 - The breach of planning control as alleged in the notice is the installation of French doors to the rear elevation at first floor level and erection of 1.1m high black metal railings around the flat roof at first floor level, in connection with its use as a roof terrace.
 - The requirements of the notice are a) cease the use of the flat roof at first floor level as a roof terrace, b) remove the French doors and reinstate the window in the rear elevation at first floor level and c) remove the metal railings surrounding the flat roof at first floor level.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a)&(f) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/H5390/W/16/3147126

74 Netherwood Road, London W14 0BG

- 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 R Weston against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2015/04886/FUL, dated 15 October 2015, was refused by notice dated 11 December 2015.
 - The development proposed is installation of a door and erection of railings and screen to proposed roof terrace.
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Procedural Matters

1. The development in the enforcement appeal is similar to that in the planning appeal, apart from the provision of the glazed screen.

Decision

Appeal A

2. The appeal 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 as amended for the development already carried out, namely the installation of French doors to the rear elevation at first floor level and erection of 1.1m high black metal railings around the flat roof at

first floor level, in connection with its use as a roof terrace on land at 74 Netherwood Road, London W14 0BG referred to in the notice, subject to the conditions in Annex A.

Appeal B

3. The appeal is allowed and planning permission is granted for a door and erection of railings and screen to proposed roof terrace on land at 74 Netherwood Road, London W14 0BG in accordance with the terms of the application, Ref 2015/04886/FUL, dated 15 October 2015, and the plans submitted with it (P586/03, 04 & 05), subject to the conditions in Annex A.

Reasons

Ground (a)

Main Issues

4. The main issues are:
 - The effect on the living conditions on neighbouring occupiers, in particular in respect of privacy, outlook, noise and disturbance.
 - The effect on the character and appearance of the surrounding area.
5. The development plan includes the Local Development Framework Core Strategy [CS] and Development Management Local Plan [DMD].
6. CS Policy BE1 requires all development to create a high quality urban environment that respects and enhances its townscape context. It should respect the scale and pattern of the existing development. DMD Policy DMH9 notes that noise impacts from development will be controlled by various measures, including controlling location and preventing noise generating development if it would be liable to materially increase the noise experience of occupiers of existing sensitive users in the area.
7. DMD Policy DMG3 requires a high standard of design in all alterations and extensions. These should be successfully integrated into the architectural design of the existing buildings. DMD Policy DMA9 aims to ensure development is of a high standard and that includes conversions.
8. Also relevant is SPD Housing Policy 8. This notes that that the proximity of new buildings or extensions to an existing building can have an overbearing and dominating effect detrimental to the enjoyment of adjoining residential occupier of their properties. A 45 degree angle is used as a basis for consideration of the impact. If any part of the proposed building would extend beyond these lines then on-site judgement will be a determining factor in assessing the impact on existing amenities of neighbouring properties. Planning permission will not be granted for roof terraces or balconies if the use of the terrace is likely to cause harm to the existing amenities of neighbouring occupiers by reason of noise and disturbance.

Living Conditions

9. Balconies are relatively common in the area, with many of the properties opposite, the modern flats adjacent and some of the older buildings further along the terrace having balconies. These properties are back to back with

quite a narrow space between the rears of the properties and while the height and size of the balconies varies, they all enable overlooking between properties and into gardens. The net effect is that there can be limited expectation of privacy or no overlooking when using the properties, their balconies or outside spaces.

10. The addition of the balcony in this location would add to the potential for overlooking of the other balconies and outside spaces, but to my mind the additional impact in terms of the effect on overlooking and privacy would be minimal and not sufficient to justify refusal of the development proposed.
11. The balcony is also near to the balcony of the adjacent property, where relatively modern flats have been constructed. As the balcony projects out beyond the end of the party wall it is possible to look from the appeal balcony onto the adjacent balcony and through the windows behind. This is at relatively close quarters and would be unacceptable in terms of the neighbours' expectation of privacy. However, a glazed screen is proposed for the end of the balcony and this would prevent overlooking and make the impact on privacy acceptable.
12. As noted below in character and appearance, because of the difference in height of floor levels, the impact of the glazed screen would be limited as its height in relation to the adjacent balcony would not be great, so would not have an unacceptable impact in terms of outlook from the adjacent flat or its balcony.
13. I acknowledge there will be some noise generated by the users of the balcony, but this would be no more than would be expected from the other balconies or from the balcony of the next door modern flats. The noise from that balcony might be heard from the room adjacent, particularly in summer months when balcony use is more likely and windows could be open. In my view there must be some expectation of noise from neighbouring gardens and properties and the fact that there is some does not make the use of the garden or balcony unacceptable or harmful. I do not consider that the proposal would be unacceptable in terms on noise and disturbance. While there is no screen in the enforcement appeal, given that this is proceeding with the planning appeal, I consider that there would be no prejudice in adding conditions associated with provision of a screen to the enforcement appeal. The development accords with DMD Policy H9 and SPD Housing Policy 8.

Character and Appearance

14. As noted above balconies are a characteristic of the area and the introduction of this balcony would not be inconsistent or out of place with those adjacent or opposite. There is at least one other with glass balustrading, although it did not appear to be of the height proposed here. Although the screen would be about 1800mm above the balcony level, part of it is located over a dwarf wall and in relation to the neighbouring balcony the base would be considerably lower, because of the differences in floor level. This means that relatively the top of the glazed screen would not be of a great height in relation to the balcony level of the balcony on the immediately adjacent flat.
15. The screen is also set back a little in relation to the rear-most wall of the outshot to the flat and would not have a great impact in terms of the views along the back of the building from the adjacent street. Overall the impact on

character and appearance from the surrounding area or impact from the adjacent flat would not be sufficient to warrant refusal of the development. The development accords with CS Policy BE1 and DMD Policy DMG3 and DMA9 and SPD Housing Policy 8.

16. The appeal building is not in Conservation Area 36, but is adjacent to it; the boundary runs approximately along the back of the properties to the rear. The significance and special interest of the conservation area relates to the building design and layout of streets in the area. The proposed development although visible from other properties would not be out of place or a discordant feature and would not have an unacceptable impact in relation to views out of the conservation area and would not have a material effect on it when considered as a whole.
17. I conclude overall that the appeal development would be acceptable in terms of the living conditions of neighbouring occupiers and the character and appearance of the surrounding area. The appeals are therefore allowed.

Ground (f)

18. As I have found that planning permission should be granted for the development I need not consider the appeal under ground (f).

Conditions

19. The development is nearly complete so the need for conditions is limited. I consider that it is necessary in the interest of the neighbours' amenity and the character and appearance of the surrounding area that details of the materials and detailed design of the proposed screen are submitted to the local authority for written approval. It is also necessary to have a condition requiring removal of the balcony etc. should the screen not be provided, in the interests of the amenity of neighbouring occupiers.

Graham Dudley

Inspector

Annex A

Conditions

1. Prior to the construction of the proposed screen, details of it, including design and materials shall be submitted to, and approved in writing by, the local planning authority in accordance with the timetable in condition 2. The screen shall be constructed in accordance with the approved details and thereafter retained in position.
2. The development hereby permitted shall cease and the French doors, balcony, railings and deck removed, the window reinstated and materials brought onto the land for the purposes of the use and materials resulting from the demolition shall be removed within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:-
 - i) within 2 month of the date of this decision a scheme for the screen shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii) if within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made, by the Secretary of State.
 - iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.