



Appeal Decision

Site visit made on 18 January 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 28 February 2017

Appeal Ref: APP/C5690/C/16/3154799

Land and premises at roof level 282 Lewisham High Street London SE13 6JZ

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Alliance Financial Consultants Ltd against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice was issued on 12 May 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the carrying out of the following development at the Premises;
 - (a) the construction of a roof extension to the rear roof slope as shown on Photograph A, attached to the enforcement notice
 - (b) the construction of additional brick courses and coping stone to the parapet wall with number 280 Lewisham High Street, as shown on Photographs A and B, attached to the enforcement notice
 - (c) the construction of additional brick courses and coping stone to the parapet wall situated on the flat roof above the rear wall of the second floor rear addition, as shown on Photograph A, attached to the enforcement notice
 - (d) the construction of additional brick courses and coping stone to the parapet wall situated on the flat roof of the second floor rear addition, as shown on Photograph C, attached to the enforcement notice
 - The requirements of the notice are:
 1. Remove the roof extension from the rear roof slope of the Premises as shown on Photograph A, attached to the enforcement notice
 2. Reinstate the rear roof slope to its former appearance by;
 - a. reinstating the pitched roof slope to the rear of the Premises and
 - b. reinstating the interlocking concrete tiles to the rear roof slope to match the tiles on the front slope of the Premises
 3. Remove the additional brick courses and coping stone from the parapet wall with number 280 Lewisham High Street to restore the wall to its former height
 4. Remove the additional brick courses and coping stone from the parapet wall situated on the flat roof above the rear wall of the second floor rear addition as shown on the Photograph A, attached to the enforcement notice, to restore the wall to its former height
 5. Remove the additional brick courses and coping stone from the parapet wall situated on the flat roof of the second floor rear addition, as shown on Photograph C, attached to the enforcement notice, to restore the wall to its former height
 6. Make good all damage to the premises resulting from compliance with requirements 1-5 above
 7. Remove all materials, debris, waste and equipment resulting from compliance with requirements 1-6 above
 - The period for compliance with the requirements is 6 months.
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- The appeal is proceeding on the grounds set out in s174(2)(a), (e), (f) and (g) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

1. The appeal is allowed insofar as it relates to the construction of a roof extension to the rear roof slope as shown on Photograph A attached to the enforcement notice and planning permission is granted on the application deemed to have been made under s177(5) of the Act for the construction of a roof extension to the rear roof slope as shown on Photograph A attached to the enforcement notice.

The appeal is dismissed and the enforcement notice is upheld insofar as it relates to:

- i. the construction of additional brick courses and coping stone to the parapet wall with number 280 Lewisham High Street, as shown on Photographs A and B, attached to the enforcement notice;
- ii. the construction of additional brick courses and coping stone to the parapet wall situated on the flat roof above the rear wall of the second floor rear addition, as shown on Photograph A attached to the enforcement notice; and
- iii. the construction of additional brick courses and coping stone to the parapet wall situated on the flat roof of the second floor rear addition, as shown on Photograph C, attached to the enforcement notice.

Planning permission is refused in respect of the said additional brick courses and coping stone to the parapet walls on the application deemed to have been made under s177(5) of the Act.

Preliminary matter

2. Reference has been made to the conversion of the roof space to living accommodation, rooflights and to the use of the associated flat A. However, the allegation in the enforcement notice concerns only operational development comprising the roof extension and increase in height of the parapet walls which surround the flat roof. The notice does not allege any material change of use or any other operational works. The scope of this appeal is limited to the matters set out in the allegation.

The appeal on ground (e)

3. Under ground (e)¹ it is argued that the occupiers of the ground floor commercial unit at the premises were not served with a copy of the notice and, thus, that the notice was not correctly served. However, the land to which the enforcement notice relates, as set out in paragraph 2 of the notice, is defined as that part of the premises "at roof level". The ground floor part of the accommodation is not at roof level.
4. As the land is described in this way, and taking into account that the Act provides the option for enforcement action in respect of only a part of a

¹ An appeal on ground (e) under s174(2) of the Act is that copies of the enforcement notice were not served as required by s172.

building², I cannot see why there would have been a need to serve the ground floor occupiers with a copy of the notice.

5. In any event, under s176(5) of the Act I may disregard non-service provided that the appellant and the person concerned have not been substantially prejudiced by any failure to serve the notice correctly. No evidence has been brought to indicate that there has been substantial prejudice. I shall, therefore, disregard this alleged failure in service. The appeal on ground (e) fails.

The appeal on ground (a)

Planning policies

6. Of the development plan policies to which I have been referred I consider those particularly relevant to the issues in this appeal are Lewisham Core Strategy Policy 15, and Development Management Local Plan Policies DM30 and DM31 as set out in the enforcement notice. Taken together these policies seek to achieve development of high design standards which has a positive relationship with the townscape and which protects amenity including in terms of privacy.
7. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise.³
8. Reference has been made to the National Planning Policy Framework [hereafter "the Framework"] which sets out the Government's planning policies for England and how it expects these to be applied at local level. Section 7 is concerned with requiring good design which contributes positively to making places better for people. The Framework is a material consideration in this appeal.
9. Core Strategy Policy 15 pre-dates the Framework but is in general conformity with it. Policies DM30 and DM31 post-date and are in conformity with the Framework.

Main issues

10. Having regard to the planning policies, statutory requirement and submissions made by the parties I consider the main issues in the appeal on ground (a) and the deemed application to be:
 - i. Effect of the roof extension and raised parapet walls upon the visual amenity of the area; and
 - ii. Effect of the development upon the living conditions of neighbours with particular regard to noise and privacy.

Effect upon the visual amenity of the area – the roof extension

11. The roof extension can just be seen in views from the street where the rear access lane meets Whitburn Road. Other views are from the access lane, private land and gardens and the windows of some of the surrounding properties. The roofscape of the terrace has an assortment of roof slopes and

² In the interpretation given at s336 of the Act the term "land" includes (amongst other things) a building and "building" includes (amongst other things) any part of a building.

³ S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

flat roofs. Chimneys, parapets and firewalls are within the mix together with some dormer windows being evident in the surroundings.

12. The roof extension takes the form of a dormer. It is of modest proportions, clad in matching tiles and subservient in scale to the main roof. At its third floor level, and sitting well back into the roof, behind the protruding flat roof and parapet, the roof extension is quite inconspicuous. Even with the parapet returned to its original lower height the roof extension would not be a particularly dominant feature and, in most views, would be seen only in part and would still be partly obscured by the (lowered) parapet walls.
13. The roof extension has a door rather than a window that would normally be found in a dormer. However, the opening is not disproportionate to the deep window form of the rear elevation generally and, sitting behind the parapet, the opening is not perceived as a doorway in most views. Although positioned off-centre, using the firewall as its side elevation in part and rising from eaves level the roof extension is not incongruous in its context. It integrates well and simply appears as part of the blend of the mixed roof form.
14. I consider, on balance, that the roof extension has an acceptable effect upon the visual amenity of the area and does not offend the policies of the development plan.

Effect upon the character and appearance of the area – increase in height of the parapet walls

15. The parapet walls with additional brick courses surround the flat roof of the rear three storey wing. Whilst seen in the same range of views as the roof extension, these works are far more prominent on this protruding part of the building.
16. Co-joined with the rear wing to the neighbouring property (number 280) this projecting element to the rear of the terrace has a sense of symmetry, with one side mirroring the other divided by a chimney. Within that symmetry the parapets surrounding the flat roofs to both sides would have been a strong architectural feature.
17. In their altered form, with additional courses of brickwork, the subject parapets appear discordant and detract from the symmetry and architectural integrity of the projecting rear element. I take into account that they are constructed in matching stock brick. However in terms of their height and mass, and when having regard to their visual prominence, I consider on balance that the works have a harmful effect upon the visual amenity of the area, contrary to the policies of the development plan.

Effect upon the living conditions of neighbours with particular regard to noise and privacy

18. The roof extension with doorway opening and additional brick courses to the parapet walls facilitate the use of the flat roof area as a terrace for the occupants of flat A. Any additional noise ordinarily arising from the use of this outdoor amenity space would not be dissimilar to that which might arise in residential gardens. It would not, in my view, be unreasonable to allow such use when having regard to the likely effects of noise.

19. In terms of privacy, when standing on the terrace the eye is drawn outwards towards the wider open views to the west. Views towards the properties on Whitburn Road and their gardens are at a steep and unnatural angle. When taking into account the distance of the terrace from these properties and gardens, and that there are already facing windows in the rear elevation, I do not consider that the roof terrace will affect the level of privacy enjoyed by the occupiers of the Whitburn Road properties to any unreasonable extent. Neither do I find any conflict with the development plan in this regard.

Other matters

20. The site is located close to, although outside, St Mary's Conservation Area. I am mindful that development, even if outside a conservation area, can in some cases have an effect upon its character and appearance.⁴ The conservation area, at this part, is characterised by tightly packed three and four storey terraces which front Lewisham High Street, many of which are period properties with impressive front façades. However, the appeal development is unseen from the frontage of Lewisham High Street.
21. The conservation area boundary encompasses number 286 (former Castle Inn) which is closely positioned (although not adjacent) to the appeal property. However, the significance of number 286 to the conservation area mainly rests upon the quality and detailing of its front elevation and its contribution to the street scene. Its rear elevation, which is seen together with the appeal development, is much less prominent and of less architectural merit. Taking all these matters into account, together with the relatively modest scale of the appeal development and that the rear elevation of number 286 is likely itself to be altered by a rear extension, stairs and roof terrace⁵, I consider that the appeal development will have a neutral effect, and will therefore preserve, the character and appearance of the nearby conservation area.
22. There are two grade II listed buildings within the vicinity of the appeal site, those being the former Temperance Billiard Hall and the United Reformed Church. There is a statutory duty upon me to have special regard to the desirability of preserving the settings of these listed buildings.⁶
23. There is no intervisibility between the Temperance Billiard Hall and the appeal development. I do not regard the appeal development to be within its setting.
24. In respect of the United Reformed Church, its spire can be seen rising behind the roof of the appeal property when viewed from the terrace. However, at these close quarters the development is not perceived as being within the setting of the Church. In most other views from the street and surroundings the development and the Church are not seen together except that the tip of the spire can be just seen above the roof in some views. In these

⁴ S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. It imposes a statutory duty on the decision maker to apply this test when considering development proposals within a conservation area. In this case the appeal development is outside of the conservation area so the statutory duty does not apply directly. However, the interests of preserving or enhancing the character or appearance of the conservation area are material considerations.

⁵ Planning permission has been conditionally granted, on appeal, for a rear extension at first floor level to provide a one bedroom self-contained flat, together with the formation of stairs and roof terrace at number 286 (appeal decision APP/C5690/W/16/3148084).

⁶ S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory requirement upon the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting.

circumstances, I do not regard the appeal development to be within the setting of the Church but, if it is, its effect is neutral and it therefore preserves the setting of this listed building.

25. These other matters weigh neither in favour nor against the development. They are not determinate matters for the appeal.

Conditions

26. The appellant has suggested a condition to limit the use of the terrace to use as a refuge in the event of fire. Alternatively, the appellant suggests a condition could be imposed to require the installation of railings in front of the door to prevent access. These conditions are intended to prevent the use of the terrace as an outdoor amenity space with the living conditions of neighbours in mind. However, I have found no unreasonable effect to living conditions arising and therefore consider such conditions to be unnecessary.

27. I acknowledge that the removal of the additional brick courses to the parapet walls will have safety and other implications for the use of the terrace. However, these are matters for the landlord and tenant and not ones which I need to address through conditions.

28. There are no other conditions that have been put forward by either party and none which I consider necessary in respect of the part of the deemed application which I intend to grant.

Conclusions on ground (a) and the deemed application

29. In respect of the raising in height of the parapet walls, I find harm to the visually amenity of the area. However, in respect of the roof extension (which is a distinct operation and severable from the raising in height of the parapet walls) I find the development to be acceptable. Therefore, I conclude on ground (a) that the appeal should fail in respect of the parapet walls but should succeed in respect of the roof extension. The deemed application shall be determined accordingly.

The appeal on ground (f)

30. Under s180 of the Act where, after the service of a copy of an enforcement notice, permission is granted the notice will cease to have effect so far as inconsistent with that permission. Therefore, as I intend to grant permission for the roof extension, there is no need for me to consider under ground (f) the requirements of the notice insofar as they relate to the roof extension.
31. With regard to the raising in height of the parapet walls specifically, there are no lesser steps put forward for me to consider. The steps requiring removal of the additional brick courses and coping, and restoration of the walls to their former height, flow directly from the allegation. These are the steps necessary to remedy the breach, that being the purpose of the enforcement notice. The steps do no more than achieve that purpose.
32. The appellant suggests that a condition could be imposed to restrict the use of the terrace and that the requirements to remove the works go further than necessary to overcome the harm. I have already addressed this matter under ground (a) and have found a condition to be unnecessary insofar as effect upon

the living conditions of neighbours is concerned. The harm to the visual amenity of the area, however, would not be overcome by the imposition of the suggested condition(s).

33. I have considered in the round whether there is any obvious alternative to the complete removal of the parapet works. However, there is none that I can identify. The appeal on ground (f) fails.

The appeal on ground (g)

34. On ground (g) it is argued that the works will have a direct impact upon the occupiers of flat A and the tenancy agreement. A period of 15 months is suggested.
35. The removal of the roof extension would have caused considerable disruption for the tenant(s) of flat A and would have had implications for the internal arrangements and the use of the property thereafter. However, I intend to grant permission for the roof extension.
36. The remaining works to remove the added brickwork and restore the parapet walls to their former height will cause much less disruption, if any, to the day to day living activities of the tenant(s). It may still be necessary to make changes to the tenancy agreement concerning rights for the usage of the area as a terrace. I acknowledge that a longer time period would be helpful to the appellant and tenant(s) in this regard.
37. On the other hand, I must take into account the wider public interests which are best served by timely compliance with the notice to remedy the identified harm. I consider that the 6 month period specified in the notice for the re-instatement of the parapet walls to their former height strikes an appropriate balance between these conflicting public and private interests without placing a disproportionate burden upon the appellant and occupier(s).
38. I find that a variation of the time period is unjustified. The appeal on ground (g) fails.

Conclusion

39. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant permission for one part of the matter the subject of the enforcement notice, but otherwise I shall uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission by virtue of s180 of the Act.

Susan Wraith

Inspector