



Appeal Decision

Site visit made on 30 August 2017

by Pete Drew BSc (Hons) DipTP (Dist) MRTPI

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

Decision date: 4 September 2017

Appeal Ref: APP/V5570/C/17/3174225

Flat 3, 62 Westbourne Road, Islington, London N7 8AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 [hereinafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Patrick Brannelly against an enforcement notice issued by the Council of the London Borough of Islington.
 - The enforcement notice was issued on 23 March 2017.
 - The breach of planning control as alleged in the notice is: Without planning permission the retention of a roof terrace, associated balustrade, decking and external spiral staircase.
 - The requirements of the notice are: 1) Carefully remove the unauthorised balustrade, decking, metal spiral staircase and all associated roof terrace paraphernalia and furniture, without further damage to the fabric of the building. 2) Reinstate the roof to its condition immediately prior to the breach, as per drawing numbers WST-P101, WST-P102 and WST-E101 (*enclosed with the notice*). 3) Permanently remove from the Premises all waste material and debris resulting from stages 1 and 2 above.
 - The period for compliance with the requirements is: Four (4) months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) of the Act.
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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 Act.

Preliminary matters

2. At the same time as dealing with this appeal I have been appointed to deal with appeals in respect of similar development at 58 Westbourne Road¹. The Council's statement in connection with those appeals appends a copy of an appeal decision² that relates to this appeal site. It would appear that an appeal against the refusal of a planning application for the same development that is the subject of this notice was dismissed in a decision dated 14 June 2017.
3. The answer to the question in section H of this enforcement appeal form says that there were no other appeals for this site which have not yet been decided, but it would appear that answer was incorrect on the date³ that the form was received. It would appear to be this is why the section 78 appeal proceeded separately to the section 174 appeal that is the subject of this decision, which is ultimately why 2 different Inspectors have visited in close succession.

¹ Appeal Refs: APP/V5570/C/17/3174229 and APP/V5570/W/17/3174228.

² Appeal Ref: APP/V5570/W/17/3172419.

³ The enforcement appeal was received by The Planning Inspectorate on 21/04/2017, but the section 78 appeal form had already been received on 24/03/2017.

Ground (a): Planning merits of development

Main issue

4. The main issue is the effect of the development on the character and appearance of the host building, the wider terrace and the surrounding area.

Planning policy

5. The Development Plan [DP] includes the London Plan [LP], which the Appellant has referred to, Islington's Core Strategy [CS] and Islington's Local Plan: Development Management Policies [DMP], which were adopted in March 2016, February 2011 and June 2013, respectively. The CS pre-dates the National Planning Policy Framework ["the Framework"] and so relevant policies including CS8, CS9, CS10 and CS15, some of which are relied on by the Appellant, fall to be assessed against paragraph 215 of the Framework. However the Appellant has offered no reason why these policies are inconsistent with the Framework and, as such, I attach them significant weight in the deemed application.
6. The Urban Design Guide was adopted by the Council as a Supplementary Planning Document [SPD] in January 2017. Part 1 of the SPD confirms that it was subject to consultation and contains a cross-reference to relevant DP Policies, such as DMP Policy DM2.1A. Having regard to the definition of SPD in Annex 2 of the Framework it is appropriate to attach it significant weight.

Reasons

7. In dismissing the appeal following a review of the development on its merits, Inspector Mulloy identified a conflict with LP Policy 7.4⁴, CS Policies CS8 and CS9, DMP Policy DM2.1 and the SPD. An Inspector is appointed in the shoes of the Secretary of State and the absence of submissions since the date of that decision gives me no grounds to reach a contrary view. Although I have noted the reference to LP Policies 7.2 and 7.6, CS Policies CS10 and CS15, and DMP Policy DM3.5, it has not been explained how these assist the Appellant's case⁵. In the circumstances I find a conflict with the DP taken as a whole.
8. I have reviewed the Appellant's statement to ascertain whether there are any material considerations that indicate the development should be determined otherwise than in accordance with the DP. The first is the existence of roof terraces at Nos 48, 50, 52, 54 and 58 Westbourne Road. Inspector Mulloy records, in paragraph 8, that none of them benefits from planning permission. This appears to be true but, with the exception of No 58, the Council admits that they were substantially completed more than 4-years ago and so are immune from enforcement action. It is unclear whether Lawful Development Certificates [LDCs] have been granted, but based on the Council's unqualified statement if applications for LDCs were submitted they would likely be granted. In short the roof terraces at Nos 48, 50, 52 and 54 appear to be lawful⁶.
9. Inspector Mulloy found that the existing roof terraces were disruptive to the continuity of the terrace. When seen from the front, including Vulcan Way⁷, and the rear, including Hides Street and Lough Road, I agree. It is material

⁴ This policy is not cited on the face of the enforcement notice but there is no reason for me to disagree.

⁵ The Council say the latter, DMP Policy DM3.5, is not relevant to the appeal. Criterion A establishes that the policy relates to new residential development and conversions; the supporting text, for example at paragraph 3.65, is consistent with that view. Even if I am wrong and the other criteria should be applied to the development subject of this appeal, criterion B emphasises the issue of design and Inspector Mulloy found a conflict with this aspect of the SPD. Accordingly I consider that reliance on the policy does not assist the Appellant's case.

⁶ Based on the Council's admission and having regard to the definition of lawful in section 191(2) of the Act.

⁷ Further along what is referred to as "an access road situated opposite" in the Appellant's Appendix 3.0.

that when exiting Paradise Park via the tarmacadam path onto Lough Road, to the north-east of the appeal site, Nos 58 and 62 are seen as somewhat detached from the roof terraces at Nos 48, 50, 52 and 54 due to the way in which the vegetation frames the view. So whilst I have no reason to think that the roof terraces at Nos 48, 50, 52 and 54 are not lawful, I am unconvinced that they have changed the established character of the terrace or the area. For these reasons I attach only moderate weight to this consideration.

10. The second factor is that what the Appellant calls the disjointed unsymmetrical rear façade is not the focal point or outlook for other residential units or high amenity outdoor recreational areas. However Inspector Mulloy, in paragraph 5, found the rear elevation of the terrace makes a significant contribution to the character and appearance of the area. Contrary to the Appellant's assertion, the rear façade does provide the outlook for some dwellings in Hides Street. In my view Paradise Park is a high amenity outdoor recreational area, which has a number of park benches in the immediate vicinity of the aforementioned tarmacadam path entrance. As such I attach very limited weight to this factor.
11. The third factor is reference to a planning permission for a roof terrace that appears to have been granted at 22 Hyde Park Gate in 2011⁸. However I have very few details of the development that was permitted beyond an indication that the decking and railings were at first floor level. On this basis the Council says that it is not considered to be similar as the context, in this case what is effectively a fourth floor roof terrace, is completely different; I agree. For this reason I attach very limited weight to this material consideration.
12. The fourth factor is a statement of support from a local resident. I acknowledge that there is a degree of subjectivity in considering the effect of development on the character and appearance of an area, but for the reasons outlined above I cannot agree that the development enhances its character and appearance. The Council's policies are adopted after consultation with local residents and do permit changes, for example where they make a positive contribution to the local character and distinctiveness of an area, based upon an understanding and evaluation of its defining characteristics⁹. Whilst I appreciate that the development has made the resident feel safer, I consider that it is appropriate to reinstate the roof form that was recently permitted by the Council¹⁰. For these reasons I attach only limited weight to the statement of support.
13. The Appellant has offered mitigation measures that could be delivered by the imposition of planning conditions. These include i) painting the wooden balustrade and spiral staircase black; and ii) offering landscaping or "*greenery*" on the roof terrace. However Inspector Mulloy's concerns, with which I concur, include that the roof terrace, by virtue of extending significantly above the roof line of the mansard roof, is a bulky addition, that its design and materials contrast starkly with the host property and that the spiral staircase adds to visual clutter. In reaching that view she plainly took account of the yellow spiral staircase. It inevitably follows that superficial works, such as painting or landscaping, could not address this harm. In any event there would appear to be very limited scope for planting on this relatively exposed roof terrace and the inclusion of greenery would disrupt the rhythm and unity of the terrace.

⁸ The reference is PP/11/02018, which appears to have been submitted if not granted in 2011.

⁹ Taken from DMP Policy DM2.1A.

¹⁰ Pursuant to planning permission P2014/0340/FUL.

14. The Appellant's submission does not demonstrate that outdoor private amenity areas are in general encouraged by planning policy and guidance. Although I have noted the qualified support for roof terraces in paragraph 5.171 of the SPD, in this case the visual incongruity outweighs the benefits for occupiers. Inspector Mulloy weighed in the balance the benefits to occupants, including providing access to an outdoor amenity space, but found that this would not outweigh the harm; I agree.
15. On the main issue I conclude that the development harms the character and appearance of the host building, the wider terrace and the surrounding area. There are no material considerations that, individually or cumulatively, outweigh the identified conflict with LP Policy 7.4, CS Policies CS8 and CS9, DMP Policy DM2.1 and the SPD.

Conclusion on Ground (a)

16. For the above reasons, having regard to all other matters raised, I conclude that the ground (a) appeal, the deemed planning application, should fail.

Overall conclusion

17. For the reasons given, and having regard to all other matters raised, I conclude that the appeal should be dismissed and I shall uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Pete Drew

INSPECTOR