



Appeal Decision

Site visit made on 11 July 2019

by Andrew Dale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 August 2019

Appeal Ref: APP/Y5420/C/18/3209542

14 Bishops Road, London N6 4HP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Zafiro Homes (Bishops Road) Limited against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 16 July 2018 under ref. UNW/2018/00139.
 - The breach of planning control as alleged in the notice is: *"Without planning permission, the erection of a roof terrace"*.
 - The requirements of the notice are to:
 - "1. Remove the balustrades and any other enclosing structure fixed to the flat roof, parapet wall in their entirety;*
 - 2. Permanently disable the door leading on to the roof terrace;*
 - 3. Remove all resultant debris"*.
 - The period for compliance with these requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the text *"erection of a roof terrace"* in paragraph 3, replacing it with the text *"installation of glazed balustrades 1.1 m high and a door to facilitate the creation of a roof terrace at first floor level."* Subject to that correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background and matters of clarification

2. No. 14 Bishops Road is a recently constructed, 2-storey over basement, detached house for which planning permission was granted in June 2015 (ref. HGY/2014/3128) and November 2015 (ref. HGY/2015/2910). The appeal site lies within the Highgate Conservation Area.
3. The matter in dispute is a first floor rear roof terrace. It has a parapet wall 0.46 m high around its outer edges. Fixed to that wall are glazed balustrades 1.1 m high. Planter boxes have been placed on the rear edge of the wall. There is a further planter box on the surface of the roof terrace itself. The roof terrace is accessed from a door off a first floor bedroom.

4. As well as visiting the appeal site, I was able to view the rear of the appeal property from 11A Bloomfield Road.

The enforcement notice

5. The notice is directed against alleged operational development, namely the erection of a roof terrace. On a general point, the appellant questions the validity of the notice on the basis that the alleged breach and the requirements do not relate to one another. The allegation is not wholly incorrect or uncertain but in order to achieve a closer match with the requirements, it could have been put more accurately as "*The installation of glazed balustrades 1.1 m high and a door to facilitate the creation of a roof terrace at first floor level.*" I can correct paragraph 3 of the notice accordingly without causing any injustice to the parties. There has been no suggestion that the planter boxes are attacked by any part of the notice, especially since they are not fixed to the parapet wall or flat roof as such.

The appeal on ground (b)

6. This ground of appeal is that the breach of planning control alleged has not occurred as a matter of fact. The onus is on the appellant to make out the case on the balance of probability.
7. Whether the glazed balustrades or door giving access to the roof terrace were authorised by the planning permission issued in November 2015 or by the discharge of details pursuant to that permission is more relevant to the appeal on ground (c).
8. The issue for ground (b) is simply whether the roof terrace has been erected at all. The appellant says that a roof terrace has not been erected at the appeal site and the notice does not require the removal of any such terrace or balcony. In addition, it is claimed that the erection of the glazed balustrades and the doorway opening do not amount to the erection of a roof terrace. It is the Council's view that the roof terrace has been constructed by the enclosing of the flat roof with balustrades and the fitting of a door leading on to the roof.
9. Any reasonable observer standing on the surface of the flat roof is likely to reach the view that he or she is standing on a roof terrace. The Council's view is therefore to be preferred, although as I pointed out in paragraph 5 above the allegation should have been put more accurately, so that the works which have facilitated the creation of the roof terrace and are referred to in the requirements of the notice are actually included within the breach of planning control alleged. To the extent that a roof terrace has been provided, the appeal on ground (b) fails.

The appeal on ground (c)

10. In appealing on ground (c), the onus is on the appellant to demonstrate on the balance of probability that the matter stated in the enforcement notice, when it occurred, did not amount to a breach of planning control.

11. The key question raised by the written representations is whether the roof terrace which has been created falls within the terms of the planning permission which has been implemented. There appears to be no dispute that planning permission ref. HGY/2015/2910 is the one that has been implemented. This permitted a new list of drawing numbers – nos 15 BHL PL01 (drawing 1) and 15 BHL PL02 (drawing 2) – as a variation to condition 2 of planning permission ref. HGY/2014/3128.
12. Whilst for planning permission ref. HGY/2015/2910 neither the planning application form nor the covering letter submitted with it mentioned a roof terrace, it is a fact that the development had to be carried out in accordance with drawings 1 and 2 by virtue of condition 2 on the face of the decision notice. Without a further rider in that condition, it is not possible to pick and choose what parts of the plans should be or should not be built out as shown. It would not have been possible for the planning permission to give a complete, self-contained description of every component of the approved development. Readers of the decision notice would realise it was incomplete, even useless, without the approved plans.
13. On drawing 1, the subject roof terrace area is described simply as “*Flat Roof*”. Read with the “*Finishes Legend*” (FL), the low parapet wall with “*Facing Brick*” topped by “*Stone coping*” can be identified. The single light opening in the rear elevation of “*Bed 1*” is labelled “8” on the FL, that being “*Powder coated metal double glazed windows*”. This single light window cannot be construed as a doorway opening by reference to the first floor plan or to the rear elevation drawing. To be the doorway as constructed, 3 things would have needed to be shown on drawing 1: a vertical frame in the centre of the opening dividing it into 2 separate lights; an indication (behind the parapet wall) by annotation or some other means that the frame extended down to the level of the roof surface; and a doorway swing angle on the first floor plan. As it is, there is nothing to distinguish it from the ground floor “*Study*” window in the front elevation.
14. On drawing 2, the only relevant item I can see is the description of the same subject roof terrace area as a “*Paved balcony*”. Planning conditions were evidently discharged with this same description on the plans. The landscaping plan stated that the paving would be “*Indian sandstone*”. The indication in a letter dated 29 December 2015 from the appellant’s architect that the balustrades would be of “*Frameless clear glass*” (re condition 3 on building materials) is of little consequence as there is no evidence that planning permission exists for them. In particular, no indication is provided on drawings 1 and 2 as to where or at what height the balustrades would be erected.
15. The appellant correctly notes that the use of the flat roof or paved balcony in connection with the use of the property as a dwelling house does not amount to development requiring planning permission. The use of the planning unit is as a dwelling house and no material change of use would occur. The use of the roof has not been limited by condition. However, the enforcement notice is not directed at a material change of use.
16. It is the door and the glazed balustrades 1.1 m high, acting as guard rails, around the perimeter of the roof which actually facilitate the active use of

the roof as an outdoor amenity area including right up to its edges. Without those 2 operational developments, the roof surface, like many flat roof surfaces above ground floor bays or wings, would be very unlikely to be put to such use. I have found that neither of those operational developments fell within the terms of the relevant planning permission.

17. The appellant acknowledges in the rebuttal statement that the erection of the balustrades comprises development. I see no reason to disagree. They could not have been permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) given condition 11 of the relevant planning permission withdrawing permitted development rights. In any event, since the development that has taken place has facilitated or included the provision of a raised platform or balcony, they would not have been permitted by the limitation at paragraph B.1 (e) (i) of Class B, Part 1, Schedule 2 of the GPDO.
18. Permitted development rights cannot apply to new development where doors are inserted as part of the initial construction contrary to the details shown on the approved plans. The doorway opening giving access to the roof area is contrary to the terms of the planning permission, namely the approved plans and condition 2. This is in breach of planning control. There is no evidence before me that the approved window was first installed in accordance with the plans and then subsequently replaced by the doorway.
19. I should add that the roof terrace that has been provided constitutes a single physical entity. The installation of the door and the 1.1 m high balustrades were integral components of the works carried out in order to create the roof terrace. In the light of this, the question of whether there has been a breach of planning control applies to the scheme as a whole. Even if one element of the scheme did not constitute development for any reason, it would not be appropriate to consider one of its constituent parts in isolation.
20. Having taken into account all other matters raised, I see nothing to deflect from my finding on the balance of probability that the matter alleged in the enforcement notice constitutes development for which there is no grant of planning permission through the GPDO or otherwise. The matter so alleged therefore constitutes a breach of planning control. I conclude that the appeal on ground (c) should not succeed.

The appeal on ground (a) and the deemed planning application

21. Reading the reasons given in the enforcement notice for its issue, the main issue for consideration is the effect of the development that has taken place upon the amenity of nearby occupiers, with particular reference to overlooking, perceived overlooking and privacy.
22. Determinations are to be made in accordance with the development plan unless material considerations indicate otherwise. The most relevant development plan policy is Policy DM1: Delivering High Quality Design of the Development Management Development Plan Document (DPD). Part D of that policy seeks to ensure a high standard of privacy and amenity for

the development's users and neighbours. The National Planning Policy Framework (the Framework) was updated in July 2018 and February 2019, but the revisions made on each occasion have no real or material bearing on the main issue that arises in this particular appeal. DPD Policy DM1 accords with the Framework.

23. The roof terrace has a usable floor space of about 5.9 sq. m. The balustrades have clear glass and are no higher than 1.1 m above the surface of the terrace. The basic constraints are that there is a compact pattern of development hereabouts and the roof terrace is sited very close to the rear and southern side boundaries of the land. I saw that users of the terrace would have direct and intrusive views towards the rear gardens and rear-facing windows of 11 and 11A Bloomfield Road and down into the rear garden of 12 Bishops Road, all from only a very short distance away. This gives rise to serious harm and clear conflict with DPD Policy DM1 since the development adversely affects the amenity of nearby occupiers in respect of loss of privacy, overlooking and perceived overlooking. The development has not therefore delivered high quality design in this regard.
24. Views would be possible from the approved first floor rear bedroom window (in Bed 1) but the relationship to neighbouring private gardens and windows would be far less overt. Conversely, the presence of a person or a small group of people on this raised terrace might well be intimidating and compromise the reasonable use and enjoyment of the neighbouring areas I have identified in paragraph 23 above. Moreover, given the rather cramped layout of other private outdoor areas at the appeal property, the roof terrace could be used on a daily basis, possibly for long periods, especially during the warmer months of the year which is likely to coincide with when the neighbouring residents are also going to be enjoying their rear gardens. People standing upon the terrace will be very obvious to the neighbouring residents which will also increase the sense of being overlooked.
25. The planter boxes and the vegetation within them did not really ameliorate the views I identified at my site inspection and even if they did, it is rather risky to rely on vegetation as a screening feature over the long term.
26. The appellant asserts that there is a fallback whereby the roof terrace would continue to be used even if the glazed balustrades are removed. It is said that these were put up to safeguard the amenity of neighbouring occupiers and that their removal would serve only to increase the degree of overlooking. I am not convinced by these arguments. The primary purpose of the balustrades is to provide a guard rail or safety feature for users of the roof terrace. Owing to their limited height and clear glazed design, they do nothing to prevent views towards other properties. If the balustrades were removed and the door disabled as required by the notice, there would be little or no prospect of the roof area being used as an outdoor terrace.
27. Even if the doorway opening was altered so as to be entirely in accordance with the single light window shown on the approved plans, there would still be little prospect of the roof area being used, however that window was

designed to be opened. If the appellant was to rely on planter boxes all the way around the edges of the roof terrace, instead of the glazed balustrades, then the Council would need to form a view as to whether or not such an arrangement amounted to development.

28. The parties have considered the possibility of privacy screens being added around the roof terrace. The Council suggests that such screens would need to be 1.8 m high and the appellant has suggested that they could be formed of obscure glazing. No detailed scheme has been submitted or benefits from planning permission. The only available option is for a condition to be imposed on a grant of planning permission for the development requiring the implementation of an agreed scheme for privacy screens in place of the 1.1 m high glazed balustrades.
29. I am reluctant to follow this approach for the following reasons. In procedural terms, this alternative option would have the same effect as granting planning permission for development (for instance, 1.8 m high privacy screens) that is not, and is not part of, the development enforced against. In fact, it could replace part of the development enforced against. Furthermore, third parties could be deprived of an opportunity to comment upon what would be a significantly altered and larger development. In substantive terms, the new privacy screens could raise various planning considerations and impacts depending on what was proposed. These could include the character and appearance of the building and the conservation area, perceived overlooking, the visual impact on neighbours and the outlook from the host bedroom itself. If the main parties can see a way forward, then this should be pursued through a fresh planning application.
30. On the main issue I conclude that the development that has taken place harms the amenity of nearby occupiers by reason of overlooking, perceived overlooking and loss of privacy, in conflict with the development plan.
31. The only substantive reason for the issue of the notice is the effect on neighbours, which is reflected in the main issue I have identified. The Council's statement of case and planning enforcement notice delegated report allege that the unauthorised development fails to preserve the character and appearance of the conservation area. Unfortunately, for the most part the Council seems to conflate this issue with the one relating to overlooking and loss of privacy.
32. The balustrades and doorway do not impinge on the local street scene. The height of the balustrades is relatively modest. Their simple, clear glazed design complements the modern design of the host property such that they do not look incongruous or unduly strident. The doorway is innocuous in visual terms. I also noted the glazed balustrades on the front elevation of Siddel Court a short distance away on the opposite side of Bishops Road. I would not go so far as to say that the development has enhanced the conservation area, but I find its effect has been essentially neutral. As such, the character and appearance of the conservation area has been preserved. Just as the conservation area was not included as a reason for the issue of the notice, so I find it is not a sound reason to dismiss this appeal.

33. Drawing these threads together, my finding on the main issue determines the outcome of the ground (a) appeal. The imposition of planning conditions was not found to be the correct way forward. There is conflict with the development plan and I find no material considerations of sufficient weight to justify a grant of planning permission. I conclude that the appeal on ground (a) should fail and that planning permission should not be granted on the deemed planning application.

The appeal on ground (f)

34. This ground allows arguments to be put that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by the breach.

35. I have already corrected the notice to ensure that the breach more closely reflects the requirements.

36. The Council indicates in paragraph 6.30 of its statement that the notice's requirements are not excessive and are specific to addressing the harm caused by the roof terrace. This, added to the manner in which the Council has prepared the enforcement notice, including the formulation of its requirements, indicates to me that its primary purpose is to remedy the injury to amenity caused by the breach.

37. A requirement to remove the balustrades is reasonable and not excessive in pursuance of the notice's purpose. The door was in breach of the relevant planning permission. Requiring it to be disabled (put out of action) is not excessive and is a lesser step than requiring it to be changed to a window in accordance with that planning permission. This requirement does not take away an element of the lawful permission for the site. The appellant remains at liberty to install the permitted window because that in itself would also disable the door by different means. This option does not need to be specifically included in the notice. A requirement to remove the floor tiles over the flat roof cannot be imposed at this stage as the appellant would be left in a worse position than if he had not appealed.

38. The appellant did not suggest any obvious lesser steps on ground (f). I considered the matter of the alternative privacy screen, which may need to be 1.8 m high to be fully effective, on ground (a). Such a new and alternative development could be the subject of a planning application which would be determined by the Council in the first instance. The appeal on ground (f) cannot be used to bring about a deemed planning application for such a new and alternative development. Upholding the enforcement notice would not prevent the appellant from entering into discussions with the Council about the way forward. The appeal on ground (f) fails.

Andrew Dale

INSPECTOR