

Appeal Decision

Site visit made on 21 August 2019

by John Whalley

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

Decision date: 28 August 2019

Appeal ref: APP/T5150/C/18/3215445
15c Malvern Road, London NW6 5PS

- The appeal is made by Mrs Chrissie Hynde under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Brent Council.
- The notice was issued on 26 September 2018 under reference No. E/18/0274.
- The breach of planning control was, Without planning permission, the erection of roof terraces at the highest roof level and to the top outrigger/rear projection of the premises.
- The requirements of the notice are:
 - STEP 1 Remove the railings and flooring materials from the terraces at the highest roof level and the outrigger/rear projection and remove these materials from the premises.
 - STEP 2 Remove all other items, fixtures and fittings associated with the terraces from the premises.
 - STEP 3 Restore the premises back to its original condition before the unauthorised development took place in accordance with the pre-existing plans Ex105, PEx104, PEx106 as attached to the notice.
- The period for compliance with the requirements is 3 months.
- The appeal was made on ground (a). Since the 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.

Summary of decision: The enforcement notice is quashed. Planning permission is granted to retain the roof terraces.

Appeal development

1. The appeal concerns separate roof terraces that have been built onto the main roof and to a lower part of the roof at the rear of the building at No.15 Malvern Road, London NW6 5PS.

The appeal on ground (a)

2. The appeal on ground (a) is a deemed application for planning permission for the retention of those matters described in the breach of planning control allegation set out in the enforcement notice. That is, an application to retain the roof terraces as built.

3. There are 2 appeal terraces. The higher terrace has been built on the roof of the mansard roof extension set back on top of the 3 floor terrace property, No. 15 Malvern Road. The second terrace, which provides another sitting out area to the flat 15c, is at the rear of the building, one floor level down. The top of the steel safety railing to the front of the higher terrace can just be seen from street level, mostly from Chippenham Gardens to the east.
4. In their objections to the retention of the roof terraces, the Council referred to the policy background contained in the National Planning Policy Framework (2012), the London Plan (2016) and their own Core Strategy (2010). They particularly referred to the Development Management Policy 2016 DMP1 – and to policy SPD2 of their Residential Extensions and Alterations Design Guide (2018). The Council said the roof terraces, because of their bulk and siting, failed to respect the character and appearance of the host property and the wider terrace. They were inconsistent with policy DMP1; over dominant additions that disrupted the rhythm of the row of buildings. There was an acknowledged need for amenity space. But the Council said that use should not cause loss of residential amenity to nearby residents.
5. In my view, the acceptability or otherwise of the appeal roof terraces depends upon 2 considerations. That is, their effect on the appearance of the building at No. 15 Malvern Road in the street scene and of their use on the amenity of neighbours.

Effect on street scene

6. The row of properties that includes No. 15 Malvern Road are characterised by their retail shops at street level, with, originally, 2 residential floors above. Several in the row, including No. 15, have an added mansard roof extension. As most of the mansard roof extensions have been set back from the front façade, they are not unduly intrusive in the street scene. Those at Nos. 19 and 23 are, however, somewhat dominant. The more notable intrusion in the street scene is that caused by the roof terrace and its extensive safety railings that have been added to the mansard roof extension at No. 23 Malvern Road and which are closer to the façade of the building. The railings to the upper appeal roof terrace are, in comparison, far less visible from public viewpoints. That terrace is set back some way from the façade of No. 15. The result is that the front railings are shielded to views from Malvern Road, the top of the front railings being seen only from further way in Chippenham Gardens and, to an even lesser extent, from Stuart Road. In my view, any adverse effect on the Malvern Road street scene caused by the construction of the appeal upper terrace at No. 15 is minimal and acceptable.
7. The rear roof terrace at No. 15 is not visible from public viewpoints. It can be seen from some of the dwellings in Malvern Mews in the private road at the rear of Malvern Road properties. But the lower appeal terrace is well provided with screening vegetation and has no objectionable effect on the appearance of the rear of No. 15.

Overlooking

8. Opportunities for overlooking any private or residential properties from the two appeal roof terraces are limited. I consider they cause no undue problems. Any overlooking from the higher roof terrace to private amenity areas is limited and distant. The views obtainable from the rear terrace are

the only ones that might give rise to overlooking that could impinge on the amenity of nearby residents. Any opportunity of overlooking towards the frontage of housing in Malvern Mews is effectively prevented by plant screening. I note that the occupier of No. 14 Malvern Mews raised some concerns about the possibility of overlooking. But there was support from the next door neighbour. My conclusion is that use of the 2 appeal roof terraces is unlikely to give rise to any unacceptable harm to nearby residential amenity.

9. For the reasons given above, I conclude that the appeal should succeed on ground (a). Planning permission is granted for the retention of the two appeal roof terraces.

FORMAL DECISION

10. The appeal on ground (a) 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 erection of roof terraces at the highest roof level and to the top outrigger/rear projection of the premises at No.15 Malvern Road, London NW6 5PS referred to in the notice.

John Whalley

INSPECTOR