
Appeal Decisions

Site visit made on 1 October 2019

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2019

Appeal A Ref: APP/Y5420/W/18/3218769

Flat B, 110 Mattison Road, Hornsey, London N4 1BE

- 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 George Pyrkos against the decision of the Council of the London Borough of Haringey.
 - The application Ref HGY/2018/2967, dated 19 September 2018, was refused by a notice dated 4 December 2018.
 - The development proposed is described as new terrace and screening.
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Appeal B Ref: APP/Y5420/C/18/3218834

Land and building(s) known as 110 Mattison Road, Hornsey, London N4 1BE

- 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 George Pyrkos against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 12 December 2018.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of timber decking, balustrading and trellis at second floor level to the rear of the property.
 - The requirements of the notice are:
 1. Remove the timber decking, balustrading and trellis that has been erected to the rear of the at second floor level entirely
 2. Permanently disable all means of access to the roof of the rear outrigger
 3. Remove all resultant debris.
 - The period for compliance with the requirements is one (1) month.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. It is directed that:
 - The enforcement notice is corrected in the first requirement of paragraph 5 by inserting the word 'property' after the wording 'erected to the rear of the'

3. Subject to the correction above 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 1990 Act, as amended.

Enforcement Notice

4. Paragraph 5 of the notice sets out what is required to be done to remedy the breach. At paragraph 5.1 there is a typographical error with the wording 'property' missing after the wording 'erected to the rear of the'. This is purely a typographical error and I am therefore satisfied that there would be no injustice to either the appellant or the local planning authority by my correcting the notice to insert the omitted word.

Appeal on ground (e) (Appeal B only)

5. The main issue centres on whether or not copies of the notice were served as required by section 172 of the 1990 Act and if not whether the appellant or the person concerned (who was not served with a copy of the notice) suffered substantial prejudice.
6. The appellant's case is that the notice was not served on the Appellant at his place of residence.
7. Section 172 (2) (a) of the 1990 Act requires that a copy of an enforcement notice shall be served "on the owner and on the occupier of the land to which it relates." The Council has confirmed that they served a copy of the notice by Royal Mail Recorded Delivery on Mr George Nicholas Pyrkos (the appellant) at the address provided for him by the Land Register database. In addition, Exhibit LBH2 attached to the Council's Statement shows that the notice was delivered to that address and signed for by G. Pyrkos. The notice was addressed to Mr George Nicholas Pyrkos and sent by recorded delivery to his last known place of abode. Moreover, it was signed for on delivery by Mr Pyrkos. I therefore conclude that the owner of the land (the appellant) was correctly served in respect of the owner of the land to which the notice relates.
8. In addition, the appellant has not provided any details of any prejudice that has been caused as a consequence of the means of service. Mr Pyrkos has been able to make his appeal on the grounds that he has chosen to, and substantial prejudice was not therefore caused to him by reason of the manner of the service of copies of the notice.
9. The appeal on ground (e) does not succeed.

Appeal A and Appeal B on ground (a), deemed planning application

Main Issues

10. The main issues in this case are the effect on the:
 - Character and appearance of the host property and surrounding area; and
 - Living conditions of the occupiers of neighbouring residents.

Reasons

Character and appearance

11. Appeals A and B both relate to Flat B, 110 Mattison Road. As the Council's reasons for refusal (Appeal A) and reasons for issuing the notice (Appeal B) are based on the same issues, I have dealt with the appeals together in one decision letter, whilst recognising that the developments are not exactly the same.
12. 110 Mattison Road is a mid-terraced brick property with a slate roof. The enforcement notice attacks the terrace which has been constructed on the roof of its two-storey rear outrigger. Timber decking has been fixed directly onto the flat roof and around the perimeter of the roof a metre-high timber balustrade has been constructed with metal uprights. A cane and willow trellis of approximately two metres in height has also been wrapped around the balustrade for privacy. The roof terrace is accessed from patio doors at third floor level and at the time of my visit a timber balustrade had been permanently fixed across these doors to prevent direct pedestrian access onto the terrace. The deemed planning application is for this terrace.
13. The existing terraced property has a distinct character with its rear elevation displaying deep stepped 2/3 storey outriggers. The 2-storey element of the outriggers within the row have clearly defined forms with bay windows at first floor level. The properties overlook verdant rear gardens which back onto properties on Pemberton Road. The terraced properties on Pemberton Road are similarly designed and consequently the perimeter block has a locally distinct character.
14. With the exception of the roof terrace at 108 Mattison Road, I did not see any other roof terraces within rear elevations of the terrace row or indeed on the neighbouring terraces on Pemberton Road. The timber balustrade with its privacy screen, by reason of its materials, design and location, is a prominent and incongruous addition to the roof. Its overall appearance detracts from the character and form of the existing terrace and it is visually intrusive to the private views of neighbouring residents both from the windows of their properties and rear garden areas. Consequently, it has a harmful effect on the character and appearance of the host property and the surrounding area.
15. There is no doubt that the part replacement of the balustrade with opaque glass side screens and the removal of the trellis, as proposed in Appeal A, would result in a development that would be appear less bulky or dominant. However, the original and simple clearly defined form and design of the existing two-storey outrigger in this location makes a valuable contribution to the character and appearance of the area. Despite the less intrusive design and materials of the proposed side screens, the roof terrace would remain an incongruous addition at second floor level. It would detract from the appearance of the building and would diminish the contribution it makes to the character and appearance of the area generally.
16. I conclude that the existing terrace with its balustrade and trellis has, and the proposed replacement screening panels and guard rail would have, a harmful effect on the character and appearance of the host property and surrounding area. The existing and proposed development conflict with the development plan, and in particular with the design objectives of Policies 7.4 and 7.6 of the London Plan 2016, Policy SP11 of the Haringey's Local Plan, 2017 and Policies DM1 and DM12 of Haringey Development Management DPD, adopted 2017 all of which seek to ensure, amongst other things, that new development

responds to its local context and character, responding to architectural components and detailing of original buildings.

Living conditions

17. The terrace is situated at second floor level and lies adjacent to a habitable room window of the neighbour dwelling, No 112 Mattison Road. In addition, it is clearly visible from the kitchen window of the neighbouring Top Floor Flat at 108 Mattison Road which is located within the recessed rear elevation between the adjoining outriggers.
18. The Council are concerned that the roof terrace overlooks the rear garden of neighbouring properties and that the balustrade at the front of the terrace would not prevent such views. However, given the height of the terrace and the limited depth of those gardens, any views that are available from the terrace would not be significantly harmful or intrusive to users of those garden areas. In addition, the sylvan nature of the gardens provides screening of the windows and gardens of properties of Pemberton Road, which are also some distance away. Furthermore, the existing trellis and the proposed glass panels provide privacy and prevent direct views into the windows of the neighbouring properties.
19. However, whilst the terrace may not have a harmful effect on the privacy of the occupiers of neighbouring properties, the height and position of the existing screen has an enclosing effect on the outlook from the adjacent windows within those neighbouring properties and reduces the amount of daylight available to them. In addition, the proposed replacement glass screens, which would be 1.8m high, would have a similarly harmful effect on the outlook and living conditions for neighbouring occupiers.
20. I appreciate that the terrace is for use ancillary to a one-person bedsit. I also understand that the Council has not raised any concerns over potential noise/nuisance from its use. However, there is enough space within the terrace for the occupier of the bedsit to have tables and chairs for sitting out and perhaps entertaining. Given its proximity to the neighbour's windows, I share the concerns of the occupiers of those properties that its use, even if only on occasion, would be intrusive and cause noise and disturbance.
21. I conclude that the existing terrace with its balustrade and trellis has, and the proposed replacement screen panels and terrace would have, a harmful effect on the living conditions of neighbouring residents. I therefore find conflict with the development plan and in particular with Policy 7.6 of the London Plan, 2016 and Policy DM1 of Haringey's Local Plan Development Management DPD, adopted 2017 which seeks to ensure, amongst other things, that new development ensures a high standards of amenity, including outlook, daylight and addresses issues of noise for both the development's users and neighbours.

Other Matters

22. I have taken into account the existence of a similar roof terrace at 108 Mattison Road. However, the Council has advised that that roof terrace does not benefit from a planning permission but is immune from enforcement action. The existence of that other roof terrace would not justify the harm that I have identified from the existing or proposed roof terrace in this case.

23. I appreciate that the existing bedsit does not have any external amenity space associated with it, and I recognise the benefits of providing new homes within the Borough and making the best use of land and buildings. I also understand that Haringey may have a shortage of open space. However, there are areas of open space close by and these considerations would not outweigh the harm I have identified in the main issues.

Conclusion

24. For the reasons given above, Appeal A and the Appeal B on ground (a) must fail.

Appeal on ground (f) (Appeal B only)

25. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.

26. Section 173 of the Town and Country Planning Act, 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case, although there is an element of remedying injury to amenity, the purpose of the notice is to remedy the breach of planning control.

27. The appellant considers that the appeal proposal to replace part of the balustrade and the trellis with opaque glass side panels would overcome the harm to amenity caused by the terrace. In addition, he does not consider that it is necessary to remove the timber decking as this gives extra protection to the roof below.

28. I have found that the roof terrace is unacceptable and given that the purpose of the notice is to remedy the breach of planning control, it is not excessive to require the removal of all its elements, including the timber decking. In addition, I have also found that the terrace with the glass screens (Appeal A) would not be acceptable, and therefore the lesser steps put forward by the appellant is not an option that is open to me.

29. The appeal on ground (f) must fail.

Conclusions

30. For the reasons give above, I conclude that the appeals should not succeed.

31. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under Section 177 (5) of the 1990 Act, as amended (Appeal B).

Elizabeth Pleasant

INSPECTOR