



Appeal Decisions

Site visit made on 1 September 2020

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 September 2020

Appeal A Ref: APP/X5990/C/19/3242405

2 Godson Yard, London NW6 5FE

- 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 Mrs Nazma Neilsen against an enforcement notice issued by City of Westminster Council.
 - The enforcement notice was issued on 5 November 2019.
 - The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last 4 years, the unauthorised erection of a raised platform with associated decking and fencing to the rear elevation of the Property at first floor level, as shown in the attached Photographs A, B and C, located in the approximate area shaded red on the attached Plan 2.
 - The requirements of the notice are:
 - (1) Remove from the land edged red on the attached Plan 1 the unauthorised raised platform and associated decking, fencing, supporting posts and brackets, as shown on the attached photograph 'A', 'B' and 'C'; and
 - (2) Make good any damage caused to the building through installing the unauthorised raised platform and complying with Requirement (1) of this notice; and
 - (3) Remove from the Property all debris resulting from compliance with Requirements (1) and (2) of this notice.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (g) of the Town and Country Planning Act 1990 as amended.
-

Appeal B Ref: APP/X5990/C/19/3242410

2 Godson Yard, London NW6 5FE

- 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 Mrs Nazma Neilsen against an enforcement notice issued by City of Westminster Council.
- The enforcement notice was issued on 5 November 2019.
- The breach of planning control as alleged in the notice is: Without the requisite planning permission and within the last 4 years, unauthorised development consisting of the removal of a timber framed sash window to the rear elevation of the Property at first floor level and its replacement with a UPVC-framed glazed door, as outlined in red on the attached Photograph A.
- The requirements of the notice are:
 - (1) Remove from the land edged in red on the attached Plan 1 the unauthorised uPVC-framed door installed to the rear elevation of the building at first floor level, as shown outlined in red on the attached Photograph A; and
 - (2) Reinstall a timber-framed sash window to match in design and materials the window previously in situ, as shown outlined in red on the attached Plan and repair and reinstall the surrounding brickwork using bricks and mortar to match the finish and appearance of the surrounding brickwork.

- The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
-

Decisions

Appeal A:

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the words "first floor level" under Section 3 (the breach of planning control alleged) and its replacement with "upper ground floor level".
2. Subject to the correction, the appeal is dismissed, and the enforcement notice is upheld.

Appeal B:

3. It is directed that the enforcement notice is corrected by:
 - the deletion of the words "first floor level" under Section 3 (the breach of planning control alleged) and its replacement with "upper ground floor level".
 - the deletion of the words "first floor level" under requirement (1) of Section 5 (what you are required to do) and its replacement with "upper ground floor level".
4. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

Application for costs

5. An application for costs for Appeals A and B was made by the City of Westminster Council against Mrs Nazma Neilsen. This application is the subject of a separate Decision.

Procedural Matters

6. For Appeal A, the appeal on grounds (a) and (f) were formally withdrawn by the appellant. Therefore, Appeal A relates solely to the appeal on ground (g), and I am unable to consider the planning merits of the development put forward by the appellant.
7. For Appeals A and B, the allegation in the Enforcement Notices refers to the alleged works at first floor level, whereas the alleged works are all at upper ground floor level. Furthermore, for Appeal B the first requirements of the notice, under section 5 (what you are required to do), also incorrectly refers to the works at "first floor level" but should state "upper ground floor level". My understanding of these notices is not affected by these minor errors, and nothing within the appellant's submissions indicates to me that they have been misunderstood by her as a result. Therefore, I consider that corrections are

necessary which can be achieved by using my powers under s176(1)(a) of the Act without causing injustice.

Background

8. These linked appeals relate to a lower and upper ground floor level residential unit and forms part of a site redeveloped in 2006 to provide 8 residential units¹. The roof terrace the subject of Appeal A is located above and around the flat roof of the lower ground floor bedroom of the appeal property and is accessed via the UPVC framed door (the subject of Appeal B) located in the rear elevation of the property at upper ground floor. The appellant advises that she purchased the lower and upper ground floor appeal property in March 2016².

Appeal A

The ground (g) appeal

9. This ground of appeal is that the time given to comply with the notice is too short. The Council has given a 3 months compliance period. The appellant has requested a period of 6 months (reduced from an initial 9 months), in order to allow time for the submitted planning applications to be determined.
10. Given that a ground (a) appeal has been withdrawn, I must take the notice at face value. The notice identifies harm in relation to 1) the living conditions of neighbouring occupiers, with regards to noise and disturbance, loss of outlook and privacy; and 2) character and appearance of the host building and surrounding area. This harm will continue to exist until such time as the notice is complied with. There is no suggestion that the actual works cannot be completed in 3 months.
11. Furthermore, the Council also advise that they first wrote to the appellant regarding this matter on 5 May 2017, and that pre-application advice was sought in respect of two different schemes on 7 July 2017, which the Council responded to on 9 October 2017. As such a reasonable period of time has already been allowed for the appellant to seek permission for an alternative scheme, and I note that two current planning applications are currently in the process of being determined by the Council.
12. I conclude that three months is a reasonable and proportionate time to comply with the notice and the appeal on ground (g) fails.

Appeal B

The ground (d) appeal

13. The onus is on the appellant under ground (d) to make the case that, at the time the enforcement notice was issued, it was too late to take action against the matters stated in the notice. The enforcement notice is directed at the alleged removal of a timber framed sash window to the rear elevation of the Property and its replacement with a UPVC-framed glazed door. Consequently, the appellant needs to show that the matters alleged in the notice occurred at least 4 years before it was issued (which was 5 November 2019). If the Council has no evidence of its own, or from others, to contradict or otherwise make the

¹ Council ref: 06/03823/FULL.

² As confirmed in the Planning Contravention Notice (PCN) response.

version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is, on the balance of probability, sufficiently precise and unambiguous.

14. The appellant's stance is that the door was installed at the time of the refurbishment of the building into flats, sometime between 2006-2008 and is therefore lawful through the passage of time. The appellant states that their evidence submitted, as outlined below demonstrates this. The Council's state that the door was installed at some point between March and August 2016, less than four years before the service of the notice.
15. In a sworn statement submitted by the appellant³, she states that she first viewed the property in October 2015, and then again in November 2015 and January 2016, and offered to purchase the lower and upper ground floor unit on 18 February 2016 with completion end of February 2016, as it was a quick cash purchase and one of the conditions was to complete before March 2016. The appellant states that she was advised by the previous tenants prior to the purchase of the property that the roof terrace was already being used as such, accessed through the big door and a bedroom window onto the terrace. Although the appellant states that this was unsecure access and refers to a photograph showing the previous roof terrace without the existing decking, no such photograph has been included with her statement. The only photographs submitted, with the appellant's document entitled 'Sworn Statement', shows the current roof terrace with decking and balustrading.
16. The appellant further states that she was advised by the Police in March 2016 to install security on the roof as tenants were using it and it was unsafe. She also states that the use of the terrace was the main attraction when she purchased the property, but it was important to make it secure. The appellant statement also refers to the original sales particulars when she purchased the property, which refers to a "potential roof terrace", and that she had changed the door hinges only so that the doors would open outwards instead of inwards.
17. However, no records of the advice provided by the Police have been included, and the approved drawings for the 2006 scheme provided by the Council show that a sash window was approved for this opening, not a door. Furthermore, there was no platform/balcony or flat roof located outside of this opening at upper ground floor level. The lack of access onto any flat roof or platform is also demonstrated by the approved plans for the 2006 scheme, in addition to the sales particulars for the appeal site, provided by the Freeholder⁴, who state that they are the original developers for the Godson Yard Project. Specifically, the sales particular also shows a window in the relevant position and that there is no platform or flat roof directly outside of this window, further highlighting the safety concerns if a door did actually exist in this location.
18. Whilst the appellant states that door access was used as part of the fire emergency access, it is unclear how such a door, which would not provide safe access onto any outside space, would have complied with building regulations. Indeed, if one stepped out of this door, one would fall from the upper ground floor to the lower ground courtyard. I also note that condition 6 of planning permission ref: 06/03823/FULL for the refurbishment of the building into flats, restricts the use of the flat roof of the ground floor extension, for any purpose

³ Dated 25 March 2020.

⁴ Appendix 6 of the Council's appeal statement.

- other than a means of escape. Condition 5 of this permission further requires all new windows to be retained as a traditional framed double sash window.
19. Furthermore, it is also unclear how the appellant could be certain that the door was installed by 2008, as her statement clarifies that she first viewed the property in October 2015. I also note that this document does not fall within the category of a statutory declaration as the statement has not been witnessed by an authorised person (there is no stamp and no details have been provided of the authorised person). This further reduces the weight which can be attributed to this document.
 20. Turning to the other evidence submitted by the appellant, a number of statements also described as statutory declarations are provided. However, these documents do not appear to have been witnessed by an authorised person (no stamp or details have been provided of the authorised person) or, in some cases do not contain the necessary words "and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act 1835". These statements cannot therefore be afforded the same degree of weight as a properly executed statutory declaration.
 21. In the declaration from Mr Harry Ramnarace, he states that he has known and visited this property since 2009, through friends living next door to the property and that he also worked nearby at many properties in area. He also declares that the UPVC door accessing the roof terrace was UPVC since 2009 and states that he noticed it was unsafe to use the terrace as there was no fence. His declaration also includes an undated photograph of the flat roof of the lower ground floor extension before the current decking, raised platforms and balustrading was installed, and states that this photograph, which appears to be taken from the upper ground floor bedroom window of the appeal property, dates from 2008/2009.
 22. However, there is no explanation as to why Mr Ramnarace's statutory declaration includes a photograph of the flat roof of the appeal property from 2008/2009 when he states has only known the property since 2009. Therefore, this photograph appears to pre-date when he, and indeed the appellant first viewed the property. Also, there is no indication of how he would have obtained this photograph which is taken from the appellant's property when visiting friends next door. Furthermore, no specific details of which properties he was working on nearby have been submitted, so it is again unclear why and how this would help him recall details of the type of opening in the rear elevation of the appeal property more than 10 years ago.
 23. Mr Ramnarace also declares that he was introduced to the appellant through neighbours and has since undertaken electrical work at the property, and that he recalls that the appellant added a platform inside the property making the inside of the property level with the door. Whilst Harry Ramnarace states that the door was untouched or original, as far as he remembers, there is no explanation as to how he would know this when carrying out electrical work at the appeal site, and no specific date has been provided of when these electrical works were carried out. In any case, since the appellant purchased the property in March 2016, it is highly likely that these electrical works were carried out less than four years before the enforcement notice was issued.

24. Nadia Ghailan, a friend and colleague of the appellant, states that she viewed the property with the appellant in October 2015 and states that the door in the photograph attached was in place and UPVC at that time. However, no reason is given as to why Ms Ghailan specifically remembers noticing this door and that it was UPVC when visiting the property with her friend and colleague in October 2015.
25. In another statement, Antou Jobe, declares that he lived next door to 2 Godson Yard and that the UPVC door existed on the appeal site since 2007. However, whilst Antou Jobe states he lived next door in 2007, the address given in the declaration refers to 237 Kilburn Lane, which is some distance away from the appeal site. Presumably this is a typographical error and is actually referring to the next door property at 237 Kilburn Park Road, as he also states that his property faced onto the garden of Flat 2 Godson Yard. However, 237 Kilburn Park Road is split into three flats (at lower ground floor, upper ground floor and first floor level), and no clarification of what floor he resided in has been provided. This is particularly relevant as only the lower ground floor flat of this property appears to have side facing windows and access to the rear garden which would face towards the relevant opening in the rear elevation of the appeal property.
26. As such, one might infer from this statement that he resided within the lower ground floor flat. However, he also states that the screens that the appellant installed looked nicer than the previous black roof terrace which existed. If he had resided within the lower ground floor flat it is unclear how he would be able to view the previous black roof terrace at upper ground floor level, as this would only be possible from the rear facing windows at upper ground and first floor level of 237 Kilburn Park Road. Since there are no side windows on the upper floors of this neighbouring property which face toward the rear elevation of the appeal site containing the relevant opening, any residents living on the upper floors of 237 Kilburn Park Road would not have any direct views of the rear elevation of the appeal property containing this opening. As such it is unclear how any resident of this neighbouring building could have viewed both the roof terrace and the opening in the rear elevation of the appeal property both at upper ground floor level.
27. Mr Jobe also refers to a photograph of the appeal site before the alleged works were carried out, but no photograph has been included with his statement.
28. These statements do not provide any clear and unambiguous evidence that the UPVC framed door existed for at least 4 years.
29. Furthermore, an email from the Freeholders of the building confirms that they were the original developers of the Godson Yard project, and that the appellant purchased the property from them on 30 March 2016. The email states that they confirm that on that date there was no door to the rear roof area from either the bedroom or hallway.
30. The Freeholder states that the appellant expressed an interest in converting the window at the end of the hallway to a door with a view to using the roof area as a terrace, and that she sought permission from the Freeholders of the development at the time. The Freeholder states that whilst they granted permission from them to use the roof as a terrace, they do not believe permission was given to convert the windows to a door. It is further stated that they advised her that she would need planning permission before

- proceeding, and that a short time later she had engaged builders to undertake the works. The Freeholder states that they were invited to view the new door at the end of the hallway and the new decking which extended beyond the roof area on two sides, and were surprised by the new door and the extent of decking which he believed was a breach of her lease. The Freeholder states that after a week of “parties” hosted on the roof terrace during the summer of 2016 they received numerous complaints from other occupiers of Godson Yard.
31. The photographs submitted in Appendix 7 of the Council’s appeal statement, taken from a website advertising the appeal property for rent, shows the relevant parts of the appeal site before and after the works to construct the raised platform with associated decking and fencing, the subject of Appeal A, took place. These photographs show that prior to the installation of the current raised decking, and balustrading there was no way of accessing the flat roof of the lower ground floor extension from this opening in the hallway, and therefore a door in this location would be superfluous, and unsafe. In addition, one of the photographs shows a picture of the window, prior to the works being carried out to facilitate a roof terrace which clearly shows a window frame, and not the current UPVC framed door.
32. Furthermore, the Council advise that they first received an allegation that the window had been converted to a door in March 2017, and that those works commenced approximately 10 months ago⁵. Whilst not conclusive on its own, it adds further doubt to the appellant’s submissions that the door existed from when she first viewed the property in October 2015.
33. I have taken into account the appellant’s assertion that the UPVC door is over 4 years old and was installed between 2006-2008. Nevertheless, there is no firm evidence to demonstrate this was the case. It is well established in planning law that the onus rests with the appellant to make out his or her case. However, on the evidence before me, I find that burden has not been satisfactorily discharged in this particular case.
34. The email provided from the Freeholder to the Council provides a clear recollection of events and timeline. Whilst this email is also not a statutory declaration, their statement is corroborated by the photographs of the site submitted by the Council, the sales particulars of the appeal site provided by the Freeholder who sold the property to the appellant, and comments by a third party outlining when they believed the works commenced. It seems to me that these provide the most clear, unambiguous and cogent evidence.
35. On the balance of probability, I conclude that at the time the notice was issued it was not too late to take enforcement action against the alleged breach of planning control.
36. The ground (d) appeal therefore fails.

Conclusion for Appeal A

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction.

⁵ Appendix 5 of the Council’s appeal statement.

Conclusion for Appeal B

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

R Satheesan

INSPECTOR