



Appeal Decision

Site visit made on 21 September 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2020

Appeal Ref: APP/X5990/C/19/3234588

**Building(s) and associated land at Second Floor, 41 Croxley Road,
London W9 3HJ**

- 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 Ravinder Sharma against an enforcement notice issued by City of Westminster Council.
 - The enforcement notice, numbered SAR/40001460, was issued on 4 July 2019.
 - The breach of planning control as alleged in the notice is without the requisite planning permission and within the last 4 years the installation of railings around the rear flat roof.
 - The requirements of the notice are: (A) Remove the railings from the rear elevation at roof level, parts of which are shown in the attached Photographs A and B; and (B) Remove from the site any materials or debris resulting from the carrying out of requirement A.
 - The period for compliance with the requirements is four months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) of the Town and Country Planning Act 1990 as amended.
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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 1990 Act as amended.

Ground (d)

2. The case to be made under ground (d) is at the time when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The onus is on the appellants to prove their case on the balance of probability. The erection of the railings that are the subject of the notice is operational development, for which the period before immunity from enforcement action is gained is 4 years. Therefore, it has to be shown that they were in-situ prior to the 4 July 2015, ('the relevant date').
3. Croxley Road is a residential street lined with terraces of three-storey properties, a substantial number of which are divided into flats. 41 Croxley Road, which has been converted into three flats, is typical of this form of development. In common with other properties on its side of the road, it has a three-storey flat-roofed element to its rear. Development in Fordingley Road, to which the rears of properties in Croxley Road look, has much the same form. The properties in these streets do not have very large rear gardens and,

therefore, dwellings are set fairly close together. No 41 is not listed, nor does it lie within a conservation area.

4. The second floor flat, which is the subject of this appeal, also has accommodation in the roof space that, I am told, dates from an extension erected in 1989. A door from the roof extension gives access to the flat roof. The evidence before me shows, on the balance of probability, the door has been in-situ since 1989 and that the flat roof has, to some degree, been used as an amenity space for the period since that time. There has been no material change of use in this regard.
5. However, the notice is directed against the railings that have been erected on the roof. These are 1.1m high metal balustrades of a simple design. Although not part of the alleged breach, the roof has been covered in plastic 'grass'.
6. The evidence shows that the railings were erected when the flat roof was replaced. Although no date has been given for this work, a guarantee from E & D Roofing Contractors for the work to the flat roof is dated 15 July 2016. This would suggest that the work was carried out at, or shortly before that date and, as such, I find that the erection of the railings was not substantially complete prior to the relevant date.
7. Therefore, I conclude on the ground (d) appeal that it was not too late for the Council to take enforcement action against the installation of the railings and this appeal fails.

Ground (a)

Main issues

8. A ground (a) appeal is made on the basis that, in respect of the breach of planning control stated in the notice, The main issues in this appeal are: the effect of the railings on the living conditions of the occupants of neighbouring properties by reason of overlooking and loss of privacy; and their effect on the character and appearance of the area.

Living Conditions

9. The appellant has not argued that the railings are permitted development, meaning that an application for planning permission was not required, and I have no reason to find otherwise.
10. The door would have given access to the flat roof prior to the installation of the railings. However, the evidence that I have been given with regards to the use of the flat roof for amenity purposes prior to their installation is scant. The railings allow for people to safely use the whole of the roof for amenity purposes and make it more attractive for such use. The latter point is evidenced in a third-party representation.
11. As the area is fairly densely developed, gardens to the rear of properties are overlooked to varying degrees from windows in other properties. However, many of these retain areas where there is little or no overlooking from neighbours.

12. A few roofs in the area are used for amenity purposes, which add to the overlooking experienced by their neighbours. Prior to the installation of the railings, the area of the flat roof at No 41 that could be safely used for amenity purposes would have been restricted. Its users would not have been able to linger close to its edge. Thus, they would not have been able to gain the panoramic views into neighbouring gardens that they can now. It has opened up views to areas of neighbouring gardens that might otherwise have been largely private. Furthermore, the use of roof gardens can lead to a harmful perception of being overlooked, in addition to actual overlooking.
13. The flat roof allows views back to the rears of 39 and 43 Croxley Road, where there are a number of windows serving habitable rooms. Its use prior to the installation of the railings would have allowed some views into those rooms, with a consequent loss of privacy. However, as the railings allow for the safe use of the entire flat roof, this loss of privacy has been significantly exacerbated. I found this to be particularly the case with respect to the views gained to windows to the rear of No 39 which were readily looked into.
14. For the above reasons, I find that the railings have facilitated the use of the flat roof in a manner that results in significantly increased ill-effects on the living conditions of the occupants of nearby properties through overlooking and loss of privacy. Their installation is, therefore, contrary to the terms of Policy 7.6 'Architecture' of The London Plan, March 2016 (LP); Policy S29 of the Westminster City Plan, November 2016 (WCP); and 'saved' Policies DES1 and DES 6 of the Council's Unitary Development Plan, adopted January 2007 (UDP that aim to protect the residential amenity of neighbouring land and buildings.
15. Whilst the first of these policies makes particular reference to tall buildings, its terms are relevant to all planning decisions where this harm would result. As UDP Policy ENV14 relates to Metropolitan open Land, it is not relevant here and I have not used it in my decision.

Character and appearance

16. In his Grounds for Appeal, the appellant quotes from the Council's document 'Roofs. A Guide to Alterations and Extensions on Domestic Buildings' (the Guide). He says that the Guide says that roof-level clutter would be resisted only "where it would be seen from the street or adversely affect the visual amenity of adjoining properties". Although neither he nor the Council has provided a copy of this document, the Council has not challenged it in its submissions, and I take this to be the case.
17. Due to the fairly tight grain of the area's development, I could not see the railings from Croxley Road or neighbouring streets. They have a simple design that is appropriate to their location. They are unobtrusive and not visually disruptive when seen from other properties in the area.
18. I take the Council's point that later additions to the railings might lead to their having a more adverse effect on neighbours' outlook, in the manner that some of the small number of other roof gardens in the area have. However, this is a matter that might be controlled through the use of conditions. I do not find that chattels placed on the roof would necessarily affect visual

amenity. This was not the case at the time of my visit and did not appear to be the case with the other roof gardens I saw.

19. Although I was not given a copy of its front cover detailing its status, I have been given what I am told is a copy of the Executive Summary of the 'Living Roofs and Walls Technical report: Supporting London Plan Policy 2008'. The Council has not questioned that this is the case. I note that this encourages the use of living roofs for the environmental benefits these bring. However, they are a significantly different form of garden than that which has been formed here and, thus, this does not provide overwhelming support for the retention of the railings.
20. My finding on this matter is that the installation of the railings does not harm the character and appearance of the area. Therefore, this accords with the requirements of LP Policy 7.6 and Policies DES1 and DES6 of the UDP for appropriate design and architectural quality.

Other matters

21. Although the appellant offered to cease the use of the flat roof, in an email to the Council dated 13 August 2019, I have not been given any evidence to show that this subsequently ceased. I also note the offer to close off the door from the flat to the flat roof in order to keep the railings for safety purposes when people are working on it. However, I have no drawings before me to assess how this would be carried out and how effective this would be. This is a matter that might be addressed with the Council.
22. The excerpt from the Building Regulations that has been submitted relates to the need for protecting people from falling from height. However, it does not give explicit support for what has been undertaken. It states that in "areas where access is required only for maintenance, greater care can be expected from people and therefore a lower standard of provision may be acceptable". Therefore, there might well be alternatives that would fulfil these safety aims in a manner that would not be harmful to neighbours' living conditions. There is no evidence in this case that such alternatives have been explored.
23. I am told that there was no condition attached to planning permission 85/5820/FUL for the roof extension to No 41 to negate the use of the flat roof from the door. However, I have not been provided with details to show that the door was part of the development permitted. Similarly, although the door was reportedly used by a Council officer in 2010/11, I am not aware of the purpose of that visit and how it is relevant to this appeal.
24. The appellant tells me that LP Policy 5.11 reinforces the use of roofs for amenity space. No copy of the policy has been submitted, however. The benefits arising from outdoor amenity space are well-known; however, its provision cannot be, as here, at the expense of significant harm to the living conditions of the occupants of neighbouring properties. There may be a variety of reasons why neighbours have not objected to the development and this does not mean that it is appropriate.
25. None of these matters, whether taken individually or cumulatively, outweigh the harm that I have identified, above.

Conclusion on Ground (a)

26. Whilst I have found that the railings do not harm the character and appearance of the area, this does not outweigh the harm that I have identified to neighbours' living conditions. For the reasons given in respect of this latter main issue, the appeal under ground (a) fails.

Overall Conclusion

27. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Roy Curnow

INSPECTOR