



Appeal Decision

Site visit made on 25 August 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 13th OCTOBER 2020

Appeal Ref: APP/N5090/C/19/3242501

Counting House, 9A Accommodation Road, London, NW11 8ED

- 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 David Grunberg against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The enforcement notice, numbered ENF/1577/19, was issued on 31 October 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the insertion of two rooflights in the rear roofslope as shown edged blue and red on the attached photo.
 - The requirements of the notice are 1. Remove the two rear roof windows edged blue and red respectively indicated on the attached photograph 2. Restore/refill the vacant aperture with tiles to match the existing.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
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Decision

1. The appeal 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 insertion of two rooflights in the rear roofslope on land at 9A Accommodation Road referred to in the notice, subject to the following condition:
 - 1) Within 3 months of the date of this decision the rooflights in the rear roofslope shall be obscure glazed and no part of the rooflights that are less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened, and the rooflights shall be retained as such thereafter.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary Matter

3. There has been, during the course of this appeal, some confusion regarding which rooflights within the rear roofslope of the appeal property were the matters alleged to constitute the breach of planning control on the notice. The Council has clarified that it is the rooflights as correctly identified edged blue

and red on the photographs attached to the notice and I have determined the appeal on that basis. Both of these rooflights were seen from inside of the building during the site visit.

4. There is also some confusion over the name of the appeal property. It had originally been known as 2 adjacent properties, No. 8C and 9A Accommodation Road but planning application 17/3613/FUL was a joint application which included both properties and they now form one residential block containing 6 flats which has been referred to jointly as 9A Accommodation Road but also as 8C and 9A Accommodation Road. The parties have both had the opportunity to make additional comments following the site visit and have both provided comments relating to the window shown edged blue on the notice which is the window within Flat 3.

Ground (c)

5. To succeed under this ground the appellant must show that the matters stated in the notice do not constitute a breach of planning control. It is accepted by the parties that the works associated with the rooflight shown edged red on the notice do not benefit from planning permission. The appellant's case regarding this rooflight is that the works do not amount to development under Section 55(2)(a) of the Act as they do not materially affect the external appearance of the building because the rooflight is so small when considered in the context of the overall size of the building. The appellant's case regarding the rooflight shown edged blue on the notice is that it accords with planning permission reference 17/3613/FUL.

Rooflight shown edged red

6. It is necessary to consider whether the works associated with the rooflight shown edged red are visible from a number of vantage points and material to the appearance of the building as a whole. Both of the rooflights which are the subject of the notice are visible from several neighbouring properties located at the rear of the building on Woodstock Road. The rooflights are hardly visible (if at all, depending in part on the time of year) from publicly accessed spaces or roads but are visible from the adjacent gardens and properties on Woodstock Road. The appellant states that the rooflights in No.9A (which includes the rooflight shown edged red on the notice) have a lower visible impact than the rooflight in No.8C (i.e. the rooflight shown edged blue), but gives no compelling reasons as to why this is the case, and I do not accept it to be sufficiently proven or that it is sufficient to mean that the rooflight shown edged red does not materially affect the external appearance of the building. The changes to the roofslope caused by the rooflight shown edged red is clearly evident as a change to the colour, material and structure of the uniform tiling on that part of the roof and this affects the external appearance of the building as a whole. This ground cannot therefore succeed in relation to the rooflight shown edged red.

Rooflight shown edged blue

7. The Council's case regarding the rooflight shown edged blue on the notice is that it does not have planning permission as it was not built in accordance with the approved plan 357/2 REV A or Condition 4 on permission 17/3613/FUL which provides that "*Notwithstanding the details shown on the hereby approved drawings, the PROPOSED rooflight to the rear facing Woodstock Road*

hereby approved shall be of a "conservation" type (with central, vertical glazing bar) set flush to the roof The rooflight shall be permanently obscure glazed and remain permanently fixed shut following installation." The appellant's case regarding this rooflight is that it has been constructed in the position indicated on the drawing as the drawing made it clear that it was the installation of a replacement window. It is clear from the drawing, the photographs and the observations during the site visit that the window in Flat 3 (the rooflight shown edged blue) has been built not in accordance with the approved plans or Condition 4 and is therefore unauthorised development. This ground cannot therefore succeed in relation to the rooflight shown edged blue and the appellant's arguments regarding the planning merits of this rooflight will be considered in relation to the appeal under ground (a).

Ground (a) and the deemed planning application

8. The main issue in the ground (a) appeal is the effect of the rooflights on the living conditions of the occupiers of the neighbouring properties on Woodstock Road, with regard to overlooking and privacy.

Main issue

9. The appeal building contains residential flats and the two rooflights are in the rear roofslopes that face onto the houses and rear gardens of Woodstock Road. I did not view the development from the gardens or properties on Woodstock Road but it is evident from the photographs that have been submitted and representations made during the course of the appeal that the rooflights may create an additional perception of overlooking in the adjoining properties.
10. It was clear from my observations during the site visit, that the rooflight shown edged red is above head height and so not easy to look through from inside the property. It is in the communal corridor which leads from the top of shared stairs to the front door of Flat 6 (within No.9A) and it is not possible to look through it when standing on the floor. During the site visit this rooflight contained an obscured panel.
11. The larger rooflight is located inside of Flat 3 in the living area of the flat. This window is also obscure glazed but it is possible to look through this window if open whilst standing within the habitable room. There can be a perception of overlooking, irrespective of whether it is obscure glazed, particularly if the window can be opened, and third party representations have raised issues regarding loss of privacy, increased disturbance and overlooking. There are also other rooflights along Accommodation Road and groupings of windows can greatly increase the perception of overlooking. However, it would be possible to adequately overcome the harm relating to loss of privacy, disturbance and overlooking by ensuring by way of a condition that the windows which are the subject of the notice remain permanently obscured and fixed shut. This would overcome the harm caused the development would therefore not be contrary to Policy DM01 of the Adopted Development Management Policies DPD (2012) or the Residential Design Guidance SPD 2016, both which are intended to provide high standards of design and residential amenity. The development would therefore not be contrary to the development plan and there are not material considerations which mean that permission should not be granted.
12. The appeal property is situated in the Golders Green Town Centre Conservation Area and there is a statutory duty to pay special attention to the desirability of

preserving or enhancing the character or appearance of that area¹. The development is not visible from publicly accessible parts of the CA (as it is on the rear of Accommodation Road which is itself on the edge of the CA) and the size and location of it means that it has a neutral effect and does not cause harm. The development preserves the character and appearance of the CA and is not in conflict with the heritage elements of the Local Development Plan or the Framework.

Other Matters

13. Representations were also received about the appearance of the development but the rooflights do not cause material harm to the appearance of the host building and are similar to other rooflights in the rear roofslopes of the adjoining properties on Accommodation Road. The concerns about the appearance, and the potential impact of the development on the value of adjoining properties, do not outweigh my conclusion on the main issue.

Overall conclusions

14. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted subject to a condition to ensure that the obscure glazing is retained and the rooflight in Flat 3 remains fixed shut in order to avoid harm the living conditions of the occupiers of the neighbouring properties on Woodstock Road. Success on this ground means that the notice will be quashed, hence the appeals on grounds (f) and (g) do not fall to be considered.

Zoë Franks

INSPECTOR

¹ Section 72(1), Planning (Listed Buildings and Conservation Areas) Act 1990.