



Appeal Decision

Site visit made on 20 October 2020

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 23rd November 2020

Appeal Ref: APP/T5150/C/20/3245656

Zahra House, 866 Harrow Road, London, NW10 5BU

- 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 Crossier Properties Limited against an enforcement notice issued by the Council of the London Borough of Brent.
 - The enforcement notice, numbered E/19/0463, was issued on 9 December 2019.
 - The breach of planning control alleged in the notice is failure to comply with condition No 5 of a planning permission Ref 07/1832 granted on 16 August 2007 ("the 2007 Permission").
 - The development to which the permission relates is the erection of a four-storey residential block comprising 14 self-contained flats, consisting of 6 x one-bedroom flats and 8 x two-bedroom flats, provision of cycle store for 14 cycle spaces, refuse and recycling store and associated landscaping to site. The condition in question is No 5 which states that: "The obscure-glazed and non-opening windows on the first, second and third floors of the rear of the building, in order to prevent overlooking of adjacent residential properties, shall be implemented prior to occupation of the development and permanently retained." The notice alleges that the conditions has not been complied with in that the windows on the first, second and third floors of the rear of the building can be opened.
 - The requirements of the notice are: 1. Permanently obscure-glaze and fix shut ALL windows on the first, second and third floors of the rear of the building; and 2. No windows shall open on the first, second and third floors at the rear of the building.
 - The period for compliance with the requirements is two 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 on ground (g), and it is directed that the enforcement notice be varied: by the deletion of 2 months and the substitution of 4 months as the period for compliance. Subject to this variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Ground (c) and hidden ground (b)

2. An appeal on this ground is on the basis that the matters in the notice do not constitute a breach of planning control. The appellant's case in relation to this ground is that there is no evidence to prove that all of the windows have in fact

been opened and that the breach has therefore not taken place in relation to all of the windows. This argument, that the matter as alleged in the notice had not occurred, is an appeal under ground (b) rather than ground (c). In this case the matter as alleged in the notice is the breach of condition No. 5 which requires that non-opening windows on the first, second and third floors of the rear of the building were implemented prior to occupation and permanently retained. This condition requires the installation and retention of non-openable windows, not the installation of windows that can be opened but which are not. As a matter of fact, the windows installed and attacked in the notice can be opened (notwithstanding that some may require maintenance) and they therefore also fail to comply with the requirements of condition 5. Consequently, an appeal on ground (b) or ground (c) cannot succeed in this case.

Ground (a) and the deemed planning application

3. The main issue in the ground (a) appeal is whether the condition is necessary having regard to the living conditions of the occupiers of the neighbouring properties at the rear of No.866 with particular reference to privacy and overlooking.
4. The deemed planning application is to carry out the original development without complying with the condition No. 5, i.e. the windows would not need to remain obscure glazed and could be opened fully. The reason given on the 2007 Permission for the imposition of condition No.5 was to safeguard the amenity of the existing residents i.e. the residents to the rear of the site on Rainham Road. The windows are currently all obscure glazed and the appellant is not expressly seeking to challenge this element of the condition.
5. The flats numbered 4, 7, 8,11, 12 and 14 have windows on the rear of the property on floors 1, 2 and 3 (the rear ground floor windows are not covered by the condition). It was evident during the site visit that, whilst all of the windows are fitted with a mechanism designed to allow both tilted and full opening, some of these were not working properly and as a result it is currently not possible to fully open these windows. This is irrelevant for the purposes of considering whether there has been a breach of condition No. 5 as the windows would open both partially and fully if the mechanism was repaired.
6. The appellant is seeking to retain the tilting mechanism for all of the windows facing to the rear of the building and to retain full opening of the rear windows in Flats Nos. 4, 8 and 12. The appellant differentiates between the flats because of the arrangement of the buildings at the rear of Rainham Road, immediately behind the appeal property. The overlooking of private outdoor areas and back doors and windows on Rainham Road is more limited from Flats 4, 8 and 12, in part because there is a one storey flat-roofed building situated between the appeal property and the houses on Rainham Road at this location. However, the overlooking from these flats is still significant, both of the entrance door into the one-storey building and also into some of the garden areas and rear windows of the houses on Rainham Road (at ground, first and roof level). The buildings are also in close proximity to each other, so that even the windows in Flats 12 and 14 located on Floor 3 of No.866, which are stepped back, still feel near to the properties on Rainham Road when the window is fully open. It is clear from the photographs submitted during the course of the appeal and my observations during the site visit that the unacceptable levels of

overlooking to Rainham Road is caused through all of the windows on the rear elevation of floors 1, 2 and 3 of the appeal property when the windows are fully opened.

7. The appellant has submitted that the windows are required to open, at least to tilt, to allow for ventilation, particularly those in bedrooms and bathrooms. The appellant has also submitted that the windows were installed with the opening mechanisms, contrary to condition No. 5, and that the complaints from the neighbouring properties has only arisen in more recent times, probably as a result of significant pruning and clearing of trees and shrubs between the appeal property and the rear of the properties on Rainham Road. Whilst that may be the case, it does not outweigh the material harm caused to the neighbouring properties. The 2007 Permission was granted for the development with condition No.5 to prevent the harm to privacy arising and the issue of ventilation should have been dealt with in a different way. Indeed, some of the rooms in question do have other openable side-facing windows and Flats 4, 7, 8 and 11 are dual aspect dwellings in accordance with the Standard 29 of the Housing Supplementary Planning Guidance March 2016 in terms of opening windows. All of the flats do have windows which can be opened to provide ventilation, although not necessarily in every room.
8. The reason for the imposition of the condition, to safeguard the amenity of the residents at the rear of the appeal site still remains and the condition still fulfils the tests set out in the planning policy guidance. Harm from overlooking and loss of privacy would be caused to the living conditions of the residents of the adjoining properties if the condition was to be removed and this would be contrary to Local Plan Policy DMP1 which seeks to promote good design and protect residential amenity. The appeal on ground (a) is therefore unsuccessful as the deemed application for planning permission also fails.

Ground (f)

9. The appellant has argued that the lesser step of retaining a fitting in the window mechanism to allow a partial tilted opening of the windows only would remedy the injury to amenity caused by the breach. The appellant has not provided details of a scheme which would achieve this or suggested the wording for an alternative condition.
10. Whilst section 177(4) allows for the substitution of another condition when discharging on appeal I am not satisfied in this case that I have sufficient details about an alternative scheme to impose a condition which would meet the tests of preciseness and enforceability. The appeal on ground (f) is therefore unsuccessful.

Ground (g)

11. The Council has agreed that the appellant's request to extend the period for compliance to 4 months is reasonable and I agree and therefore vary the notice accordingly and the appeal succeeds to this limited extent.

Conclusion

12. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant

planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Zoë Franks

INSPECTOR