

Appeal Decision

Site visit made on 20 February 2021

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 19th March 2021

Appeal Ref: APP/X5210/C/20/3254456

29 Perrin's Walk, London NW3 6TH

- 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 Robert Klimt against an enforcement notice issued by the Council of the London Borough of Camden.
 - The enforcement notice, numbered EN16/0644, was issued on 22 May 2020.
 - The breach of planning control as alleged in the notice is without planning permission: The erection of timber balustrade to enable the use of the second floor flat roof as a terrace.
 - The requirements of the notice are to:
 1. Completely remove timber balustrade from the structure from the second floor flat roof of the building and make good any resulting damage;
 2. Cease the use of the second floor roof as a terrace;
 3. Remove any resultant debris and paraphernalia from the premises as a result of the above works.
 - The period for compliance with the requirements is 4 months.
 - 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. Since an appeal on ground (a) has been made the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be corrected by:
 - Deleting the plan attached to the notice;
 - Replacing "Land at: 29 Perrin's Walk London NW3 6TH as shown outlined in black on the attached plan ("the Property")" with "Land at: 29 Perrin's Walk London NW3 6TH ("the Property")" in paragraph 2;
 - Replacing "Without planning permission: The erection of timber balustrade to enable the use of the second floor flat roof as a terrace" with "Without planning permission: The erection of a timber balustrade on the second floor flat roof" in paragraph 3; and
 - Removing step 2 of paragraph 5.
2. Subject to these corrections the appeal is allowed and the enforcement notice is quashed. 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 erection of a timber balustrade on the second floor flat roof on the land.

The enforcement notice/Ground (d)

3. The appellant has made a ground (d) appeal on the basis that the use of the second floor flat roof as a terrace was immune from enforcement at the date the notice was issued. He has in fact produced a Lawful Development Certificate (LDC)¹, issued by the Council, stating that such use was lawful on 24 October 2006 due to it subsisting for 10 years in breach of condition 1 of planning permission P9601180. Accordingly, it was too late at the time the notice was issued for the Council to take enforcement action in respect of it. The appeal on ground (d) therefore succeeds to this extent.
4. The Council's statement confirms that it made an error in drafting the notice, in that it overlooked the LDC. It invites me to use my powers to correct the notice in this regard. Due to success on ground (d) I am therefore correcting the notice, without injustice to any party, by removing the terrace use element from the allegation and the requirement for that use to cease.
5. There is also an error in that the notice plan incorrectly identifies the land subject to the appeal development. Accordingly, I am deleting the notice plan and correcting the description of the land in paragraph 2 of the notice, being satisfied that the correction causes no injustice to the parties and specifies the precise boundaries of the land to which the notice relates.

Ground (a) and the deemed planning application

Main Issue

6. The Council, in acknowledging the significance of the LDC to the appeal, confirms in its statement that the sole issue is the impact of the balustrade visually on the Hampstead Conservation Area (CA). Therefore, the main issue of dispute between the parties in this appeal is:
 - the effect of the timber balustrade on the character and appearance of 29 Perrin's Walk, adjacent properties and the Hampstead CA.

Reasons

7. The appeal site lies within the CA. I have applied the statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and paid special attention to the desirability of preserving or enhancing the character or appearance of the CA by attaching considerable importance and weight to that desirability.
8. Perrin's Walk is a private cul-de-sac and is described in the CA Statement:

"There are various building types and it is mostly residential, although there is a garage and office use. The overall appearance is tied together by the scale and rhythm of the terrace of mostly three storey buildings. Some have been rebuilt since the 1950's."
9. The appeal property is a three-storey residential property on the south side of the cul-de-sac, opposing the terrace of properties originally constructed as mews coach-houses and referred to in the CA statement as cited above. It is situated to the rear of a residential terrace of properties fronting Fitzjohn's Avenue.

¹ 2006/4798/P

10. The roof terrace referred to in the enforcement notice is above the second floor of the property, with the timber balustrade of contention located around its edge (said by the appellant to protect the safety of those enjoying the lawful use of the terrace). It is a fairly simple see-through timber structure of lightweight appearance and of a height which appears modest and not disproportionate within its context. While it is not an original feature of the building, there is a degree of harmony created with the horizontal weatherboarding features on the front façade of the property. These factors together render the development unobtrusive within the CA, and its presence is softened further in some views (particularly from the junction with Fitzjohn's Avenue) due to the backdrop and/or filtering effects of the adjacent mature tree(s).
11. As the CA statement alludes, Perrin's Walk displays a diverse mix of building types and ages including a property opposing the appeal site with a significant amount of highly prominent tall metal balustrading of modern design. Within this context, the relatively inconspicuous appeal development is not incongruous with its surroundings. Further, the development does nothing deleteriously to affect the important contribution made by the scale and rhythm of the terrace of mostly three storey buildings in Perrin's Walk, nor for the reasons given does it negatively affect the character and appearance of the adjacent terrace on Fitzjohn's Avenue. Further, I do not accept the Council's argument that the development causes an unacceptable precedent as in my view the balustrade causes no harm.
12. I therefore find, for the above reasons, that the timber balustrade causes no harm to the character and appearance of 29 Perrin's Walk, adjacent properties and the CA. As such it is not contrary to policies D1 and D2 of Camden's Local Plan (2017) which together seek to ensure that developments are of good design and protect the character and appearance of places, including conservation areas. The development is also not contrary to the heritage protection and design principles of the National Planning Policy Framework.
13. The development accords with the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal on ground (a) succeeds and I will grant planning permission for the timber balustrade.

Conclusion

14. For the reasons given above I conclude that the appeal should succeed and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation.
15. The enforcement notice is corrected, before being quashed.

Andrew Walker

INSPECTOR