
Appeal Decisions

Site visit made on 21 July 2021

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal A Ref: APP/Y5420/C/21/3266453 Land at 27 Endymion Road, London N4 1EE

- 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 David Allen against an enforcement notice issued by the Council of the London Borough of Haringey.
- The enforcement notice was issued on 17 December 2020.
- The breach of planning control as alleged in the notice is: Without planning permission
 1. The installation of metallic and glazed balustrading on the roof of the part single storey rear extension which facilitates the creation of 2 different roof terraces on this part of the property;
 2. The installation of metallic and glazed balustrading on the roof of the part 4 storey rear extension which facilitates the creation of a roof terrace on this part of the property;
 3. The installation of metal railings on the main roof of the property.
- The requirements of the notice are:
 1. Remove the metallic and glazed balustrading that has been erected on the roof of the part single storey rear extension;
 2. Remove the metallic and glazed balustrading that has been erected on the roof of the part four storey rear extension;
 3. Remove the metallic railings that have been installed on the main roof of the property;
 4. Permanently disable all means of access to all of the roof terraces that have been created at the property;
 5. Remove from the land any debris resulting from carrying out steps 1 to 4 above.
- The period for compliance with the requirements is Two (2) months.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails and the enforcement notice is upheld as set out below in the Formal Decision.

Appeal B Ref: APP/Y5420/W/20/3263788 Flat 5, 27 Endymion Road, London N4 1EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr David Allen against the decision of the Council of the London Borough of Haringey.
- The application Ref HGY/2020/2363, dated 2 October 2020, was refused by notice dated 18 November 2020.
- The development proposed is installation of single door access to rear of flat 5 in roof

space, as well as installation of glass balustrade on rear of second floor flat roof to facilitate creation of a roof terrace (retrospective).

Summary of Decision: The appeal is allowed.

The Property

1. 27 Endymion Road is a substantial residential property within a short terrace of four residential properties sited to the west of New River. There is a similar terrace of four to the east side of New River. These residential properties form part of a small block bounded by Coningsby Road, Lothair Road and Tancred Road. The layout enables views of the back of No 27 from surrounding dwellings and the adjacent streets. Finsbury Park lies to the south of Endymion Road.
2. In the past No 27 was in use as a large house in multiple occupation. In July 2016 planning permission was granted on appeal for its conversion to 5 self-contained flats including the erection of a multi-storey rear extension, changes to roof structure & internal alterations¹. The conversion works have taken place, although the flats have not been occupied.
3. The property now has residential accommodation over five floors, including a lower ground floor and in the roof space. At the back of the principal building is a flat roofed 4 storey part width extension, which projects out slightly at lower ground level. In addition, the infill of space on the eastern side of the building effectively has led to a full width extension to the lower ground floor. The back garden has been landscaped to provide amenity space for flats 3, 4 and 5.
4. Two terraces have been created at upper ground floor level for flat 3 utilising the flat roofs of the extension at lower ground floor level. For flat 5 a single terrace has been formed utilising the flat roof of the 4 storey extension, which is accessed from a door within the mansard roof. On the roof of the principal building railings have been installed to facilitate provision of a roof terrace or viewing platform. The appeals concern these works. The erection of a side opaque privacy screen and side facing door to create a front terrace at the first-floor level above the main entrance was authorised by planning permission granted in November 2016 and forms no part of this appeal process.

Planning Policy

5. After the enforcement notice was issued there have been changes to development plan and national planning policy. My decisions will be based on the current policy position.
6. The development plan now includes the London Plan 2021, the Haringey Local Plan 2017 (the Local Plan) and the Haringey Development Management DPD 2017 (the DPD). An objective of the development plan is to secure high quality design.
7. The revised National Planning Policy Framework was published on 20 July 2021 and the policies should be taken into account from that date.

¹ Appeal ref: APP/Y5320/W/16/3146434

Main Issues

8. The appellant has explained that the purpose of the terraces is to provide a minimum of 5 m² of private outdoor space for the occupiers of the flats. He considered such provision would be in accordance with the London Plan Housing Standards and would increase the enjoyment, health and wellbeing of residents. However, it is also the case that the conversion to flats was found to be acceptable without such provision and the property benefits from a shared garden of a good size at the back.
9. In these appeals the main issues are the effects of the development on:
 - the character and appearance of the property and the surrounding area, and
 - the living conditions of neighbouring occupiers, having particular regard to privacy.
10. It is not so much the development itself that has the potential to affect living conditions but rather the fact that it is integral to the formation of roof terraces and would facilitate their use. Policy DM1 of the DPD refers to the provision of an appropriate amount of privacy to residents and neighbouring properties. Policy D3 of the London Plan refers to delivering appropriate outlook, privacy and amenity.

Reasons

11. In Appeal A, the description of the development forming the deemed planning application is derived directly from the description of the breach of planning control. Consequently, the deemed planning application is for the railings and balustrading at upper ground level and roof level and the railings on top of the main roof of the property. The development needs to be considered as a whole. However, planning permission may be granted in relation to the whole or any part of the matters described in the alleged breach of planning control or in relation to the whole or any part of the land to which the notice relates (section 176 of the 1990 Act). My approach will be to consider each of the three elements before coming to an overall conclusion.
12. Appeal B is for one element – the works to facilitate the creation of a roof terrace for flat 5. To avoid repetition, I will consider this appeal in conjunction with the relevant element of Appeal A.

Roof top railings

13. My understanding from the appellant's representations is that the proposal is to complete the installation by the use of translucent and minimalist opaque glass to infill the space between the metal railings. However, the deemed planning application is only for the development that has been carried out and therefore is confined to the installation of metal railings.
14. No 27 is within a group of similar terrace properties to the west and east of New River. The principal elevations are distinguished by the front bay at upper ground floor level, the front porch to the main entrance doorway and the good level of architectural decoration and detailing. At roof level the rhythm of the steeply pitched roof gables is a strong feature with a clearly defined ridge line of varying height. The relatively small areas of roof between the gables and the

- hips at each end of the terraces mean that the gables and the elevations appear visually dominant. Where they are present, small skylights within the roof planes are unobtrusive and the dormers also do not detract from the composition. The predominant materials are red brick and slate, although the two end properties in the west terrace are rendered.
15. The appellant has drawn attention to the fact that No 27 is the only property where the lowered flat mansard roof exposes a large section of the former internal chimney stack. Nevertheless, the roof profile of the terrace remains a strong feature and the characteristic appearance of the two terraces is not affected. The roof continues to act as the cap to the buildings below. The domestic use and activity always have been contained within the building envelope and below ridge level.
 16. Within this context the installation of metal railings at high level on top of the roof introduces a feature that visually is very much out of keeping with the roofscape. The fundamental objection is their position above the ridge line and the substantial roof structure, notwithstanding the 3.5 m setback from the front roof apex described by the appellant. The installation of the metal railings above roof level represents an uncharacteristic, and incongruous addition.
 17. The appellant described the development as having two main functions – to provide safety when routine maintenance is carried out on the building and to provide a private viewing platform for future tenants. When I carried out the site visit the means of access onto the roof was by means of a step ladder from the terrace to Flat 5. This would not be a satisfactory solution for occupants. The likelihood is that additional development would be required, such as an external metal spiral staircase and platform shown on plans within the appellant's documents. That forms no part of the deemed planning application. Therefore the development under consideration would not enable a safe, secure and inclusive environment to be achieved and in that respect is contrary to a requirement of Policy D3 of the London Plan.
 18. As with surrounding properties, maintenance should be able to be conducted safely without the need for metal railings and the creation of a roof terrace. A viewing platform would not be necessary for residents to enjoy views across the surrounding areas of this part of London, which are gained adequately from within the flat. By reason of the high level and atypical place for residential activity the use of the viewing platform by residents of the flat and their visitors would be particularly intrusive and disturbing for neighbours and harmful to their amenity.
 19. The small number of roof top viewing platforms in the wider surrounding area referred to by the appellant do not provide justification for the proposal at No 27. In some instances it appears that the platforms are not above roof level and ridge line. On the period properties, there is no confirmation that the balustrades are authorised. The roof top installation at No 27 has to be assessed primarily on its own merits because of the specific characteristics of the building and its surroundings and the relationship to nearby residential properties, which are all of key importance to whether or not the development is acceptable.
 20. In conclusion this element of the development does not relate positively to the host building, the terrace and the locality and accordingly fails to comply with Policy SP11 of the Local Plan and Policies DM1 and DM12 (criterion E) of the

DPD. The development would not secure a safe environment and hence fails to comply with Policy D3 of the London Plan. The development also fails to comply with policy in the Framework in that it is not sympathetic to local character and the surrounding built environment, does not create a place that is safe and accessible and high standards of amenity are not achieved.

Balustrading to roof of part 4 storey rear extension (Appeals A and B)

21. The installation of balustrading would facilitate the creation of a roof terrace to serve flat 5. The chrome poles and the infill panels of glazing would be above the eaves line on the principal building and at the level of the mansard roof. The enclosure is visible within the locality, including from neighbouring and nearby residential properties and from Lothair Road South. Access to the terrace is via a door off a landing and staircase within the flat. The formation of the door is not referred to in the alleged breach of planning control but is included in the Appeal B scheme.
22. The rear elevation of the property does not have the same level of architectural detail and ornamentation as the principal front elevation. The renovation and conversion have involved a considerable amount of alterations and extensions, including the multi storey extension and the formation of a mansard roof with inset dormers. New windows and patio doors have been inserted and new materials introduced. At its maximum height the balustrading is below the level of the ridge and the top of the dormers. The multi storey rear extension does not extend across the full width of the property, which in turn contains the width and extent of the balustrading. The installation has shown attention to detail with a view to ensuring a high quality of design. The enclosure appears as a lightweight, small scale extension which complements the host property.
23. The appearance of the structure results from achieving a balance between safeguarding privacy, technical requirements in construction and providing a functional space. In local views the balustrading is prominent mainly because of its height, position, the use of the opaque glazing and the higher side screen. Nevertheless, I did not find it intrusive, particularly if the roof top railings are discounted. In representations a concern was expressed about glare but my site visit was on a sunny day and such an effect was not obvious. In my judgement the development respects the character and appearance of the building and is not unduly prominent within its urban surroundings.
24. Given the elevated position, the installation of the railings and glazed balustrading has implications for the amenity and privacy of neighbouring residents. An objection of the Council, as set out in the reasons for refusal in Appeal B, was the lack of a set back of the balustrading, which the Council considered would result in views into the rear gardens of neighbouring properties.
25. The terrace is directly adjacent to No 26. On the site visit the removal of a glazed panel showed the relationship of the terrace to the roof and windows at the neighbouring property. The 1.8 m high oblique glazed screen would be essential to protect privacy, although as indicated by a photograph taken from No 26, the screen would intrude into the outlook towards the east from that property. The use of the terrace could lead to noise disturbance but the small area of actual useable space and other factors, such as the seasonal weather, would very significantly reduce any possible harm.

26. Opaque glass also has been used in the balustrade along the edge of the roof to help mitigate undue overlooking. On the east side of the terrace the clear glass panels enabled views down into the garden of No 28 but the separation distance would help to mitigate any adverse effect. In Appeal B planters are proposed along this side of the terrace which would provide a 'no-go' strip, and although not essential, would offer a degree of additional screening. By way of assurance, the appellant has confirmed that the planters would be heavy and difficult to move.
27. Looking north towards Coningsbury Road and Lothair Road South I found that an appropriate and acceptable level of privacy would be maintained taking account of the orientation of gardens, separation distances, garden vegetation and the urban location. There would be intervisibility between the Flat 5 terrace and the roof terrace on 30 Lothair Road South but separation distance and use of balustrading would provide adequate mitigation. The Council approved the terrace at No 30, which indicates a level of acceptability. The formation of a smaller sized terrace at the appeal site would be unlikely to have a greater effect on privacy.
28. In conclusion the installation of metallic and glazed balustrading is of sensitive design quality that respects and complements the characteristics of the host building and harmonises with the surroundings. An appropriate amount of privacy to residents and neighbouring properties would be achieved and overall the effect on living conditions and amenity is acceptable.
29. These conclusions rely on maintaining the installation as constructed in terms of its height and use of opaque glass in order to safeguard the amenity of neighbouring occupiers. In Appeal B this is able to be achieved through the use of planning conditions based on the details shown on the submitted plans, in accordance with Policy D4 of the London Plan. Such precision would not be the case for Appeal A and in addition the means of access would not be included in the development.
30. The development in Appeal B complies with the requirements of Policies DM1 and DM12 of the DPD and, as regards privacy and amenity, Policy D3 of the London Plan. An objective of the Framework is to secure good design. An acceptable balance has been achieved between design quality, respect for local character, the amenity of neighbours and promoting health and well-being of the occupiers of the flat. The same level of policy compliance is not achieved through the deemed planning application (Appeal A), due to the unresolved means of access and safeguarding of amenity over the long term.

Creation of roof terraces upper ground floor

31. The installation of metallic and glazed balustrading would facilitate the use of the roofs to the extended lower ground floor by the residents of Flat 3.
32. The area created adjacent to No 28 would be the larger terrace (the appellant's figure is 6m²). The visual effect of chrome/glass balustrading is reduced by its height above ground and its relatively discrete position relative to the rear elevation of the principal building and the wall of the projecting rear extension. Also, the window within the rear elevation to the flat behind would not be obscured, thereby maintaining the rhythm of fenestration to the building.

33. The smaller area created outside the bedroom and adjacent to No 26 would be of limited depth. In turn this reduces the length of projection of the side screens and overall the balustrade system relates well to the host property. There is no harmful effect on the appearance of the locality, taking account of the relatively low elevation and the position at the back of the property.
34. The Council's concern is limited to effect on privacy, recognising that in an urban location such as this there is always a degree of overlooking of neighbouring gardens and windows due to the close proximity of properties one to another.
35. At this lower level, the main potential for a harmful loss of privacy is in relation to the dwellings and their gardens to either side. The side privacy screens are 1.8 m high and of opaque glass. The height is similar to that typically used for boundary fencing between rear gardens. I found that the view from the larger terrace was directed over the garden to No 27. Views towards the garden of No 26 were largely obscured by the enclosure provided by the built extension as well as the screen. The opaque screen was effective in relation to the effect for No 28. The space immediately next door was above an unused flat roof, reducing the possibility of a perception of overlooking or of disturbance. Taking account of the probability that occupiers of the flat would use the larger area the most, I consider that the effect on neighbours would be acceptable. The appellant's evidence includes a photograph of the side balustrade taken from the garden of No 28, which adds weight to my conclusion.
36. The small size of the balcony outside the bedroom would constrain its use and, together with the screens, restrict the visibility of neighbouring gardens. Whilst it was possible to see the patio in the neighbouring garden, in my judgement privacy would not be adversely affected.
37. Planning conditions would be required to ensure that the installation is retained as constructed in terms of its height and use of opaque glass in order to safeguard the amenity of neighbouring occupiers.
38. In summary the installation of metallic and glazed balustrading to create roof terraces at upper ground floor (rear) is of sensitive design quality that respects the characteristics of the host building and harmonises with the surroundings. An appropriate amount of privacy to residents and neighbouring properties would be achieved. The development complies with the requirements of Policies DM1 and DM12 of the DPD and, as regards privacy and amenity, Policy D3 of the London Plan. With reference to the Framework, an acceptable balance has been achieved between design quality, respect for local character, the amenity of neighbours and promoting health and well-being of the occupiers of the flat.

Conclusions

Appeal A

39. The development is not acceptable when considered as a whole by reason of the installation of the roof top railings. The balustrading at lower levels is acceptable subject to the details of the installation being adequately controlled through planning conditions. In terms of the more sensitive terrace at the higher level Appeal B is supported by detailed plans which provide the appropriate mechanism for control over the longer term.

40. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of section 180 of the Act.

Appeal B

41. The development complies with the development plan when read as whole. There are no other considerations of sufficient weight to indicate that this direction should not be followed.
42. The development has been carried out and therefore the standard planning condition on the time limit for commencement of development is not required. Conditions on materials, height and position of balustrading and requiring retention of privacy screens, linked to the details on the approved plans are necessary to safeguard visual amenity and privacy.
43. For the reasons given above I conclude that the appeal should be allowed and planning permission will be granted. The requirements of the upheld notice (Appeal A) will cease to have effect so far as inconsistent with the permission by virtue of section 180 of the Act.

DECISIONS

Appeal A Ref APP/Y5420/C/21/3266453

44. The appeal is allowed insofar as it relates to the development described in point 1 of the breach of planning control as alleged in the enforcement notice 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 installation of metallic and glazed balustrading on the roof of the part single storey rear extension which facilitates the creation of 2 different roof terraces on this part of the property at 27 Endymion Road, London N4 1EE, subject to the following conditions:
1. The opaque glass used in the installation of balustrading on the sides of the terraces shall be retained at all times.
 2. On the roof of the part single storey rear extension the height of the installation of balustrading shall be retained at 1.8 m on the boundary with No 26 Endymion Road at all times.
 3. On the roof of the part single storey rear extension the height of the installation of balustrading shall be retained at 1.8 m on the boundary with No 28 Endymion Road at all times.
45. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the development described in point 2 and point 3 of the breach of planning control as alleged in the enforcement notice. Planning permission is refused in respect of the installation of metallic and glazed balustrading on the roof of the part 4 storey rear extension and the installation of metal railings on the main roof of the property, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref APP/Y5420/W/20/3263788

46. The appeal is allowed and planning permission is granted for installation of single door access to rear of flat 5 in roof space and the installation of glass balustrade on rear of second floor flat roof to facilitate creation of a roof terrace Flat 5, 27 Endymion Road, London N4 1EE in accordance with the terms of the application, Ref HGY/2020/2363, dated 2 October 2020, and the plans submitted with it, subject to the following conditions:

- 1) At all times the glass balustrade shall be retained in the position, at the height and in the materials shown on plan numbers P(1-)01, P(3-)01 and P(4-)01 hereby approved.
- 2) Opaque glass shall be retained at all times in the sections of balustrade positioned on the north and west sides of the roof terrace, as shown on plan number P(1-)01 hereby approved.

Diane Lewis
Inspector