



Appeal Decisions

Site visit made on 4 August 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 September 2021

Appeal Ref A: APP/T5150/C/20/3247215

Appeal Ref B: APP/T5150/C/20/3247216

87 Chevening Road, London NW6 6DA

- 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 Act).
- **Appeal A** is made by Ms Claudia Renton and **Appeal B** is by Mr Mark Lobel against an enforcement Notice issued by the Council of the London Borough of Brent.
- The enforcement Notice was issued on 10 January 2020.
- The breach of planning control as alleged in the Notice is: *Without planning permission the erection of a roof terrace situated on top of the flat roofed single storey rear extension at the premises.*
- The requirements of the Notice are:
 - Step 1: Remove the unauthorised roof terrace situated on top of the flat roofed single storey rear extension at the premises including the decked platform, the balustrade and railings.
 - Step 2: Remove all associated debris, items and materials from the premises arising from compliance with the above step.
- The period for compliance with the requirements is 3 months.
- **Appeal A:** This is proceeding on the grounds set out in section 174(2)(a) and (f) of the Act. Since an appeal has been brought under ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act.
- **Appeal B:** Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed. The appeal is proceeding on ground (f) only.

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

Summary decision Appeal B: The appeal is dismissed and the enforcement notice is upheld.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 7 September 2021.

Procedural Matters

National Planning Policy Framework (the Framework)

1. During the course of the appeal, a revised version of the Framework was published on 20 July 2021 that officially replaces the previous version published in February 2019. The parties have had the opportunity to comment on the revised Framework and in reaching my decision I have had regard to it.

Error in the enforcement Notice (the Notice)

2. There is an error in schedule 3 of the Notice. The Supplementary Planning Guidance No.5 "Altering and Extending Your Home" (SPG5) has been superseded and the Notice should have referred to the Supplementary Planning Document No.2 entitled "Residential Extensions and Alterations" (SPD2)¹. The relevant extracts from the documents relate to paragraph 3.6 "Balconies and Roof Terraces" and paragraph 2.6 "Balconies and Roof Terraces" respectively.
3. Regulation 4 of the Enforcement Notices and Appeals Regulations² requires at (b) the Notice to specify all the policies and proposals in the development plan which are relevant to the decision. Policy DMP1³, which is within the development plan, is identified. Whilst general in its nature, the policy requires development to provide high levels of amenity. Planning law⁴ also requires applications for planning permission to be determined in accordance with the development plan. Documents such as the Council's SPG5 and SPD2 simply supplement the development plan and so are guidance rather than a development plan requirement.
4. The guidance in SPD2 is shorter and does not refer expressly to balconies and roof terraces being 'problematic' or compromising the 'privacy' of neighbours, as SPG5 does. Instead it advises that balconies and roof terraces can be 'difficult to provide without impacting on adjoining residents' and that 'Any proposal should be designed not to overlook the habitable room windows or gardens of adjoining properties'. The degree of any harm caused will depend on the particular circumstances of the proposals under consideration and is for the decision-maker to determine, as I do later.
5. In my view, the essence of the design guidance in SPD2 has not fundamentally changed and still advises that consideration is taken of the impacts a balcony or roof terrace would have on neighbouring residents. Even if the guidance has been worded in a more nuanced way, impacts can still include overlooking and the effects on privacy without expressly saying so.
6. In any event, levels of amenity fall to be considered under Policy DMP1, which is the relevant development plan policy explicitly referenced in the Notice. Schedule 3 of the Notice also clearly explains that the development results in 'overlooking to the neighbouring premises' and 'unacceptable loss of privacy for neighbouring occupiers'. I find the appellants had sufficient information to understand why the Notice was issued and to appeal.
7. Having referred to the wrong design guidance in the Notice the Council did not notify the appellants until late in the appeal timetable. The Planning Inspectorate gave the appellants more time to submit their Statement in light of this and they availed themselves of this opportunity. For the reasons above, an incorrect reference to supplementary planning guidance does not, in my view, render the Notice invalid. I find no prejudice has been caused.

¹ adopted in January 2018

² The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.

³ of the London Borough of Brent Development Management Policies Document, adopted 2016.

⁴ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

Appeal A

The Appeal on Ground (a) and the Deemed Planning Application

8. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the Notice.

Main Issue

9. Based on the reason for issuing the enforcement notice, the main issue is the effect of the appeal development on the living conditions of neighbouring occupiers with particular regard to privacy.

Reasons

10. The appeal property is a two-storey semi-detached Victorian dwelling within the Queens Park Conservation Area (the CA), which is an example of a planned estate displaying a unified pattern of streets, which I observed was a predominantly residential area. There is an Article 4 Direction removing a number of householder permitted development⁵ rights from various properties within the CA.
11. At the rear, the property has a two-storey outrigger. A flat roof single storey extension has been added to the end of the outrigger as part of planning permission⁶ granted for various extensions and alterations. Despite some variety in design and detailing of the properties, the CA displays a uniformity and I saw that two-storey outriggers with single storey extensions were a characteristic feature of nearby properties and the adjoining semi-detached property 85 Chevening Road (No.85).
12. The appeal development involves the formation of a roof terrace on the flat roof of the single storey rear extension. Decking has been laid on the roof and clear glass balustrading panels have been erected around the three sides of the roof, held in place with slim vertical steel poles or railings and unobtrusive brackets secured to the rear wall. Access to the roof terrace is via patio doors that have been installed in the first floor master bedroom. The roof terrace is not visible from the street.
13. I saw that the adjoining property (No.85) has laid decking on the flat roof of their single storey extension. There was a small table and some chairs and along the edge of the decking planters and tubs had been placed. Access to their decking was also via a set of patio doors from a habitable room. I am led to understand that No.85 is two flats and that the occupiers of the upper floor flat use the roof terrace. I could see that users of this roof terrace are able to look across onto the appellant's roof terrace and into their master bedroom, as indeed I was able to look into No.85. The Council advise that the use of next door's roof terrace has occurred for some time and is immune from enforcement action, but is still contrary to policy.
14. The patio doors that have been installed to the appellant's master bedroom allow occupiers to walk through the doors and stand and walk about on the roof terrace and lean over the balustrades, as I was able to do on my visit.

⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

⁶ LPA ref: 18/1442 granted 8 June 2018 for 'A single storey rear extension to replace existing extension, single storey side infill extension to outrigger and erection of basement level and associated landscaping'.

15. I was able to look down into the patio areas and parts of the gardens of the properties either side (Nos.85 and 89) and see garden furniture and other garden paraphernalia. Whilst the appeal garden and neighbouring gardens had some trees and shrubs and there was a palm tree or similar along the boundary with No.89, landscaping is not a permanent feature and in winter, as some leaves drop off, views would generally be increased. Standing on the terrace I could also look back towards the rear and side habitable windows of No.89. There are no properties to be affected at the rear due to the long garden and railway.
16. From the roof terrace I was also able to look into properties further afield such as into the habitable room of the glazed ground floor extension at No.83 with its sofa in full view. I could also look along the rear of properties in both directions and see a number of flat roof single storey extensions. I saw that occupiers of one property had placed some garden chairs on the flat roof of their single storey extension, but I did not see any form of balustrading or balconies on any other properties.
17. In denser urban areas where properties are closer together there is generally an accepted lower level of amenity and privacy. Partial views of other properties and private courtyards already exist, and there were side windows in the appellant's master bedroom looking towards the side elevation of No.89.
18. Nonetheless, it was clear to me that the roof terrace with its elevated position, size, and balustrades that can be leaned over, has facilitated more extensive and intrusive views of neighbouring properties and gardens than is the case from standing at the existing patio doors. It also increases the perception of being overlooked.
19. Accessing the roof terrace periodically for maintenance purposes is an acceptable and incidental use of the flat roof. However, in my view such occasional use would not warrant the need for such substantial balustrading around the outer edges of the roof. Whilst the appellant may only need occasional access, planning permission runs with the land and future occupiers of the property may act differently. The presence of balustrade around the outer edges of the roof terrace, coupled with the decking surface, would likely encourage a different character and intensity of use that would adversely affect the privacy of neighbouring properties than if the balustrade was not there. A condition could be imposed to prevent use of the roof terrace as a balcony or sitting out area, but the extensive decking area and balustrading around all sides would likely still encourage use.
20. I appreciate the need for safety and note the appellant's concerns that should her young children happen to access the roof terrace there is a serious risk they could fall off. However, there are other ways of providing security closer to the patio doors, such as a Juliet-style balcony, that would still afford periodic access to the roof for maintenance purposes.
21. Whilst the arrangement of adjacent flat-roofed single-storey extensions is common here, not all properties have installed doors at first floor providing direct access to the roofs as the appellant and next door have chosen to do. I could see that some form of physical structure along the shared boundary would impede access across the roof terraces. I have not been advised of any incidents to suggest that security is, or has been, a problem. The appellant's

- choice of clear glass balustrading is at odds with their concern of being directly overlooked by those using the roof terrace at No.85.
22. I am advised that the decking is also necessary to protect the single-ply membrane on top of the flat-roofed extension from exposure to sunlight and any thermal movements. The usual shingle covering would not protect the membrane from being punctured if walked on, albeit occasionally. I have not been provided with any technical specification of the membrane roof. Consequently, I am not satisfied that the roof needs to be covered with decking. Any visual continuity the decking may provide with next door's decking is minimal, and in my view negated by the elevational differences on the rear single storey extensions when viewed from the garden.
23. The appellant refers me to a number of existing and approved roof and balcony extensions. For the three photographed examples I have not been provided with their full details or circumstances, but their mere presence does not indicate they are lawful. In addition, there are permissions and consents granted for four other roof terraces. The Council has confirmed that two were granted Certificates of Lawfulness because it had been proven the terraces were immune from enforcement due to the passage of time – and in these types of applications planning merits do not fall to be considered. The other two roof terraces that were granted planning permission were apparently much smaller than the appeal development before me, and both were approved a number of years ago.
24. These last two examples illustrate that the Council has found some roof terraces can be designed in a way that do not cause significant overlooking of occupiers of neighbouring properties. However, none of the examples comprise the same configuration as the appeal development before me and consequently they are not directly comparable. In any event, I must consider the appeal on its own merits.
25. For the reasons above I find the appeal development causes significant overlooking that results in an unacceptable loss of privacy to occupiers of neighbouring properties as to harm their living conditions. Accordingly, the development is contrary to Policy DMP1 of the London Borough of Brent Development Management Policies Document. It is also be contrary to the advice in SPD2. The aims of these are outlined above. The Queen's Park Conservation Area Design Guide 2013 does not refer to roof terraces and balconies and their potential amenity issues and hence is not directly relevant to the main issue on living conditions.
26. As part of the ground (f) appeals, the appellant has provided plans in their Grounds of Appeal in Figs 4, 5 and 6 that show a 1.8m high opaque glass security screen in a position (marked in green) that coincides with the existing balustrade along the shared boundary with 85 Chevening Road. I have powers to grant planning permission for the '*whole or any part of those matters*' stated in the enforcement notice as constituting a breach of planning control. The Notice is directed at the balustrade that was in place at the time of the issue of the Notice. I have not been advised that what I saw on site is different from that which has been enforced against. Installing a taller balustrade would extend the development beyond the height of the existing balustrade. In my judgement this would not be within the '*whole or any part of*' the balustrade against which the enforcement notice was issued. Therefore, I am unable to

- take the taller 1.8m high balustrade into account or grant any planning permission for it.
27. Keeping the balustrade the same height as that which exists, but replacing the clear glass panels with opaque glass ones instead all around the roof edge would come within the 'whole or any part' of the matters. However, this would not overcome the issues of overlooking I have described, as one would still be able to walk out onto the roof terrace and lean over the balustrade around the three sides of the roof terrace.
28. However, retaining the glass balustrade only along the shared boundary with No.85 would maintain the security the appellant says they need. Furthermore, making the glass balustrade opaque along this shared boundary, as the appellant suggests, would provide the privacy the appellant says is lacking against users of the adjacent roof terrace. This would not be unreasonable in my view. In such a scenario, the height of any opaque glass balustrade would need to not exceed their current height, in order to be within the 'whole or any part' of the matters.
29. The appellant's plans show this screen annotated as 1.8m high, but I have found a screen of this height should not be granted planning permission and so these plans could not be used. Nonetheless, a condition can be worded with sufficient precision of what needs to be done. In addition, as the appellant's plans indicate only opaque glass panels could be used, I will condition that the opaque glass panels are not patterned or coloured.
30. The decked platform and balustrade along the other two edges of the roof would still need to be removed as these facilitate the wider use of the roof terrace. As the appellant says they only need periodic access to the flat roof for maintenance, a condition could be imposed preventing the use of the roof terrace as a balcony or seating area.

Conclusion on the Ground (a) Appeal and the Deemed Planning Application

31. Accordingly, for the reasons given above, I conclude that the ground (a) appeal and the deemed planning application should succeed in part only. I will grant planning permission on the application deemed to have been made for one part of the alleged matters (namely the glass balustrade and railings along the shared boundary with No.85 Chevening Road on top of the flat-roofed single-storey rear extension) subject to conditions, but otherwise I will refuse to grant planning permission on the other part (namely the decked platform and remaining glass balustrade and railings along the two other sides of the flat-roofed single-storey rear extension). The requirements of the Notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act.

Appeals A and B

The Appeals on Ground (f)

32. An appeal on ground (f) is that the requirements of the Notice exceed what is necessary. To determine this it is essential to first understand the purpose of the Notice. Section 173(4) of the Act provides that the purpose of the Notice shall be either to remedy the breach of planning control or to remedy any injury to amenity.

33. The Notice requires the removal of the decked platform, the balustrade and railings. The purpose of the Notice is therefore to remedy the breach of planning control. For an appeal on ground (f) to succeed the appellants must show that the requirements of the Notice are excessive to remedy the breach to put the property back to its condition before the breach took place and that 'lesser steps' would achieve the same end.
34. I have already considered the arguments in relation to ground (a) and found that planning permission ought not to be granted for the decked platform, balustrade and railings along the end and outer side of the flat-roofed single-storey rear extension, but granted for the balustrade and railings along the shared boundary with 85 Chevening Road and that the glass panels are replaced with opaque glass panels that do not exceed their current height. There is no scope for me to revisit that conclusion or any other aspect of the planning merits through a ground (f) appeal.
35. As already mentioned, I have the power to grant planning permission for the 'whole or part of the matters' alleged. I have considered whether permission could be applied to taller 1.8m high obscure glazed balustrading, but it is outside the scope of the Notice. Furthermore, taller screens with opaque glazing would not result in the removal of the decked platform or the balustrade, and hence would not remedy the breach of planning control. Therefore these 'lesser' steps cannot be entertained.
36. The retention of any part of the development would not remedy the breach of planning control. To that end, it is essential and not excessive to require that the roof terrace including the decked platform, balustrade and railings are removed and the property is made good.
37. The appeals on ground (f) therefore fail.

Other Matters

38. The appellants express concerns with the Council's handling of the case and mischaracterisation of correspondence, but in reaching my decision I have been concerned only with the planning merits of the case. I note that some of the correspondence refers to an outbuilding, but the alleged breach of planning control and the appeal before me does not involve one.
39. Whilst there are no letters of objection from the immediately adjacent properties, the lack of representations from them does not diminish the harm that I have identified. Just because someone has not objected to the Council about use of the roof terrace at No.85 does not necessarily imply they have no concerns about it. Furthermore, planning permission runs with the land and I must determine the proposal on its planning merits.

Formal Decisions

For Appeal A:

40. The appeal is allowed insofar as it relates to the land outlined bold in black on the plan and the glass balustrade and railings on top of the flat roof of the single storey rear extension along the shared boundary with 85 Chevening Road, 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 glass

balustrade and railings on top of the flat roof of the single storey rear extension along the shared boundary with 85 Chevening Road, at 87 Chevening Road, London NW6 6DA, subject to the following conditions:

1. Unless within 3 months of the date of this decision the clear glass balustrade panels along the shared boundary with 85 Chevening Road are replaced with non-coloured, non-patterned, opaque glass panels that shall not exceed the height of the ones they replace, the balustrade and railings along the shared boundary with 85 Chevening Road shall be removed. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
 2. The roof on top of the flat-roofed single-storey rear extension shall not at any time be used as a balcony or sitting out area and no additional balustrade, railing, wall, fence or other means of enclosure shall be erected on any part of the flat roof, apart from the opaque glazed balustrade and railings permitted under condition 1 above.
41. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the land outlined bold in black on the plan and the decked platform, the glass balustrade and railings along the other two sides of the flat roof, and planning permission is refused in respect of the decked platform, the glass balustrade and railings along the other two sides of the flat roof at 87 Chevening Road, London NW6 6DA on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

For Appeal B:

42. The appeal is dismissed and the enforcement notice is upheld.

K. Stephens
INSPECTOR