



Appeal Decision

Site visit made on 14 September 2021

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

an Inspector appointed by the Secretary of State

Decision date: 12 October 2021

Appeal Ref: APP/N5660/C/19/3237246

89 Churchmore Road, London SW16 5XA

- 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 Mander (RM Property) against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice was issued on 6 September 2019.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a flat roofed, full width single storey ground floor extension to the rear elevation of the premises, with wooden balustrade atop the edges of its roof ('the unauthorised rear extension') and the unauthorised creation of a self-contained flat at second floor level ('the unauthorised flat').
 - The requirements of the notice are to:
 - a) Remove the unauthorised rear extension in its entirety from the premises and reinstate the rear elevation of the premises as existed prior to the breach of planning control; and
 - b) Cease the use of the unauthorised flat by fully removing all partitions and divisions and all kitchen facilities (including all kitchen units, appliances and services) from the second floor of the premises that facilitate the unauthorised use; and
 - c) Remove all associated waste and debris resulting from compliance with above steps, from the premises.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) (c) (e) of the Town and Country Planning Act 1990 as amended (the Act).
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Decision

1. It is directed that the enforcement notice be varied by substituting the words "boundary treatment" for "wooden balustrade" in paragraph 3, due to partial success under ground (b).
2. Subject to this variation, the appeal is otherwise dismissed and the enforcement notice is upheld.

Ground (e)

3. For an appeal to succeed under this ground, the appellant must satisfy me on the balance of probabilities that copies of the enforcement notice were not served as required by section 172 of the Act. Even were I satisfied of failure by the Council to comply with these provisions, I may disregard non-service under section 176(5) provided that neither the appellant nor the person not served have been substantially prejudiced.
4. The appellant says that a copy of the notice was served addressed to the occupier of the "Second Floor Flat" as opposed to what he says is the correct address of "Room 6". However, I have seen a copy of correspondence from the

occupier of the accommodation unit in question confirming that she received the copy of the enforcement notice served. As the occupier was afforded the right of appeal through such receipt, neither she nor the appellant (who has exercised his right of appeal) were substantially prejudiced even were it the case that she was not served in full compliance with section 172. Therefore, the appeal under ground (e) fails.

Grounds (b) and (c)

5. For an appeal to succeed under ground (b), the appellant must satisfy me on the balance of probabilities that the matters stated in the notice have not occurred. For success under ground (c), the appellant must satisfy me to the same standard of proof that those matters (if they occurred) do not constitute a breach of planning control.

Self-contained flat

6. The appellant says that, at the time the notice was issued, there was no self-contained flat at second-floor level as alleged by the Council. He says that it was another room ("Room 6") in a licenced House in Multiple Occupation, although does not dispute it had a kitchenette which he has removed since the issue of the notice.
7. However, in my judgement the second-floor unit had all the facilities required for day-to-day private domestic existence (including cooking and washing facilities) separated from the rest of the appeal property by a locked door (code-locked on my site visit). Therefore, as a matter of fact and degree I find that it constituted a self-contained flat.
8. Section 55(3) of the Act is clear that the creation of an additional dwelling in any building previously used as a single dwellinghouse constitutes a material change of use and, therefore, development. As no planning permission has been granted for this development, it constitutes a breach of planning control.
9. Accordingly, appeals under grounds (b) and (c) fail in respect of this aspect.

Rear extension

10. The appellant does not dispute under ground (b) that a single-storey ground floor rear extension has been built. Further, in respect of ground (c), at the time the notice was issued the development neither benefitted from express planning permission or from general planning permission afforded by the Town and Country Planning (General Permitted Development) (England) Order 2015 since the parties agree that it is 4m in depth. Class A of Part 1, Schedule 2 providing planning permission for such extensions is limited to those extending no more than 3m from the rear wall of the original dwellinghouse unless it is a detached property. The appeal property is an end of terrace property.
11. Therefore, appeals under grounds (b) and (c) fail in respect of this aspect.
12. I understand that the extension has been granted express planning permission by the Council since the appeal was made¹. However, it is not necessary for me to amend the notice to reflect the existence of the new permission as section 180 of the Act provides that the notice shall cease to have effect so far as is inconsistent with that permission.

¹ 20/01612/FUL; 10 July 2020

Wooden balustrade

13. The appellant says that no wooden balustrade exists, or existed, atop the edges of the roof of the rear extension as stated in the notice.
14. According to the Oxford Dictionary, referred to by the appellant, a balustrade is "a row of short posts or pillars supporting a rail or stone coping round a balcony or terrace". The appellant has further given its meaning as "a railing supported by balusters" (consistent with this definition) and the Council has not substantively addressed the matter of balustrade definition in its submissions.
15. It appears that a continuous line of wooden planters/box-type structures with ornamental hedging above has been positioned along the edges of the roof. As a matter of fact, these do not constitute a balustrade since they are not "a row of short posts or pillars supporting a rail or stone coping" or similar. Therefore, the appeal on ground (b) succeeds on this aspect.
16. Under ground (c), the appellant essentially makes a case that these additions are not development as they are removeable. However, it appears that the structures have been fixed to each-other and massed together form a relatively sizeable boundary treatment around all open sides of the roof. These features deliver a degree of permanency sufficient to lead me to find that a boundary treatment amounting to operational development requiring planning permission has been erected. Accordingly, ground (c) fails on this aspect
17. For these reasons, I am varying the notice appropriately to substitute the words "boundary treatment" for "wooden balustrade".

Conclusion

18. For the reasons given above I conclude that the appeal should not succeed, except to a limited extent under ground (b). I shall uphold the enforcement notice with a variation.

Andrew Walker

INSPECTOR