



Appeal Decision

Site Visit made on 20 September 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2021

Appeal Ref: APP/N5660/C/21/3275169

58-60 Barnwell Road, London SW2 1PW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Amy Hopkins Younger against an enforcement notice issued by London Borough of Lambeth.
 - The notice was issued on 24 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the installation of black metal railings atop and around the perimeter of the main flat roof of 58 Barnwell Road ('the unauthorised railings') facilitating its use as a terrace.
 - The requirements of the notice are to:
 - a) Remove the unauthorised railings and all associated fixtures and fittings in their entirety from the premises and make good the roof as existing prior to the breach of planning control; and
 - b) Remove all resultant waste and debris arising from compliance with the above requirement, from the premises.
 - The period for compliance with the requirements is: Four months after this notice takes effect.
 - 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 brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. 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.

Preliminary Matters

2. The railings, the subject of the notice, had been removed from the property at the time of my site visit. Photographs provided by the appellant have been used to inform my assessment of the effect of the appeal scheme on the character and appearance of the area. Railings erected at No 87 Rattray Road do not form part of the breach and are therefore outside the scope of this appeal.
3. Since the enforcement notice has been issued, the London Plan (2021) has been published. The Council advise that it considers policies D4 and D6 are relevant to the appeal and establish overarching broad principles which are better catered for within the Local Plan policies identified within its appeal statement. The appellant has been given the opportunity to comment on the implications of the new London Plan on the appeal.

4. Since the appeal was submitted, the Council has adopted its new Lambeth Local Plan 2020-2035¹¹ (LLP). Although not identified within its reasons for taking enforcement action, the Council cited Policy Q11 within its statement of case and the appellant has addressed the implications of the policy on the appeal scheme within their statement of case. When the publication of the LLP was raised with the parties, the Council stated the policies it considers of relevance to the appeal are D5, Q2, Q5, Q8 and Q11. I have therefore considered the appeal on the basis of these policies.

Main Issues

5. The main issues are the effect of the appeal scheme on:
- The character and appearance of the area; and
 - The living conditions of neighbouring occupants, having particular regard to overlooking.

Reasons

Character and appearance

6. The appeal site comprises part of a Victorian style terrace, located in a prominent position on the corner of Barnwell Road and Rattray Road. The fine architectural detailing of the building and use of traditional materials makes a significant positive contribution to the character and appearance of the area. Although removed by the time of my site visit, the breach comprises metal railings which were erected above the parapet wall and around the perimeter of the main flat roof of 58 Barnwell Road.
7. Policies Q5 and Q11 of the LLP seek development which responds to positive aspects of the locality and historic character in terms of built form, including roofscapes, and policy Q8 of the LLP seeks building designs and details which are visually attractive, amongst other things. Policy D4 of the London Plan seeks, in part, to ensure scheme quality is not adversely affected by materials.
8. The Building Alterations & Extensions Supplementary Planning Document (SPD) 2015, explains that the design unity of architectural groups and the prevailing uncluttered character of many roofscapes mean that most roof alterations are best located to the rear. However, the appeal railings would extend along the main frontage of the building, along Barnwell Road and so would be a prominent feature. Metal railings above the parapet wall would be an uncharacteristic feature which would detract from the fine architectural detailing of the host building and contrast with the traditional materials used in its construction.
9. Although the appeal railings were similar in size, height and appearance to the railings at No 87 Rattray Road, the Council advise the railings at No 87 were erected without planning permission and are immune from enforcement action by the passage of time. A matter which is not disputed by the appellant. The appellant suggests the consistency of treatment would ensure that the building continues to form a coherent terrace. However, the railings would not extend along the entire frontage of the building and would therefore not form a coherent terrace.

¹¹ Adopted September 2021

10. Furthermore, although the railings to No 87 Rattray Road can be seen from Barnwell Road, their extent along the frontage with Barnwell Road is limited. Railings to the appeal property would be particularly prominent in views along Barnwell Road, towards the junction with Rattray Road.
11. I saw that there are a number of solar panels on the roof top, which are likely to require maintenance over time. The appellant also advises that the roof is also used as a fire escape and the railing is required to meet Building Regulations. The appellant has drawn my attention to policies D3 of the London Plan, which requires consideration of safety, amongst other things and D11, which seeks to minimise potential physical risks and Paragraph 97² of the Framework, which seeks to promote public safety.
12. Whilst I accept safe access to the roof is required, to enable maintenance of the solar panels or in the event of a fire, I am not persuaded the appeal scheme is the only means of securing this. It may be possible to provide some sort of barrier set back from the parapet walls, limiting the visual impact on the character and appearance of the area, or for individuals to secure themselves while working on the roof. I therefore afford this matter very limited weight.
13. Given the building's prominent position along Barnwell Road, the railings would appear a dominant, incongruous feature which would harm the character and appearance of the area, contrary to policies Q5, Q8 and Q11 of the LLP, policy D4 of the London Plan and the SPD, the requirements of which are set out above.

Overlooking

14. The appellant states that the use of the roof for maintenance, access and occasional amenity use by occupants of the flat has already been established. Although it would be possible for occupants to use the roof without the railings, given the limited height of the parapet walls above the surface of the roof, I consider levels of use are likely to be very low in the absence of railings or some sort of other barrier to reduce the risk of falling. I therefore afford this matter very limited weight.
15. Due to the height of the appeal building, users of the roof are able to peer into a number of rear gardens to properties along Rattray Road, in particular Nos 77-79, as well as the windows of properties opposite the appeal site, along Barnwell Road. While there is a degree of overlooking within the area already, given the open nature of the roof top, users of the rear gardens in particular are likely to find such overlooking intrusive, contrary to Policy Q2 of the LLP, which seeks to avoid unacceptable levels of overlooking, amongst other things and policy D6 of the London Plan, which seeks to ensure high quality design and sets out key qualitative aspects which should be addressed in the design of housing, including ensuring the site layout, orientation and design provide privacy for residents, amongst other things.

Other Matters

16. The enforcement notice identifies Policy D5 of the LLP within its reasons for issuing the notice. However, the policy simply sets out the circumstances in

² Referred to in the evidence as paragraph 95, which became paragraph 97 following the publication of the Framework in 2021.

which the Council will take enforcement action and is therefore not determinative in the appeal before me.

Conclusion

17. I have found the railings would harm the character and appearance of the area and lead to harmful overlooking of the rear gardens of 77-79 Rattray Road. While the railings would enable safe access to the roof for the maintenance of the solar panels and in the event of a fire, since there are likely to be other means of securing the roof, such benefits do not outweigh the harms I have identified above. I consider that the development conflicts with the development plan as a whole and there are no material considerations which indicate that the decision should be taken otherwise in accordance with the development plan.
18. Thus, for the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

M Savage

INSPECTOR