



Appeal Decision

Site visit made on 23 November 2021

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

an Inspector appointed by the Secretary of State

Decision date: 10th December 2021

Appeal Ref: APP/H5960/C/20/3258913

Land at 97-99 St Johns Road, London SW11 1QY

- 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 Anestis Kyprianou (Parkgrove Properties Limited) against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The enforcement notice was issued on 24 July 2020.
- The breaches of planning control as alleged in the notice are:
 - Breach A
Without planning permission and within the past four years, the erection of a timber enclosure and timber decking at rear first-floor level of the Property (the "Unauthorised Timber Enclosure"); and
 - Breach B
Without planning permission and within the past ten years, breach of condition 4 of the planning permission granted by the Council on 26 January 2016 under reference 2015/5049 (the "Planning Permission") which state: Condition 4 *The development shall be carried out in accordance with the approved drawings and specifications 99/04/01, 99/04/02A, unless otherwise approved in writing by the local planning authority.* Condition 4 has been breached by the failure to install a glazed balustrade approved under this condition.
- The requirements of the notice are to:
 - Breach A
 1. Remove the Unauthorised Timber Enclosure from the Property; and
 2. Remove from the Property all debris arising from compliance with step 1 above.
 - Breach B
 1. Install the glazed balustrade to a height of 1100mm to the rear of the Property as required by condition 4 of the Planning Permission.
- The period for compliance with the requirements is 4 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) (c) (d) (e) (f) (g) of the Town and Country Planning Act 1990 as amended (the Act). 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.

Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Site Visit

2. Relevant to the 'Breach B' matter, I saw on my site visit that a glazed balustrade had been installed to the rear of the first floor flat creating a modest amenity area for its occupiers upon the flat roof. The development which is the subject of 'Breach A' was present, forming a much larger enclosed area on the other side of the balustrade nearer Barnard Mews and 85 St Johns Road.

Ground (e)

3. For an appeal to succeed on this ground, the appellant must demonstrate on the balance of probabilities that copies of the notice were not served in accordance with section 172 of the Act. I also have discretion under section 176(5) of the Act to disregard any such failure where it has not caused substantial prejudice.
4. The appellant says that he was not served with a copy of the notice within 28 days of its issue, despite having provided the Council previously with his contact details including address.
5. The notice indicates that copies were served on the appellant and his company at 1 Kings Avenue, London N21 3NA (and at the appeal property in the case of the appellant). Notwithstanding the burden of proof being upon him, I do not know what address was provided to the Council by the appellant as he reports. However, he does say that he was provided with a copy by his mortgage lender who had received the document. As the appellant subsequently appealed against the notice, I do not consider that he has been caused any substantial prejudice even had the Council not complied with section 172 of the Act (which in any case he has failed to demonstrate).
6. Accordingly, the appeal under ground (e) does not succeed.

Ground (c)

7. For success on this ground, the appellant must satisfy me on the balance of probabilities that the matters stated in the notice do not constitute a breach of planning control.
8. The appellant says that the timber enclosure including fencing does not constitute a breach of planning control in that it is allegedly in-keeping with the adjoining properties. However, this is a ground (a) matter relating to the planning merits of a development and I shall deal with it accordingly under that ground. The appellant further says that it is "permitted development in that no new or additional floorspace was provided as a consequence of the alleged contravention and that the plans submitted at the time of development clearly show the space as having existed prior to the timber enclosure...". However, an assertion that there was space on the pre-existing flat roof at the location does not mean that the matters under 'Breach A' of the notice do not constitute operational development under section 55 of the Act which require planning permission. Notwithstanding what the appellant has said about permitted development, he has not demonstrated how the development benefits from such rights and I am otherwise not satisfied that they do. As underlined by the Council, there are no such rights under Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for development within the curtilage of a building used for flats.
9. Accordingly, the appeal under ground (c) does not succeed.

Ground (d)

10. For an appeal to succeed under this ground, the burden of proof is upon the appellant to satisfy me on the balance of probabilities that at the date the notice was issued it was not possible for the Council to take enforcement action.

11. In respect of 'Breach A', the Act says that enforcement action is possible within a period of 4 of years following the substantial completion of the development. The appellant says that the decking has been in existence for over 40 years. However, he has provided no substantive evidence to support that statement and the burden of proof is upon him. The appellant does not provide a date of when the timber enclosure was completed or substantive evidence to show it took place more than 4 years before the issue of the notice on 24 July 2020. He says that the development occurred prior to the grant of retrospective planning permission 2016/1138 on October 2016 but has not provided evidence of that or papers and drawings associated with the application and approval. He has asked me to note dates of associated correspondence with the Council, yet I read that the email to him from Mr Tan dated 19 April 2017 says, " *I note that a new timber fence has been erected at first floor level without planning permission as I could not see this fence included in the planning permission under reference 2016/1138*". Consequently, I find the appellant's case in this matter to be insufficiently precise and unambiguous to be persuasive. Conversely, there is clearly precise and unambiguous evidence from the neighbouring occupier at 85A St Johns Road (supported by photographs) that the timber enclosure was erected on 12 March 2017 and this corroborates the Council's statement.
12. The appellant makes no clear case in respect of 'Breach B' under this ground. Further, for the avoidance of doubt, the Act permits enforcement action within a period of 10 years following the alleged breach of a planning condition. The condition was imposed with the planning permission 2015/5049 granted on 26 January 2016.
13. For these reasons, the appeal on ground (d) does not succeed.

Ground (a) and the deemed planning application

Main issue

14. The main issue in the ground (a) appeal is the effect of the breaches of planning control on the living conditions of neighbouring occupiers as regards noise and general disruption.

Reasons

15. The rear of the appeal property faces onto Barnard Mews where the front elevations of the terraced houses directly abut the street. Opposite them across the Mews are residential dwellings on floors above commercial units on St Johns Road. One of these, 85A St Johns Road, is very close to the appeal property and in particular to the timber enclosure that has been constructed at broadly the same level as the dwelling. The setting is therefore a relatively densely occupied and close-knit residential area separated from the busy commercial streets in the area by the buildings that line those streets.
16. The introduction of a relatively large, decked area to the rear of the appeal property, its use facilitated by the timber perimeter fencing (which the appellant acknowledges is higher than the previous boundary treatment¹), creates an amenity space that can be used recreationally by a much larger group of people than the smaller balustraded balcony amenity areas approved

¹ "...prior to the erection of the timber fencing the area subject to the Enforcement Notice was protected by a brick wall construction approximately 2" (two foot) in height."; Grounds of Appeal (Ground (f))

and conditioned under the planning permission. This in my judgement creates significant harm to the living conditions of neighbours in the sensitive setting I have described, and indeed I have seen considerable evidence from local residents that there has been a significant adverse impact through noise and general disruption from use of the development since it was constructed. I place significant weight on this evidence from multiple sources and it supports my finding on harm, being in conflict with policy DMS1 of the Wandsworth Local Plan Development Management Policies Document (2016) and its aim of ensuring developments do not harm the amenity of neighbouring occupiers through unacceptable noise and other impacts. Even with the provision of a glazed balustrade, as seen on my site visit, the existence of the timber enclosure and decking poses an unacceptable risk of use and resultant harm to neighbours.

Other matters

17. The appellant says that other properties nearby have outside amenity areas, enclosed in some cases by fences. I acknowledge that, but it is the size of the appeal development in the context I have described that causes unacceptable harm.
18. I agree with the main parties that the development does not harm the character and appearance of the area, including the St Johns Road Conservation Area. The fence is of an unstriking appearance and is not inharmonious with the main building which in any respect is not of particular architectural or historic importance.
19. I do not accept that the fencing is reasonably necessary for the privacy of occupiers of the first-floor flat of the appeal property. Its windows are sufficiently distant from the direct views of neighbours and of those using Barnard Mews.

Conclusion on ground (a) and the deemed planning application

20. For the above reasons, the appeal fails on ground (a) and I will not grant planning permission in respect of either breach.

Ground (f)

21. For an appeal to succeed on this ground, I must be satisfied that the steps required to be taken to comply with the notice are excessive in achieving its purpose.
22. From the way the notice has been drafted, I find that its purpose is to remedy the breach of planning control as regards 'Breach A' by returning the land to its condition before the breach took place, and as regards 'Breach B' by ensuring compliance with the condition imposed by the planning permission. There is therefore nothing excessive in the requirements in section 5 of the notice, which do no more than achieve the purpose of the notice.
23. The appellant has suggested that restrictions could be imposed on the use of the enclosed area behind the timber fencing, such as upon the number of people permitted to use it at any one particular time. Even were I to consider the purpose of the notice is to remedy injury to amenity rather than to remedy the breach of planning control, I think that any such restrictions would be practically unenforceable and unreasonably onerous for the Council to monitor.

24. Accordingly, the appeal on ground (f) fails.

Ground (g)

25. For an appeal to succeed on this ground, I must be satisfied that the time given in the notice for compliance with its requirements falls short of what is reasonable.

26. The appellant says that the compliance period of 4 months is unreasonable and requires no less than 12 months due to “the existing health concerns and national/international pandemic”. However, notwithstanding the current Covid- 19 context, the appellant has apparently already complied with the notice requirements in respect of ‘Breach B’ and the removal of the unauthorised timber enclosure could reasonably be undertaken within 4 months.

27. Accordingly, the appeal under ground (g) does not succeed.

Conclusion

28. 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 deemed application.

Andrew Walker

INSPECTOR