



Appeal Decision

Site visit made on 18 January 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 16 February 2022

Appeal Ref: APP/T5150/C/21/3273283

44 Randall Avenue, London NW2 7ST

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by G Mohamed against an enforcement notice issued by London Borough of Brent.
- The enforcement notice was issued on 10 March 2021.
- The breach of planning control as alleged in the notice is breach of condition No 1 of a planning permission ref APP/T1550/C/19/3238016 granted on 19 August 2019 (the '2019 permission')
- The condition in question is Condition 1 which states that: 'Unless within 1 month of the date of this decision, details of screening to prevent overlooking from the decking hereby approved into neighbouring properties are submitted in writing to the local planning authority for approval, and unless the approved details are implemented within 1 month of the local planning authority's approval, the decking and fencing hereby approved shall be removed from the land and all equipment and materials brought onto the land for the purposes of such removal shall be removed until such time as a scheme is approved and implemented. If no details in accordance with this condition are approved within 4 months of the date of this decision, the decking and fencing hereby approved shall be removed and all equipment and materials brought onto the land for the purposes of removal shall be removed until such time as the details approved by the local planning authority are implemented. Upon implementation of the approved details specified in this condition, the screening shall thereafter be maintained so as to fulfil its purpose. 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.
- The notice alleges that the condition has not been complied with in that: Details of screening to prevent overlooking from the decking have not been approved by the Local Authority within 4 months of the date of appeal decision APP/T5150/C/19/3238016
- The requirements of the notice are to:
 1. Demolish the unauthorised decking and fencing to the rear of the premises.
 2. Remove all debris and items arising from this demolition and remove all materials associated with the unauthorised development 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)(a) and (f) of the Town and Country Planning Act 1990 as amended (the Act). 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.

Decision

1. It is directed that the enforcement notice is varied by:

"Adding the following wording to the end of the first requirement ` OR alter the decking including reducing the width so that it accords with the approved plans pp 16/0813 (only in so far as it relates to the decking)."

2. Subject to the variation, 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.

Background Matters

3. Following the issue of an enforcement notice, the 2019 permission was granted on appeal¹ for the decking and associated balustrade fence to the front of the decking. However, as planning permission was not granted for the canopy structure including the screening to both sides of the decking, a single condition was imposed to ensure that details of alternative screening were submitted to the Council for approval and subsequent installation to mitigate harm to living conditions of neighbouring occupiers.
4. The appellant subsequently submitted two applications to discharge the condition and both were refused by the Council who then served the notice which is the subject of this appeal.

The appeal under ground (a) and the Deemed Planning Application (the DPA)

5. The DPA where a breach of condition has taken place is usually for the development to be permitted without compliance with the condition being enforced against. The development being enforced against is the decking and the associated balustrade fence. The previous appeal decision upheld the part of the enforcement notice which required the removal of the canopy frame and the side panels made of plastic sheeting. The planning merits of those elements do not therefore fall within the scope of this appeal.
6. However, the appellant is not asking for the development to be permitted without compliance with the condition but instead has suggested a replacement condition. I do have power under Section 177(1)(b) to discharge the condition and to impose a new condition under Section 177(4) of the Act.
7. The development permitted by the 2019 permission is located to the rear of the appeal dwelling and consists of wooden decking with a balustrade fence to the area of decking closest to the garden. The decking structure also includes steps for access to the garden. The previous Inspector considered that the decking could only remain with suitable screening in place and having visited the appeal site and given the elevated position of the decking and the proximity of neighbouring gardens to either side of the development, I see no reason to disagree with his view.
8. The appellant indicates that the previous Inspector was clear about what kind of screening was appropriate and referred to an increase in the height of the existing boundary fencing. The appellant therefore suggests a new condition be imposed to require that the height of the existing timber boundary fences be increased by 1.8 metres and has also provided a drawing. However, the previous Inspector did not specify that the new screening should be in wood and neither did he specify the height. My understanding of this point is that the existing wooden panel fencing to both side boundaries was insufficient to overcome the privacy concerns due to the elevated height of the decking and any proposal would therefore need to be higher than the existing boundary treatment to both sides. However, the total height of a solid wooden fence on

¹ APP/T5150/C/19/3238016

top of existing decking at around 76cm would be in excess of 2.5 metres.

Whilst installing solid fencing at such a height would address any overlooking, I share the Council's view that it is very likely to create issues with outlook due to its overbearing appearance for the adjoining occupiers to either side of the development.

9. The previous proposals by the appellant to comply with the condition were firstly replacing the existing side panels with an artificial expandable hedge wall panel whilst retaining the canopy structure but with pergola rafters instead of plastic sheeting. However, as the hedge wall would fill the canopy frame, the Council considered that the potential height of the new feature was an issue at over 3 metres at its highest point.
10. The second application suggested timber panels with a trellis element and a reduced height as compared to the first application. The Council considered the maximum height for these side panels to be 2.8 metres and refused the application. An element of trellising may however overcome the Council's concern about creating outlook issues for neighbouring residents in introducing completely solid structures to overcome privacy concerns. However, the combination of the height and the materials of the side infill whilst retaining the canopy frame has resulted in the refusals.
11. During the latter stages of the appeal, the Council suggested reduced decking and some form of planting and indicated that it would be available for pre-application discussions with the appellant. The appellant has indicated that no discussions had taken place with the Council prior to refusals being issued. Nevertheless, the appellant is ultimately responsible for ensuring that the condition imposed upon the grant of planning permission is complied with.
12. The appellant has stated that following the refusal of the proposed screening schemes, it was no longer possible for her to comply with the 4 month period for installing the approved scheme. However, the appellant could have appealed either or both refusal decisions in which case the Council is likely to have suspended any further enforcement action pending the outcome of the appeals. I understand that the appellant wishes to retain some form of decking for family use. It remains the case that the 2019 permission allowed for the retention of decking subject to suitable screening. Early discussions and pre-application advice may now assist the appellant in deciding whether to pursue a new application or to revisit the earlier approval.
13. However, for the reasons given, I do not consider that the alternative condition suggested by the appellant would mitigate harm to living conditions of nearby residents as a solid fence at the height proposed would be overbearing. The appeal under ground (a) is therefore dismissed.

The appeal under ground (f)

14. Section 174(2)(f) of the Act states that an appeal may be made on the ground that the steps required by the notice to be taken, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. It is therefore necessary to consider whether the purpose of the notice is to remedy the breach of planning control or remedy any injury to amenity. As the requirement of the notice is to demolish, the purpose of the notice is to remedy the breach.

15. I have assessed the alternative condition arguments advanced under ground (f) under ground (a). Whilst the appellant has offered to comply with any approved scheme as soon as reasonably practical that does not overcome the current absence of an approved scheme.
16. The appellant has referred to decking being previously allowed under approval 16/0813 and considers that the requirements of the notice should allow for that decking to be installed. From the plan provided, there is no balustrade fencing and the approved decking covers a smaller area and the previous Decision Letter refers to a height of 60cm which is lower than the existing decking.
17. However, remedying the breach includes making the development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land. Although the Council has not commented upon this point, the requirement of the original enforcement notice for the decking was to alter the decking to accord with the plans of the approval 16/0813. I will add the alternative of altering the decking to accord with the approved plans of pp16/0813 to the existing requirement to demolish as the alternative requirement represents a lesser step that would remedy the breach. The appeal under ground (f) therefore succeeds to that extent.

Conclusion

18. For the reasons given above, I conclude that the appeal should not succeed. I shall vary and then 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.

E Griffin

INSPECTOR