



Appeal Decision

Site visit made on 18 January 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 4th April 2022

Appeal Ref: APP/T5150/C/21/3271458

16 Earlsmead Road, London, NW10 5QB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Alex Schneideman against an enforcement notice issued by London Borough of Brent.
- The notice was issued on 17 February 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a rear dormer, roof terrace, timber decking and railings to enclose the roof terrace on the rear projection of the premises ("the unauthorised development").
- The requirements of the notice are to
 - 1.Remove the unauthorised roof terrace situated on the rear projection of the premises including the timber decking and railings.
 - 2.Demolish the rear dormer and restore the premises back to its original condition before the unauthorised development took place
 - 3.Remove all associated debris, items and materials arising from compliance with the 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)(a)(f) and (g) 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.

Summary Decision: the appeal succeeds in part and planning permission for that part is granted but otherwise the appeal fails and the enforcement notice is upheld as set out below in the Formal Decision.

Background Matters

1. On 3 May 2016, the Council granted a Certificate of Lawfulness¹ for removal of existing rear dormer window and proposed erection of a rear dormer window with Juliet balcony to dwellinghouse." (the Certificate).The enforcement notice was served after an initial complaint about the development in 2018.
2. The Council adopted the Brent Local Plan 2019-41 (the Brent Local Plan 2022) on the 24 February 2022 which supersedes the London Borough of Brent Development Management Policies Document 2016. However, the relevant replacement policy in the new plan was referred to in the reasons for issuing the notice and can be included in my decision.

The appeal under ground (a) and the deemed planning application

3. The Council's two reasons for issuing the notice relate to character and appearance and living conditions. Both reasons refer to "the development" as in the dormer and the roof terrace. However, at paragraph 4.1.4 of the

¹ Council Ref 16/1129

Councils statement, the Council sets out the details of the dwelling which it considers are effected by overlooking from the roof terrace and no specific reference is made to the dormer creating overlooking issues.

Main Issues

4. The main issues are therefore (i) the effect of the development namely the rear dormer and the roof terrace on the character and appearance of the surrounding area and (ii) the effect of the roof terrace upon the living conditions of nearby occupiers particularly Nos 14 and 18 Earlsmead and Nos 13, 15, and 17 St Margaret's Road with particular regard to overlooking.

Character and Appearance

5. The character of the area is of long terraces of dwellings with modest rear gardens or courtyards. The gardens on Earlsmead Road back onto St Margaret's Road and as properties in both roads tend to have outriggers or extensions there is limited space between the built development to the rear.
6. The development consists of a dormer element on the main roof of the appeal two -storey dwelling with a roof terrace on the outrigger. The appellant states that the dormer element was originally constructed in accordance with the terms of the Certificate with a Juliet balcony. There are some differences between what has now been built and the dormer arrangement shown on approved drawing 1006-EL-PP Rev C although the drawing does refer to a door where the Juliet balcony is located. However, the Council considers that the development namely the rear dormer and the roof terrace have to be assessed as one single operation which does not benefit from deemed consent or planning permission.
7. The appellant sees the construction and completion of the dormer as separate to the later work which involved removing the Juliet balcony, adding two steps, strengthening the outrigger roof, installing decking and railings to create the roof terrace and has provided declarations to that effect. However, the same builder was retained to carry out all of the work and the scaffolding remained in place throughout and the time span for the completion of all the work is relatively short. I do therefore share the Council's view that the development was made up of a single operation. Article 3 (5)(a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) provides that permission granted by the Order shall not apply if in the case of permission granted in connection with an existing building the building operations involved in the construction. The appellant cannot therefore state that part of the works have the benefit of permitted development rights and indeed accepts that is the case as there is no appeal under ground (c) before me.
8. An appeal under ground (a) does involve an assessment of the development as described in the allegation. However, in view of the appellant's arguments under ground (f) in relation to the dormer, I do consider it appropriate to address that argument in the first instance. Under ground (f), the appellant has referred to the demolition of the dormer being excessive in view of the policy considerations. An overlap between grounds (a) and ground (f) can occur in terms of appellant's arguments is not uncommon. The appellant is essentially asking for planning permission for the dormer element so that it can remain

and that argument is more appropriately addressed under ground (a) as it involves a consideration of the planning merits of part of the development.

9. Section 177(1)(a) of the Act states that planning permission can be granted for the matters constituting a breach of planning control in relation to the whole or any part of the development. The appeal dormer is part of the development. The appellant is not advancing an argument that the existing development or any part of it currently has the benefit of permitted development rights. However, irrespective of the permitted development rights position, it remains the case that in terms of an obvious alternative the two elements that make up the development can be severed.
10. The appellant has produced photographs of other dormers to the rear of dwellings on Earlsmead Road and St Margaret's Road. and those dormers are not of a dissimilar appearance to the appeal dormer in terms of dark colour, shape and size. The bank of dormers shown in the northwest view from the appeal dwelling are of a similar appearance to the appeal dormer and one dormer has a Juliet balcony. All of those dormers appear to be at the same height as the ridge of the roof and in comparison the appeal dormer is more modest as it does not project onto the outrigger. Whilst the dormer in the view to the southeast is more modest than those to the northwest that dormer is also at ridge height. Whilst each development has to be assessed upon its own merits, there are similar examples of dormers within the vicinity of the appeal dwelling which form part of the character and appearance of the area.
11. The Council considers that the development including the dormer disrupts the rhythm of houses on this side of Earlsmead Road but in assessing the character of the rear of Earlsmead Road, the presence of other dormers in the vicinity including those on St Margaret's Road has to be considered. The appearance of the dormer in the context of other surrounding development is not over-dominant in an area where the style of dwellings to the rear is not particularly symmetrical. The materials and design is not significantly different to any other of the dormers in the area.
12. Although the Council has referred to non-compliance with the ridge and eaves details set out in the SPD, this is a guidance note which supports the relevant policy which in this case is Policy DMP1. In this instance, due to the design of the dormer, the location of the appeal site, the character of the surrounding area and the existence of other dormers, I do consider that the dormer element does meet the requirements of the overriding policy which refers to complementing the locality despite not following the more specific guidance set out in the SPD in terms of relationship with the eaves and ridge of the roof.
13. For the reasons given, I do not find the dormer does harm the character and appearance of the surrounding area. Although the appellant has advanced a "fallback argument" in respect of the Certificate and permitted development rights which would apply following compliance with the notice, there is no need for me to consider this matter as I have found the dormer to be acceptable on its merits for the reasons given.

The roof terrace

14. The roof terrace consists of decking to the roof of the outrigger element of the appeal dwelling together with railings to three sides and two steps for access through the dormer. The photographs provided by the appellant to the Council prior to the service of the notice show the extensive tall green planting in rectangular planters around all three outward facing sides of the terrace which is visible at ground level. The same planting was present at the time of my site visit. However, the Council states that the plants are not subject to planning permission and are not part of the unauthorised development within the allegation.
15. Whilst other dormers are present in the vicinity, there is no evidence of any similar railings to provide roof terraces. The decking and railings that make up the roof terrace introduce new development at an elevated and prominent part of the appeal dwelling.
16. The presence of the railings and decking to create a roof terrace does result in an incongruous feature in an area which is not in keeping with the existing pattern of development and use of that development. The appellant states that the existing bamboo planting contributes to an attractive "greening" of the rear and provides an effective privacy screen. However, the density, height and nature of the planting in such a prominent location on top of the outrigger which is visible from a number of nearby properties and gardens is out of keeping with the domestic appearance of the surrounding dwellings with modest gardens and courtyards where roof outriggers and extensions are development free. Even if the retention of the plants could be addressed by way of a condition, in my view, the planting adds to the harm created by the roof terrace by highlighting the presence of the roof terrace.
17. Whilst I note the appellant's personal circumstances and appreciate that the roof terrace provides valuable outdoor space for the appellant and his family, the presence of the roof terrace is an incongruous feature which is out of keeping with surrounding development. Although the appellant has indicated that the decking provides a protective surface for the roof, the decking is clearly part and parcel of the roof terrace. Removal of the decking will also limit wear and tear on the roof and other materials are likely to be available to provide appropriate protection for the original roof surface.
18. Whilst an occupier on Earlsmead who is not adjacent to the appeal dwelling considers the roof terrace with planters to be visually appealing, her views of the terrace are limited to a side on view from her garden. In comparison, occupiers of St Margaret's Road at Nos 13, 15 and 17 would have direct views of the roof terrace projection both from their modest gardens and their rear habitable rooms.
19. I do consider that the roof terrace does harm the character and appearance of the surrounding area. The roof terrace is therefore contrary to Policy DMP1 of the London Plan 2022 which, amongst other things, states that development should complement the locality and is also contrary to the SPD.

Living Conditions

20. In view of the prominent location of the roof terrace features, any use of the roof terrace without any permanent screening is going to result in overlooking of both gardens and of habitable areas on the first floor level of St Margaret's Road. The SPD states that "balconies and roof terraces can be difficult to provide without impacting adjoining residents. Any proposal should be designed not to overlook the habitable room windows all gardens of adjoining properties."
21. There is a modest side gap between the appeal dwelling and the built development at No 18 Earlsmead as shown in photograph 9 of the appellant's photograph. Although there were limited views through gaps in the bamboo plants at the time of my site visit, the provision of planters which are not fixed to the decking and which can therefore be moved and whose height, density and position and appearance can be variable in comparison to permanent screening is problematic and unlikely to be capable of being secured by way of condition. Whilst the current occupiers of No 18 do not object to the development, any grant of planning permission would run with the land and the occupation of No 18 may change. It is also not clear from the comments whether they are made subject to the planting which is not part of the development remaining in place. As No 14 has a matching outrigger, overlooking to No 14 is limited to the modest outdoor garden.
22. I do therefore consider that the roof terrace harms the living conditions of occupiers of Nos 13,15 and 17 St Margaret's Road and Nos 14 and 18 Earlsmead Road with particular regard to overlooking which conflicts with the SPD which amongst other things states that roof terraces should be designed not to overlook the habitable room windows or gardens of adjoining properties. Policy DMP1 of the Brent Local Plan 2022 also refers to development providing high levels of external amenity.
23. It therefore follows that the development as a whole would be unacceptable due to the issues I have identified with the roof terrace. However, I do not find that the dormer by itself does cause harm to the character and appearance of the area. The dormer element is therefore not in conflict with Policy DMP1 of the adopted London Local Plan 2022 which, amongst other things, states that development of a design, scale and detailing which complements the locality will be acceptable.

Conditions

24. Re- instating railings to form a Juliet balcony would sever the link between the roof terrace and the dormer. Both parties commented upon the condition and the appellant has no objection with the wording of it. The Council indicated it would have preferred the deletion of the requirement as it wished to avoid the service of a further enforcement notice in the event of non-compliance with the condition. However, even I considered that alternative to be appropriate, as I am granting planning permission under ground (a) it is not within my powers to delete the requirement. Whilst any future enforcement is a matter for the Council, a breach of condition with no right of appeal would be one option for the Council to pursue, should the simple condition not be complied with.
25. The purpose of condition 1 is to therefore require the appellant to re-instate a Juliet balcony. The wording of the condition provides for the loss of the benefit of the grant of planning permission where the condition is not complied with. Should the requirement of the condition not be met in line with the strict

timetable, then the rear dormer would have to be demolished. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission, it is not possible to use a negatively worded condition precedent to secure compliance with the condition because the development has already taken place.

The appeal under ground (g)

26. An appeal under ground (g) is that the time for compliance with the notice is too short. The appellant had asked for a period of 9 months essentially due to the extent of the work and upheaval for occupiers. However, in view of my decision with regard to ground (a), I do consider that the existing 6 months compliance period is reasonable. The appeal under ground (g) therefore fails.

Conclusion

27. For the reasons given above, I conclude that the appeal succeeds in part on ground (a) and I shall grant planning permission for part of the development namely the rear dormer subject to the condition. However the appeal under ground (a) with regard to the roof terrace element of the development is dismissed. Whilst the appeal on ground (g) fails, the appellant states in his statement that the ground (f) appeal relates solely to the requirement to demolish the dormer and does not therefore require determination in view of my decision with regard to ground (a).
28. For the reasons given above, I conclude that the appeal should succeed in part only, and I will grant planning permission for the rear dormer but otherwise I will uphold the notice. 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 s180 of the Act.

Formal Decision

29. The appeal is allowed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for part of the development already carried out, namely the rear dormer on the land at 16 Earlsmead Road, London NW10 5QB subject to the following condition:
- 1) The rear dormer hereby permitted shall be demolished unless within 6 months of the date of the decision, a Juliet balcony of a minimum height of 1.1 metres is installed across the existing double frame containing the door and window element of the roof area of the outrigger. Following installation, the Juliet balcony shall be retained for the life of the development
30. The appeal is otherwise dismissed and planning permission is refused in respect of the application deemed to have been made under section 177(5) of the 1990 Act as amended insofar as it relates to the roof terrace, timber decking and railings and the enforcement notice is upheld.

E Griffin

INSPECTOR