



Appeal Decisions

Site visit made on 14 April 2022

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 May 2022

Appeal A Ref: APP/H5960/C/20/3266167

Appeal B Ref: APP/H5960/C/20/3266168

36 Rostella Road, London SW17 0HY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- Appeal A is made by Mr Robert Brownhill and Appeal B is made by Mrs Denyse Brownhill against an enforcement notice issued by the Council of the London Borough of Wandsworth.
- The notice was issued on 26 November 2020.
- The breach of planning control as alleged in the notice is: Without planning permission and within the past four years the erection of metal railings to the flat roof of the single storey rear extension of the Property.
- The requirements of the notice are:
 1. Remove the unauthorised metal railings and all associated fixtures and fittings from the flat roof of the single-storey rear extension of the Property;
 2. Cease the unauthorised associated use of the flat roof as a terrace; and
 3. Remove from the Property all debris arising from compliance with steps 1 and 2 above.
- The period for compliance with the requirements is: Four months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) 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.
- Appeal B is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the 1990 Act.

Summary Decision: The appeals are dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matter

1. The notice was served on Robert Brownhill and "Denise" Brownhill. As such, the name of one of the recipients was not correctly spelt. However, Denyse Brownhill has been able to appeal the notice and there is no evidence anyone has been substantially prejudiced by the above error. I have proceeded with the appeal on this basis.

Reasons

Ground (c)

2. An appeal on ground (c) is that the matters stated in the notice do not constitute a breach of planning control. This may be because planning permission exists for the matters stated in the notice or because they are not 'development' as defined by section 55 of the 1990 Act. There is no evidence planning permission of any kind exists for the railings and so I have considered whether they are development under section 55.

3. The appellant states that the current railings are replacements of previous lawful railings. Be this as it may, it does not mean that they do not require planning permission, because of the wording of section 55(1A)(b) of the 1990 Act. This makes clear that 'rebuilding' requires planning permission. It makes no difference whether the previous railings were lawful through time expiry, as the appellant says, or not.
4. The appellant states that the current railings were only a necessary 'maintenance' upgrade of the previously existing railings. So I have considered whether the current railings may constitute 'maintenance', under section 55(2). But under this section, the carrying out for the maintenance, improvement or other alteration of any building only falls outside the definition of development if those works affect only the interior of the building, or do not materially affect the external appearance of the building.
5. On the appellant's own case, the current railings are of a different design to the previous railings and this is clear from the photographs provided. So in my view, they materially affect the external appearance of the building, even if, as the appellant says, they are the same height and location. I conclude the appeal on ground (c) fails.

Ground (a)

6. An appeal on ground (a) is that planning permission ought to be granted for the matters stated in the notice. Based on the reasons for issuing the notice, the main issues in the ground (a) appeal are the effect of the appeal development on the living conditions of neighbouring occupiers, particularly Nos 34 and 38 Rostella Road, and its effect on the character and appearance of the area.

Living Conditions

7. The railings which are the subject of the notice have been erected around the edge of the flat roof of an existing single storey rear extension. Access on to this flat roof is via an external door at first floor level from a bedroom in the appeal property. The railings clearly facilitate the safe use of this flat roof as a large roof terrace, from which there are clear views into neighbouring properties.
8. With the railings in place, I could safely stand on the flat roof to see directly into habitable rooms of Nos 34 and 38 at close proximity. From this elevated position I could also easily and safely see directly into their private rear gardens. Whilst these gardens are seen from behind the upper floor windows of neighbouring properties, the facilitation of the safe use of the flat roof as a terrace by the installation of these railings introduces a new form of overlooking from an elevated position at close proximity. This is intrusive. It is materially different from standing behind a window to overlook neighbours or perilously standing on a flat roof, without railings, to do the same. The result is a significant loss of privacy for the neighbours.
9. The appellant states that they would be willing to accept a planning condition prohibiting the use of the roof terrace for any sitting out or social activity. But the development before me is the railings and not the use of the flat roof. So the suggested condition would not be 'relevant to the development to be permitted' and so would not comply with all the tests for conditions, set out in

paragraph 56 of the National Planning Policy Framework. I therefore cannot impose a condition to that effect, in this case.

10. Taking all of the above into account, I conclude that the appeal development facilitates the safe use of the flat roof as a terrace and this significantly harms the living conditions of neighbouring occupiers, particularly Nos 34 and 38 Rostella Road. In respect of privacy, this does not comply with Policy DMS 1 of the Council's Development Management Policies Document 2016 (the DMPD), which is referred to in the notice.

Character and Appearance

11. The area is characterised by terraced houses, some of which have a single storey rear extension and some of which have a box dormer on the rear roof slope. Looking from the rear of the appeal site, I could see at my site visit that at least 2 of the neighbouring properties with a box dormer had Juliet balcony railings high up at second floor level. The railings which have been installed on the rear extension at the appeal property are of a broadly similar, simple design.
12. In this context, I am satisfied that the railings which are the subject of this appeal do not harm the character or appearance of the area. So in respect of character and appearance, I find no conflict with Policy DMS 1 of the DMPD, which is referred to in the notice.
13. The notice also draws my attention to Policy DMH 5 of the DMPD. But it has not been explained how the wording of this policy, or any of the criteria in it, are relevant to the appeal development. Its wording in respect of criterion 'ii.' is to the effect that an alteration to a roof of an existing residential property will be permitted where confined to the rear of the building. That is the case in this appeal and so I find no conflict with this policy either, as the railings are not visible from the street or any other public space.

Other Matters

14. According to the appellant, railings have been in position around the edge of the roof of the extension for many years. Be this as it may, the previous railings were removed long ago and their previous existence does not alter my conclusion on living conditions in light of current planning policy. There is no right for railings to be built, to satisfy Building Regulations, or rebuilt, due to the wording of section 55(1A)(b), referred to above. Moreover, from the photographs provided, the previous railings had no spindles. So in my view they did not facilitate the safe use of the flat roof as a terrace in the way that the current railings do.
15. The appellant states that the railings are only in place for safety reasons. But safety is a matter for the appellant. Even if the roof of the extension may be lawfully used, this does not justify railings which facilitate the use of the roof as a terrace. This is particularly so given that safety may be achieved by the existing door leading on to it being kept closed (at least its lower half). Moreover, there are other means by which the property may be maintained, so this is not justification for the railings either.
16. I appreciate that current occupants of Nos 34 and 38 may not object to the railings or the appellants' use of the roof of the extension. But this makes no difference to my conclusion on living conditions either, as I cannot be certain

that future occupiers of neighbouring properties will feel the same way, or that future occupiers of the appeal property will not use the roof of the extension as a terrace in a manner that will harm the living conditions of neighbouring occupiers. I am satisfied that this eventuality is minimised by not granting planning permission for the railings.

17. I appreciate that the railings may not interrupt light, but this is a neutral point and not a benefit of the appeal development.

Conclusion on Ground (a)

18. Whilst I have not found the appeal development harmful in terms of its effect on character and appearance, I find the harm to living conditions significant. I find conflict with the development plan overall therefore and so taking all of the above into account, I conclude the appeal on ground (a) fails.

Ground (f)

19. An appeal on ground (f) is (in summary) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
20. Under section 173(4) of the above Act, when serving an enforcement notice the Council may seek to (a) remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedy any injury to amenity which has been caused by the breach.
21. Based on the requirements of the notice, the purpose of the notice in this case is to remedy the breach of planning control. The breach stated in the notice refers to the erection of railings. It does not refer to the use of the flat roof as a terrace. So requirement 2 of the notice exceeds what is necessary to remedy the breach of planning control and should be deleted.
22. The issue of whether the use of the roof of the extension is in fact lawful may be addressed by a certificate of lawfulness application or further enforcement action, if necessary. The appeal on ground (f) succeeds to this extent (although not for the reason referred to by the appellant) and I shall vary the notice accordingly.

Ground (g)

23. An appeal on ground (g) is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The appellant requests a period of one year to comply with the notice. But this is due to their position on harm.
24. Removing the railings would be a relatively simple operation and I see no reason why a period longer than that specified in the notice should be allowed to comply with the requirements of the notice. I conclude the appeal on ground (g) fails.

Conclusion

25. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant

planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

26. It is directed that the enforcement notice is varied by the deletion of requirement 2 in paragraph 5 of the notice. Subject to this variation, the appeals are 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.

L Perkins

INSPECTOR