
Appeal Decisions

Site visit made on 5 May 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 June 2022

Appeal Ref: APP/N5660/C/21/3273121 (Appeal A)
Apartment 11, 177 Abbeville Road, London SW4 9BH

- 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 Adam Tokarski against an enforcement notice issued by the Council of the London Borough of Lambeth.
 - The enforcement notice is dated 18 March 2021.
 - The breach of planning control as alleged in the notice is: Without planning permissions, the tiling over of the flat roof of the single storey extension on the northeast elevation and installation of wooden box planters around the perimeter ('the unauthorised planters and tiling'), facilitating the use of the flat roof as a terrace.
 - The requirements of the notice are: a) Remove the unauthorised planters and tiling and reinstate the roof as existed prior to the breach of planning control; and b) Remove all associated waste and debris resulting from compliance with the above step, from the premises.
 - The period for compliance with the requirements is four 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.
-

Appeal Ref: APP/N5660/W/21/3273125 (Appeal B)
Apartment 11, 177 Abbeville Road, London SW4 9BH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Adam Tokarski against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 21/00086/FUL, dated 11 January 2021, was refused by notice dated 2 March 2021.
 - The development is described as 'retention of planters set behind existing parapet wall and extension of existing roof terrace'.
-

Decisions

1. Appeal A is dismissed, the deemed planning application is refused, and the enforcement notice is upheld.
2. Appeal B is dismissed.

Appeal A on ground (a) and Appeal B

Main Issues

3. The main issues are the effect of the development on:
 - the character and appearance of the surrounding area, including the significance of the conservation area; and

- the living conditions of nearby residents, with particular regard to privacy and noise and disturbance.

Reasons

Character and appearance

4. Apartment 11 is a first floor flat within 177 Abbeville Road, a three storey building that is set within its own landscaped grounds. The whole building, which was purpose built as an office, was recently converted for residential use. The provision of a small roof terrace at No 11 was permitted under planning ref: 18/02467/FUL. The unauthorised development comprises the extension of the roof terrace across the whole flat roof, and the provision of boundary treatments in the form of planters which contain hedging.

Significance

5. The Clapham Conservation Area is centred on the eastern section of the public green space of Clapham Common. In addition, it encompasses 18th and 19th century development including dense rows of terraced housing. No 177 is a mid-20th century brick-built building whose main elevation faces the Abbeville Road and Crescent Lane junction across a lawned area.
6. On plan, it forms an articulated curve, which is unusual within its immediate context. Features include the vertical, narrow recessed windows that are set within brick mullions, the projecting upper floor oriel elements that punctuate the elevations, and understated decorative details including tile creasing and patterns inscribed into cement. Generally, however, the palette of materials and colours is limited. The overall impression of the building is one of simplicity and austerity, in contrast to the surrounding Edwardian dwellings.
7. It announces the different character of Crescent Lane and the gateway into the Clapham Conservation Area. The building and the generous space around it contribute positively to the character and appearance of the conservation area.
8. Policy Q11 of the Lambeth Local Plan (LP) sets out guidelines for alterations and extensions. It states that roof terraces, roof level balconies and other similar development will normally be resisted on locally distinct building types where they are not characteristic of the host building. The Council's document entitled 'Building Alterations and Extensions - Supplementary Planning Document' (SPD) clarifies that such developments will be resisted on street facing roofs.
9. The timber planters create a new form of enclosure that is clearly visible above the brick parapet wall of the flat roof from Abbeville Road, and from within the flat complex. Due to their low height, the planters remain physically subservient to the scale of the existing building. Nonetheless, they depart significantly from its established character.
10. The planters introduce a new built element whose materials and aesthetic do not have visual clues in the existing building. The appellant argues that the flat roofed section on which the terrace sits is out of character with the rest of the street. However, from my observations, its simple form and its blank, hard edges are very much part and parcel of the sparse architectural character of the whole building, which does not require any visual softening. Rather, the

planters draw the eye unduly as a result of their lack of integration within the strong design of the existing building.

11. In departing from the prevailing character of the appeal site, the development appears as an incongruous addition. I therefore conclude that the development unacceptably harms the character and appearance of the appeal site, and in turn, the significance of the wider CA. Accordingly, the development conflicts with the overarching statutory duty as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990, which must be given considerable importance and weight. In addition, the scheme fails to comply with the SPD, LP Policy Q11, LP Policy Q5, which seeks to sustain and reinforce local distinctiveness, and LP Policy Q22, which seeks to preserve and enhance the character and appearance of conservation areas.
12. Although serious, the harm to the heritage asset in this case is less than substantial, within the meaning of the term in paragraph 195 of the NPPF. Paragraph 196 requires that, where there is less than substantial harm, the harm should be weighed against the public benefits of the works.
13. The appellant argues that the larger terrace affords greater mental health benefits. He does not quantify this benefit, but even if I accept this point, it is a private benefit, and so does not count in favour of the appeal scheme. The planting of greenery in itself does not require planning permission, and conversely, it could be removed at any time. Its presence is therefore neutral in my consideration, as are any marginal benefits in terms of air quality, local fauna and biodiversity.
14. I therefore find that insufficient public benefits have been identified that would justify or outweigh the harm I have identified to the heritage asset. The scheme therefore conflicts with the NPPF, which directs, at paragraph 193, that great weight should be given to the asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Living conditions

15. The Council's second concern relates to the effect of the development on the living conditions of neighbouring residents. As noted above, planning permission exists for a roof terrace at No 11 of a more limited size.
16. However, the existing terrace is big enough to be used by a significantly larger number of people than the permitted terrace at No 11. It is reasonable to expect some level of noise from neighbours in a built-up urban environment. Nonetheless, the development introduces a marked intensification of the use of an area that was previously uninhabitable. I consider that the aural privacy of the closest neighbours could materially be harmed by gatherings of people on the terrace. Conversations and/or music, even at normal sound levels, could easily carry over the short distances involved, having an intrusive effect on those occupants.
17. Even if the flat roof has been well insulated, this does not prevent air-borne noise from travelling, particularly if residents had their windows open in hot weather. The fact that no formal noise complaint has been made does not itself render the development acceptable.

18. I acknowledge that, at the moment, only the appellant uses the terrace. However, planning permission attaches to the land and not to an individual, unless a personal permission is appropriate. Therefore, were I to allow the appeals, there would be no meaningful way to control the use of the terrace by future owners or tenants. The appellant suggests a condition limiting the number of tables and chairs on the terrace. However, such a condition could prove difficult to enforce, and might not prevent noise disturbance in any event.
19. The development is therefore contrary to LP Policy Q2, insofar as it resists development that has an adverse impact in terms of noise.
20. With regard to privacy, the Council state that the use of the extended terrace area allows users of the area views into the habitable windows of the flats adjoining No 11, harming the privacy of the occupants. The flat above No 11 has windows overlooking the unauthorised terrace. However, even if somebody was standing at the end of the terrace farthest from the building and looking up to this flat, the angle of sight gives limited views into the rooms, such that no material harm occurs.
21. According to the submitted floorplans, the two windows immediately beside the terrace on the first floor serve bathrooms, which are not habitable rooms. The next windows along on the first floor serve the living area of the neighbouring flat. However, with regard to overlooking between these windows and the new terrace, it appears to me that any lines of sight between the two would be at quite oblique angles. Therefore, whilst some degree of overlooking between the properties may be possible, it is not materially harmful to privacy.

Other Matters

22. I accept that roof terraces are becoming more commonplace in the wider area, and are often a way to provide residents with valuable private outdoor space. My attention has been drawn to two terraces approved at the flat complex. However, I am not aware of the circumstances in which these were found to be acceptable, and in any event, they appear to be located further away from the public realm, and so do not directly parallel the case before me.
23. I have also been directed to a number of terraces and balconies in the area, which vary greatly in terms of their size and location. The first floor examples on the terrace opposite the appeal site, for example, appear to be integral to the original design of the buildings, and very limited in size. Moreover, in the absence of the planning history of these developments, I cannot be certain if they are directly comparable to the appeal case. Moreover, each case is to be considered on its individual merits, and these circumstances have not led me to a different conclusion on the main issues above.

Conclusion

24. For the reasons above, Appeal A on ground (a) and Appeal B fail.

Appeal A on ground (f)

25. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive.

26. The notice requires the removal of the tiling which covers a single ply membrane above the concrete slab. The appellant argues that it is integral to the roof and provides sun and weather protection to the membrane. He states that a difficulty arises in that remedial action beyond his control would be required to ensure the roof below is protected sufficiently from weather and does not degrade over time.
27. Furthermore, the appellant contends that it is not sustainable to require the removal and disposal of the tiling and its replacement with a different roof covering to perform the same function. He argues that the requirements of the notice should be varied to seek only the removal of the planters and the reinstatement of the approved terrace railings.
28. With regard to the approved terrace railings, it would not be appropriate to add this to the requirements paragraph as it would go beyond the purpose of the notice. There is no statutory power to require an appellant to undertake anything other than a reversion to the condition the building was in before the breach took place. The appellant may implement an extant permission if he wishes, but that process is separate to the enforcement process.
29. I acknowledge the appellant's concerns over the removal of the tiling, but it is part and parcel of the unauthorised development and leaving it in place would not achieve the purpose of the notice. It must be presumed that the previous finish to the flat roof was similarly weatherproof, and it is not clear why its reinstatement would not achieve the same end. If there is a need to liaise with a third party over the condition of the roof, that is for the appellant to undertake.
30. I therefore find that the requirements are commensurate with the purpose of the notice, and so the appeal on ground (f) fails.

Conclusion

31. For the reasons given, Appeals A and B are dismissed, the deemed planning application is refused, and the enforcement notice is upheld.

Elaine Gray

INSPECTOR