



Appeal Decision

Site visit made on 7 February and 20 June 2022

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2022

Appeal Ref: APP/Y5420/C/20/3261637

The land and building known as 66 Dunbar Road, London N22 5BE

- 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 Andreas Toumazi against an enforcement notice issued by the Council of the London Borough of Haringey.
 - The enforcement notice was issued on 15 September 2020.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of metal staircase to the rear of the property, facilitating access from the first floor flat to the rear garden.
 - The requirements of the notice are: 1. Remove the external staircase in its entirety; 2. Remove from the land any debris resulting from out step 1.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) 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.
-

Summary of Decision

1. The appeal is dismissed and the enforcement notice upheld.

Preliminary Matters

2. The appellant, or a representative on his behalf, has failed to attend two scheduled site visits. It is for the appellant to take the opportunities afforded by the appeal process, and in this respect he has not done so. There is also the consideration of the wider public interest, to ensure the enforcement process and determination of appeals is not frustrated by repeated failures such as this. Whilst a ground (a) appeal is before me, I was able to see the development enforced against as the site is close to the junction with Stirling Road. I will therefore undertake my assessment on the basis of what I observed during my site visits and the written evidence before me, as I do not consider that injustice would arise. Even if I am wrong, any perceived injustice is of the appellants own making and would be further outweighed by the wider public interest.
3. Since the appeal was lodged the London Plan 2021 has been adopted which supersedes the 2016 version cited in section 4 of the notice. The parties were provided with an opportunity to make representations, which I have considered for the purposes of my assessment.

The ground (b) appeal (and hidden ground (c) appeal)

4. For the ground (b) appeal to succeed the onus is on the appellant to demonstrate, on the balance of probabilities, that the alleged breach of planning control has not occurred as a matter of fact.
5. The appellant contends that the metal staircase is a replacement. That being so, he must accept that there has been the erection of a staircase as alleged, albeit in his view a replacement, and therefore it has occurred as a matter of fact. Otherwise, there would be no staircase.
6. The Council has acknowledged that there was a staircase at the rear of the property on two occasions¹, even though the Google images before me do not demonstrate this. Given the Council's acknowledgement, I am persuaded that on the balance of probabilities there was a staircase, albeit in light of the images it may have been removed some considerable time before the staircase the subject of the notice was erected.
7. The appellant's case is then more appropriately considered as a ground (c) appeal, which is to say that there has not been a breach of planning control, because the matter alleged does not constitute development. I will therefore consider this accordingly given injustice does not arise as the parties have been provided with an opportunity to respond to the respective cases.
8. The appellant then provides an invoice for the replacement staircase. It appears to be extremely carefully worded to explain that it would be an exact replica. However, there is no photographic evidence or drawings before me which then would demonstrate this on the balance of probabilities. The invoice then makes no reference to the removal of the previous staircase, which reinforces my view from the evidence that it may have already been removed. I therefore afford the invoice itself only limited weight and note there is conflicting evidence as the appellant later describes the replacement staircase as being only of similar appearance and position to the earlier version.
9. There is then very little evidence before me to demonstrate on the balance of probabilities why being of a similar appearance amounts merely to a maintenance, improvement or other alteration. The evidence before me is that a hi-ab crane was required to install the staircase, which is an operation usually undertaken by a builder or other such professional. I could then see during my site visit that the staircase is a substantial structure, serving the first floor. It therefore follows that it would require affixation to both the building and ground and is clearly intended to have permanence.
10. In considering the evidence in the round, I find as a matter of fact and degree that the staircase enforced against is development for the purposes of Section 55 of the Town and Country Planning Act 1990. Being a substantial structure, the staircase, whether a replacement or not, was an entirely new entity and its installation, which included the use of a crane, amounted to a building operation.
11. There is then very little evidence to demonstrate on the balance of probabilities that the staircase was either permitted development or has the benefit of planning permission.

¹ Letter dated 16 May 2007 and email dated 12 October 2020

12. The appellant has therefore not discharged the necessary burden of proof to demonstrate on the balance of probabilities that the alleged breach of planning control has not occurred as a matter of fact, or that there has not been a breach of planning control.
13. The appeals on ground (b) and (c) therefore fail.

The ground (a) appeal

Main Issue

14. The main issue is the effect of the external staircase on the living conditions of adjoining occupiers, having particular regard to overlooking.

Reasons

15. The site relates to a terraced property in use as two flats, located close to the junction with Stirling Road. The staircase enforced against is situated at the rear of the building. It provides the first-floor flat with access to a rear garden area.
16. The evidence is that the previous staircase was required as a fire escape when the property was previously used as emergency accommodation. That being so, the staircase would be seldom used. In contrast, the staircase enforced against provides day-to-day access by the occupier/s of a flat to a rear garden.
17. This frequent use, combined with the location and proximity of the staircase to neighbouring properties which I could see during my site visits, means that direct views into the adjoining rear gardens of properties would be readily afforded.
18. I could see during my site visits that the staircase consists of an external landing and that there appeared to be a small screen situated on part of it, presumably to reduce overlooking. However, given its small size and position, it would only partially restrict overlooking and so does not ameliorate the harm. Given it projects to the rear of the property, and being external, the staircase also results in a greater perception of being overlooked than from merely a rear first floor window. The overlooking into private amenity areas therefore has a detrimental impact and does not ensure a high standard of privacy for neighbours.
19. During my site visits I was able to see the rear elevations of a number of the properties within the terrace and that there were no other external staircases. I therefore do not accept that external staircases are a common feature. Overlooking such as that promoted by the staircase into private amenity areas is therefore not a normal feature in this area, which is not a particularly high density one given the style of properties.
20. I conclude the external staircase is harmful to the living conditions of adjoining occupiers, having particular regard to overlooking. The development therefore contravenes policies DM1 and DM12 of the Haringey Development Management DPD, adopted 2017. These policies, amongst other things, require development to ensure a high standard of privacy for neighbours and take account of the privacy and amenity of neighbouring uses. This is a matter to which I attach considerable weight.

Planning Balance

21. The appellant asserts that the ability to use the staircase to access the garden outweighs any minor loss of privacy involved and the Council have drawn my attention to Policy D6 of The London Plan 2021 concerning private outside space. However, whilst I appreciate the general desirability of having access to a garden area, there is very limited evidence before me concerning the needs of occupiers or future occupiers of the flat concerned as well as other options that might be available to them. Accordingly, I can only afford this matter moderate weight, which does not outweigh the harm I have identified.

Conclusion

22. For these reasons and having regard to all other relevant matters raised, I conclude that the appeal on ground (a) should fail.

Overall Conclusion

23. 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.

Formal Decision

24. 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.

Paul T Hocking

INSPECTOR