



Appeal Decision

Site visit made on 9 August 2022

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 September 2022

Appeal Ref: APP/H5960/C/21/3267292

Land at Flat C, 125 Tooting Bec Road SW17 8BW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Brian Crainey of Ground Work First Limited against an enforcement notice issued by the Council of the London Borough of Wandsworth.
 - The notice was issued on 10 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission and within the last 4 years, the unauthorised erection of mansard roof extension, second floor flank wall window and roof terrace over two storey rear addition.
 - The requirements of the notice are:
 1. Remove the unauthorised roof terrace, brick upstand and associated access
 2. Remove the unauthorised flank wall window at second floor level; and
 3. Ensure that any remedial works accord with the approved plans and conditions of planning permission ref: 2017/6111
 4. Remove from the site all debris arising from compliance with steps 1-3.
 - The period for compliance with the requirements is five months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is varied by deleting requirement three (3.) from section five of the enforcement notice and renumbering accordingly.
2. Subject to this 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.

The Enforcement Notice

3. The allegation refers to the unauthorised erection of a mansard roof extension, flank wall window and roof terrace. The requirements should follow logically from the allegation however, they do not require the removal of the mansard roof extension.
4. I sought the Council's comments on this omission, bearing in mind the effect of section 173(11) of the Town and Country Planning Act 1990. They confirmed that they found this element of the development to be acceptable and therefore chose to under enforce. My consideration therefore only concerns the roof terrace and second floor flank wall window.
5. Where planning permission has been granted but the development is not built as approved, the notice should give the recipient options to either remove/modify the unauthorised works or implement the permission in

accordance with its terms and conditions. However, the appellant cannot be forced to implement any planning permission because that would exceed what is necessary to remedy the breach of planning control. Yet requirement three is worded to that effect and is therefore excessive.

6. Since that permission, relates only to the erection of a dormer and as the Council have chosen not to require the removal of the dormer as-built, I shall delete the requirement. There is no injustice by me so doing.

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

7. Based upon the above, the main issues are the effect of the roof terrace and second-floor flank wall window on the living conditions of neighbouring occupiers with particular regard to overlooking, noise, outlook, and daylight/sunlight matters.

Reasons

Roof terrace

8. Flat C is a third floor flat at 125 Tooting Bec Road which is a mid-terrace property. The properties in the terrace have two-storey outriggers to their rear elevations.
9. The roof terrace is surrounded on two sides by glazed privacy screening, which the appellant stated is 1.7m in height and prevented me from overlooking into the property and garden at 127 Tooting Bec Road. Consequently, there is no harm because of loss of privacy to no.127.
10. However, whilst standing on the terrace I could see into upper floor windows at 123 and 121 Tooting Bec Road. Given the elevation, this results in an actual and perceived level of overlooking and loss of privacy which would be harmful to the living conditions of neighbouring occupiers.
11. Whilst the size of the flat may limit the use of the terrace to some extent, any activity, unlike that associated with a typical residential amenity space, would be occurring in an elevated position, and this is likely to make noise generated by users of the space more noticeable. Furthermore, the extent of the terrace could result in relatively large, potentially noisy gatherings of people, which adds to my concerns. Such noise would be particularly disruptive given the proximity to the living spaces of other flats.
12. The appellant referred to other roof terraces in the area which the Council approved and at my visit I could see that at 131 Tooting Bec Road. However, those approved have a significantly smaller floor area than the appeal development and are set back from the eaves. They are not therefore comparable in terms of size, nor can I be certain that they result in overlooking of neighbouring properties. Their existence does not therefore provide a strong reason to justify the appeal development.
13. I am aware, that at 133 Tooting Bec Road was built larger than as approved and planning permission was subsequently refused and dismissed on appeal¹ for that development. The existence of that terrace does not therefore weigh in favour of the appeal development.

¹ APP/H5960/W/19/3228944

14. The appellant suggested that Environmental Health or the Police could deal with any noise nuisance issues. However, it is necessary for me to be satisfied the appeal development is acceptable in planning terms, without reliance on other legislative regimes where the threshold for harm may well be different.
15. The two-storey outrigger at no.125 already limits outlook from the inner rear and side facing windows of no.127. Consequently, since the terrace is erected above the outrigger, there is no materially harmful overbearing impact on the outlook from no.127.
16. The rear of the terrace faces broadly north-east and the outrigger already limits the sunlight/daylight to the inner and side windows at the rear of no.127. Whilst the terrace projects above the existing roof plane, much of the upper section, which intersects the 25-degree line shown on the plans, is formed of glazed panels which are translucent in nature. Consequently, given this and the orientation of the properties, I find no material harm as a result of overshadowing or loss of daylight.
17. Overall, for the reasons given, the roof terrace unacceptably harms the living conditions of neighbouring occupiers with regard to the reduction in privacy and the potential for increased noise and disturbance.

Second-floor flank wall window

18. The installed window is obscure glazed but was open at the time of my visit. Although not fully open, it was possible to see into the windows in the adjacent no.127. Given the limited distance between the windows, this is materially harmful to the living conditions of the occupiers of no.127 because of the loss of privacy.
19. The appellant suggested a condition be imposed requiring the window to be obscure glazed and fixed closed. I note that the Council raised no objection to the use of permanently closed obscure glazing.
20. On balance, since it appears there is another opening window in the room, I find this would overcome the harm.

Other Matters

21. The Council in the reasons for issuing the notice referred to Policy DMH5 of the Wandsworth Local Plan Development Management Policies Document 2016 (DMPD). However, I do not find that policy directly relevant to the detail of this appeal.

Conclusion on ground (a)

22. I conclude that the roof terrace and second floor flank wall window unacceptably harm the living conditions of neighbouring residents with regard to the reduction in privacy and the potential for increased noise and disturbance. The development would therefore be contrary to Policy DMS1 of the DMPD which amongst other things seeks to ensure there is no harm to the amenity of nearby occupiers in respect of unacceptable noise and loss of privacy. There is also conflict with the amenity protection aims of the National Planning Policy Framework and the Council's SPD².

² Wandsworth Local Plan Supplementary Planning Document Housing Adopted November 2016

The appeal on ground (f)

23. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the removal of the roof terrace, brick upstand and associated access and flank wall window, I find the purpose is to remedy the breach of planning control. No lesser steps would achieve that purpose.
24. The appellant's case on this ground is that a more proportionate approach would be to permit the brick upstand and second-floor flank wall window and require only the removal of the terrace and its access.
25. The terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice. The allegation cannot be corrected to enable a development different to that which is correctly defined in the notice.
26. I am therefore unable to consider granting permission for the appellant's alternative, being the retention of the brick upstand with rooftiles or felt. In respect of the flank wall window, I am not certain that this is severable from the brick upstand and consequently, notwithstanding my findings on ground (a) it would not be appropriate to grant permission for its retention.
27. It is however open to the appellant to apply for planning permission for the retention of the brick upstand and second floor flank wall window.
28. Consequently, since the requirements, as varied, would do no more than seek to achieve the purpose of the notice – to remedy the breach of planning control, they are not excessive. The appeal on ground (f) therefore fails.

The appeal on ground (g)

29. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
30. The appellant suggested a period of nine months to allow for further negotiations to take place with the Council for an alternative scheme. The appellant referred to two appeal decisions where Inspectors extended compliance periods to allow time for discussions and the submission of alternative schemes.
31. The notice does not require the removal of the mansard roof extension. Whilst the remaining requirements may cause some disruption to occupiers, they will have little effect on the internal accommodation. Consequently, in the absence of substantive contrary explanation, it seems to me that the compliance period is long enough for an alternative to be submitted and if approved implemented, or the notice complied with.
32. The appeal on ground (g) therefore fails.

Conclusion

33. For the reasons given above, I conclude that the appeal 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.

Felicity Thompson

INSPECTOR