



Appeal Decision

Hearing held on 20 September 2022

Site visit made on 20 September 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 October 2022

Appeal Ref: APP/V5570/C/21/3276818

No 1 Northampton Row, London EC1R 0JZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
 - The appeal is made by Mr Thomas Ades against an enforcement notice issued by the London Borough of Islington.
 - The notice, numbered 03/2021, was issued on 30 April 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the formation of a roof terrace incorporating timber decking and associated metal balustrades with glass panels to the rear of the property at fifth floor level.
 - The requirements of the notice are to: Remove from the land the metal balustrades with glass panels and all associated paraphernalia linked to the use of the roof as a roof terrace including timber decking on the fifth floor level and making good any damage to the fabric of the original building, including the removal of all waste materials therefrom.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (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.
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Decision

1. It is directed that the enforcement notice is corrected by deleting the alleged breach of planning control set out at Schedule 2 and replacing it with 'Without planning permission, the installation of timber decking and metal balustrades with glass panels to the rear of the property at fifth floor level'.
2. Subject to the correction the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the installation of timber decking and metal balustrades with glass panels to the rear of the property at fifth floor level at land as shown on the plan attached to the notice and subject to the conditions set out in the attached schedule.

Procedural Matters

3. A request was made for me to view the appeal site from a neighbouring property. However, the person who made that request did not attend the hearing. While I called at the property during my site visit, there was no answer. Nevertheless, I am satisfied that the site visit as carried out was sufficient to enable me to reach a view on all relevant matters before me.

4. There has been no change to the adopted development plan since the Council issued the notice. However, I was advised at the hearing that the emerging local plan is now at an advanced stage, with main modifications having been published. With that in mind, I have had regard to policies of the emerging Strategic and Development Management Policies document and the emerging Bunhill and Clerkenwell Area Action Plan. The National Planning Policy Framework (the Framework) has also been updated since the notice was issued.

The Notice

5. At the hearing the Council confirmed that the notice was aimed solely at the operational development consisting of the timber decking and metal balustrades with glass panels and did not target the use of the roof as a terrace. Consequently, the allegation in the notice would be clearer if reference to the formation of a roof terrace were removed. Both parties were content that this would not alter the substance of the notice and would not cause injustice to either party. Accordingly, I will correct the notice along those lines.
6. The appeal on ground (d) related solely to the use of the terrace. Since the corrected notice relates solely to operational development, the appeal on ground (d) falls away. The appellant confirmed the decision to withdraw this ground of appeal at the hearing.

Ground (c)

7. To succeed on ground (c), the appellant must demonstrate, on the balance of probability, that the matters stated in the notice do not constitute a breach of planning control. The formation of the terrace is no longer a consideration, given the agreement that the allegation can be amended to exclude reference to it.
8. Section 55 of the Act defines the meaning of development. In accordance with s55(2)(a)(ii) the carrying out for the maintenance, improvement or other alterations to any building of works which do not materially affect the external appearance of the building is not development for the purposes of the Act. In this instance the 'building' consists of No1 Northampton Row, a 5-storey, mid-terrace property, containing a shop with a dwelling above. The appellant does not dispute that the metal balustrades/glass panels required planning permission, but argues that the timber decking did not, on the basis that the decking does not materially affect the external appearance of the building.
9. However, I am not persuaded that these two elements of the works can be split up in that way. While they are constructed of different materials, they were built at the same time as part of a single project to make the roof more usable as a terrace. From my inspection of the property it also appears likely that the decking and balustrade are attached to the same supporting timbers and are therefore linked structurally. Moreover, in public views they appear to be part and parcel of the same development, the balustrade being positioned immediately above the decking. While not prominent from public views, the decking and the supporting timber below are visible and add to the overall visual effect of the works. As the appellant acknowledges, the balustrade materially affects the appearance of the building in its own right.

10. For these reasons I conclude, as a matter of fact and degree, that the decking and balustrade are elements of a single development which materially affects the appearance of the appeal property. Accordingly, the works are development which required planning permission and are a breach of planning control. The appeal on ground (c) therefore fails.

Ground (a)

Main issues

11. The main issues are:

- The effect of the development on the character and appearance of the building and the Rosebery Avenue Conservation Area, within which it lies; and
- The effect of the development on the living conditions of neighbouring occupiers, with particular regard to any noise and disturbance or loss of privacy.

The conservation area

12. The conservation area is centred around Rosebery Avenue, a tree-lined route formed in the late Victorian period. Exmouth Market is another key street within the conservation area and is lined with late 18th and early 19th century houses with shops below. The formal appearance of many of the buildings fronting these roads is important to the significance of the conservation area. The appeal property, part of a Victorian terrace, is one such building. Thus, the contribution the appeal property makes to the conservation area is derived primarily from its front elevation, which the unauthorised development does not change in any way.
13. The rear elevation of this short terrace, where the unauthorised development has been carried out, is a much less formal affair, less prominent and clearly not the principal elevation of the property. The balustrade is constructed of a steel framework, with glazed panels and a wooden top rail. These materials do not match the brick of the building and I am mindful that the balustrade obscures the rear roof slope in certain views. However, views of the rear roof slope would be limited in any event due to the height of the appeal property and neighbouring buildings. Moreover, the balustrade as a whole is a minor addition to the building, and the steel framework is only a small element of the structure. The glazing allows the colours behind it to show through and does not appear out of place.
14. There are no public views of the walking surface of the decking and private views of it are very limited indeed. The edge of the decking and the supporting timber can be seen in public views, showing up as a fairly narrow strip of timber situated above the guttering at the eaves of the roof. While this has the effect of raising the flat roof at the appeal property marginally above the level of its neighbours, the effect is very slight and barely discernible from the ground.
15. Overall, given the informal nature of the rear elevations of the appeal building and its attached neighbours, the minor nature of the balustrade and decking, their positioning high on the building and the use of glazed rather than opaque

- panels, the effect on the character and appearance of the building, including its roofline, is minimal and not harmful.
16. Public views of these additions are limited, their being largely screened by the buildings on Rosoman Place to the rear. They can be seen from Northampton Row, a narrow pedestrian route, and from certain parts of nearby Spa Fields Park, but are not prominent in any of these views. Thus, the effect on the wider area is very limited. While there are close private views of the development from the dwellings to the side and rear, nothing arises from this, given my view that it is not visually harmful.
 17. The Council contends that roof terraces are not an established feature of the conservation area. However, several prominent roof terraces close to the appeal site have been drawn to my attention, including examples on Exmouth Market and Rosoman Place. Within that context, I am not persuaded that these unobtrusive works associated with a roof terrace are harmful. Nor am I persuaded that the height of this roof terrace makes the development more prominent. Rather, the effect is to restrict short range views of the development.
 18. The Council's Conservation Area Design Guidelines for Rosebery Avenue advises that roof extensions, alterations to existing roof extensions or new dormers and roof lights which are visible from the street or other public areas will not normally be permitted. However, in this instance, I do not consider that the appeal scheme should be ruled out on the basis of such general guidance, given its minimal visual effect on the area. For the same reason, I find no conflict with the advice relating to rooflines in the Council's Urban Design Guide supplementary planning document.
 19. For these reasons I conclude that development has not harmed the character or appearance of the building or the area. Accordingly, the character and appearance of the conservation area is preserved. I therefore find no conflict with policies DM2.1 (design) and DM2.3 (heritage) of the Council's Development Management Policies Local Plan document, or with Policy BC6 (North Clerkenwell and Mount Pleasant) of the Finsbury Local Plan Area Action Plan for Bunhill and Clerkenwell. Nor is there conflict with the aims for heritage assets set out in policies DH1 and DH2 of the emerging Strategic and Development Management Policies document and Policy BC6 of the emerging Bunhill and Clerkenwell Area Action Plan, or with the similar aims of the Framework.

Living conditions

20. It is common ground that this part of the building may be lawfully used as a terrace in connection with the residential occupation of the property. Nevertheless, the Council argues the balustrade and decking make such use a more practical proposition and, therefore, more likely to occur. I agree with that view; a terrace located high on the building will necessarily be a less appealing place to be without a barrier in place, particularly for larger gatherings and for guests.
21. Nevertheless, I am not persuaded that use of this terrace is likely to cause harmful noise disturbance. The appeal property has a much more accessible terrace on a lower floor, accessed from the kitchen and directly from the stairway. This is more likely to be used for entertaining guests, given its easy

accessibility and proximity to the kitchen. In stark contrast, the subject terrace is accessed from the top floor, via a bedroom, up a steep set of steps. It seems unlikely to me that such a space would be regularly used for entertaining guests. The appellant says that it is primarily used in a low-key way by the occupants of the dwelling, a use to which it seems far better suited. The terrace has apparently been in use for some time and there is no evidence of specific instances of unacceptable noise created on the terrace.

22. Moreover, there are terraces on neighbouring properties. The nature of the rear of these properties is that some noise arising from people using their terraces is inevitable. Within that context, I have no reason to suppose that any noise arising from increased use of this terrace would cause material harm due to noise.
23. The terrace affords elevated views of the rear of the dwellings opposite and to the side. However, it is the nature of this very close-knit group of dwellings that there is already extensive overlooking. Even without this terrace the appeal property would overlook other properties at close quarters due to its windows and the lower terrace. Other properties are also a source of overlooking, and the appeal property itself is overlooked. I cannot see that this situation is worsened in any way by any increased use of this terrace, particularly given my view that it is unlikely to be extensively used by large numbers of guests.
24. I have had regard to concerns raised by a neighbour regarding glare arising from sunlight reflected from the glazed panels. This was discussed at the hearing, and both the Council and the appellant considered that glare could be effectively reduced by changes to the panels, perhaps involving etching them. I accept that view and have attached a condition requiring a scheme to reduce glare to be agreed and implemented.
25. For these reasons I conclude that the development has not harmed the living conditions of neighbouring occupiers. Consequently, I find no conflict with Policy DM2.1 or with the Framework.

Conclusion

26. For the reasons given above, I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice as corrected.
27. I have attached a condition requiring a scheme to reduce reflected glare to be submitted and implemented in the interests of the living conditions of neighbouring occupiers. I have also imposed a condition requiring the existing planters on the terrace to be retained or replaced with an alternative planting scheme to ensure the satisfactory appearance of the development. The wording of the conditions is different to that suggested by the appellant and reflects the discussion at the hearing.
28. Since the appeal has succeeded on ground (a), grounds (f) and (g) do not fall to be considered.

Peter Willows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Greg Dowden: Planning Director – WSP
Sophie Ward: Planner – WSP
Thomas Ades: Appellant
Philip James: Occupier

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Jarratt: Planning Enforcement Manager

DOCUMENTS SUBMITTED DURING THE HEARING

Appellant

- Draft Planning Conditions
- Photographs of the appeal property

Council

- Emerging Strategic and Development Management Policies document – Policies DH1 and DH2
- Emerging Bunhill and Clerkenwell Area Action Plan– Policy BC6

Conditions

- 1) Within 2 months of the date of this decision, a scheme to reduce reflected glare from the glass panels shall be submitted in writing to the local planning authority for approval. The approved scheme shall be implemented within 3 months of the local planning authority's approval.

If no scheme in accordance with this condition is approved within 6 months of the date of this decision, the glass panels shall be removed until such time as a scheme approved by the local planning authority or, on appeal, the Secretary of State, is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, or in the event of any appeal relating to that procedure, the operation of the time limits specified in this condition will be suspended until that legal challenge or appeal has been finally determined.

- 2) The 3 existing planters shall be retained in position on the terrace unless replaced with an alternative planting scheme which has previously been submitted to and approved in writing by the local planning authority. Any such replacement planting scheme shall be implemented in accordance with the approved details and shall remain in place throughout the lifetime of the development.