



Appeal Decisions

Site visit made on 2 November 2022

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 November 2022

Appeal A Ref: APP/V5570/C/21/3281678

Appeal B Ref: APP/V5570/C/21/3281679

Appeal C Ref: APP/V5570/C/21/3281680

Appeal D Ref: APP/V5570/C/21/3281681

65 Aberdeen Park, Islington, LONDON, N5 2AZ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Ms Lubov Kotzeva; Appeal B by Francisco Diaz; Appeal C by Alegria Diaz; and, Appeal D by Clara Diaz, against an enforcement notice issued by the London Borough of Islington.
- The notice, numbered 13/2021, was issued on 15 July 2021.
- The breach of planning control as alleged in the notice is without planning permission, the installation of a timber balustrade, with supporting frame and posts at first floor level to the rear.
- The requirements of the notice are:
 - 1 Remove the timber balustrade, supporting frame, posts and fixings around the perimeter of the rear first floor roof.
 - 2 Remove from the land all materials and debris arising from the works.
- The period for compliance with the requirement is two months.
- Appeal A 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.
- Appeals B, C, and D are proceeding on the grounds set out in section 174(2) (c), (d), (f) and (g)

Decisions

1. Appeal A 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 a timber balustrade, with supporting frame and posts at first floor level to the rear at 65 Aberdeen Park, Islington, LONDON, N5 2AZ as shown on the plan attached to the notice.

Preliminary matters

2. The local authority representative and myself attended the pre-arranged site inspection but there was no response from any of the appellants and I was therefore unable to view the alleged development. Notwithstanding this, I am satisfied that there is sufficient information submitted by the parties, including

photographs, in order for me to determine the appeals without the need to enter the site.

The site and relevant planning history

3. The appeal site is a semi-detached, two storey house adjoining No 63 and adjacent to a detached house at No 67. It lies within the Aberdeen Park Conservation Area whose significance derives from its Victorian villas and roof terraces, large gardens, spacious layout and mature trees.
4. Planning permission P2015/1417/FUL dated 27 May 2015 relates to various works on the appeal property, condition 3 of which states "The flat roof area shown on plan no. 412/02 Rev 12 hereby approved shall not be used as an amenity or sitting out space of any kind whatsoever and shall not be used other than for essential maintenance or repair, or escape in case of emergency". The condition was imposed in order to prevent the undue overlooking of neighbouring habitable room windows.
5. In May 2019 permission was granted for P2019/10004/S73 for a variation of condition 2 and removal of condition 4 of the 2015 permission but condition 3 of the earlier permission was included in full in the revised permission.
6. In October 2019, appeal reference APP/V5570/D/19/3234062 was dismissed for retrospective works involving the installation of a balustrade constructed of timber in association with a roof terrace at first floor level to the rear.

Appeals A, B, C and D: appeals on ground (c)

7. An appeal on this ground is that a breach of planning control has not taken place.
8. The appellants state that the parapet structure including a metal frame forms part of a roof of the single storey extension not exceeding permitted development rights in Class A of the General Permitted Development Order 2015, as amended (the GPDO).
9. Conditions attached to Class A include A.1.k(i) which does not permit development where it would result in a veranda, balcony or raised platform. As the works facilitate the provision of a raised platform, the development is not permitted. It also contravenes condition A.2(C) as it creates an additional storey and the materials used are not similar to the host dwelling contrary to Condition A.3(A). Additionally the development is not within the tolerances of Class B and C of Schedule 2, Part 1 of the GPDO.
10. The onus of proof rests with the appellant where an appeal is made on a legal ground and the standard of proof is on the balance of probabilities. That has not been shown in this case. As the development requires planning permission and such permission is not granted through the GPDO, the appeals on this ground fail.

Appeals A, B, C and D: appeals on ground (d)

11. An appeal on this ground is that it is too late to take enforcement action. It is necessary to show that the development was substantially complete 4 years or more before the notice was issued.

12. The appellant claims immunity from enforcement action on the basis that the metal frame and structure supporting the timber has existed since before December 2016. However as the construction of the balustrade occurred in March 2019, this argument carries no weight.
13. The appeals on these grounds fail.

Appeal A: appeal on ground (a)

14. An appeal on this ground is that planning permission should be granted for what is alleged. The use of the roof of the terrace does not form part of the allegation, which relates only to the operational development of the construction of the balustrade, although I acknowledge that in the reasons for issuing the notice, the Council considers that the louvred timber balustrade facilitates the first floor rear roof to be used as a terrace. The appellant states that the balustrade is required in view of safety concerns for her children.
15. The main issues are the effect of the development on the character and appearance of the Conservation Area; and, on the living conditions of the occupiers of the adjacent properties.
16. In the 2019 appeal decision, the Inspector considered two main issues.
17. In respect of the development on the character and appearance of the site and the Conservation Area, he concluded that the development was not overly prominent and did not cause an unacceptable level of harm to the area. He considered that the louvred timber balustrading responded positively to the brick façade in terms of colour and design and that terraces were a characteristic of the area. He concluded that the development complied with relevant policies of the Development Management Policies, the Core Strategy and the London Plan and that it met the requirements of the Urban Design Guide and Conservation Area Guidelines.
18. On the basis of that Inspector's assessment and conclusions, and having regard to the submitted photographs and my own observations of the character and appearance of the conservation area, I also conclude that the timber balustrade is an acceptable form of development that does not harm the character or appearance of the conservation area.
19. In respect of the effect of the development on the living conditions of the occupiers of Nos 63 and 67 regarding privacy and noise, the Inspector concluded that the development facilitated overlooking of certain windows of the neighbouring properties and a first floor terrace at No 67. The inspector also concluded that the terrace may be used for social gatherings which could lead to an unacceptable level of harm.
20. In his decision, the Inspector makes no reference to the planning history of the site, and in particular to Condition 3 in planning permission P2015/1417/FUL, repeated in P2019/10004/S73. When imposed, the condition appears to have been necessary, relevant to planning and to the development, enforceable, precise and reasonable in all other respects as required by the policy tests set out in paragraph 56 of the National Planning Policy Framework. The condition also satisfies the legal tests established in *Newbury DC v SSE & Others [1980] 2 WLR379, [1981] AC578*. The condition is still in effect today and if any breach of the condition occurs then the Council could consider the expediency of taking enforcement action such as serving a Breach of Condition Notice.

21. The appellant is aware of the condition and has offered a s106 unilateral planning obligation in which it is undertaken not to use the area for gatherings or to transmit any noise. However, such an undertaking is unnecessary as it would largely duplicate the extant conditions. Paragraph 55 of the Framework advises that planning obligations should only be used when it is not possible to address unacceptable impacts through a planning condition
22. I have had regard to the objections to the development by the adjacent neighbours but their comments do not overcome the fact that such a condition exists and if it is breached, then the remedy is in the hands of the Council.
23. I conclude therefore that as there is no harm caused to the Conservation Area through the construction of the balustrade and that the use of the roof is controlled through a restrictive condition to prevent the undue overlooking of neighbours. I consider that the development is in accord with the relevant development plan policies and with the Framework.
24. As the balustrade has already been constructed, and as an effective condition applies to the use of the roof and continues to apply, it is unnecessary to impose any further conditions.

Conclusions

25. For the reasons given above, I conclude that Appeal A succeeds on ground (a). I shall grant planning permission for the development as described in the notice.
26. The appeals on grounds (f) and (g) do not therefore fall to be considered.
27. The appeals on grounds (c and (d) fail on legal grounds.

P N Jarratt

INSPECTOR