



Appeal Decision

Site visit made on 7 December 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 21st February 2023

Appeal Ref: APP/T5150/C/22/3298103

136 Cairnfield Avenue, London NW2 7PJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Carlo Lamberti against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 30 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of railings on the roof of the rear extension to form a roof terrace ("the unauthorised development").
- The requirements of the notice are:
STEP 1 Remove the railings on the roof of the rear extension.
STEP 2 Remove all items associated with the roof terrace, including decking, block up the access to the roof terrace and do not use the flat roof of the rear extension as a roof terrace.
- The period for compliance with the requirement is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) 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.

Decision

1. It is directed that the enforcement notice is corrected by
 - 1) deleting the allegation in full and substituting it with " Without planning permission, the erection of railings on the roof of the rear extension"And varied by
 - 2) deleting all of the wording of STEP 2 as a requirement from Schedule 4 of the notice.
2. Subject to the correction and 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.

Applications for costs

3. An application for costs was made by Carlo Lamberti against the Council of the London Borough of Brent. This application is the subject of a separate Decision.

The appeal under ground (b)

4. An appeal under ground (b) is that the breach alleged in the notice has not occurred as a matter of fact. The allegation is the erection of railings on the roof of the rear extension to form a roof terrace. The appellant accepts that the

- railings are in situ and are unauthorised but states that the formation of a roof terrace has not occurred as a matter of fact.
5. Planning permission was granted on the 31 July 2015 for “erection of proposed single storey rear extension, two storey side extension, conversion of existing garage into bathroom and laundry room”. (the 2015 planning permission)
 6. The first floor fenestration was shown as sliding doors with Juliet balconies preventing access onto the roof area of the rear extension. However, the appellant did not install the Juliet balconies thus allowing access onto the roof of the rear extension. During the course of the appeal, the Council accepted that the reinforced glass roof lights and decking on the roof have been in place since 2016.
 7. The erection of the railings is the operational development which is attacked by the notice. The practical implications of the erection of the railings taken together with the first floor fenestration as installed, is that it is safe for the occupiers of the dwelling to walk out onto the roof of the extension and that is the purpose of the railings. The railings serve no other purpose than to prevent people from falling off the roof of the extension. Whether or not the roof has been utilised as an outdoor elevated amenity area does not detract from the fact that railings have been erected. The allegation should therefore be corrected to the erection of railings on the roof of the rear extension.
 8. The first requirement is to remove the railings on the roof of the rear extension. The second requirement states “Remove all items associated with the roof terrace, including decking, block up the access to the roof terrace and do not use the flat roof of the rear extension as a roof terrace.” In view of the partial success of ground (b), the second requirement needs to be removed as a consequential amendment as it is superfluous to the amended allegation. The removal of the second requirement is now a consequential correction to the notice rather than a variation requiring the parties comments. I will therefore correct the allegation and vary the requirements accordingly and the appeal under ground (b) succeeds to that extent.

The appeal under ground (a)

Main Issue

9. The main issue is the effect of the development upon the living conditions of neighbouring occupiers of Cairnfield Avenue with particular regard to loss of privacy.

Reasons

10. The appeal dwelling is a semi-detached property in a row of similar dwellings on Cairnfield Avenue. The railings, the subject of the notice, are located around the edges of the roof of a single storey rear extension.
11. There is no dispute between the parties that the railings on the single storey roof do not have planning permission. In the absence of Juliet balconies, the two bedrooms at first floor level have unrestricted access to the roof of the extension through the sliding doors. The erection of the railings allows anyone to walk safely over the roof area whether or not they use it as an amenity area. The only purpose of the railings is to ensure the safety of anyone who walks out onto the roof and ensures that they do not fall from the roof area.

12. The appellant chose not to erect the Juliet balconies, as approved, as he considered that they would make maintenance, particularly window cleaning difficult due to the railings being so close to the glass. Nevertheless, balconies of this kind are not uncommon and the dormer window of the appeal dwelling has a similar feature close to the window.
13. The reasons for service of the notice stated by the Council relate to the impact of any use of the roof on the privacy of nearby dwellings. The adjoining semi-detached dwelling at No 134 has a bay window at first floor level on the side of the house closest to the appeal dwelling. It also has an extension at ground floor, to the other side of the property, with a window and door on the side which faces the appeal dwelling. From the roof of the appeal property there are direct views into the first floor room and the extension of No 134.
14. Furthermore, due to the elevated view from the roof of the extension anyone standing on it, which is enabled by the erection of the railings, has clear views down into the gardens of nearby properties including Nos 130, 132, 134 and 138. Views of No 140 are largely obscured by trees.
15. While I appreciate that the appellant states that the roof of the rear extension is not utilised as an amenity area (terrace), the railings allows unrestricted and unrestrained safe access to the roof area. It is the existence of the railings that increases the likelihood and ability of people to use this area for whatever reason. Due to the elevated position of the roof area allowing views down into garden areas and across to windows at No 134, any use is likely to result in significant loss of privacy for the occupiers of nearby dwellings particularly Nos 134 and 138.
16. One local resident states that he is not affected by the development but I note he does not live on Cairnfield Drive. The appellant states that the railings were added as a safety feature for the appellant's family, particularly his child, as it is possible to get onto the roof through the sliding doors. This supports my view that the purpose of the railings is to provide safe use, whether planned or not, of the roof area for people to use. The railings are not essential as there are alternative methods to prevent anyone being able to freely step out onto the roof area such as alternative window designs or the installation of Juliet balconies.
17. A condition was attached to the 2015 permission which restricts use of the flat roof as a balcony, roof terrace or sitting out area of any kind. Whilst the allegation is limited to operational development, the appellant has suggested that a further use condition could be imposed to restrict access to maintenance purposes only and for no other purpose. However, whether someone is utilising the roof for maintenance, other purposes or as an amenity area the railings allow for that to take place by making it safe to do so and it is the location of the railings at the edge of the roof which has created the harm.
18. As the purpose of the railings is to enable safe use of the roof for any purpose, to impose a condition restricting any such use would negate the purpose of the installation of the railings and would therefore be unreasonable. Such a condition would therefore fail to meet the statutory test for imposing a condition and therefore cannot be imposed.
19. I find that the development would harm the living conditions of nearby occupiers of Cairnfield Drive particularly Nos 134 and 138. The development

does conflict with Policy DMP1 of the Brent Local Plan 2022 which, amongst other things, expects development to provide high levels of amenity. It also conflicts with the adopted Supplementary Planning Document No 2 (SPD2) "Residential Extensions and Alterations" 2018 which seeks to ensure that alterations do not have an unacceptable impact on neighbours.

The appeal under ground (f)

20. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. As stated by the Council, the purpose of the notice is to remedy the breach of planning control. The removal of the second requirement has already been addressed under ground (b).
21. The appellant considers that it is not necessary to remove the railings as they do not result in any identified harm to "any interest of acknowledged importance." However, ground (f) is a limited ground which does not include an assessment of planning merits. I have already found under ground (a) that the development does cause harm to the living conditions of nearby occupiers which cannot be adequately mitigated by the imposition of conditions. In my view, the removal of the railings is the minimum necessary to remedy the breach of planning control and it is not excessive. The appeal under ground (f) therefore fails.

Conclusion

22. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and 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.

E Griffin

INSPECTOR