



Appeal Decision

Site visit made on 31 October 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 8 December 2023

Appeal Ref: APP/U5360/C/23/3317536

Flat D, 90 Mortimer Road, Hackney, London N1 4LA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by De Beauvoir Management Ltd and Appeal B is made by David Waller against an enforcement notice issued by London Borough of Hackney.
- The notice was issued on 23 January 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, operational development consisting of decking and railings to facilitate the creation of a roof terrace at the first floor.
- The requirements of the notice are to:
 1. Remove the balustrade railing and timber flooring atop the first floor extension as shown in appendix 1;
 2. Make good all damage to the Property resulting from the removal of the unauthorised works as listed above;
 3. Upon completion of the above steps, remove all materials, debris, waste and equipment resulting from compliance with the other requirements of the notice from the property and its premises.
- The period for compliance with the requirements is 3 (three) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Act. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission is deemed to have been made under section 177(5) of the Act.

Decision

1. The appeal is dismissed and 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.

Ground (a) and the deemed planning application

Main issues

2. These are whether the development would preserve or enhance the character or appearance of the De Beauvoir Conservation Area and the effect of the development on the living conditions of the occupiers of neighbouring properties.

Reasons

Character and appearance of the De Beauvoir Conservation Area

3. The appeal relates to the installation of wooden decking and railings which have facilitated the use of the flat roof extension to the rear of the building as a roof terrace. The appeal property is a flat within an early Victorian terraced dwelling. The frontage is highly decorative being part stucco and London stock brick with stone window surrounds and ornate Juliette balconies to full height first floor windows. The rear elevation of the appeal property, and its

- immediate neighbours, is plainer than its frontage. Mortimer Road and its surrounding streets are located within the De Beauvoir Conservation Area (CA).
4. The CA comprises development of the De Beauvoir Estate dating from the mid-19th century and predominantly comprises residential development of short terraces and semi-detached houses on tree lined, spacious streets. Mortimer Road is a quiet road which leads off De Beauvoir Square to the south where an open public garden is surrounded on three sides by the original houses dating from the development of the estate. The significance of the CA as a heritage asset derives from its layout and the quality of the buildings.
 5. An Article 4 Direction was made in 2008 and this aimed to further protect the De Beauvoir area by controlling elements of development that may be granted by virtue of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended. This restricts development falling within Classes A, B, C, D, F and H of Part 1 of Schedule 2 of the Order and Classes A and C of Part 2 of Schedule 2 of the Order.
 6. The building in which the flat is situated, provides residential accommodation over four floors, those being lower ground, ground, first and second. The appeal property is said to be interlinked with other flats at 90 Mortimer Rd and certain areas are common parts. Although the parties refer to the appeal development in relation to different floors, I observed at my visit that the roof terrace extends from the rear of the first floor of the property and is atop the roof of a ground floor extension to the flat below. Thus, the roof extension is associated with the first floor flat as described in the notice.
 7. The flat roof atop the ground floor extension has a low-level parapet wall. Metal railings have been erected around two sides of the roof top to form a balustrade. This is set back from and extends marginally above the low-level parapet wall. In addition, the surface of the roof terrace has been covered with timber decking. The development has been undertaken to facilitate the use of the roof for outdoor leisure space. Access to the area is via a sash window through which one must climb.
 8. The adjoining property to the side has a roof terrace of a similar size and style. The Council notes that this development is immune from enforcement action by virtue of s171B(1) of the Act having been in situ for several years. Nevertheless, this space has black metal railings along three sides and a form of screening along the boundary with the appeal property that extends above the railings. This acts to block, what appears to be the only view of the appeal development from the public highway along Englefield Road.
 9. The balustrade on the appeal property is of a slim plain design and light in colour. Being set in from the parapet wall and of limited height it allows for views through to the surrounding buildings in the terrace. The decking is set below the parapet wall and thus is visually screened for the most. While there are close private views of the development from those immediate neighbours, I consider that the railings and the decking to the rear of the property are not visually harmful and do not detract from or harm the original design of the building or the character of the non-designated heritage assets in the vicinity.
 10. Therefore, and having regard to my statutory duty under s72 of the Planning (Listed Building and Conservation Areas) Act 1990, I consider that the operational development consisting of decking and railings has a neutral effect

and the CA, as a whole, is preserved. As such, I find no conflict with Policies D3 and HC1 of the London Plan (2021) Policies LP1 and LP3 of the Hackney Local Plan (2020), the Hackney Residential Extensions and Alterations SPD and the De Beauvoir Conservation Area Appraisal. These, amongst other matters, seek to promote and protect the historic environment.

Living conditions

11. The railings and decking which have been installed on the roof terrace have facilitated the use of the roof, and this is deemed to have an impact on the living conditions of the occupants of neighbouring properties. Due to the layout of the converted former single dwellinghouse, the roof terrace sits atop living space occupied by others. Representations from the occupier directly below the terrace say that the terrace is above their living room and disturbance is created when it is walked on. The space is also said to allow for views into their main bedroom.
12. At my visit I stood on the roof terrace and observed the views of outdoor leisure spaces belonging to the occupants of neighbouring properties. The space beyond the rear of the houses along Mortimer Road is well landscaped and with boundary walls and fences, extended views into private spaces are limited to those close to the rear of the houses. Nevertheless, from the rooftop there are direct views into private outdoor spaces within the immediate setting. What would have been the original rear garden to the former single dwellinghouse is on different levels and the arrangement of outdoor furniture and landscaping features suggested that the area is used by occupants of the immediate flats.
13. Although I appreciate that these spaces do not lend themselves to ultimate privacy, and that windows in the rear of the row of properties allow overlooking, the use of the roof terrace will undoubtedly increase the loss of privacy experienced by those on the lower levels using the private open space to the rear. There is also the opportunity to look towards the rear of the properties within the terrace at a level where privacy was previously not encroached. The railings, being stepped in, do go some way to protect the flat below from direct overlooking. However, the loss of privacy remains and I consider this to be heightened due to the level of the roof terrace.
14. The Council's Supplementary Planning Document – Residential Extensions and Alterations (Approved April 2009) forms part of the local development frameworks and is a material consideration. Guidance contained within highlights the issue concerning roof terraces to be: over-looking, loss of privacy and noise creation during use. It states that roof terraces are not characteristic of the traditional housing stock in Hackney and that in areas of higher density, privacy and amenity issues can be exacerbated. Overall, it surmises that where there would be an impact on privacy, roof terraces and balconies are not normally acceptable.
15. Being on an elevated level would not only give rise to a feeling by those within the immediate vicinity of being overlooked, it would also provide a platform for increased noise and disturbance. This may arise from footsteps on the decking but more so from voices in general chit chat to louder disturbances if the area is used for entertaining guests. The roof terrace is of a size where guests could comfortably gather and indeed at my visit, there were a couple of coffee tables and a number of chairs in situ. While the arrangements to access the roof

terrace through a window would make it less usable than it would likely be if access was via a doorway, the absence of other outdoor private space for the occupants and the furniture on the roof top indicate that it is likely that it is well used during times of clement weather.

16. I acknowledge that the roof terrace provides a pleasant space in an attractive setting where previously no outdoor space was provided. However, on balance, I consider that the installation of the railings and the decking to provide a useable space has an adverse impact on the living conditions of the occupants of the neighbouring properties. While this is likely to occur from the use of the existing neighbouring roof terrace, the addition of a further roof terrace would increase the loss of privacy and potential for noise and disturbance. Although the neighbouring roof terrace is said to be immune from enforcement action, its presence cannot be assumed to set a precedent.
17. In this respect, I find that the appeal development conflicts with Policy D3 of the London Plan (2021), Policy LP2 of the Hackney Local Plan (2020) and the Hackney Residential Extensions and Alterations SPD which seek to ensure new development is appropriate to its location and that there are no significant adverse impacts on the amenity of occupiers and neighbours.

Other Matters

18. The appellant comments that there are examples of a roof terrace in Mortimer Road and Balls Pond Road which are said to be similar to the appeal development. In the absence of further details, I am not able to compare the development. I note the Council confirms that there is no permission for a roof terrace within the terrace and that investigations have commenced. Drawings have also been provided to show a development scheme at Cadogan Close with balconied roof terraces on two levels for neighbouring flats. From the plans, the situation appears to be significantly different to the appeal before me and I am not able to draw any comparisons between the developments.
19. Reference is also made to the flat below and its elevated position which is said to allow views towards its neighbours to the side and rear. I noted that lattice fencing to the side and rear of the patio at a height provides some screening. However, I am not persuaded that the circumstances are similar to the appeal roof terrace which is at a higher level and with wider ranging views.

Conclusion

20. For the reasons given above, the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S A Hanson

INSPECTOR