



Appeal Decisions

Site visit made on 24 January 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22ND MARCH 2024

Appeal A Ref: APP/N5660/C/22/3306011

Appeal B Ref: APP/N5660/C/22/3306012

19 Rectory Grove, London SW4 0DX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Mr Tim Morley and Appeal B is made by Ms Glenys Martin against an enforcement notice issued by the Council of the London Borough of Lambeth.
- The notice, numbered 21/00323/3DEV, was issued on 21 July 2022.
- The breach of planning control as alleged in the notice is that without planning permission, and at the rear of the premises, the unauthorised installation of a black painted, steel landing and staircase ('the unauthorised black metal landing and staircase').
- The requirements of the notice are to:
 - a) Remove the unauthorised black metal landing and staircase and reinstate the rear elevation of the premises as existed prior to the breach of planning control, and
 - b) Remove all associated waste and debris resulting from compliance with the above steps, from the premises.The period for compliance with the requirements is: Four (4) months.
- The appeal is proceeding on the ground set out in section 174(2)(a) 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.

Summary Decision: Appeals A and B are dismissed, the enforcement notice is upheld with corrections and variations.

Appeal C Ref: APP/N5660/W/22/3303643

19 Rectory Grove, London SW4 0DX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Tim Morley against the decision of the Council of the London Borough of Lambeth.
- The application Ref 21/04499/FUL, dated 18 November 2021, was refused by notice dated 29 April 2022.
- The development proposed is for the erection of a replacement garden access to the first floor of the property comprising a steel landing and staircase.

Summary Decision: Appeal C is allowed.

Matters Concerning the Enforcement Notice

1. The appellants consider that the enforcement notice is invalid. Although they accept that the enforcement notice was served correctly, they raise issue with the timing of the enforcement notice being served, its implications and the expediency of taking action. Specifically, they claim the Council did not follow its own protocol when taking enforcement action and at a time when an appeal against the planning refusal was being made. These actions were considered to

have been excessive and impinged on the appellants human rights, contrary to Article 1 of the first Protocol and Article 8 and 14 of the Human Rights Act 1998.

2. I understand that the appellant feels frustrated with the Council's decision to take action before the planning appeal was determined. However, the conduct of the Council in respect of its own enforcement protocol is not something that effects the validity of the enforcement notice. It is for the Council, along with the courts, to determine the expediency of serving the enforcement notice. The matters raised regarding the acceptability of the development against relevant planning policy is not relevant in this regard, but will be considered as part of the ground (a) appeal below.
3. There is no reason why an enforcement notice cannot be issued while a planning or LDC application or appeal remains undetermined. However, courts tend to deprecate prosecutions for non-compliance with an enforcement notice whilst there is a pending planning application or appeal. In this instance the Council decided to take action as they determined the development was unacceptable and it was a breach of planning control. If they neglected to take action until the determination of the section 78 appeal, then the process of serving the notice and dealing with a separate section 174 appeal could have elongated the impact of the development on those neighbours affected by it.
4. Consequently, the Council's decision to take action would have needed to balance the affect of the development on neighbour's living conditions, which is a well-established planning policy aim set out in the development plan, with the appellants human rights. In this regard, the Council decided to serve a notice to protect the public interest, which could not have been achieved by means that are any less interfering of the appellant's human rights.
5. In view of the matters raised by the appellant, I do not consider the notice to be invalid.
6. Before considering the grounds of appeal, I have a duty to put the notice in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act) include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
7. The corrections and variations set out below would not alter the nature of the allegation or the requirements and would not result in injustice to either party.
8. The word 'unauthorised' does not need to be included in the allegation. This is already implied given that it is without planning permission and a breach of planning control. As such, in paragraph 3, the word 'unauthorised' can be deleted.
9. In paragraph 5, step (b) the words 'above steps, from the premises' can be deleted and substituted with the words 'step (a) above.'. There are not several steps to the requirements, and it is also unnecessary to specify that the waste must be removed from 'the premises', when 'it has already been identified in paragraph 2. This is simply for the appellant to understand what he is required to do to remedy the breach.

Applications for costs

10. An application for costs were made by Mr Tim Morley and Ms Glenys Martin against the Council of the London Borough of Lambeth's decision to take formal enforcement action and refuse planning permission. These applications are the subject of a separate decision.

Preliminary Matters

11. During the course of the appeal the revised National Planning Policy Framework December 2023 (the Framework) was published. There are no substantive changes relevant to the appeal before me and therefore no interested parties would be prejudiced by my consideration of the 2023 version of the Framework.
12. From the evidence before me, and what I saw on site, there are no differences between the development proposed as part of Appeal C, and the deemed application being sought as part of the ground (a) appeal under Appeals A and B. However, Appeal C is a Section 78 appeal based on the proposed drawings, rather than what has been constructed on site and alleged as part of the enforcement notice under Appeals A and B. Nonetheless, as the main issues are the same, and to avoid duplication, I have considered them together, but I will refer to the relevant appeals to outline any differences in approach.

Appeal A and B: the Ground (a) Appeal and the Deemed Planning Application, and Appeal C

13. The **main issues** are the effect of the development on
- the character and appearance of the area.
 - the living conditions of the neighbouring occupants of 17, 21 and 23 Rectory Grove, with regard to noise, disturbance, privacy and outlook.

Reasons

Character and Appearance

14. The property is situated on Rectory Grove, which is a terrace of period properties in a predominantly residential area.
15. The dwellings in the terrace, between 11 and 39 Rectory Grove, are similar in appearance, set back behind a small front wall, with square bay windows finished in a brown and red brick. The uniformity and shared design features to the front of the terrace results in a pleasant character and appearance to the area. The rear of the terrace also maintains some consistency in appearance, but alterations meant there was not such an appreciable uniformity. Some properties had no external staircase, and those that remained were similar in size but were finished in a variety of materials, such as brick, painted metal, or wood. The rear of the terrace and parts of the appeal property are visible from Charles Barry Close.
16. The development introduces a metal landing and external staircase to the rear. The landing area is wider than the replaced stairs as well as those steps that remain to the back. However, the landing and stairs are still modest in width, with a depth and height that is comparable to others along the terrace. Furthermore, the lightweight metal design and the painted black finish would be an appropriate design and finishing material in this context. The staircase is

visible from Charles Barry Close, but it is not a prominent feature due to existing vegetation, intervening development as well as its modest scale and siting. Having regard to the scale, siting and design, the development does not appear as an incompatible feature on the property or in the immediate rear terrace street scene.

17. It is indicated that the site borders some conservation areas but is situated outside of them. I have only been provided with limited information on the position of the nearby designations. However, as I have concluded that the development has an acceptable impact on the character and appearance of the property and area, it follows that the setting of the adjoining conservation areas would not be adversely affected.
18. Accordingly, the development is not harmful to the character and appearance of the property or its immediate surroundings, complying with Policies Q2, Q5 and Q11 of the Lambeth Local Plan 2021 (Local Plan) and the Lambeth Building Alterations and Extensions Supplementary Planning Document (SPD). These policies and guidance, seek to ensure that schemes are all designed to be visually attractive, with developments responding creatively to the local distinctiveness of the area as well as the original architecture of the host building.

Living Conditions

19. The appeal site is a maisonette, which is situated above the ground floor flat of 17 Rectory Grove. The rear garden has been subdivided along its length, resulting in a small compact garden to the back of 19 Rectory Grove, and a longer but less private garden space for No 17. Based on my observations and the plans submitted with the appeal, there is a similar situation at 13 and 15 Rectory Grove. The garden areas of No 17 and No 15 are overlooked by the bedroom and kitchen windows of no 19 and No 13, as well as a balcony to the back of No 13.
20. The replaced wooden stairs were situated nearer to the boundary with 21 and 23 Rectory Grove and set off the party boundary with No 17 by approximately 1-1.5m. The steps have been repositioned to the opposite side of the landing and the increased width means the development is now closer to the party boundary with No 17 (approximately 0.3m off the boundary).
21. The landing area would provide views into the neighbour's private garden at No 23, and to a lesser extent the kitchen door and window at No 21. However, from the evidence submitted, the previous steps were as close to this boundary, without any mitigation. As such, the replacement steps do not result in any adverse change to the outlook from the garden or nearest windows at No 21 and No 23. For the same reasons, it would not result in any greater impact upon this neighbour's living conditions with regard to privacy, noise and disturbance.
22. The garden of No 17 is enclosed by high fences and the surrounding two storey built form. A bungalow adjoining at the back also encloses the garden to the rear. The landing and part of the steps are visible above the side boundary fence from the neighbour's side. Although at an elevated level, the landing has a limited depth and an open lightweight metal design. Given the existing situation and the scale of the development, the development does not result in a significant loss of light nor an adverse change to outlook from the garden at No 17.

23. The increased width of the landing would not facilitate large gatherings, but it is large enough for two persons to sit and use the area as an outside space. The development is also nearer to No 17 boundary than the previous landing, allowing users an elevated outdoor space with closer and increased views of the majority of the neighbour's garden than previously. In this regard, the development has the potential to result in more frequent use by the occupants and a marginal increase in noise and disturbance. Also, despite the existence of the windows and the previous access stairs, the development gives the perception of a loss of privacy to the neighbour's garden space, by increasing the number of locations where most of the garden space can be viewed.
24. The development, therefore, results in a greater level of noise and disturbance and perceived overlooking to the neighbour's garden, which would have an adverse impact on the neighbouring occupant's living conditions. To overcome these concerns the appellant has suggested a screen could be erected, but no specific details have been provided. However, given the small scale of the development, I am of the view that a screen would adequately mitigate the harm I have identified.
25. In the case of Appeals A and B, I can only consider granting planning permission based on the whole or part of the matters alleged in the notice, which includes the staircase and landing but with no privacy screen. However, Appeal C can be considered with respect to the proposed plans, which can be subject to an adequately worded condition requiring a proposed screen to be erected. I note the Council's concerns over the impact of a screen on the neighbour's outlook. Having regard to the limited depth and height of a screen, I am of the view that it would not adversely impact on the outlook from the neighbour's garden, despite its elevated position.
26. Accordingly, the development as proposed in Appeal C, and subject to the erection of a screen, would not cause harm to the living conditions of the occupiers of No's 17, 21 or 23 by virtue of noise, disturbance, privacy and outlook. The development complies with Policy Q2 of the Local Plan and the Lambeth Building Alterations and Extensions SPD, which indicate that extensions and alterations can be permitted provided any adverse impact on privacy, outlook as well as noise and disturbance has been reduced to an acceptable level by screening.

Other matters

27. I have had regard to representations that object to the retention of the external landing and steps. However, I have concluded that the concerns raised can be adequately mitigated by the erection of a screen. I accept that this matter has resulted in neighbour disputes, which in itself has caused some disquiet. However unfortunate, these matters would not weigh against allowing the appeal.

Conditions

28. The Council did not suggest any conditions and indicates that a condition limiting the use of the landing as a sitting out area is not enforceable. I would agree that a condition restricting the use of the landing would be difficult to enforce, but as I have concluded that the use of the landing is acceptable, subject to a screen, it is not necessary to condition the consent in this manner.

29. A screen would be required along the side adjacent to No 17. The screen would need to be at a certain height to mitigate any overlooking as well as noise and disturbance to the neighbours. As the development has been erected on site, details of the screen and a timeframe for its implementation would also need to be submitted and agreed by the Council as part of the condition.
30. Although the Council did express an objection to the impact of the screen on the neighbour's outlook, I do not share the same concerns. The condition has been set out to both parties and neither raised an objection to it.

Conclusions on Ground (a) on Appeals A and B and the Deemed Planning Application, and Appeal C

31. For the reasons given above, I conclude Appeals A and B should not succeed. I shall uphold the enforcement notice, with corrections and variations, and refuse to grant planning permission on the deemed planning application.
32. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that Appeal C should be allowed.

Appeals A and B on Ground (g)

33. An appeal on this ground is that any period specified in the notice in accordance with s173(9) falls short of what should reasonably be allowed. I accept that the appellants have not appealed on this ground, but it is necessary to consider whether the period of time required to comply with the corrected and varied notice would be sufficient to allow the condition for a screen to be agreed and implemented.
34. The notice requires compliance within 4 months, which is reasonable if the appellant was required to remove the development. However, as details of the screen would have to be proposed in an application, agreed by the Council and implemented, an extension to the time for compliance would be reasonable. The appellant would need to propose a screen and submit the details within two months. A further four months strikes a good balance between the details being agreed and installed, whilst minimising the length of time the current development impacts on the neighbour's living conditions.
35. On this basis, I consider that a period of six months for the appellant to comply with the corrected and varied notice would be reasonable. As such, I shall vary the terms of the notice accordingly.

Formal Decisions

Appeal A Ref: APP/N5660/C/22/3306011

Appeal B Ref: APP/N5660/C/22/3306012

36. It is directed that the Notice is corrected and varied by:

In paragraph 3, delete the word 'unauthorised.'

In paragraph 5, step (b) delete the words 'above steps from the premises' and substitute with the words 'step (a) above.'

In paragraph 6, delete the word 'four' and substitute the word with 'six.'

37. Subject to the corrections and variations, the appeals are 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 for the installation of a black painted, steel landing and staircase.

Appeal C Ref: APP/N5660/W/22/3303643

38. The appeal is allowed, and planning permission is granted for the erection of a replacement garden access to the first floor of the property comprising a steel landing and staircase at 19 Rectory Grove, London SW4 0DX in accordance with the terms of the application, Ref 21/04499/FUL, dated 18 November 2021, subject to the following conditions: -

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing reference 21652-02, 21652-04, 21652-05 and 137 Rev B.
- 2) Within 2 months of the date of this decision, a scheme for a 1.7m high privacy screen to be installed on the northern side elevation of the landing of the staircase shall be submitted to the local planning authority for written approval. The scheme shall include the design of the screen, its form of attachment, materials, and a timetable for its implementation. The approved scheme shall have been carried out and completed in accordance with the details and timetable agreed. Upon implementation of the approved scheme, the screen shall thereafter be retained in that manner.

M. P. Howell

INSPECTOR