



Appeal Decisions

Site visit made on 12 March 2024

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 10 May 2024

Appeal A Ref: APP/T5150/C/23/3326828

37B Kilburn Lane, North Kensington, London W10 4AE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Ms Helen Papaspyrou Ioannides against an enforcement notice issued by London Borough of Brent.
 - The notice, numbered EN/22/0381, was issued on 20 June 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the formation of a roof terrace to second floor flat, by installing a door on the rear elevation, and decking and railings on the flat roof.
 - The requirements of the notice are to:
 - STEP 1 Completely and permanently remove the roof terrace to second floor flat by carrying out the following:
 - a) removing the door, bricking up the doorway using bricks which match the house up to 1m from the flat roof and installing a window in the remainder of the opening ensuring that the window is non openable and no access is provided to the flat;
 - b) removing the decking;
 - c) removing the railings.
 - STEP 2 Restore the premises back to its previous condition before the unauthorised development took place and remove all items, debris and materials, arising from taking the steps required in Schedule 4 of this notice, from the premises.
 - The period for compliance with the requirements is: 1 (one) month.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) of the Town and Country Planning Act 1990 as amended (the Act). 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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Appeal B Ref: APP/T5150/W/23/3325256

37B Kilburn Lane, North Kensington, London W10 4AE

- 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 Mrs Helen Papaspyrou Ioannides against the decision of London Borough of Brent.
 - The application Ref 22/3771, dated 2 November 2022, was refused by notice dated 16 May 2023.
 - The development proposed is retrospective application for existing roof terrace with obscure screening to rear of second floor to flat 37B.
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Decisions

Appeal A

1. It is directed that:

- 1) the requirements at part 5 of the notice is varied by deleting the words "ensuring that the window is non openable and no access is provided to the flat" from requirement Step 1a); and

- 2) the period for compliance at part 5 of the notice is varied to 2 (two) months.
2. Subject to the variations the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

Preliminary matters

4. The appeals relate to the same roof terrace development. However, the application for planning permission proposed the installation of obscure glazed privacy screens around the perimeter of the terrace. The metal railings which are in situ are approximately 1m high and would remain in place. Timber panels are proposed to be fitted to the outer edges of the railings with obscure glass screens to a height of 1.8m. Drawing no. 270220-06(A1) Rev A formed part of the application for planning permission and shows the proposal as described.
5. To avoid repetition, both appeals are considered in a single decision letter under Appeal A and Appeal B.

Appeal A - ground (a) and the deemed planning application

Main issues

6. These are the effect of the development on the character and appearance of the host building and the surrounding area and the living conditions of neighbouring residents in terms of privacy and outlook.

Reasons

Character and appearance

7. The appeal relates to a roof terrace above an outrigger. The development is situated to the rear of a three-storey end of terrace building which is subdivided into flats. The roof terrace is at second floor level. The adjoining properties along Kilburn Lane are in retail use on the ground floor and residential above. Development to the rear appears to be predominantly residential and there is variety in the age and design of buildings.
8. The roof terrace is accessed via a newly created doorway in the recently extended bathroom. The approved plans for the extension show a window in place of the door and the existing plans show that there was previously a window in this rear elevation. The appellant maintains that the roof top had been used previously as a terrace albeit with no safety measures in place and with access via the bathroom window.
9. The roof terrace has timber decking and metal railings have been installed to provide a safety barrier. These are secured to the outer edges of the decking. To one side, bamboo screening is attached to and exceeds the height of the railings. The railings are approximately 1m in height and have a horizontal emphasis with 8 slim cylindrical bars and a heavier metal handrail. They are

secured to the decking by metal cylindrical vertical posts. The railings are light in colour, of a simple style with clean lines and a lightweight appearance.

10. The development is limited from public viewpoints but would be highly visible from properties on Epcot Mews and Buller Road as well as some of its neighbours on Kilburn Lane. While the roof terrace development is an anomaly in this setting, its design and form are not visually harmful, and the slim railings maintain views towards the building. Nevertheless, the bamboo screening along the one side extends above the height of the railings and is an incongruous addition that jars with the surrounding built form at this higher level. The adjacent mature tree would screen some views, but this would be seasonal.
11. Although the Council does not preclude roof terrace development, Policy DMP1 of the London Borough of Brent Development Management Policies Document (the LP) seeks to ensure that such developments complement the locality, relate to existing buildings and are appropriate in terms of, amongst other things, materials, detailing and design. To supplement the policy the Residential Extensions & Alterations Supplementary Planning Document 2 (the SPD) sets out that designs should aim to minimize the impact on the elevation, match existing materials and colours, and use setbacks where possible.
12. While I consider that the decking and railings do not detract from the character and appearance of the building or the wider area, the development as a whole is visually unsympathetic due to the extent and height of the bamboo screening, and this is harmful to the character and appearance of the building and its immediate environment. Consequently, there is conflict with policies DMP1 and BD1 of the LP and the guidance provided by the SPD.

Living conditions

13. The flat roof is said to have been previously used by the occupants of the flat, but that would have been without the safety railings in place and with awkward access through the bathroom window. The development now has access through a doorway rather than a window and the roof space has a decked surface and safety measures in place in the form of the railings. These make the space easily accessible and safe and would likely encourage a different character and intensity of use. That in turn would be likely to have a far greater adverse effect on privacy in surrounding neighbouring properties.
14. It is accepted that in denser urban areas where properties are closer together there is generally an accepted lower level of amenity and privacy from windows. However, a roof terrace allows for more extensive and intrusive views and increases the perception of being overlooked. Being on the second floor and given the proximity of other residential properties to the rear, the flat roof provides the opportunity for looking into what appear to be habitable room windows of nearby properties at distances that would be likely to impinge on privacy in those rooms. With the railings in place, it also allows for leaning over and looking down into neighbouring private space.
15. Although the appellant claims it would not be used as a viewing platform, a roof terrace provides space to sit and relax and it is natural that, when enjoying such a space, one would look towards a view and that would most likely be outwards towards the rear of the surrounding houses. While the bamboo screening lessens, to some extent, overlooking towards Epcot Mews,

the high vantage point allows for uninterrupted views enabling severe overlooking and this has the potential for significant harm to the living conditions of neighbouring residents in terms of loss of privacy. It is acknowledged that a similar roof terrace exists directly next to the appeal property, but this does not benefit from planning permission and its existence should not set a precedent for similar development.

16. Overall, I find the appeal development causes significant overlooking that results in an unacceptable loss of privacy to occupiers of neighbouring properties so as to harm their living conditions. Accordingly, the development is contrary to Policy DMP1 of the LP which requires development to provide high levels of amenity. It is also contrary to the guidance in SPD2 which advises that roof terraces should be designed not to overlook the habitable room windows or gardens of adjoining properties.

Other matters

17. The appellant has drawn my attention to examples in the form of images which show roof terraces further along Kilburn Lane, railings and terraces on the top of and to the front of four-storey buildings, and staggered roof terraces again to the front of a building. These developments occupy different positions and will have different relationships with other neighbouring properties, and it is not clear whether the circumstances are directly comparable. Consequently, I find nothing of sufficient weight to alter my decision and in any event, I must consider the appeal on its own merits.
18. In reaching my conclusion, I have taken into account the National Planning Policy Framework (the Framework). I have not been provided with any substantive evidence which would lead me to conclude that the local plan policies referred to above conflict with the Framework. Accordingly, the Framework has not led me to reach any different overall decision.

Appeal A - conclusion on ground (a) and the deemed planning application

19. For the reasons set out above, the development conflicts with the development plan taken as a whole and there are no material considerations to indicate that a decision should be taken otherwise. Having considered all other matters raised, I conclude that the appeal on ground (a) should not succeed, and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act as amended.

Appeal B – the s78 appeal

Main issues

20. These are the effect of the development on the character and appearance of the host building and the surrounding area and the living conditions of neighbouring residents in terms of amenity and outlook.

Reasons

Character and appearance

21. As referred to under preliminary matters above, the application for planning permission sought to regularise the development with an alternative roof terrace boundary treatment. While the metal railings would remain in place albeit with a timber handrail, wooden panels would screen the railings from

inward views and panels of obscure glazing would project above the sides to a height of 1.8m.

22. Such a mix of materials and height to the boundary would result in a development of a design and scale that would jar with the architectural form of the building and that of its surroundings and would obscure views through to the property. The development would be viewed as a solid extension rather than what should be the simple form of a roof terrace. The prominent development would be an awkward addition which would detract from the character and appearance of the appeal property and the built environment in the wider setting, and this would be visually harmful. In this respect, the development as proposed would conflict with policies DMP1 and BD1 of the LP and guidance contained in the SPD which state that development should complement the locality and be of the highest architectural and urban design quality.

Living conditions

23. The privacy screens would be positioned along each side of the roof terrace and their height and obscure glazing would curb outward views. While this would likely satisfy the loss of privacy through overlooking, the form and extent of the development would compromise the outlook from the neighbouring properties. I consider this to be particularly so from the adjoining neighbouring property to the north. It is also considered that the development would increase the sense of enclosure to the occupiers of properties within close proximity given the depth, height and composition of the structure. The living conditions of neighbouring residents would be compromised and the development as proposed would conflict with Policy DMP1 of the LP and guidance for roof terraces contained in the SPD which seek to protect residential amenity.

Appeal B – conclusion on the s78 appeal

24. For the reasons given, I conclude that the proposed development would conflict with the development plan taken as a whole and there are no other material considerations, including the Framework, that outweigh this conflict. Accordingly, the appeal should be dismissed.

Appeal A - ground (f)

25. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control or any injury to amenity. In this case the purpose is to remedy the breach of planning control.
26. As part of their appeal, the appellant suggests that the requirements of the notice could be varied to allow them to implement the scheme shown in drawing no. 270220-06(A1) Rev A. As the drawing formed part of the planning application, it is before me in the appeal against the planning refusal. Therefore, I have considered the scheme under Appeal B and my findings are given above.
27. The appellant has also provided a drawing showing a 1.8m high privacy screen with opaque glass along the northern side of the railings. This is shown stepped-in from the side by 0.5m which they consider would reduce dominance while preserving outlook and protecting privacy.

28. I have powers to grant planning permission for the 'whole or any part of those matters' stated in the notice as constituting a breach of planning control. The notice is directed at the railings that were in place when the notice was issued. Installing a taller screen would extend the development beyond the height of the existing railings. In my judgement this would not be within the 'whole or any part of' the development against which the notice was issued. Therefore, I am unable to take the taller 1.8m high screening into account or grant any planning permission for it. Notwithstanding this, the screening as suggested by the appellant would not restrict the substantial views obtained from the rear edge of the terrace.
29. The appellant considers that the requirement to replace the door with a non-opening window is unreasonable and potentially hazardous. It is also claimed that the pre-existing window had been used for access and thus its removal or replacement with a non-opening window would be unwarranted. It is suggested that the door be retained, and internal railings installed across the opening as a safety measure and to restrict all but essential access. This would allow improved ventilation for the flat and would, if necessary, allow access for maintenance purposes.
30. The purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place (s173(4)(a)). In this case the replacement of the door with a window as previously approved is considered appropriate, however I consider that the requirement for it to be non-opening is excessive. There is no evidence to show that what was in place previously was non-opening and therefore I will vary the requirements of the notice.
31. Given that the requirements, as amended, go no further than requiring the appellant to undo what has been done, they cannot exceed what is necessary to fully remedy the breach of planning control. Accordingly, there is partial success on the appeal on ground (f).

Appeal A - ground (g)

32. An appeal on ground (g) is that the period specified in the notice falls short of what should be reasonably allowed. The appellant requests a period of 4 months to allow time for the remedial works to be completed.
33. I appreciate that it may take time to find a contractor to undertake and complete the works to comply fully with the notice in one month. I am not however, persuaded that this should be extended to 4 months. The structural works are minor and are not likely to take a significant amount of time to complete, therefore I consider 2 months should be sufficient to comply with the notice.
34. The appeal on ground (g) succeeds to that extent.

S A Hanson

INSPECTOR