



Appeal Decisions

Site visit made on 24 April 2024

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th May 2024

Appeal A Ref: APP/T5150/C/23/3319063

Appeal B Ref: APP/T5150/C/23/3319064

Appeal C Ref: APP/T5150/C/23/3319065

36A Riffel Road, London NW2 4PH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeals are made by Mr Nimesh Patel (Appeal A), Ms Karina Akopyan (Appeal B), and Mr Nicola Dametto (Appeal C) against an enforcement notice issued by the Council of the London Borough of Brent.
- The notice was issued on 15 February 2023.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a second floor rear dormer with terrace to rear outrigger and the installation of first floor doors and balcony to the rear of the premises.
- The requirements of the notice are set out in the Appendix attached to this decision.
- The period for compliance with the requirements is 6 months after the notice takes effect.
- The appeals are proceeding on the grounds set out in section 174(2)(a) and (b) of the Act. Since appeals have been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decisions: The appeals succeed in part and permission for that part is granted, but otherwise the appeals fail, and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision.

Ground (b)

1. To succeed under this ground of appeal the appellants would need to demonstrate that the alleged breaches of planning control have not occurred.
2. The terrace to the rear outrigger at second floor level has been completely enclosed with a roof so as to become another room to the flat. It is not disputed that 'the erection of a second floor rear dormer with terrace to rear outrigger' occurred prior to the notice being issued. The appeals under ground (b) therefore fail in this regard.
3. Tall, floor to ceiling French windows have been installed in place of a smaller casement window at first floor level on the rear elevation of the appeal building. The French windows can reasonably be described as doors on account of their size, positioning and design. They would provide access to the flat roof over the ground floor rear extension, were it not for a basic balustrade which has been fixed across the interior of the bottom part of the doors.
4. The doors open outwards, effectively creating a Juliette balcony with the balustrade. Photographs¹ show that the balustrade was not in place when the property was advertised for sale/rent. Those same sales/rental particulars

¹ The Council's Appendix 8

include a floor plan which showed a balcony with an external platform capable of being stepped out onto. That appears to be the only evidence to support the allegation that a balcony was installed, and it is inconsistent with the accompanying photographs, where no external balcony platform or balustrade is visible. The appellant claims that a balcony never existed.

5. Prior to the installation of the balustrade, the doors provided access to the flat roof, but this cannot reasonably be described as the installation of a balcony. Similarly, it would be wrong to describe a Juliette balcony simply as a 'balcony' on account of its lack of an external platform and it generally being understood that there are broad differences, as set out in Government guidance².
6. The Council's own evidence, alongside what I saw during my site visit, shows that it is more likely than not that the balcony shown on the floor plan of sales/rental particulars was never installed. What has been installed are the doors referred to by the notice and, at a later date, possibly after the notice was issued, an internal balustrade.
7. The appeal under ground (b) therefore succeeds insofar as a balcony was not installed to the rear of the appeal building and I shall correct the alleged breach accordingly. The appeal under ground (b) fails in respect of the other parts of the breach of planning control.

Ground (a) and the deemed application for planning permission

8. I may only consider granting planning permission for the whole or any part of the breach of planning control stated in the notice³. It is not open to me to grant planning permission for the enclosed former terrace in its current form. I shall therefore consider the acceptability of the terrace as it previously existed.

Main Issues

9. The main issues are:
 - The effect of the second floor rear dormer with terrace to the rear outrigger on the character and appearance of the area; and
 - the effect of the first floor doors to the rear of the premises on the living conditions of neighbouring residents, with particular regard to privacy.

Character and Appearance

10. The appeal site is a terraced house split into 2 flats, with a large rear outrigger. The outrigger has a pitched roof with gable end shared with the neighbouring property, and is a common feature of buildings on this part of Riffel Road and Chandos Road to the east.
11. The rear dormer and the top of the outrigger are difficult to see from within the garden to the appeal site. They can, however, be seen from gardens and rear facing windows at other properties. There are some dormer roof extensions over rear outriggers in the surrounding area, but they are generally modest in size and well-proportioned with regard to the buildings they are on, sympathetic to the roofscape. I would not describe any of the roof extensions referred to or those which I saw locally as similar to the development.

² Page 29 of the Technical Guidance: Permitted development rights for householders

³ Section 177 of the Act

12. The dormer over the rear outrigger has an odd shape in that its side facing cheek is not perpendicular; it slopes at a significant angle. This emphasises its width and overall mass, which spreads down, close to the eaves of the rear outrigger. Alongside the projecting walls which created the terrace, it is an uncharacteristic arrangement for the area which adds chaotic bulk to the rear outrigger. The overall effect is a dense, contrived form of development at roof level, discordant with the surrounding roofscape. This causes a low level of harm to the character and appearance of the area, which would be long lasting.
13. I have been referred to an appeal decision⁴ by another Inspector, where development at the appeal site was described as 'rear dormer window with terrace to rear outrigger, two front rooflights and replacement of first floor rear window with doors and installation of balcony to first floor flat'. That appeal was dismissed, but the Inspector made it clear in the decision that the appellant failed to provide the full details of planning permission reference 19/3755 ('the 2019 PP') for her to consider as part of their case.
14. I have been provided with a copy of the decision notice and proposed plans forming part of the 2019 PP. These show development described as 'proposed roof extension with addition of rear dormer and addition of 2 rooflights to the front roof slope' was approved by the Council. There are significant differences between what has been built at roof level and what is shown on the plans forming part of the 2019 PP. In particular, the development approved by the 2019 PP would have been much more modest in size and design, and would have appeared as a minor and sympathetic addition to the rear outrigger. I do not take the 2019 PP as an indication that the breach of planning control is acceptable in design terms.
15. In conclusion on the first main issue, I find that the second floor rear dormer with terrace to the rear outrigger harms the character and appearance of the area, contrary to Policy DMP1 of the Brent Local Plan 2019-2041 (2022) (BLP). This states development will be acceptable provided its design complements the locality, amongst other things.

Living Conditions

16. Views from the first floor doors, when open or closed, are very similar to those which would have been experienced from the former window. This is on account of the position and size of the doors, together with the balustrade currently in place. The balustrade appeared to be fixed in place during my site visit, but I have no details confirming its height and method of fixing. The doors open outwards, but there is no evidence that this is unsafe, subject to an appropriate internal balustrade remaining in place.
17. Opportunities for overlooking into neighbouring properties from the doors are limited and it is extremely unlikely that occupants of the flat would want to lean out of the window, over a balustrade, to gain views into neighbouring properties. Even if they did, the effect would be largely the same as from a typical window. Leaning out over a balustrade to open and close the doors would be irregular and fleeting actions which would not result in any unacceptable overlooking of neighbouring properties. With a balustrade fixed in place, the first floor doors do not adversely affect the privacy of neighbours, and do not cause any unacceptable harm to their living conditions.

⁴ Appeal Ref: APP/T5150/W/22/3291701

18. The flat roof of the ground floor extension would be easily accessible from the first floor doors if the balustrade were to be removed. I can see how this would be tempting for occupants of the flat, as it does not have access to outside space. Direct access to the flat roof would significantly reduce the privacy enjoyed by neighbouring residents on account of the opportunities for views into garden and living spaces from the flat roof. This would cause unacceptable harm to the living conditions of neighbouring residents.
19. That harm could be avoided through the use of a condition requiring details of the position, height and method of fixing of a balustrade to be approved and for that balustrade to be fitted and then remain in place. This condition needs to require the removal of the doors and the installation of a window to match that which previously existed if the necessary details of a balustrade are not submitted to the Council within a specific timeframe, approved by the Council within a specific timeframe, or subsequently approved at appeal. This is to make the condition enforceable, as the development has already been carried out and it is only acceptable with an appropriate balustrade in place. A period of 2 months to submit those details and 5 months for the Council to approve them (if the details are acceptable) would be reasonable. A period of 3 months to remove the doors and install a window would be reasonable if appropriate details are not submitted and approved within those timescales.
20. Therefore, subject to a condition, the first floor doors do not cause unacceptable harm to the living conditions of any neighbouring residents and accord with Policy DMP1 of the BLP, the Council's Residential Extensions and Alterations Supplementary Planning Document (2018) and the National Planning Policy Framework. These require, amongst other things, development to be designed to provide a high level of internal and external amenity which does not adversely affect privacy.

Conclusion on ground (a) and the deemed application for planning permission

21. The second floor rear dormer with terrace to the rear outrigger harms the character and appearance of the area. The level of that harm is low, but it is also long lasting and contrary to the development plan as a whole. There are no material considerations which indicate planning permission should be granted for this part of the breach of planning control.
22. The first floor doors do not harm the living conditions of any neighbouring residents and accord with the development plan as a whole, subject to a condition. There are no material considerations which indicate planning permission should be withheld for this part of the breach.
23. Under the provisions of section 177 of the Act I am able to grant planning permission for part of the breach of planning control stated in the notice. The first floor doors are a separate form of development to the second floor rear dormer with terrace to the rear outrigger, and as such they are severable from each other. I shall make a split decision on the appeals under ground (a) and the deemed application for planning permission.
24. The appeals under ground (a) succeed in part, insofar as they relate to the first floor doors only, and planning permission is granted for that development subject to a condition which would protect the privacy of neighbouring residents. The appeals under ground (a) fail in respect of the second floor rear

dormer with terrace to the rear outrigger and planning permission is refused for that development.

Conclusion

25. For the reasons given above I conclude that the appeals should succeed in part only, and I will grant planning permission for the installation of first floor doors to the rear of the premises subject to a condition, but otherwise I will uphold the notice with corrections and refuse to grant planning permission in respect of the erection of a second floor rear dormer with terrace to rear outrigger. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the Act.

Formal Decision

26. It is directed that the enforcement notice is corrected by the deletion of:

- the text 'and balcony' at Schedule 2 of the enforcement notice;
- the text 'and balcony' at Step 2A of Schedule 4 of the enforcement notice; and
- the text 'and balcony' at Step 2B of Schedule 4 of the enforcement notice.

27. Subject to the corrections, the appeals are allowed insofar as they relate to the installation of first floor doors to the rear of the premises and planning permission is granted on the applications deemed to have been made under section 177(5) of the Act, for the installation of first floor doors to the rear of the premises at 36A Riffel Road, London NW2 4PH subject to the following condition:

The first floor doors to the rear of the premises hereby permitted shall be removed and a window shall be installed in their place to match the design, position and size of that which previously existed, as shown in 'Image A' attached to the enforcement notice, within 3 months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

- (i) Within 2 months of the date of this decision details of a fixed balustrade to the first floor doors to the rear of the premises shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation. Those details shall include the position, height and method of fixing of the balustrade.
- (ii) If within 5 months of the date of this decision the local planning authority refuse to approve the details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- (iii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
- (iv) The approved balustrade shall have been fixed in position in accordance with the approved details and the approved timetable.

- (v) Upon implementation of the approved details specified in this condition, the balustrade shall thereafter be retained fixed by its approved method in its approved position and at its approved height.
- (vi) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

28. The appeals are dismissed and the enforcement notice is upheld as corrected insofar as it relates to the erection of a second floor rear dormer with terrace to rear outrigger and planning permission is refused in respect of the erection of a second floor rear dormer with terrace to rear outrigger at 36A Riffel Road, London NW2 4PH on the applications deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR

Appendix

EITHER

- STEP 1A Remove the second floor rear dormer and terrace.
- STEP 2A Remove the first floor doors and balcony to the rear of the premises, and install a window as shown in the image labelled 'Image A' attached to this Notice.
- STEP 3A Restore the roof to its original condition before the unauthorised development took place. For the avoidance of doubt, ensure that the roof and upper floors are constructed in accordance with the drawings labelled 'Appendix A' attached to this Notice.
- STEP 4A Remove all items, debris and materials, arising from the compliance with the above steps, from the premises.

OR

- STEP 1B Alter the second floor rear dormer and terrace, ensuring it complies with the approved drawings and conditions of planning permission ref. 19/3755 dated 17/12/2019.
- STEP 2B Remove the first floor doors and balcony to the rear of the premises, and install a window as shown in the image labelled 'Image A' attached to this Notice.
- STEP 3B Remove all items, debris and materials, arising from the compliance with the above steps, from the premises.