
Appeal Decision

Site visit made on 20 August 2024

by A U Ghafoor BSc (Hons) MA MRTPI ACMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 23 August 2024

Appeal Ref: APP/N5660/C/23/3315103

244 Amesbury Avenue, London SW2 3BL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended ("the Act").
 - The appeal is made by Mr Jack Rix against an enforcement notice issued by the London Borough of Lambeth.
 - The notice was issued on 29 November 2022.
 - The breach of planning control as alleged in the notice is: The erection of a rear dormer roof extension, complete with 3 sash windows, to the side of the existing original rear roof extension ('the unauthorised dormer roof extension'); and the replacement of a window with a door in the existing original rear roof extension and the installation of metal railings forming a balustrade on the flat roof of the 2-storey rear projection that facilitates the use of the flat roof as a roof terrace ('the unauthorised door and terrace railings').
 - The requirements of the notice are to: a) Remove the unauthorised dormer roof extension in its entirety from the premises and reinstate the rear roof slope of the premises as existed prior to the breach of planning control; b) Remove the unauthorised door and terrace railings and reinstate the affected rear elevation and flat roof as existed prior to the breach of planning control; and c) Remove all associated waste and debris resulting from compliance with above steps, from the premises.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Act.
 - This decision supersedes that issued on 10 April 2024. That decision was quashed by order of the High Court on 16 August 2024.
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Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the development already carried out, namely the erection of a rear dormer roof extension, complete with 3 sash windows, to the side of the existing original rear roof extension and the replacement of a window with a door in the existing original rear roof extension and the installation of metal railings forming a balustrade on the flat roof of the 2-storey rear projection that facilitates the use of the flat roof as a roof terrace.

Background information and the main issues

2. The dormer roof extension, door, and terrace railings do not accord with plans approved by planning permission ref 17/03970/FUL. The development, as built, facilitates the residential use of the roof of the two-storey projection. Therefore, there is nothing wrong with the way in which the notice describes the alleged breach of planning control.
3. The site is in an area covered by an article 4 direction removing permitted development rights for, amongst other things, the enlargement, improvement, or other alterations of a dwellinghouse. Nothing turns on this point.

4. The terms of the deemed application are directly derived from the alleged breach of planning control. Effectively, permission is sought for the dormer roof extension, door, and terrace railings. The reasons for issuing the notice refer to the development's impact and effect on the character and appearance of the Leigham Court Estate Conservation Area (CA) and the living conditions of neighbours, due to noise, overlooking and loss of privacy.
5. Against that background, the **main issues** are as follows: (1) Whether the development preserves or enhances the character or appearance of the CA, and (2) the effect on neighbours' living conditions having regard to loss of privacy.

Reasons – first main issue

6. The quality of the CA is derived from the design and architectural style of the locality: the layout and arrangement of mainly terraced dwellings reinforce the CA's special interest: box-like dormer windows are not totally alien in the locality. The quality of the rear elevations is primarily defined by the scale and proportions of mainly large, three-storey, terraced, buildings: two-storey flat roof rear projections featuring a large central brick chimney are typical. No. 244 is a large mid-terrace property, but the development is positioned to the rear and is not visible from, and has no effect on, the street scene. In contrast, however, it is likely to be visible and noticeable from the perspective of other dwellings, but any effect on character and appearance is within that context.
7. The dormer roof extension, as built, is wider and joins onto the original dormer without a gap. The dormer has three, rather than the approved two windows, but the proportions remain balanced and reflect the design and fenestration of other dormers in the block. The box-like structure's location is like other roof projections in rear elevations. Its overall scale, bulk and size does not appear overly excessive, especially when seen in context of the existing roof. The as-built dormer sits comfortably within the roof slope and is a subordinate structure. The exterior is finished in hanging slates which match the host roof.
8. The street scene comprises buildings of various architectural detailing. In this part of the locality, dormers have been extended. Some have been altered to include a door at roof level providing access to the flat roof, and some have perimeter railings and or planters around the roof edge. The Council say the railings and terraces at no. 238 and 240, as well as the one at no. 87 Lydhurst Avenue¹, are now immune from action due to the passage of time. Nevertheless, in my planning judgement, the alleged development is not totally out of keeping with the locality's residential character.
9. Drawing all the above threads together, I too conclude that the development does not cause unacceptable visual harm to the external appearance of the host dwelling and, at the very least, preserves the character and appearance of the CA. As such, the development complies with The London Plan policies D4 and HC1; The Lambeth Local Plan (LLP) 2021 policies Q2, Q5, Q11 and Q22; and the main objectives and guidance of the Supplementary Planning Document, Building Alterations and Extensions (SPD) 2015.

Second main issue

10. The weather was pleasant at the time of my visit. So, I had the opportunity to view the site's surroundings by standing on the roof of the two-storey extension as well as observing the surroundings whilst sitting down on a chair.

¹ Council's final comments on the appellant's comments received by e-mail communication on 21 August 2024.

11. There are numerous windows to habitable rooms in rear elevations. Most of these openings are of similar scale and appearance. Observing from a window is likely to be different than being outside on the terrace in the open air. Nonetheless, it is likely residents who utilise upper floors for human habitation would also be able to overlook adjoining gardens and the rear elevations without significant visual interruption. Given the built-form, design and setting of the properties, in my planning assessment, there is already significant degree of overlooking.
12. Private amenity spaces of dwellings along Amesbury Avenue back directly onto the gardens of properties along Lydhurst Avenue. Many of the buildings to the rear of no. 244 appear as flats or maisonettes and have staircases. The Council argues that the stairs at the back of these flats are too narrow and not wide enough to use as a terrace or for sitting out on. However, on some of the landings there are various chairs, storage boxes or planters placed or positioned on the landings: they could not have appeared from nowhere. In a similar vein, there are chairs positioned on the roof terraces of some of the adjoining properties.
13. No.244 and adjoining gardens are reasonably landscaped. Users of the roof terrace are likely to have elevated views of these amenity spaces, especially when standing or leaning over the edge of the balustrading. However, despite their limited size, staircase landings appear to be used as terraces by the occupiers of the dwellings opposite: residents are likely to have direct views of adjoining gardens. If the two-storey extension's roof surface is to function as amenity space, I do not consider that the perceived or actual loss of privacy would be any worse due to the existing layout and make-up of the properties: overlooking in a built-up area, such as this, would be totally unavoidable. In this urban setting, neighbours' perception of being overlooked is unlikely to greatly increase, due to the use of the roof terrace for domestic activity. In my planning judgment, the use of the roof terrace is unlikely to compromise, unacceptably, visual amenity from adjoining sites or the public realm.
14. LLP policy Q2 also suggests adverse impact of noise should be reduced to an acceptable level. The Council is concerned that the use of the roof terrace can lead to increased activity and cause harm to neighbours. Presumably, noise generated by people sitting, standing, chatting, or socialising. That may be so, but the evidence presented does not show there is a specific noise-related issue in this locality. While the SPD discourages overly projecting roof terraces, given the urban nature of this part of the CA, I consider that a pragmatic approach can be adopted in this specific case.

Overall conclusions

15. For all the above reasons, I too conclude that the development meets the main thrust of local and national policies relevant to the redetermination of this appeal, taken as a whole.
16. I do not consider any conditions are necessary to make the development acceptable in planning terms.
17. The appeal on ground (a) succeeds and planning permission is granted on the application deemed to have been made under section 177(5) of the Act.

A U Ghafoor

Inspector