



Appeal Decision

Site visit made on 5 February 2025

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2025

Appeal Ref: APP/U5360/C/23/3321369

Flat 2, 21 Well Street, Hackney, London E9 7QX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms S Hipgrave against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The notice was issued on 30 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission the installation of timber decking and fencing at second floor level to facilitate the use of the flat roof as a roof terrace.
 - The requirements of the notice are to:
 1. Remove the decking and wooden fencing 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 two 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).
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Decision

1. The appeal is 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.

Preliminary Matters

2. On 22 February 2023, the Council refused planning permission for the decking subject of this appeal, with proposed balustrading around the perimeter, reference 2021/3760.
3. For the avoidance of doubt, the terms of the appeal on ground (a) derive directly from the alleged breach of planning control set out in the notice and as built. Nevertheless, I do have the power under s177(1)(a) of the 1990 Act to grant planning permission for any part of the matters stated in the notice. I am also required to consider whether there is an obvious alternative which could overcome the planning difficulties, at less cost and disruption.
4. The appellant proposed installing a 1.4m high frosted glass balustrade and providing a caged ladder from the existing terrace and amending the window to provide access. However, whilst there are floor plans, there are no details of what the proposed balustrade or ladder and window alterations would consist of.

5. Accordingly, even if I had considered the extent of the suggested changes properly fell within the statutory power to grant planning permission, there are no details to consider, or which could form the basis of a planning permission.
6. The reasons for refusing planning permission related to loss of privacy, increased sense of enclosure, noise and disturbance, as well as unsuitable access/egress arrangements. The reasons given for issuing the notice relate to matters concerning design, access arrangements and amenity. The impact on amenity is not specified in the notice but it is evident from the Council's submissions that they are concerned with overlooking and loss of privacy. It is on this basis that I have considered the appeal.
7. The appeal site is located within the Mare Street Conservation Area. The reasons for issuing the notice reference Policies HC1 of The London Plan and LP3 of the Local Plan¹, but do not refer to the Conservation Area. However, section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
8. The appellant referred to several policies in their statement however, I have had regard to those referred to in the reasons for issuing the notice which I consider are most relevant to the appeal development.

The appeal on ground (a) the deemed planning application

Main issues

9. Based on the above, the main issues are (i) the effect of the development on the living conditions of occupants of nearby dwellings with particular regard to privacy (ii) whether the development preserves or enhances the character or appearance of the Mare Street Conservation Area; and (iii) whether the development provides suitable access.

Living conditions

10. The appeal property occupies a mid-terrace position in a mixed-use area largely consisting of residential uses above ground floor commercial uses. To the rear and in relatively close proximity at 21A Well Street, is a more recently constructed development which includes dwellings.
11. It seems, there are at least two windows in the rear of the appeal property from which it is possible to gain oblique views of the windows and balconies at the rear of No.21A. One of those windows, I observed, serves a stairway and the other appears to be a bedroom window. Accordingly, such views are likely to be limited to transient glances, rather than any sustained overlooking. There is also an existing terrace to the rear of the flat, however that is located at a lower level than the decking and is enclosed by a relatively tall wall and fencing which restricts views.
12. The decking affords views of the windows and balconies of the dwellings at No.21A to anyone sitting or standing on the decking. Whilst I acknowledge that the balconies at No.21A are not entirely private, with a mutual degree of overlooking possible, since views from the decking are from an elevated position, this heightens

¹ Hackney A Place for Everyone Hackney Local Plan 2033 Strategic Planning Adopted July 2020

the sense of invasive overlooking and results in a significant increase in the actual and perceived level of overlooking and loss of privacy.

13. Even if the proposed balustrade could have been secured by condition, this would not overcome the unsettling and intrusive effects on neighbours given the elevated position of the decking.
14. Overall, for the reasons given, I conclude that the decking materially harms the living conditions of the occupants of the dwellings at 21A Well Street with regard to overlooking and loss of privacy.
15. The decking is therefore contrary to Policy LP2 of the Local Plan which requires that development be designed to ensure there are no significant adverse impacts on the amenity of neighbours from overlooking. It also conflicts with the aims of the National Planning Policy Framework (Framework) to seek a high standard of amenity for existing and future users, and the Council's SPD² which states that roof terraces are not normally acceptable where they would impact on the privacy of neighbouring properties.

Conservation Area

16. The Mare Street Conservation Area is an irregularly shaped area centred on the historic route of Mare Street. This early route into London was historically characterised by Georgian ribbon development of villas and houses set within fields and market gardens. Later Victorian and Edwardian development subsequently led to a more commercial and industrial character which was further reinforced by post-war development.
17. It is stated in the appraisal³ that Well Street is a major local transport route creating a major interchange with Mare Street. Further, that the small group of buildings formed by properties at 17 to 25 Well Street is an interesting group of buildings.
18. To the rear, properties in the locality include extensions and alterations of varying design. Nevertheless, and whilst the decking is contained within the roof area, together with the fence, the decking has a rudimentary appearance and could not be described as high-quality design. Whilst limited in its extent, there is material harm to the appearance of the building and Conservation Area.
19. Given the scale of the proposal within the context of the Conservation Area as a whole, I consider the harm to be less than substantial. Nevertheless, the Framework says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.
20. In this case, whilst I acknowledge the decking provides additional floorspace, it has not been suggested, nor do I consider there are any public benefits to outweigh the great weight that I am required to attach to the heritage asset's conservation. The decking is therefore contrary to policies LP1 and LP3 of the Local Plan and Policy HC1 of the London Plan 2021, which together require that all development is of the highest architectural and urban design quality and preserves or enhances the character and appearance of conservation areas. It also conflicts with the heritage protection aims of the Framework.

² Local Development Framework Supplementary Planning Document Residential Extensions and Alterations Approved April 2009

³ Conservation Area Appraisal for Mare Street and Town Hall Square Conservation Areas

Access

21. I acknowledge comments about the flat's limitations in terms of accessibility. However, Policy D3 of the London Plan 2021, together with the Framework, requires development to create places that are safe, secure, inclusive, and accessible, and which promote health and well-being, with a high standard of amenity for existing and future users.
22. I understand that the decking is accessed via an unfixed ladder from the existing terrace, or from the window above the decking. There was no ladder at my visit, but I saw that the window is top opening and a reasonable height above the decking. Given the elevation of the decking, together with the limited enclosure, these arrangements expose users to an unacceptable risk from falls, contrary to Policy D3 of the Local Plan and the aims of the Framework.

Conclusion

23. For the reasons given above, I conclude that 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).

Felicity Thompson

INSPECTOR