



Appeal Decision

Site visit made on 5 March 2025

by **C Rafferty LLB(Hons), Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 19 March 2025

Appeal Ref: APP/U5360/C/24/3339715

38 Digby Crescent, Hackney, London N4 2HR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Tareq Baconi against an enforcement notice issued by the Council of the London Borough of Hackney.
 - The notice was issued on 24 January 2024.
 - The breach of planning control as alleged in the notice is without planning permission, installation of railings to the rear parapet around the third-floor flat roof area.
 - The requirements of the notice are:
 1. Remove the balustrade railing as shown in Appendix 1 'photograph of the railing';
 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: 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) 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.
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Formal 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.

Appeal on ground (a)

2. An appeal on ground (a) is brought on the basis that planning permission ought to be granted for the breach of planning control stated in the notice. Where an appeal on ground (a) is duly made, an application for planning permission is deemed to have been made.

Preliminary Matters

3. The National Planning Policy Framework (the Framework) was updated on 12 December 2024. However, the sections pertinent to this appeal have not changed to such an extent as to significantly affect the matters raised. It has not therefore been necessary to seek parties' views.
4. Submitted evidence mentions the use of the flat roof area at the site as a terrace, and reference is made to a separate breach of condition notice in this regard. However, the enforcement notice before me relates only to the installation of railings without planning permission and I have proceeded on this basis.
5. The reasons for issuing the notice do not expressly refer to the location of the site in a conservation area. However, given the cited policies and the fact that the main

parties have referenced the conservation area in submissions, they would not be prejudiced by my taking this into account. In any event, I have a statutory duty to have special regard to the desirability of preserving or enhancing the character or appearance of a conservation area.

Main Issues

6. The main issues are the effect of the proposed development on: (i) the character and appearance of the area, including whether it would preserve or enhance the character or appearance of the Brownswood Conservation Area (the CA); and (ii) the living conditions of occupiers of neighbouring properties.

Reasons

Character and appearance

7. The appeal site is a terraced, residential property in use as apartments. The property lies within the CA, the significance of which is derived from its Victorian suburban nature, with predominantly traditional architecture and a largely unchanged design and layout. The historic external appearance of the appeal property remains largely apparent, such that it contributes positively to the character and appearance of the CA.
8. The development comprises the installation of railings to the rear parapet of the third-floor flat roof of the appeal property. The railings are modest in height, with consistent notable gaps and have been constructed from a dark metal. I observed on my site visit that this reflects similar railings at lower levels within the vicinity and does not significantly impact on the solid-to-void ratio of the building, such that the design of the development would not, in itself, appear out of place. I further note that railings are not specifically resisted by the CA appraisal and management plan, nor are they expressly identified as alien features.
9. However, the elevated position of the railings at the appeal property results in them being notably prominent and, in creating the appearance of an enclosed external space in the upper floors, they read as an overtly contemporary addition to the building. While views of the railings from both the immediate surrounds and neighbouring properties on Digby Crescent are limited, clear visibility of them is afforded from the rear elevations and external spaces of immediately opposite properties on Brownswood Road. This allows the harmful juxtaposition of the railings with the traditional nature of the appeal property and the prevailing character of the CA to be readily experienced.
10. The appellant and interested parties have drawn my attention to other terraces and means of enclosure in the vicinity but I observed that upper-level railings such as those at the site are not so common as to be a defining feature of the CA. Similar elevated railings do exist at the neighbouring property. I have limited information on the planning circumstances relating to these but, from my visit, found that they too failed to reflect the more traditional built environment. It remains that the rear elevations among which the appeal property is experienced are largely free from such features, such that the railings at the appeal site remain visually jarring due to their positioning at the upper levels. The existence of the neighbouring railings does not, therefore, justify the presence of the development at the site.

11. In the immediate context the upper-level railings at the site are highlighted as an unduly modern feature, out of place against the overarching traditional nature of the appeal property and this section of the CA. The fact that the railings may not compromise existing openings or architectural features of the building does not alter my findings. For these reasons, the railings cause visual harm to the site and the contribution it makes to the surrounding character and appearance. As such, they neither preserve nor enhance the character or appearance of the CA. The effect is localised such that it is 'less than substantial' harm.
12. Nevertheless, the Framework is clear that great weight should be given to the conservation of heritage assets. It specifies that where a development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. It has been raised that the railings may be required for the safety of balcony users. Even if I were to find this a public, rather than private, benefit, given the great weight attached to the conservation of heritage assets, it would not outweigh the identified harm.
13. For the reasons given, the development has a significant adverse effect on the character and appearance of the area, and fails to preserve or enhance the character or appearance of the CA. As such, it fails to comply with Policies LP1 and LP3 of the Hackney Local Plan 2023 and Policies D3 and HC1 of the London Plan 2021 insofar as they seek to ensure development that responds to local character and context, and conserve the significance of heritage assets.

Living conditions

14. The notice alleges that the railings would have impacts on neighbouring amenity, but limited further information is provided in this regard. As outlined above, the enforcement notice relates to the installation of the railings only.
15. Notwithstanding my findings on character and appearance, the low-level and open nature of the railings, combined with the separation distance from surrounding dwellings, ensure that they are not an overbearing addition that unduly impacts the outlook of neighbouring residents. There is nothing substantive either before me or observed on site to suggest the installation of the railings impacts the living conditions of occupiers of surrounding properties in any other manner.
16. For the reasons given, the development does not have a significant adverse effect on the living conditions of occupiers of neighbouring properties. As such, there is no conflict with Policy LP2 of the Hackney Local Plan 2023 and Policy D3 of the London Plan 2023 insofar as they seek to ensure development is designed to ensure no adverse impacts on the amenity of neighbours, and delivers appropriate outlook, privacy, and amenity.

Conclusion

17. I have found that the development does not result in harm to the living conditions of occupiers of neighbouring properties. However, it does have a significant adverse effect on the character and appearance of the area, and fails to preserve or enhance the character or appearance of the CA. For the reasons given above, I conclude that the appeal on ground (a) should not succeed, and I shall refuse the deemed application for planning permission.

Appeal on ground (g)

18. An appeal on ground (g) is brought on the basis that the time period for compliance in the notice falls short of what should reasonably be allowed.
19. The notice gives 3 months for compliance. The appellant argues that this would be insufficient and that a period of 6 months would enable them to find a builder and undertake the works. There is nothing compelling before me to suggest that a builder could not be readily found and instructed, and the required works carried out, within the 3 month period specified. This would ensure that the identified planning harm is dealt with in the necessary expedient manner.
20. The appeal on ground (g) therefore fails.

Overall conclusions

21. 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).

C Rafferty

INSPECTOR