



Appeal Decision

Site visit made on 16 July 2025

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2025

Appeal Ref: APP/Q5300/C/23/3319231
20A St Georges Road, London N13 4AS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Malik Ibheis against an enforcement notice issued by the Council of the London Borough of Enfield.
 - The enforcement notice was issued on 23 February 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, a balustrade has been erected on the roof of the single storey rear extension, with the roof of the extension being used for recreational purposes, contrary to conditions 1 and 4 imposed on planning permission TP/10/1258, dated 7 January 2011.
 - Condition 1 is in these terms:
'The development hereby permitted shall be carried out in accordance with the following approved plans P-001, P-002, P-003, P-004 and P-005.'
 - Condition 4 is in these terms:
'Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or any amending order, no balustrades or other means of enclosure shall be erected on the roof of the extension(s). No roof or any part of the extension(s) shall be used for any recreational purpose and access shall only be for the purposes of the maintenance of the property or means of emergency escape.'
 - The reasons for conditions 1 and 4 are, respectively, 'For the avoidance of doubt and in the interest of proper planning' and 'To safeguard the privacy of the occupiers of adjoining properties.'
 - The requirements of the notice are to:
 - 5.1 Cease the use of the roof of the single storey rear extension for recreational purposes;
 - 5.2 Remove the balustrade from the roof of the single storey rear extension;
 - 5.3 Remove all tables and chairs from the roof of the single storey rear extension;
 - 5.4 Remove all plant pots from the roof of the single storey rear extension;
 - 5.5 Remove all decorative lighting from the roof of the single storey rear extension;
 - 5.6 Install a Juliet balcony across the outside of the doors at first floor level leading to the roof of the single storey rear extension to prevent free access.
 - The period for compliance is two calendar months after this notice takes effect.
 - The appeals are proceeding on the grounds set out in section 174(2)(a), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Formal decision

1. In accordance with section 177(1)(b) of the 1990 Act, as amended, conditions nos 1 and 4 attached to the planning permission TP/10/258, dated 7 January 2011, granted by the Council, are discharged as:
 - a) regarding the use of the extension's roof for recreational purposes, the appeal is allowed and it is directed that the enforcement notice be corrected by deleting requirements 5.1, 5.3, 5.4, 5.5 and 5.6. In accordance with

section 191(3) the use is lawful as the time for taking enforcement action has expired; and

- b) regarding the operational development undertaken 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 1990 Act, as amended, for the development already carried out, namely the erection of a balustrade on the roof of the extension on land at 20A St Georges Road, London N13 4AS, referred to in the notice.

Preliminary Matters

- 2. A request from an interested party was received that I view the appeal property from his garden. In the event this did not prove possible but, nonetheless, having already examined the evidence the primary matter, brought to the fore due to an appeal having been lodged under ground (d) was whether or not the appellant could convincingly demonstrate the use of the roof terrace as being immune from planning control.
- 3. I had noted that, given the material submitted, the evidence for such was strong, and if the appellant could satisfactorily prove his case then this would mean that any planning merits and/or impacts, which would be assessed on the deemed planning application, would not then fall to be considered. Besides, the views gained from the roof terrace itself allowed me to fully assess its effect on the privacies of neighbouring occupiers.
- 4. Accordingly, the appellant's claim here as to immunity from planning control is the first consideration.

Background

- 5. The terms and relevant conditions of the planning permission (ref TP/10/1258) have already been described. These were breached, balustrading was erected and the single storey's flat-roofed extension has been used for recreational purposes. In May 2022 the timber balustrades and decking were replaced and, subsequently, in November 2022, an application (ref 22/03210/CEU) was made requesting a lawful development certificate for the 'Continued use of the roof to downstairs neighbours existing extension as a balcony' was refused for the following reason:

'The information provided by the applicant is deemed to be insufficiently precise and unambiguous to demonstrate that, on the balance of probability, the flat roof of the ground floor rear extension has been in use as a roof terrace along with the installation of balustrading/railing for a continuous period of 10 years as required under the Act. Furthermore, the Council's evidence contradicts and/or undermines the applicant's version of events.'

- 6. The above decision was not appealed and the Council then saw it expedient to issue an enforcement notice in an attempt to remedy the breaches identified.

The Appeal on ground (d)

- 7. An appeal on ground (d) is that the development is immune from planning control due to the passage of time. In instances where the requirements of planning conditions are breached the appellant must demonstrate that the

- breach has occurred on a continuous basis since at least ten years back from the date that the enforcement notice was issued.
8. The burden of proof is on the balance of probabilities, and the onus of proof is on the applicant/appellant.
 9. The main issue in this appeal is, therefore, whether, on the balance of probability, conditions 1 and 4 imposed against planning permission TP/10/1258 have been breached for a period of at least ten years and that both the use of the roof of the single-storey rear extension for recreational purposes and the existing balustrading/metal railings were lawful within the meaning of section 191(3) of the Town and Country Planning Act 1990.
 10. A photograph of the L-shaped roof terrace, dated 3 November 2012, showing timber decking recently laid and coping stones in place, along with two Statutory Declarations (SD), has been provided by the appellant to support his case.
 11. One SD, signed and dated 20 March 2023 was sworn by Andrew Sweetman, the former owner of 20 St George's Road. This is the ground floor flat below on which the flat-roofed extension stands. He explains that planning permission was sought for the single-storey extension, which was granted in 2011. Construction commenced in late 2011 and was completed in October 2012. This is consistent with the said photographic image which shows the terrace in the process of being created.
 12. Mr Sweetman goes on to say that he arranged for the builders to install the decking along with a timber balustrade, and he assisted with their installation, and this was completed later that month. Mr Sweetman then recalls Mark Proud, the former owner of no 21A, having a drink on the terrace along with his sister in celebration of the extension's completion and the creation of the roof feature.
 13. The second SD is effectively an independent corroboration of the above claims. It was sworn by David Elliott, who has lived at no 22, the neighbouring property, since 2004. He recalls that the extension itself was completed in October 2012, and then a roof terrace was added which, he claims has been used regularly since at least November 2012.
 14. The Council, for its part, indicates that it holds limited resources to back up the claims. An aerial photograph is cited, dated 26 May 2012, which shows the single-storey extension, but not the balustrading. This is not inconsistent with the appellant's account, given that the extension at that time would have been under construction, and the original balustrading was not erected until after 3 November 2012. More telling, however, is another aerial photograph, dated April 2013 in which the decking and perimeter coping stones are clearly evident.
 15. The original balustrade feature, erected as operational development, would have been subject to the then applicable four-year bar, and immunity from planning control would have been achieved many years before the enforcement notice was issued. It is understood that the original balustrading was replaced in May 2022 with metal railings. Given that, amongst other things, the Levelling Up and Regeneration Act 2024 made all breaches – both material change of use and operational development – subject to the ten year bar. The

- railings' full replacement goes beyond routine maintenance and, as it is reasonable to suggest that, due to their height, the external appearance of the building is altered. Accordingly, they would appear to represent unauthorised development which is lawfully subject to enforcement action.
16. The railings in situ, therefore, are a separate entity to the use of the terrace within but, importantly, the fact that the railings were replaced does not necessarily have any bearing on the use of the roof terrace itself. Instead, the railings are a peripheral feature serving as a safety guard.
 17. Turning to the requirement that the roof terrace had been used for at least ten years, on an uninterrupted basis, the mere cessation of use – should this have occurred during the winter months and perhaps at the time that the original balustrading was replaced – does not constitute development nor abandonment. Instead, with reference to the court judgement of *Nicholls v SSE & Bristol CC* [1981] JPL 890, abandonment of a use involves its cessation in such a way, and for such a period of time, as to give the impression to a reasonable onlooker - applying an objective rather than a subjective test - that it was not to be resumed.
 18. Further, the court judgement of *Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40 established the four criteria applicable to determining whether a use had been abandoned; these being, the period of non-use, the physical condition of the land or building, whether there had been any other intervening use, and the owner's intentions as to whether to suspend the use or to cease it permanently. This was subsequently reinforced by *Bramall v SSCLG* [2011] JPL 1373. Clearly, the use of a roof terrace outside a habitable room's French windows, as is the case here, is untouched by the said criteria.
 19. Finally, a legal precedent was set in the case of *Gabbitts v SSE & Newham LBC* JPL 630 where it was clarified that when assessing an application for a certificate of lawfulness, the applicant's own evidence does not necessarily require corroboration from independent sources.
 20. In this particular instance, I find the statutory declarations taken with the photographic evidence, along with the dates specified, to be compelling. There is no convincing rebuttal against the claim that the roof terrace has been used by the occupiers of the appeal property since November 2012. Consequently, I am satisfied that the appellant has provided precise and unambiguous evidence to successfully demonstrate, on the balance of probabilities, that the use of the roof terrace as an amenity feature to the upper floor flat is immune from planning control due to the passage of time.
 21. Accordingly, I must conclude that there was no time within the ten year period up to 23 February 2023 when the Council could not have taken enforcement action against the said breach of planning control. The fact the Council did not take such an approach would suggest that the breach didn't come to the authority's attention until November 2022 when, or immediately prior to, the application for the lawful development certificate being submitted.
 22. As regards, the enforcement notice's requirements relating to the removal of tables and chairs, plant pots and decorative lighting from the roof terrace the Council indicates that this is necessary as they facilitate the use and are harmful to amenity. However, planning permission TP/10/1258 did not condition against the installation of such and, given the history I have outlined,

it is reasonable to assume that a table and chairs, plant pots and some form of lighting would have been evident from an early stage. Besides, none of these constitute development under s55 of the 1990 Act, as amended, and their removal, therefore, cannot be legally justified. Also, given the circumstances, neither can the stipulated installation of a Juliet balcony.

23. The balustrading in situ is not, though, lawful, and planning permission is therefore required for its lawful retention.

24. The appeal on ground (d) therefore succeeds in part.

The appeal on ground (a) – the deemed planning application (DPA)

The Main Issue

25. Given my findings on the ground (d) appeal the DPA is limited to the retention of the existing balustrading. Accordingly, with reference to the Council's reasons for issuing the enforcement notice, the main issue here is the effect on the character and appearance of the surrounding area.

Reasons

26. Policy CP30 of the Council's Development Management Document (DMP) is specifically concerned with maintaining and improving the quality of the built environment, and DMP policy DMD37 aims to achieve a high quality of design. Taken together, both policies seek to achieve a satisfactory standard of development.

27. In this instance, I note that other residential properties along the street have characteristic first floor rear facing balconies which were clearly built as original features. However, these are limited and significantly smaller than the extent of the roof terrace at no 20A which has been facilitated by the approved single-storey extension below. Given, though, that on the evidence available, the terrace's use for the enjoyment of the occupiers is lawful, I can only consider the appearance of the balustrading alone and whether it is harmful to the prevailing character of the immediate area.

28. I find that the blue metal railings are modest in height and extent, are of a decorative design and, consequently, are not unattractive in their contextual setting. In view of the circumstances they appear as an unusual feature but this does not mean that they necessarily detract. Further, although they perform a safety function, they are not essentially facilitative to the use of the roof which could lawfully continue without their presence.

29. I thereby conclude that the balustrade railings are not harmful to the character and appearance of the surrounding area and the development does not conflict with the aims and requirements of the said local policies and, moreover, the development plan as a whole.

Interested Party Representations

30. I have had regard to the points raised by a local objector which are largely concerned with the overlooking of neighbouring rear gardens and a consequent loss of privacy and I agree that the implications in this regard are significantly greater than that from the nearby smaller, and integral, first floor balconies.

31. Each case is, of course, assessed and determined on the individual circumstances and the planning merits and/or impacts involved. In this particular instance, if formal enforcement action had been taken sooner such that immunity from planning control could not have been demonstrated then it is quite likely that the the DPA would have turned on the privacy issue and planning permission would have been refused, accordingly.
32. As explained, though, that is not the case here and the railings, although below head height, would actually inhibit overlooking from certain angles. In terms of privacy, to this extent, they serve a purpose.

Conclusion

33. For the reasons given above I conclude that the appeal should succeed on ground (a) and the enforcement notice should be quashed. I propose to discharge the conditions the subject of this notice and to grant planning permission on the application deemed to have been made for the operations previously permitted without complying with the conditions enforced against.
34. The appeal on ground (f) does not therefore fall to be considered.

Timothy C King

INSPECTOR