Planning Inspectorate

Appeal Decisions

Site visit made on 16 November 2026

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2026

Appeal A Ref: APP/N5090/C/25/3372989
Appeal B Ref: APP/N5090/C/25/3372990
20 Albert Road, London NW4 2SG

- 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 Shimshon Kahn (3372989) and Mrs Devorah Rochel Kahn against an enforcement notice issued by the Council of the London Borough of Barnet.
- The notice was issued on 12 August 2025.
- The breach of planning control as alleged in the notice is without planning permission, the construction of metal railings upon the roof of the rear dormer roof extension.
- The requirements of the notice are to:
  1. Permanently remove all the railings, fittings and associated equipment that facilitated the railing structure.
  2. Permanently remove all constituent materials resulting from the works in 1. Above from the property.
- The period for compliance with the requirements is 2 months.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Act.

Decision

1. The appeals are dismissed and the enforcement notice is upheld.

Applications for costs

2. An application for costs has been made by Mr Shimshon Kahn and Mrs Devorah Kahn against the Council of the London Borough of Barnet. This application is the subject of a separate decision.

Appeals on ground (c)

3. An appeal on ground (c) is that the matters alleged at section 3 of the notice, if they occurred, do not constitute a breach of planning control. The onus of proof in ground (c) appeals is on the appellants, and the test of the evidence is on the balance of probability.

4. Section 171A(1)(a) of the Act defines a breach of planning control which includes the carrying out of "development" without the required planning permission. In section 55(1) of the Act "development" is defined to include the carrying out of "building operations" and in addition to this a "building" is defined in section 336 of the Act to include "any structure or erection, and any part of a building". In this regard, the *Skerritts*[1] case established three primary tests for assessing whether a structure amounts to a building, these being size, permanency and the degree of physical attachment.

[1] Skerritts of Nottingham Ltd v SSETR (No. 2) [2000] 2 PLR 102

5. The appellants argue that the railings are not development as there are no fixtures to the roof, they can be assembled by any DIY man, they have not been in place for a long time and a single person can lift or move the railings. The appellants further explains, with reference to the words of Jenkins J in Cardiff Rating Authority, as quoted by Bridge J in Barvis, and James v. Brecon C. C. (referred to by Glidewell J.), that the railings are not such a size that it has to be built or constructed on the site. The appellants explain that a feat of engineering or navigation was not necessary to bring the railings to site and no process amounting to pulling down or taking to pieces or an act of demolition is required.

6. The appellants have not explained how the railings came to be on the roof of the appeal property. In my mind, the railings could have been brought to the site as one section with the weights applied once the railings were in place. However, given the size of the railings, this would have meant that they would have had to have been lifted onto the roof, most likely by some type of crane that would have been operated by persons carrying on business. Alternatively, the railings could have been brought to the roof in sections and then constructed. The appellant argues that the assembly of the railings can be done by any DIY person, although there is no clear indication in the evidence that the railings were constructed by any DIY persons. Given the various parts to the railings, which I saw at my site visit, that included the horizontal bars been screwed to the vertical upright bars, it would not be outrageous to consider that the construction of the railings was needed to be undertaken by persons carrying on business as a builder.

7. Turning to the three tests established in the *Skerritts* case. In terms of permanence, the railings are functionally linked to the property as they provide a safety feature for persons who have accessed the roof through the sky light. There is no indication that there would be any intention to move the railings in the future and given the main reason for them being there is for safety, on the balance of probability, I consider the railings would be intended to be situated on a permanent basis. Consequently, I consider that the railings, whilst being able to be moved, has a substantial degree of permanence. Whilst the railings are not secured to the roof of the property by screws or any other type of method of joining two items, given the railings sit on top of the roof by their own weight as well as the weights which lay over the railing legs, there is a degree of physical attachment to the roof of the property. The size of the railings are relatively small, although this factor alone is not decisive.

8. Taking account of all three factors, as a matter of fact and degree and on the balance of probability, I am of the view that the railings are an addition to the building and therefore the railings are building operations for the purposes of section 55 of the Act. As the railings are a “building operation” and is therefore defined as “development”, they consequently require planning permission.

9. The appellant has referred to other caselaw[2]. I have had regard to these however, these cases primarily relate to the definition of operational development in the context of caravans, they are therefore not necessarily directly comparable to the matters subject of this appeal and they do not alter my findings above.

[2] Mr Harold Gray v Secretary of State for the Communities and Local Government, Harrogate Borough Council [2015] EWHC 2452 (Admin), 2015 WL 3953013 and SSCLG & Beesley v Welwyn Hatfield BC [2011] UKSC 15 JPL 1801

10. Since the development has taken place without planning permission it thereby constitutes a breach of planning control, and I conclude that the appeals on ground (c) fail.

Chris Baxter

INSPECTOR