



Appeal Decision

Site visit made on 26 March 2024

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th April 2024

Appeal Ref: APP/X5210/C/23/3326337

Land at: Flat 2, 80 Greencroft Gardens, London NW6 3JQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mrs Sarah Abergl against an enforcement notice issued by the Council of the London Borough of Camden.
 - The notice was issued on 19 June 2023.
 - The breach of planning control as alleged in the notice is without planning permission the installation of roller shutters and single-pane bi-folding doors to rear elevation of the lower maisonette, and installation of glass balustrades around the lower floor rear sunken garden.
 - The requirements of the notice are: 1. Completely remove the roller shutters to rear elevation of the lower maisonette at ground floor and lower ground floor levels; and 2. Completely remove the glass balustrades around the lower floor sunken garden.
 - The period for compliance with the requirements is: within 6 months of the notice taking effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), and (g) of the Act. 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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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 roller shutters and single-pane bi-folding doors to the rear elevation and the glass balustrades around the lower floor rear sunken garden at Flat 2, 80 Greencroft Gardens, London NW6 3JQ as shown on the plan attached to the notice.

Ground (c)

2. To succeed under this ground of appeal the appellant would need to demonstrate, on the balance of probabilities, that the matters stated in the notice as constituting a breach of planning control do not constitute a breach of planning control.
3. It is suggested that the housing elements of the roller shutters do not form part of the alleged breach because they are not specified in the notice. The integrated construction and operation of the roller shutters are such that any reasonable person would take references to the roller shutters in this case to include their housing.
4. Section 57 of the Act states that planning permission is required for the carrying out of any development of land. Section 55 provides the relevant meaning of 'development', which includes the carrying out of building

- operations. Subsection (1A) clarifies that 'building operations' includes additions to buildings and other operations normally undertaken by a person carrying on business as a builder.
5. It is not disputed that the bi-folding doors and balustrades comprise development requiring planning permission. However, it is claimed that as the roller shutters are temporary structures, they do not constitute development. The roller shutters have been fixed to the building as a long-term solution to security concerns. They are not temporary structures, even when raised.
 6. The process of fixing the roller shutters to the building would normally be undertaken by a person carrying on business as a builder, or some other person with similar expertise and tools. In any case, the list of works which comprise building operations provided at section 55(1A) of the Act is not exhaustive. It has not been demonstrated that the roller shutters do not comprise development requiring planning permission.
 7. Planning permission is granted under the provisions of Article 3(1) and Class A, Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) for the erection or construction of a gate, fence, wall or other means of enclosure, subject to limitations. Article 3(4) clarifies that the GPDO does not permit development contrary to any condition imposed by any planning permission.
 8. Planning permission reference 2018/3103/P was granted for extensive development at the appeal site, which included extensions to the building at basement and ground floor levels and the conversion of the building from 4 flats to 7 flats, subject to conditions. Condition 3 of that planning permission requires the development to be carried out in accordance with specified plans.
 9. The evidence indicates that planning permission reference 2018/3103/P was implemented, and that the plans referred to by condition 3 showed metal railings around the perimeter of the 'lower garden' at ground floor level, in the positions of the glass balustrades. There is no information which shows that the glass balustrades were installed other than in association with, and as a part of, the development referred to by planning permission reference 2018/3103/P. The evidence indicates that the glass balustrades were installed in breach of condition 3 of that planning permission. It has not been demonstrated that the glass balustrades benefit from any planning permission.
 10. On the evidence provided, the installation of the roller shutters, bi-folding doors, and glass balustrades comprises development which requires planning permission. No planning permission exists for that development. It has not been demonstrated, on the balance of probabilities, that the development is not in breach of planning control.
 11. The appeal under ground (c) must therefore fail.

Ground (a) and the deemed application for planning permission

Main Issue

12. The bi-fold doors are not referred to in the reasons stated for issuing the notice, and the notice does not require their removal. Therefore, if the appeal under ground (a) were to fail and the notice were to be upheld, planning permission would effectively be granted for the bi-fold doors under the

provisions of section 173(11) of the Act. This is a relevant consideration when assessing the planning merits of the development.

13. The main issue is the effect of the roller shutters and glass balustrades on the character and appearance of the area, with particular regard to the South Hampstead Conservation Area (CA).

Reasons

14. The appeal site is located within the CA. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the CA.
15. So far as relevant to the development, the significance of the CA relies on the continuity of high-quality, attractive, large-scale Victorian semi-detached and terraced residential properties with traditional fenestration layouts and detailing. There are variations in detailing and form, especially at ground floor level, on the rear elevations of buildings within the CA. This can be partially seen from the appeal site. Views of ground floor rear elevations, including that of the appeal building, in this part of the CA are restricted by thick boundary planting between large gardens.
16. Notwithstanding the restricted views, I saw examples of modern finishes, including windows and extensions, to ground floor rear elevations at other buildings within the CA. I also saw a glass balustrade in front of upper floor windows within the CA. The significance of the CA does not therefore rely on a complete absence of modern building features on rear elevations, especially at ground and basement floor levels where views are restricted.
17. The bi-fold doors are unavoidable modern features in views from within the appeal site garden. They have thick black frames and fill most of the ground and basement level rear elevation with glazing. They contrast with the more traditionally proportioned and detailed glazing on upper floors and the front of the building.
18. The glass balustrades are confined to a small area in the private rear garden where they are unlikely to be seen in detail from outside the appeal site. The roller shutters and glass balustrades are overtly modern features, but they are experienced as part of a high-quality contemporary authorised extension. The notice does not require the bi-fold doors to be removed, and with this in mind, in the context of their secluded domestic setting and surroundings, the roller shutters do not appear particularly out of place when raised or lowered. The glass balustrades are minor features which are sympathetic in design to the extension.
19. Roller shutters are not conventional additions to domestic buildings. However, those in this particular case are consistent with the high-quality modern design of the ground and basement level rear elevation of the appeal building. Their low positions, within a large private rear garden skirted with thick vegetation, greatly limits their effect on the character and appearance of the area. Their effect is so limited, that they do not cause any harm to the significance of the CA, even though roller shutters are not a typical feature of historic residential buildings or the CA. Seen as part of the authorised contemporary extension with wide bi-fold doors, they preserve the character of the CA.

20. The development does not therefore conflict with Policies D1 and D2 of the Camden Local Plan (2017). This is due to its limited visibility from outside the appeal site, the context in which it is seen, and its design and materials being consistent with those of the authorised rear extension. Those policies require development to respect local context and character and preserve heritage assets without causing harm to their significance, amongst other things.

Other Matters

21. I have been referred to noise made by the roller shutters when they are raised and lowered. I heard this from the appeal site garden during my site visit. The likely level of the noise, its short duration, and the distance of the roller shutters from neighbouring residential properties lead me to find that it would be very unlikely to cause unacceptable harm to the living conditions of any residents. No detailed evidence has been provided to convince me otherwise.
22. It is claimed that granting planning permission for the roller shutters may set a precedent for the area. However, every case should be assessed on its merits, with regard to the development plan and any other material considerations. The development in this particular case accords with the development plan as a whole on account of the specific circumstances of the development and the site. There are no material considerations which indicate planning permission should be refused, including the possibility that other residents may seek planning permission for roller shutters elsewhere within the CA.
23. No conditions are necessary to make the development acceptable. A condition specifying approved plans is not necessary as the development has already been carried out.

Conclusion

24. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The appeal on ground (g) does not therefore fall to be considered.

L Douglas

INSPECTOR