



Appeal Decision

Site visit made on 17 July 2012

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 August 2012

Appeal Ref: APP/X5210/C/12/2169295

3 Murray Street, London NW1 9RE

- 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 N Barker against an enforcement notice issued by the Council of the London Borough of Camden.
 - The Council's reference is EN10/0373.
 - The notice was issued on 14 December 2011.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a ladder and railings to facilitate use of the flat roof as a terrace.
 - The requirements of the notice are to remove the ladder and railings surrounding the flat roof.
 - The period for compliance with the requirements is 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended is to be considered.
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Procedural Matters

1. The appellant suggests that the enforcement notice is not precise and does not identify the harm. I disagree, as the reasons for issuing the notice clearly identify that the ladder and railings, by virtue of their location, size and design are considered to have a detrimental impact on the host property and on the surrounding conservation area, contrary to policies.

Decision

2. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Reasons

Ground (c)

3. Railings and the ladder are additions to a building normally undertaken by a person carrying on business as a builder and would come within the definition of development if they materially affect the external appearance of the building. The proposed railings and ladder are particularly prominent features projecting above the mansard roof, visible against the skyline and clearly materially affect the external appearance of the building. They are visible from public viewpoints, particularly Agar Grove, and private residences. I conclude that the railings and ladder are development. While some permitted

development rights are given to dwellinghouses, the Town and Country (General Permitted Development) Order 1995 as amended, definition of "dwellinghouse" does not include a building containing one or more flats, or a flat contained within such a building.

4. I conclude that the railings are development requiring planning permission and as the appellant has not identified any relevant permitted development rights, I conclude that the appeal on ground (c) should fail.

Ground (a)

5. The main issues are:

- The effect on the character and appearance of the surrounding area, including the Camden Square Conservation Area.
- The effect on the living conditions of adjoining occupiers.

6. The development plan includes the Camden Core Strategy 2010 [CS] and the Camden Development Policies [CDP]. The aim of CS Policy CS5 is to manage the impact of development, providing sustainable buildings of the highest quality and making sure that the impact of development on the occupiers and neighbours are fully considered. CDP Policy DP24 aims to secure high quality design and CS Policy CS14 promotes high quality places and conservation of heritage. It requires development of the highest standard of design, respecting local context and character and which preserves Camden's rich and diverse heritage assets and their settings. This reflects Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. CDP Policy DP25 has similar aims. CDP Policy DP26 indicates that the impact of development on occupiers and neighbours should be managed with visual privacy and overlooking being factors to be considered.

Character and Appearance

7. I consider that the significance and special interest of the Camden Square Conservation Area relates to, amongst other things, its historic development, and the design and layout of the various buildings within it.
8. The tops of this and most other buildings in the area form an attractive roofscape, many dominated by mansard roofs and chimneys. The presence of the plain metal railings, which project significantly above the existing 'eaves' line of the existing mansard roof, dominate the skyline in this position, unacceptably interrupting the general outline of the roofs. Together with the ladder these are utilitarian, alien and incongruous features on the building and in the row of buildings in which it is located. They are not good design and do not preserve or enhance the character or appearance, significance or special interest of the conservation area as a whole. I accept that there are some railings on top of the buildings opposite, which appear to be safety barriers. These appear to go around most of the building and not incongruous features in their context, as are the appeal railings. The presence of the other railings neither mitigate the harm of this development nor justify it.
9. The appellant suggests that the railings could be painted a different colour and the safety cage removed from the ladder, but this would not overcome the

harm of the projection of the railings above the general roof line, as in this location railings of any colour would be likely to remain unacceptably prominent against the skyline. No details are provided about how the railings could be set in from the roof edge and the effect this might have on the impact of the railings. However, given the size of the roof, I consider it unlikely that setting the railings in would overcome the harm of railings to this building.

10. The appellant also suggests that they are similar to access safety railings. This may be the case, but it does not make their presence any less harmful here. I also note that there are other similar railings around balconies on this and adjacent premises, but they are in a quite different position, being lower down the building and not in a prominent position jutting up above the general roof line. These do not justify the position of these railings. I note that the railings and ladder are not visible from Murray Street. However, they are prominent from Agar Grove and from many of the surrounding houses and cause harm to character and appearance.
11. I appreciate that the existing flat roof area is of limited use, apart from keeping the building dry, and that the appellant would benefit from increased amenity space and enjoyment of panoramic views, but this is not sufficient to overcome the substantial harm identified.
12. I conclude that the railings and ladder would conflict with CS Policies CS5 and CS14 and CDP Policies DP24 and DP25 and would not preserve or enhance the character or appearance of the conservation area as a whole and on this matter alone would be unacceptable.

Living Conditions

13. I acknowledge the right of the appellant to use the existing roof for access. However, in my view, the presence of railings would enable significantly greater use of the roof area and, in particular, would enable users to get routinely close to the edge and look down on the adjoining balcony. I appreciate that the neighbouring balcony was extended and that it has been necessary to have a privacy screen erected to protect privacy at No 3, but that does not mean that privacy of the neighbouring balcony is not to be considered in relation to this development.
14. Because of the proximity and raised position of the roof, users of the area would dominate the adjacent balcony below and cause considerable harm to the neighbours, not only from the actual overlooking likely to occur, but from the perception that users of the lower balcony would be overlooked. While I accept that there are panoramic views from the balconies and that only family and friends would use the balcony, this does not overcome the harm to the neighbours' living conditions. I accept that use of balconies is likely to be only occasional and in good weather, but this is also the time when the neighbours would be likely to want to use their own balcony.
15. I also appreciate that there can be balconies on other buildings with similar relationships. However, in this case there is an existing situation where the neighbours should have a reasonable expectation of privacy. There are some other balconies nearby, which are at a lower level than the lower balconies at 3 and 4 Murray Street, but those are much further away, so the effect in terms of overlooking is much less. In my view, the proposal, because of its proximity to the balcony of 4 Murray Street, would lead to an unacceptable change, and the

overlooking and loss of privacy that would result would cause unacceptable harm to the neighbours' living conditions. Given the proximity of the railings to the edge of the roof, it would be difficult to prevent overlooking by the use of screens. In any case, screens large enough to achieve this would be likely to cause significant additional harm in terms of character and appearance. The proposal would conflict with the aims and objectives of CS Policy CS5 and CDP Policy DP26.

16. Overall, I conclude that the ladder and railings cause unacceptable harm and that the appeal under ground (a) fails and that the deemed planning application should be refused.

Ground (f)

17. The appellant suggests that the railings could be improved by removing the safety cage for the ladder, using a different paint colour or by setting the railings back from the edge of the roof. However, I have considered these matters in relation to the ground (a) appeal and have not found them to be likely to overcome the substantial harm of the railings and ladder. I consider that the removal of the railings is reasonable and does not exceed what is necessary to remedy the breach identified; the appeal on ground (f) fails.

Ground (g)

18. The removal of the railings and ladder is a reasonably straightforward operation and should take about a week. I consider that seven weeks is therefore a reasonable period in which to arrange for contractors to visit the site, prepare quotes and implement the work of removal. The appeal on ground (g) fails.

Graham Dudley

Inspector