

# Appeal Decision

Site visit made on 1 March 2017

**by George Mapson DipTP DipLD MRTPI**

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

**Decision date: 23 March 2017**

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**Appeal Ref: APP/X5210/C/16/3155128**

**Land at Flat B, 26 Healey Street, London, NW1 8SR**

- 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 Ms Tal Machover against an enforcement notice issued by the Council of the London Borough of Camden.
  - The Council's reference is EN14/1021.
  - The notice was issued on 21 July 2016.
  - The breach of planning control as alleged in the notice is: *"Without planning permission: Alterations to sloped roof and building up the height of the rear two-storey closet wing to create a roof terrace with timber balustrade."*
  - The requirements of the notice are: *"1. Totally remove the roof terrace and associated enclosure from the rear elevation of the building; and 2. Reinstate the rear closet wing to its original height and pitched roof profile in bricks/materials to match the existing building; 3. Make good any damage caused as a result of the above works."*
  - The period for compliance with the requirements is two months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) 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 falls to be considered. There is also an implied appeal on ground (g).
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## Decision

1. The appeal is allowed on ground (g) and the enforcement notice is varied by deleting from section 6 *"two months"* and substituting *"six months"* as the period for compliance.
2. Subject to this variation 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.

## Background

### *The appeal site and surroundings*

3. No. 26 Healey Street is a three-storey terraced Victorian building. It was erected as a dwellinghouse, but has been sub-divided to form a self-contained flat and maisonette. The building is not listed and is not located within a conservation area
4. The building has a two-storey closet wing at the rear, which formerly had a sloping roof. That roof has been removed and replaced by seven rows of brickwork to create a level roof terrace accessed from Flat 2. The roof terrace has a timber decking surface and a perimeter balustrade of the same materials around three sides.

### **The appeal on ground (d)**

5. An appeal on ground (d) is that at the date the notice was issued it was too late to take enforcement action in respect of the matters alleged in the notice.
6. This ground of appeal assumes that at some stage there has been a breach of planning control but that it is immune from enforcement, having subsisted for the four or ten year periods laid down by section 171B of the Act. In cases involving operational development, the four year period applies and begins to run from the date when the operations are 'substantially completed'. The relevant date in this case is 21 July 2012.

#### *Reasoning and conclusions on the ground (d) appeal*

7. The appellant's case is set out in Section E of the appeal form. It focuses on the poor condition of a sash window and the fact that whilst carrying out repairs to it she took the opportunity to create the roof terrace. No claim is made that the works were carried out before the relevant date or that they are immune from enforcement action. Consequently, the appeal on ground (d) must fail.

### **The appeal on ground (a) and the deemed planning application**

8. An appeal on ground (a) is that planning permission should be granted for what is alleged in the notice.

#### *The Council's position*

9. The reasons for issuing the enforcement notice are that: "*The roof terrace by reason of its design is considered to be too bulky and out of keeping with its immediate site context*".
10. The requirements are to: "*remove the roof terrace and associated enclosure from the rear elevation of the building and reinstate the rear closet wing to its original height and pitched roof profile in bricks/materials to match the existing building*."
11. However, the Council's statement of case confirms that the terrace itself is acceptable in principle, subject to there being an appropriate design for the balustrade. Prior to issuing the notice the Council wrote to the appellant to say that if she wished to retain the terrace she had the option of applying for retrospective planning permission, but that she should consider replacing the timber balustrade by a more lightweight timber trellis or seamless glass frame.

#### *Main issue*

12. The main issue in this appeal is whether the design of the balustrade and the materials used harm the character and appearance of the building, the terrace of which it forms part and the surrounding area.

#### *Planning policy*

13. No special policies, controls or designations have been cited as applying to the appeal site or the surrounding area. The development plan policies cited as relevant to this appeal are general policies; Core Strategy Policy CS14 ('Promoting high quality places and conserving our heritage') and Camden Development Policy DP24 ('Securing high quality design').
14. The broad aim of these policies is to ensure that all developments, including alterations and extensions to existing buildings, are of the highest standard of design. The Council expects all developments to consider, among other things, the character, setting, context and the form and scale of neighbouring buildings; the character and proportions of the existing building, where alterations and extensions are proposed; and the quality of materials to be used.

15. The National Planning Policy Framework [NPPF], paragraph 60, states that planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles. It is, however, proper to seek to promote or reinforce local distinctiveness. Paragraph 64 states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions.
16. The Council has drawn attention to its Supplementary Planning Document [SPD] entitled 'Camden Planning Guidance – Design' [CPG1] as a material consideration in this appeal. The purpose of this guidance is to promote design excellence and to outline the ways in which individuals can achieve high quality design within their development.
17. Paragraph 5.23 acknowledges that balconies and terraces can provide valuable amenity space for flats that would otherwise have little or no private exterior space. But paragraph 5.24 advises that they should form an integral element in the design of the building's elevations.
18. The key to whether a balcony or terrace would be considered acceptable is the degree to which it would complement the elevation on which it would be located. The detailed design and materials chosen should aim to reduce the impact on the existing elevation. The materials should weather well, so that the aging process contributes positively to the character of the building and the site's wider context.

*Reasons and conclusions on ground (a)*

19. Like many Victorian terraces in London, the repetition in the design, scale, proportions and layout of the buildings in this terrace have created a strong sense of unity. With such uniformity, even small changes to the shapes of the buildings or the spaces between them can disrupt that sense. Different parts of buildings have varying degrees of sensitivity to such changes. Although rear elevations are generally less sensitive to extensions or alterations, with increased height comes greater sensitivity.
20. The Council says that there is a precedent for roof terraces at the rear of properties on Healey Street and Hadley Road, but that those schemes can be distinguished from the appeal development by their use of more lightweight balustrades. Typically, decorative fences, timber trellises and mesh fencing have been used. In contrast, the use of thick timber boarding for the balustrade of the appeal development gives the rooftop balcony an unattractive, bulky appearance. Furthermore, in my view it is not a material that is likely to weather particularly well.
21. The whole structure is a conspicuous addition to the building. Being positioned so high on the rear elevation, where it is exposed to public views from the properties opposite, it significantly detracts from the character and appearance of the building, the terrace of which it forms part and the surrounding area. It therefore conflicts with the objectives of the Council's planning policies and SPD and with those of the NPPF.
22. I recognise the obvious benefits that the rooftop terrace offers the appellant. It provides her with a private open space to sit out and grow plants, and in so doing undoubtedly enriches the quality of her life. I place a high value on those benefits.
23. However, the Council says that it has sought to negotiate with her (and her son) a more acceptable design solution for the balustrade, but without success. I consider it important that such a solution is found and implemented, if the rooftop balcony is to be retained, because the development is unacceptable in its present form. No conditions could be imposed on a deemed planning permission that would overcome the harm caused.
24. For these reasons, the appeal on ground (a) fails and permission on the deemed planning application is refused.

**The appeal on ground (f) and implied appeal on ground (g)**

25. An appeal on ground (f) is that the requirements of the notice are excessive and lesser steps would overcome the objections. An appeal on ground (g) is that the time for compliance is too short.
26. Although no appeal was made explicitly on ground (g), the appellant's case is that she would be prepared to replace the timber balustrade with wrought iron railings, if that would overcome the objections to the development, but she would need more time to raise the money to fund it.
27. The Council considers that it would be possible to devise a revised proposal for the terrace and balustrade that would overcome the objections, but approval for any such scheme would require an application for planning permission.

*Reasons and conclusions on ground (f) and implied ground (g)*

28. Given the issues raised by the existing development, the planning merits of any alternative can be properly considered only within the context of a formal planning application, where all interested parties affected by the development have an opportunity to comment. It cannot be addressed through an appeal on ground (f). Consequently, the appeal on ground (f) fails.
29. However, if an alternative proposal is put forward which might be acceptable in planning terms, it is open to an Inspector to allow the appeal under ground (g) and extend the period for compliance with the notice so that the planning merits of the alternative can be properly explored.
30. An extension of the compliance period would not be justified to enable finances to be raised to pay for alterations to unauthorised development. However, I consider that an extension to six months is warranted in this case to enable discussions to take place on a suitable alternative design of balustrade and a planning application to be made. To that limited extent, the appeal succeeds on ground (g).

**Overall conclusions**

31. I have taken account of my observations at the site and the surrounding area and all the matters raised in the written representations. For the reasons given, I shall uphold the enforcement notice, as varied by the extension to the period for compliance. I shall refuse to grant planning permission on the deemed application.

*George Mapson*

INSPECTOR