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# Appeal Decision

Inquiry held on 13 November 2012

Site visit made on 13 November 2012

**by R J Perrins MA MCI ND Arbor**

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

**Decision date: 14 December 2012**

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## **Appeal Ref: APP/T5150/C/12/2168890**

### **83 Purves Road, London NW10 5TE.**

- 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 Mrs Katie Scotland against an enforcement notice issued by the Council of the London Borough of Brent.
  - The Council's reference is E/11/0642.
  - The notice was issued on 9 December 2011.
  - The breach of planning control as alleged in the notice is the erection of a wooden decking and railings to form a roof terrace to the rear on top of two-storey rear extension of the premises.
  - The requirements of the notice are:  
STEP 1 Remove the wooden decking and metal railings on top of the two-storey rear extension, remove all items and debris and all materials associated with the unauthorised development from the premises.  
STEP 2 Fix the doors that lead out onto the flat roof of the two-storey rear extension of the premises so that it is permanently shut and can no longer open.
  - The period for compliance with the requirements is 2 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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## **Decision**

1. 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.

## **Preliminary matters**

2. The appellant and her husband gave evidence under oath. However, following completion of their evidence, and a short adjournment, they formally withdrew the appeal on ground (d). Given that was the only legal ground of appeal it was agreed the Council witnesses did not need to give evidence on oath. The appeal proceeds on grounds (a) and (f) only.
3. A Statement of Common Ground has been agreed and submitted which sets out a description of the site, planning history and areas of disagreement.

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

### *Main Issues*

4. I consider the main issues in this case are the impact of the development upon the living conditions of occupiers of adjacent dwellings and the impact of the development upon the character and appearance of the locality.

### *Reasons*

5. The appeal premises, a mid-terrace dwelling, is located near to the eastern corner of the junction of Purves Road and Hiley Road, a predominantly residential area. The roof terrace has been constructed on top of a rear projection with access through patio doors installed in a rear dormer window. It is served by wooden decking and metal railings with willow screening attached.
6. Policy BE2 of the Brent Adopted Unitary Development Plan 2004 (BAUDP) requires developments to be designed with regard to their local context and to make a positive contribution to the character of the area. Policy BE9 of the same Plan states that extensions to buildings should meet certain criteria including, amongst other things, that they are of appropriate scale and massing and provide a satisfactory level of privacy and outlook for residents.

### *Living Conditions*

7. I accept that given the location, density of residential development, and proximity to neighbours, that a degree of overlooking is inevitable in any event. Views are available across gardens and into a side window of 68 Hiley Road from the rear windows of the appeal property and the dormer window at No 85. I also accept that the willow screening affords some screening and reduces views from, and into, the terrace. Furthermore it was agreed that the appellant and her husband do not actively seek views into the adjoining property and seek to respect their neighbours' privacy. Given the aspect of the site, and that it faces the side of No 68 Hiley Road, I do not consider any reduction in sunlight or daylight caused by the screening to be of significant harm.
8. However, I must consider all future occupiers and visitors to No 83 and I was able to see that views are readily available directly into the adjoining property No 81. Whilst those views are through a high level window serving the stairs and landing of that property, a non-habitable room, I was able to see that, given the proximity and depth of the terrace views are available of the majority of the landing and a bedroom door. I am in no doubt that this has restricted the use of No 81; any occupiers would be aware that those views are available each time they left their bedrooms and would need to act accordingly.
9. Given the height of the window (just below the eaves) it would be reasonable to expect a certain degree of privacy and the freedom to move around one's own house without concern (from bedroom to bathroom for example) and without being overlooked. That is regardless of the proximity of nearby properties. In addition the terrace allows for direct overlooking of and loss of privacy to the adjoining rear gardens at 81 and 85 Purves Road and 68 Hiley Road. Whilst the appellant points to no objections from a number of neighbours again I have to consider all future occupiers of nearby properties.

10. The terrace has facilitated extensive views of neighbouring property beyond that which existed from rear windows. Furthermore, I concur with the Council's unchallenged view that someone stood on a terrace looking into adjoining properties has a more detrimental impact than views taken from within a property. It is the combination of these factors that leads me to find the development has led to unacceptable harm to the living conditions of occupiers of neighbouring properties.

#### *Character and appearance*

11. Turning to the second issue, views of the balcony are readily available from Hiley Road where it is visually prominent. However, the terrace has been constructed from high quality materials and is served by a parapet wall; the iron railings do not look unsightly. The deck and furniture upon it cannot be seen from street level. Moreover, the eye is drawn to the dormer window roof extension which it serves; the dormer's modern appearance jars against the more traditional roofscape in the locality. Nevertheless, I accept the willow screening attached to the railings is an unsightly addition appearing out of context at this level. Although I see no reason why this could not be replaced with a more suitable screening such as box hedging, as discussed at the Inquiry. A maintenance and replacement scheme could be secured for such a screen by way of condition.
12. For these reason I find the development has not led to unacceptable harm to the character and appearance of the locality. However, that does not outweigh the harm I have identified; whilst conditions to secure a different edge treatment would reduce the development's impact on the street scene it would not reduce the harm to living conditions. Moreover no screening, leaving just the railings, would exacerbate that harm.

#### *Other matters*

13. The appellant has drawn to my attention a number of terraces in the locality that have been given planning permission along with a planning appeal decision (ref:APP/T5150/D/11/2164916) for *a roof terrace and associated balustrade* at 79B Purves Road. I accept that decision turned on the appearance of the terrace and lack of a parapet wall, unlike the development subject of this appeal. However unlike the terrace at No 83 the nearest neighbouring window was set beyond the flank wall with views to it obscured. It is not therefore comparable to this case. In the same way the other developments occupy different positions and will have different relationships to neighbouring properties; each case must be decided upon its own merits. I find nothing of sufficient weight to alter my decision.
14. In reaching my conclusions I have taken into account the recently published National Planning Policy Framework. However, I have not been provided with any substantive evidence which would lead me to conclude that the development plan policies referred to above are in conflict with the Framework. Accordingly, the Framework has not led me to reach any different overall decision.

#### *Overall Conclusions*

15. Thus, for the reasons given above and having taken full and careful account of the views of local residents and all other matters I conclude that the development is at conflict with the aforementioned planning policies and the

Advice contained within the Supplementary Planning Guidance No 5 *Altering and Extending Your Home*. The appeal on ground (a) should be dismissed.

**The appeal on ground (f)**

16. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. The requirements of the notice in this case seek the removal of the decking, railings and all resultant materials from the land along with permanent closure of the doors that lead onto it. That covers everything in the alleged breach of planning control and concurs with the Council's assertion that the notice was served under s173(4)(a).
17. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. Given the purpose of the notice is to remedy the breach of planning control, it falls within s173(4)(a). Therefore, any lesser requirements, such as the options submitted by the appellant which include a variety of wooden structures along with the treatments discussed at the Inquiry, such as obscure glazing, would simply not meet the requirements of the notice and thus would not remedy the breach of planning control.
18. Moreover, for the reasons set out above I do not consider such treatments would remedy the injury to amenity in any event. In the same way I am not convinced, without a scheme to consider, that reducing the area of the terrace would resolve the harm I have identified. Thus the appeal on ground (f) fails.

*Richard Perrins*

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Mrs K L Scotland	The appellant
Mr G A D Scotland	The appellant's spouse
They both gave evidence	

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Nigel Wicks MRTPI	Instructed by Director of Planning, London Borough of Brent.
He gave evidence and called	
Miss M Saugar	Neighbour.

## PHOTOS

- 1 Internal view of No 83 pre development showing original stairs and landing window.