
Appeal Decision

Site visit made on 10 January 2017

by J A Murray LLB (Hons), Dip.Plan Env, DMS, Solicitor

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

Decision date: 18 January 2017

Appeal Ref: APP/G5750/C/16/3158360

Land at 326 Green Street, Upton Park, London, E13 9AP

- 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 Mohammed Arshad against an enforcement notice issued by the Council of the London Borough of Newham.
- The enforcement notice, numbered 13/01581/ENFA, was issued on 19 August 2016.
- The breach of planning control alleged in the notice is breach of conditions 2 & 4 attached to application 09/00290/FUL dated 1st May 2009 as discharged in part by 12/00677/AOD dated 22nd August 2012.
- The requirements of the notice are:
 1. Remove the balcony and access door to the balcony (as shown edged in yellow on the photograph attached at Appendix 1) and reinstate a juliet balcony and patio door as approved by drawing number 6005/DET-01 attached to approval of details application 12/00677/AOD;
 2. Remove the three air conditioning units located on the northern and western elevations of the property (as shown edged in red on the photographs attached at Appendix 2);
 3. Demolish the canopy (as shown edged blue on the photograph attached at Appendix 3); and
 4. On completion of steps 1, 2 and 3 above, remove all materials and debris from the site
- The period for compliance with the requirements is three months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as corrected and varied is upheld as set out below in the Decision.

Preliminary matters

1. Planning permission Ref 09/00290/FUL was granted on 1 May 2009 (the planning permission) for: "Demolition of existing building and erection of a replacement three storey building with a Class A1 retail use on the ground floor and two one-bed flats on the first and second floors" at the appeal site.
 2. Condition 2 of that permission stated: "All works are to be completed in accordance with drawing numbers; Unnumbered site location plan, 6005/16, 6005/01, 6005/02, 6005/03, 6005/13 Rev A, 6005/14 Rev A, 6005/15 Rev C, prepared by Richard Bonshor. No further drawings apply unless otherwise approved in writing by the Local Planning Authority." Condition 4 of the
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planning permission stated: "Prior to the commencement of development a drawing at a scale of not less than 1:50 of the balustrade as detailed on drawings 6005/15 Rev C shall be submitted to and approved in writing by the Local Planning Authority."

3. Details of the balustrade were submitted in accordance condition 4 of the planning permission. There was therefore no breach of condition 4, which did not also require the development to be carried out in accordance with the approved details. However, when the details were approved on 22 August 2012 under Ref 12/00677/AOD (the approval of details), this was subject to condition 1, which stated: "The development shall be carried out in accordance with the following approved drawing: Rear Balustrade Detail – 6005/DET-01."
4. The rear balustrade does not conform to drawing 6005/DET-01 and so there has been a breach of condition 1 of the approval of details. This does not amount to a breach of condition 4 of the planning permission. However, it does also constitute a breach of condition 2 of the planning permission, which covers drawings "otherwise approved in writing by the Local Planning Authority", as well as those listed in condition 2.
5. It is clear from the appeal submissions that the appellant understood the nature of the alleged breach. However, in the interests of clarity, I will correct the allegation so that, as is customary in such cases such as this, it sets out the details of the relevant conditions on the planning permission and approval of details and the manner in which those conditions were breached. I am satisfied that this can be done without causing injustice.

The appeal on ground (a)/the deemed application for planning permission

6. As the notice concerns breach of conditions, the deemed application is for planning permission for: "Demolition of existing building and erection of a replacement three storey building with a Class A1 retail use on the ground floor and two one-bed flats on the first and second floors without complying with condition 2 of planning permission Ref 09/00290/FUL and condition 1 of planning permission Ref 12/00677/AOD, in so far as that non-compliance involves: the installation of a balcony and access door to the balcony, instead of a juliet balcony and patio door; the installation of three air conditioning units located on the northern and western elevations of the property; and the installation of a canopy on the front elevation."

Main Issues

7. The main issues are:
 - The effect of the balcony on neighbours' living conditions in terms of overlooking, loss of privacy, noise and disturbance;
 - The impact of the air conditioning units on the character and appearance of the host property and the area;
 - The impact of the air conditioning units on neighbours' living conditions in terms of visual impact and noise and disturbance; and
 - The impact of the front canopy on the character and appearance of the host property and the area.

Reasons

8. Approved drawing No 6005/15 Rev C, referred to in condition 2 of the planning permission, showed a juliet balcony at second floor level. Drawing No 6005/DET-01, referred to in condition 1 of the approval of details, depicted this protruding just 90mm from the rear elevation, with patio doors behind. The balcony which has been installed is both deeper and wider than that approved. In any event, unlike the approved juliet balcony, it is large enough to walk onto and to sit on in chairs, or otherwise. There were no chairs on the balcony at the time of my visit, but it was a cold winter's day.
9. As constructed, the balcony affords commanding views of several gardens and yards at the rear of Raymond Road to the west, as well as of the roof terrace serving the first floor flat below. Despite the separation distance, it also allows views down into the first floor rear windows of the Raymond Road properties. The approved Juliet balcony would enable some overlooking, through the patio doors. However, the effect of this would be less intrusive than observation from people standing or sitting on the balcony as built.
10. There are other balconies/roof terraces serving nearby properties, including those at 336 – 338 and 316 – 324 Green Street, and of course the approved terrace serving the first floor flat at the appeal property. However, they differ from the balcony the subject of this appeal. First, they are larger, which enables people to stand or sit away from the terrace edges. Secondly, some of them, including the terrace serving the first floor of the appeal property, are also enclosed by solid walls. Whilst not high enough to prevent anyone standing at the edge of the terrace from looking over them, those walls obstruct views for anyone seated on the terrace. In these circumstances, overlooking from the unauthorised balcony will be more sustained, intrusive and significant than that from the other balconies/terraces that I observed. Furthermore, given its limited size and open railings, anyone standing or sitting on this balcony will always be visible to neighbours and the perception of overlooking and lost privacy will be thereby increased. Although the railings could be replaced by opaque or obscure screening, those screens would need to be unreasonably high to reduce overlooking from a balcony of this size to acceptable levels.
11. This is a town centre location, where a lesser degree of amenity might be expected than in a purely residential area. However this, and the fact that neighbours' privacy is already compromised to some degree, does not justify the further significant detriment resulting from this development.
12. Neighbours have complained of noise from those using the balcony, and this forms part of the Council's objection. However, disturbance through unusual levels of noise would be dependent on the behaviour of the occupiers, rather than being an inevitable consequence of the existence and use of the balcony. By contrast, anyone sitting or standing on the balcony will at least create a perception of overlooking and lost privacy, even if they are not in fact looking at neighbours. In these circumstances, the potential for noise and disturbance is not sufficient reason in itself for rejecting the balcony, though it may exacerbate concerns over loss or privacy.
13. I conclude on the first main issue that the balcony results in unacceptable harm to neighbours' living conditions in terms of overlooking and loss of privacy. This is contrary to Policy 7.6 of the London Plan Spatial Development Strategy

for London (consolidated with alterations since 2011), published March 2016 (LP), which seeks, among other things, to prevent unacceptable harm to neighbours' privacy. It also conflicts with LP Policy 7.4, which includes a requirement for development to create a positive relationship with its surroundings and to ensure that people feel comfortable with their surroundings. In addition, the development breaches Policy SP8 of the London Borough of Newham Local Plan: Detailed Sites and Policies Development Plan Document, adopted 20 October 2016 (DSPDPD), which aims to secure neighbourly environmental, social and design aspects of development. These policies are consistent with the National Planning Policy Framework (the Framework). This indicates that the planning system should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. It also states that good design is a key aspect of sustainable development; it is indivisible from good planning and should contribute positively to making places better for people.

14. I acknowledge that the balcony provides outdoor amenity space for the occupiers of the second floor flat. However, this benefit does not justify the harm to neighbours' living conditions.
15. Turning to the second main issue, none of the 3 air conditioning units is shown on the approved plans. Whilst the unit on the rear elevation is substantial and unattractive, it is not visible in the public domain and is largely screened from private properties to the rear by the pitched roof of an intervening outbuilding. The top of this unit might be seen from the upper windows of properties to the rear, but it will not be unduly obtrusive against the backdrop of the building and having regard to the separation distance. I also note that a number of other air conditioning units are more clearly visible in the area, for example to the rear of the building immediately to the north.
16. The 2 air conditioning units on the northern elevation are visible from Green Street, as one looks down the alleyway between the appeal property and its neighbour. I note that, under CS Policy SP7, Green Street is one of the streets that are to be the subject of public realm and regenerative improvements that reinforce their role as high quality movement corridors and linear gateways, with emphasis placed on de-cluttering the public realm. Nevertheless, this is not a conservation area and these air conditioning units are relatively small and unobtrusive when glimpsed from this busy town centre street. They are not on the Green Street frontage and I noted other similar units, along with larger plant and equipment, such as extractor flues, on the side elevations of other nearby properties. I also saw 1 on the front elevation of a property, at first floor level. In this context, the appellant's air conditioning units are not unduly incongruous or unexpected and they do not contribute significantly to clutter in the street scene.
17. For the reasons given, I conclude on this issue that the air conditioning units do not cause unacceptable harm to the character and appearance of the host property or the area. In this regard, I find no conflict with any development plan policies, in particular LP Policy 7.4, CS Policy S6, SP1, SP3 or SP7 and DSPDPD Policy SP8. I also find no conflict with the Framework which, whilst emphasising the importance of good design, also supports economic growth and encourages planning to meet the needs of business and promote competitive town centre environments. The Council accepts the need for air conditioning units to serve the commercial premises on the ground floor of the

appeal property and there is no obvious scope for more discreet siting or effective screening.

18. In terms of the effect of the air conditioning units on neighbours' living conditions, for the reasons given in connection with the last main issue, the air conditioning unit on the rear elevation of the appeal building will not have any significant detrimental visual impact on neighbours to the west. The units on the side elevation have even less impact.
19. Turning to noise and disturbance, the Council asserts that the air conditioning units generate unacceptable levels of noise and disturbance. I accept that such units can generate noise. However, though these units have been in place since at least 3 August 2016, when a photograph which shows them was taken, no evidence has been produced to demonstrate any actual harm in this case. It is notable that none of the neighbour representations mentions noise and disturbance from these units. As my site inspection revealed no obvious issue in this regard, I am not persuaded on the evidence before me that dismissal of the appeal in relation to the air conditioning units would be justified on grounds of noise and disturbance, or that a condition requiring the submission of a written assessment would be necessary. Of course, my decision would not prevent the Council taking action, using other statutory powers, if a nuisance were established.
20. I conclude on the third main issue that the air condition units cause no unacceptable harm to neighbours' living conditions in terms of visual impact or noise and disturbance. In this regard, I find no conflict with the LP, CS or DSPDPD policies referred to.
21. With regard to the impact of the front canopy on the character and appearance of the host property and the area, such canopies are a common and indeed characteristic feature on Green Street. When retracted, this canopy presents as a small and inconspicuous protrusion. When extended, it is prominent, but not out of character with the host property, which includes shop premises on the ground floor, or the busy town centre street scene.
22. Again, I note the aim of CS Policy SP7 to reduce clutter, but neither that policy nor its reasoned justification, makes specific mention of canopies or awnings, despite their being such a common feature. I am not persuaded that the canopy conflicts with Policy SP7. I also note the indication in the Framework, which post-dates Policy SP7, that design policies should avoid unnecessary prescription or detail, concentrating instead on guiding the overall scale, density, massing, height, landscape, layout, materials and access of new development.
23. For the reasons given, I conclude on the last main issue that the front canopy does not harm the character and appearance of the host property or the area. In this regard, I find not conflict with the development plan policies referred to and no conflict with the Framework.

Overall conclusion on ground (a)/the deemed application for planning permission

24. For the reasons given I conclude that the balcony causes unacceptable harm to neighbours' living conditions in terms of overlooking and loss of privacy. Condition 2 of planning permission Ref 09/00290/FUL and condition 1 of

planning permission Ref 12/00677/AOD are therefore reasonable and necessary in this regard and the appeal should fail in respect of the balcony. However, I have found that the air conditioning units and the front canopy are acceptable. The appeal should therefore succeed in part, so that the development should be permitted with these items in place, without compliance with condition 2 of planning permission Ref 09/00290/FUL.

25. I will not vary the requirements of the notice, as this would lead to unconditional planning permission being granted under section 173(11) of the 1990 Act, if the notice is complied with. I intend to grant permission subject to the conditions on the original planning permission, so far as they are still subsisting and capable of taking effect. However, section 180 will operate to override the requirements of the notice, in so far as they are inconsistent with the permission hereby granted.

Ground (g)

26. The appellant contends that 6 months should be allowed in respect of the balcony, rather than 3 months, because of the logistical challenges of accessing this constrained site and constructing temporary scaffolding. Whilst I am not persuaded that the work will be physically difficult, it will inevitably involve disruption for the occupiers of the first floor flat, as well as the second floor flat served by the balcony. Sufficient time therefore needs to be allowed for proper arrangements to be made.
27. However, a period of 6 months could enable the existing balcony to remain in use well into the summer months, when the impact on neighbours is likely to be greatest. I consider that extending the period for compliance to 4 months would strike a proportionate response and I will vary the notice accordingly.

Decision

28. (a) The enforcement notice is corrected by deletion of the allegation in section 3 and the substitution of the following:

"On 1 May 2009 planning permission Ref 09/00290/FUL was granted for: "Demolition of the existing building and erection of a replacement three storey building with a Class A1 retail use on the ground floor and two one-bed flats on the first and second floors, subject to conditions." Condition 2 stated: "All works are to be completed in accordance with drawing numbers; Unnumbered site location plan, 6005/16, 6005/01, 6005/02, 6005/03, 6005/13 Rev A, 6005/14 Rev A, 6005/15 Rev C, prepared by Richard Bonshor. No further drawings apply unless otherwise approved in writing by the Local Planning Authority." Condition 4 stated: "Prior to the commencement of development a drawing at a scale of not less than 1:50 of the balustrade as detailed on drawings 6005/15 Rev C shall be submitted to and approved in writing by the Local Planning Authority."

On 22 August 2012 planning permission Ref 12/00677/AOD was granted for the approval of details pursuant to condition 4 of planning permission Ref 09/00290/FUL, subject to condition 1, which stated: "The development shall be carried out in accordance with the following approved drawing: Rear balustrade Detail – 6005/DET-01.

It appears to the Council that condition 2 of planning permission Ref 09/00290/FUL and condition 1 of planning permission Ref 12/00677/AOD have

not been complied with because: (i) a balcony and access door to the balcony have been installed on the rear elevation at second floor level, which differ from the juliet balcony and patio doors shown on the approved drawings numbered 6005/15 Rev C and 6005/DET-01; (ii) three air conditioning units have been installed on the northern and western elevations of the property, which are not shown on any of the approved drawings; and (iii) a canopy has been installed on the front elevation which is not shown on any of the approved drawings.”

(b) The enforcement notice is varied by the substitution of four months as the time for compliance in section 5.

(c) The appeal is allowed in part and planning permission is granted for demolition of existing building and erection of a replacement three storey building with a Class A1 retail use on the ground floor and two one-bed flats on the first and second floors at 326 Green Street, Upton Park, London, E13 9AP (the development) in accordance with application Ref 09/00290/FUL dated 11 March 2009, without compliance with condition 2 previously imposed on planning permission Ref 09/00290/FUL dated 1 May 2009, in so far as the three air conditioning units installed on the northern and western elevations of the property and the canopy installed on the front elevation are hereby permitted, notwithstanding that they are not shown on any of the approved drawings listed in condition 2 of planning permission Ref 09/00290/FUL, but subject otherwise to condition 2 and to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect, and subject also to condition 4 of planning permission Ref 12/00677/AOD.

(d) Planning permission is refused for the development to be carried out with the addition of a balcony and access door to the balcony on the rear elevation at second floor level, without compliance with condition 2 of planning permission Ref 09/00290/FUL and condition 4 of planning permission Ref 12/00677/AOD.

(e) Subject to the correction and variation set out in (a) and (b) above, the enforcement notice is upheld.

J A Murray

INSPECTOR