



Appeal Decision

Site visit made on 7 August 2019

by Simon Hand MA

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

Decision date: 20 August 2019

Appeal Ref: APP/A5840/C/18/3215909

Flat 3, 16 Upland Road, London, SE22 9EE

- 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 Thomas Colvin against an enforcement notice issued by the Council of the London Borough of Southwark.
- The enforcement notice was issued on 10 October 2018
- The breach of planning control as alleged in the notice is that on 19 July 2017 planning permission was granted by the Council under reference number 17/AP/1268 for the Variation of Condition 2 (Approved plans) of planning permission 16/AP/3338 for: 'Change of use from Financial and Professional Services (Class A2) to Residential (Class C3); Demolition and partial reconstruction of existing single-storey rear projections; construction of a rear dormer roof extension, formation of front and rear lightwells associated external alterations to facilitate the creation of 2 x 1-bed flats, 2 x 2-bed flats and 1 x 3-bed flat' ('the Planning Permission'), which was subject to conditions.

The sixth condition provided that:- "The flat roof of the two-storey rear projection (basement and ground floor), hereby permitted shall not be used other than as a means of escape in the event of an emergency and shall not be used for any other purpose including use as a roof terrace or balcony or for the purpose of sitting out".

It appears to the Council that this condition has not been complied with because the flat roof of the two-storey rear projection (shown hatched black on the attached Plan) has been used as a roof terrace or balcony and for the purpose of sitting out.

- The requirements of the notice are 5.1 cease the use of the flat roof of the two-storey rear projection (shown hatched black on the attached plan) for any purpose (including its use as a balcony for leisure) other than as a means of escape in the event of an emergency; 5.2 remove the decking shown on Photograph 1 annexed to this notice; 5.3 Remove the outdoor light shown circled red on Photograph 2 annexed to this notice; 5.4 Remove any material and any debris arising from compliance with the requirements of 5.2 and 5.3 above to an authorised place of disposal.
 - The period for compliance with the requirements is 1 month.
 - 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.

The Appeal on Ground (a)

2. There is no dispute that the development plan policies relied on by the Council (7.6 of the London Plan, 13 of the Core Strategy and saved policy 3.2 of the Southwark local Plan) all encourage high standards of amenity, and to avoid causing harm to neighbours' amenity from noise and loss of privacy. From what I saw on site the use of the balcony would have the potential to be highly intrusive. This is a typical tightly grained urban neighbourhood, and from the first floor windows of the building there are clear views into neighbours' gardens and to their windows. This would be exacerbated from the terrace, which sits over a rear extension that protrudes into the back yard area and so provides even more direct and intrusive views to gardens and windows in neighbouring houses. The use of the flat roof as a terrace would be contrary to the Council's policies and should not be allowed.
3. The appellant's argument appear to accept this and they are looking only to reduce the requirements. He says the fixed Juliet balcony prevents any use of the flat roof and the decking and light are by themselves unobjectionable. However, the allegation is that the balcony has been used for sitting out and photographs provided by neighbours would appear to support this assertion. Success on ground (a) would authorise the continued use for sitting out, which would be harmful as described above, so the ground (a) appeal has to fail.

The Appeal on Ground (f)

4. The argument here is that as the balcony can no longer be used for sitting out, the decking and the light should be allowed to remain. The former because it provides a better surface for the roof when used as a means of escape and it looks better from above. The latter because it causes no harm and provides little more light than falls out of the windows when the rooms are lit internally.
5. As I saw the Juliet balcony was fixed by bolts and could not be opened. It also came up to my chest height and so would be difficult to climb over. In my view the Juliet balcony now effectively prevents the use of the flat roof as a terrace. However, it would also seem to be pretty easy to remove the bolts and convert the balcony back so that it opened, which would seem to have been the case in the past. The current use of the room is as a baby's bedroom, and I have no doubt the current occupiers do not intend to use the flat roof as a terrace, but there is no control over who else may live in the flat in the future, and the flat roof obviously was a temptation in the past. It is argued the decking is more attractive than the roof below, but it is hardly visible from anywhere except upstairs in this building and one or two neighbours. I don't accept that the decking is the only means of covering up an unsightly roof. There would seem to be no reason to retain the light, unless the terrace was to be used.
6. It is well known that items that have facilitated an unlawful use can be required to be removed. There would seem to be no reason to retain the decking and light unless it was to continue to facilitate the use of the flat roof as a sitting out area. Therefore it is not excessive to require them to be removed. The appeal on ground (f) fails.

Simon Hand

Inspector