



Appeal Decision

Site visit made on 2 June 2021

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 June 2021

Appeal Ref: APP/A5270/C/20/3254988

93 St Elmo Road, Shepherd's Bush, London W12 9DZ

- 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 Ed Cotterell against an enforcement notice issued by the Council of the London Borough of Ealing.
- The enforcement notice was issued on 13 May 2020.
- The breach of planning control as alleged in the notice is: *Without planning permission the installation of a full length door in the western elevation of the second floor roof extension, erection of a parapet wall and installation of glass balustrade at second floor level.*
- The requirements of the notice are:
 - i. Replace the full length door in the western elevation of the second floor roof extension with the window as shown on approved plan drawing number 02 - proposed plans of the Planning Permission 164209FUL for the rear roof extension incorporating Juliet balcony (involving conversion of roof space to habitable use) and installation of two rooflights to front roofslope,
 - ii. Remove the parapet wall and glass balustrade in its entirety,
 - iii. Remove all resultant debris.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary decision: The appeal is dismissed and the enforcement notice is upheld with corrections, as set out in the Formal Decision below.

Procedural Matters

1. During the course of the appeal the new London Plan was published in March 2021. The parties have been given the opportunity to comment and submit relevant policies from the new London Plan that replace those cited from the draft London Plan and the previous 2016 London Plan. I have taken these into account in coming to my decision.
2. Requirement i) of the notice requires the full length door to be replaced by the window as shown on approved plan "drawing no 02-proposed plans of the Planning Permission-164209FUL...". This shows the proposed floor plans that indicate the location and width of the window. However, drawing no 03 titled "Proposed sections and elevations" is attached to the notice and shows what the window looks like in elevation.
3. I can correct the notice to refer to both drawing nos 02 and 03. There would be no injustice caused to either party as both these plans were considered by the Council and later by the appeal Inspector when determining the

application 164209FUL. Furthermore, the plans have been submitted as evidence by the appellant.

4. In his Statement and appendices, the appellant repeatedly refers to the previous planning permission allowed on appeal as 16/4206/FUL. The last digit is clearly a typographical error.

Background

5. Planning permission was granted on appeal¹ for the 'construction of a roof extension and conversion and alterations to the first floor including the rear elevation and the insertion of roof lights to the front roof slope.' The permission effectively allowed a roof extension with a rear dormer plus a Juliet balcony in front of a new window in the roof.
6. However, a different design of development has been built. Instead of the rear window in the dormer, a full length glazed double door has been inserted and a balcony and parapet walls erected, including obscure glazed balustrading. Instead of the intended Juliet balcony there is now only a window.
7. The roof extension and conversion provide two habitable rooms and a bathroom. At the time of my visit the front room was in use as a bedroom and the rear room, with the glazed doors and balcony, was in use as a sitting room with television.

The Appeal on Ground (a) and the Deemed Planning Application

8. The appellant has made an appeal on ground (a) – that planning permission ought to be granted for the matters alleged in the notice. The deemed planning application arising from the ground (a) appeal is for the "installation of a full length door in the western elevation of the second floor roof extension, erection of a parapet wall and installation of glass balustrade at second floor level" as enforced against.

Main Issue

9. It is clear from the reasons for issuing the enforcement notice and its Statement that the Council has raised no concerns about the quality of the materials used, the appearance of the development, or its effect on the character and appearance of the area and the street scene of St Elmo Road. Nor has it raised concerns about effects of light and outlook on occupiers of neighbouring properties. I have no reason to disagree.
10. The main issue in this appeal is the effect of the appeal development on the living conditions of existing occupiers of neighbouring properties with regard to overlooking.

Reasons

11. The appeal site is a mid-terraced two storey property with a two-storey outrigger in an established and predominantly residential area of similar type properties. The site comprises a ground floor flat for 91 St Elmo Road, and the appeal property is a first floor flat above it with accommodation in the roof.

¹ LPA ref:164209FUL and appeal ref: APP/A5270/W/16/3161788 dated 27 January 2017

There is a small rear courtyard, a common feature of properties in the area. At the rear there is also a wide pathway that runs from Valetta Road to Jeddo Road that gives pedestrian access to the rear courtyard of the appeal property and other properties on St Elmo Road and Davis Road.

12. The glazed door is recessed from the end of the roof extension. The side walls of the recess serve to restrict views out when one is in the room, even when standing at the door itself. However, the balcony and parapet extend the development outwards to the end of the outrigger. As a result, occupiers of the room are now able to walk through the outward-opening doors and stand and walk about on the balcony.
13. On my site visit I was able to stand on the balcony and lean over the balustrade look down into the courtyard of the appeal property as well at the neighbouring courtyard at 87-89 S Elmo Road. I could see garden furniture and would be able to see people using these spaces. Views into the neighbouring rear courtyard of 95-97 St Elmo Road were more limited due to the presence of the side parapet wall, but I was still able to see part of the courtyard. I was able to look directly towards rear windows of properties on Davis Road, as well as into other rear courtyards of properties of both roads and see BBQs and outside chairs and tables. Views along the entire length of the rear pathway in both directions was also possible, but views of these more distant courtyards were more oblique.
14. In a denser urban area such as this there are generally accepted lower levels of amenity and privacy, and I saw that partial views of other properties and private courtyards already exist. Nonetheless, it was clear to me that the full height glazed door and balcony have facilitated more extensive and intrusive views of neighbouring properties and courtyards than the approved window would have done, as well as increasing the perception of being overlooked. I find the appeal development results in a significant increase in overlooking of neighbouring properties and rear courtyards.
15. It may be the case when sitting down in the room that views out of the doors, with the obscure glazed balustrade beyond, would be no worse than looking out of the approved window. However, this does not outweigh the additional overlooking the balcony affords.
16. Being approximately 0.6 metres deep, the balcony is not large enough for a table and chairs, although one could just about sit on a small chair or stool. Nor is it big enough to be a space for social gatherings. Nonetheless the doors open outwards and give direct access to the balcony where one is able to walk the width of the roof extension from one end of the balcony to the other and lean over the front and side balustrading.
17. The approved Juliet balcony, that is now a window, would be set back a substantial distance on a different part of the rear roof. It would have afforded views of the neighbouring passageway alongside the outrigger rather than the main rear courtyard area. It may be the case that replacing the Juliet balcony with a window now reduces overlooking from this particular aperture. However, this is not a trade-off when the new doors and balcony have increased overlooking to more properties.
18. Opening the door onto the balcony may create a more ventilated room. However, the approved window would also have provided ventilation. I have

not been presented with any substantive evidence that ventilation to this room is inadequate such that it necessitates the insertion of a glazed door opening onto a balcony.

19. The appellant refers me to a number of other existing and approved roof and balcony extensions.
20. The approved roof alterations and extension next door at 95 St Elmo Road² (No.95) show a large glazed window in the rear roof extension, and a Juliet balcony similar to what had been approved at the appeal property. This large rear window would likely afford greater views than the smaller window allowed by the Inspector at the appeal property. However, the large window would be set back from the end of the roof extension and outrigger, with no balcony. It is therefore not the same configuration and would not create the same degree of overlooking as the appeal balcony and glazed door.
21. Contrary to the appellant's assertion, the Council imposed a condition on the planning permission at No.95 stipulating that "No part of the roof of the extension shall be used as or altered to form a balcony roof garden roof terrace or similar amenity area", in order to protect the living conditions of nearby properties. When approving the roof extension at the appeal property, the Inspector did not impose a condition restricting use of the roof for a balcony – but he was considering a different scheme to that at No.95 and the window was much smaller.
22. Next door at 87-89 St Elmo Road there are full height doors with a Juliet balcony at the end of the outrigger. Whilst one would be able to lean over the Juliet balcony, the sphere of view would be more limited because one cannot step out and away from the building and it is lower down at first floor level. I stood at the appellant's widened first floor kitchen window, at the end of the outrigger – this had a less extensive view of other courtyards and properties, albeit there was no Juliet balcony.
23. I saw the roof balcony at 67 Davis Road. From my observations and the submitted plans it is markedly different. It is much larger, but set back approximately 1.3 metres from the end of the outrigger and about 1 metre in from the side. Moreover, it was surrounded by tall obscure glazed balustrading, which in my view would make it improbable that anyone would be able to lean over it, unlike at the appeal balcony.
24. Other balconies have also been approved at 57 and 75 Davis Road, similar to that at No.67. These are also shown set back from the ends and sides of the outriggers by similar distances, with 1.7 metre high obscure glazed balustrading.
25. At 2a Valetta Road there is another large balcony and I could see the outline of a table and chairs through the obscure glazed balustrades. Like with the other examples the balustrading is tall, as illustrated by the appellant's photographs of the men installing the balustrading. Moreover, the property occupies a corner location so has a different context and relationship to neighbouring properties and private amenity spaces when compared to the appeal development.

² LPA Ref: 19/2906/FUL

26. These examples indicate to me the Council has found that roof extensions with balconies can be designed in a way that is acceptable to ensure there is no significant overlooking of occupiers of neighbouring properties. However, none of the examples comprise the same configuration as the appeal development. Consequently, they are not directly comparable to the appeal development, which in any event I must consider on its own merits.
27. I find the appeal development causes an unacceptable degree of overlooking of neighbouring courtyards and properties that would reduce privacy and harm the living conditions of existing occupiers. Accordingly, the development is contrary to Policy 7B of the Ealing Development Management Development Plan Document and Policies D1, D2, D3, D4, D6 and D13 of the new London Plan 2021. These collectively seek, both generally and specifically, to ensure that development is appropriate for its location and context and achieves high standards of amenity for adjacent users ensuring good levels of privacy.

Conclusion

28. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

29. It is directed that the enforcement notice be corrected by amending requirement (i) to make 'approved plan' plural to read 'approved plans', and after "drawing no 02 - proposed plans" **insert** "and drawing no 03 – proposed sections and elevations".
30. Subject to these corrections, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

K Stephens
INSPECTOR