



Appeal Decision

Site visit made on 15 August 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 5th October 2023

Appeal Ref: APP/E5900/C/22/3307643

Doros House, 12 Cambridge Heath Road, London E1 5QH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Gokul Krishna against an enforcement notice issued by London Borough of Tower Hamlets.
- The notice was issued on 15 September 2022.
- The breach of planning control as alleged in the notice is without planning permission, the addition of a balcony to flat GMO5, shown in the location outlined in blue on the attached photograph in Appendix 2.
- The requirements of the notice are to: (1) remove the balcony to the rear of the building at flat GMO5, shown outlined in blue in the photograph in Appendix 2; and (2) remove all resultant materials from the site.
- The period for compliance with the requirements is three months from the date the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary Decision: The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Applications for Costs

1. An application for costs has been made by Mr Gokul Krishna against the Council. This application is the subject of a separate decision.

Preliminary Matters

2. Since the appeal start date, the 2021 iteration of the National Planning Policy Framework (Framework) has been superseded. I am satisfied that the updates to the Framework do not materially affect its content insofar as it is relevant to the main issue of this appeal. I have therefore determined this appeal with regard to the current version, published in September 2023.

Main Issue

3. The main issue is the effect of the development on the living conditions of occupants of the host and neighbouring buildings, with particular regard to privacy and outlook.

Reasons

4. The appeal property is part of a 4-storey mixed use building (Doros House) on the eastern side of Cambridge Heath Road. The building sits close to the junction with Mile End Road, which means its rear elevation runs at a right angle to neighbouring residential properties along that road. Flat GMO5 is

- located towards the southernmost side of the property, which means it is one of the closest flats in Doros House to these neighbouring properties. A small balcony has been erected to the rear of flat GMO5, and whilst the parties disagree with regard to the extent of intervening distance, the distance between the balcony and the properties at nos. 9–25 Mile End Road is limited.
5. Notwithstanding the limited intervening distance, a tall privacy screen has now been erected around the perimeter of the balcony, which was present on my site visit. This reflects the screening used on other balconies to the rear of Doros House. The privacy screen is made of opaque glass and is effective in preventing any meaningful degree of mutual overlooking between the occupiers of Doros House and the occupiers of the properties along nos. 9–25 Mile End Road, thereby ensuring the privacy of occupiers is adequately protected. Its ongoing retention can be secured by condition.
 6. In terms of any flats above the balcony, the privacy impact is broadly comparable to the relationship between balconies already in situ, so does not make a meaningful difference to the living conditions already experienced.
 7. There is also a covered walkway which runs along the rear of nos. 9–25 Mile End Road at first floor level. This walkway is bordered by a mesh fence, which numerous bikes are attached to. The windows to the residential flats at first floor level look directly out over this walkway, which means it already interrupts the views from these flats. Moreover, a tall boundary fence underneath the walkway significantly impedes views towards the balcony from the properties at ground floor level. In turn, and irrespective of the intervening distance, the addition of a small balcony to the rear of flat GMO5 does not make a meaningful difference to the outlook experienced within these neighbouring properties, as it is not readily visible on account of these existing boundary obstructions.
 8. For these reasons, I am satisfied that the development does not cause unacceptable harm to the living conditions of occupiers of the host and neighbouring buildings, with regard to privacy or outlook. The development is therefore consistent with Policy D.DH8 of the Tower Hamlets Local Plan (2031), which says development must protect the amenity of new and existing buildings and their occupants. This includes requirements to ensure good levels of privacy are maintained and that habitable rooms have an acceptable outlook. The development is also consistent with similar amenity protections embedded in Policy D3 of the London Plan (2021).

Other Matters

9. Any allegations of trespass are a civil matter, and are not relevant to the planning merits of the development. As an enforcement appeal, the deemed planning application relates to the development as constructed, so ownership issues are again not relevant. In terms of noise, I do not consider that the balcony would make a material difference to the living conditions of neighbouring occupiers in this regard, when considered in the context of the other balconies along the rear of Doros House, which are not much further away. The Council has also not raised any drainage concerns in respect of the development, and there is no reason before me to suggest that any run-off would be a reason to warrant refusal.

10. The appeal site is within the Stepney Green Conservation Area (CA). I have therefore had special regard to the desirability of preserving the CA and its setting, in line with my statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. As the balcony is commensurate in size, scale and design with other balconies along the rear of the host building, I am satisfied that it integrates effectively without causing harm to the CA or its setting.
11. The appeal site is also located within 60m of the Albion Brewery, which is listed. Once again, I have had special regard to the desirability of preserving the setting of this building, in line with my duty under section 66(1) of the same 1990 Act. Given that the development is not visible from the brewery nor its immediate surrounds, I am again satisfied that it would preserve the setting of this building.

Conditions

12. Whilst privacy screening has already been erected, the screening shown on the submitted plans appears different to what is now in situ. I have therefore included a requirement for these details to be approved, so that the long-term retention and maintenance of the privacy screening can be properly secured. There is a strict timetable for approval and subsequent implementation of the screening. This is because the permission is being granted retrospectively and it is not possible to use a negatively worded condition to secure the approval and implementation of the privacy screening before the development takes place. As worded, the condition will ensure the development can be enforced against if the requirements are not met.

Conclusion

13. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice.

Formal Decision

14. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the addition of a balcony to flat G05 at Doros House, 12 Cambridge Heath Road, London E1 5QH as shown on the plan attached to the notice and subject to the following condition:
 - 1) Unless within 2 months of the date of this decision, details of balcony privacy screening have been submitted to the local planning authority for approval, and unless the approved privacy screening is completed within 3 months of the local planning authority's approval (or such longer timescale as may be approved), the balcony hereby permitted shall be removed in its entirety. The balcony privacy screening shall thereafter be retained and maintained in accordance with the approved details.

James Blackwell

INSPECTOR