



Appeal Decision

Site visit made on 21 November 2023

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 January 2024

Appeal Ref: APP/A5840/C/22/3312337

8 Ashleigh Mews, London, Southwark SE15 4BF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr S Evsikov against an enforcement notice issued by London Borough of Southwark.
 - The notice, numbered 22/EN/0014, was issued on 4 November 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a glass balustrade/railing and decking on the roof of the land and shown for indication purposes only outlined and hatched in green on Map 1 attached to this Notice.
 - The requirements of the notice are to:
 - 5.1 Remove the glass balustrade/railing at roof level.
 - 5.2 Remove all decking installed at roof level.
 - 5.3 Remove all fixtures and fitting associated with this Unauthorised Development from the Land.
 - The period for compliance with the requirements is: Three (3) months.
 - 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.
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Decision

1. The appeal is dismissed, 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.

Preliminary Matters

2. The enforcement notice refers to two elements of development, namely the erection of the glass balustrade/railing and the erection of the decking. However, as the balustrade/railing is physically attached to the decking, the two elements of the development are not severable from one another. Therefore, I have considered the scheme as a whole.
3. A new version of the National Planning Policy Framework (the Framework) was published on 19 December 2023. The parts of the Framework most relevant to this appeal have not substantively changed from the previous iteration and, consequently, it has not been necessary for me to seek the further comments of the main parties in this respect. I have determined the appeal accordingly.

Reasons

4. The main issues are the effect of the development on (i) fire safety, (ii) the character and appearance of the area and (iii) the living conditions of the occupiers of adjacent dwellings with particular reference to overlooking and loss of privacy.

Fire safety

5. Policy D12 of the London Plan 2021 (LP) relates to fire safety. Criterion A3) of this policy requires that all development proposals must achieve the highest standards of fire safety and ensure that they are constructed in an appropriate way to minimise the risk of fire spread. The appellant's response to the planning contravention notice served by the Council indicates that the decking is a composite material, but no details relating to how fire resistant this material is have been provided. The appellant's Statement of Case does not address this matter either, referring only to access arrangements to the roof being unchanged by the development that has taken place.
6. Without any details in this respect, it is not possible to establish whether the decking has minimised the risk of fire spread. As it has placed a new material on the roof, and one that is potentially combustible, it was necessary for information to be provided to demonstrate that the development would accord with the aims of Policy D12 of the LP and thus promote fire safety. This information has not been forthcoming with the appeal submissions, and in such a circumstance it has not been shown that the development is of the highest standard in terms of fire safety. Accordingly, I find conflict with Policy D12 of the LP.

Character and appearance

7. The balustrade/railing encloses only the area immediately surrounding the rooflight, from where access is taken onto the roof of the property. Whilst it is higher than the parapet that surrounds the roof, its limited size, its positioning away from the edge of the roof and its use of clear glazing greatly reduce the visual impact that it has. Although it will be visible from the upper floors of adjacent dwellings, due to these factors it is not an incongruous feature, and it does not result in harm to the character and appearance of the area. The decking does not protrude above the parapet of the roof. It therefore has no perceptible impact on the character and appearance of the surrounding area.
8. For these reasons, the development accords with Policies P13 and P15 of the Southwark Plan 2022 (SP) and Policies D4 and D6 of the LP, where they seek to protect character and appearance and promote good design. There is also no conflict with the aims of the 2015 Technical Update to the Residential Design Standards 2011 Supplementary Planning Document (RDS) in the same respect, or with the Framework where it seeks to achieve well-designed places.

Living conditions

9. The Council has concerns that the roof could be used as an outdoor amenity area. There is no restriction on such a use under the terms of any previous planning permission granted. Whilst the appellant states that they intend to install solar panels on the decking, this is not part of the development that has already been undertaken, and they could not be compelled to install panels if the appeal were to be allowed. It therefore remains a possibility that the roof could instead be used for outdoor amenity purposes.
10. The decking that has been installed offers protection to the fibreglass roof below it. It means that people walking on the flat roof do not need to walk directly upon its surface. Any furniture brought onto the roof in conjunction with a use as an amenity area would also not have to be placed on or moved

across its surface. Accordingly, it would seem to me that the decking offers substantial protection to the roof surface from wear and tear.

11. Given that the replacement or frequent repair of a damaged fibreglass roof would be likely to be an expensive undertaking, I consider it probable that the roof would be used much less often, if at all, as an amenity area if the decking was not present. In my view therefore, the decking would at the very least facilitate a more frequent use of the roof as an amenity area than might otherwise occur.
12. As almost panoramic views of neighbouring properties can be taken from the roof and these are views from a relatively close distance, the frequent use of the roof would cause significant harm to the occupiers of adjacent dwellings through overlooking and a loss of privacy. Whilst planters have been placed around the perimeter of the roof, these are not entirely effective in preventing overlooking and the screening they do provide would be lost or reduced if the plants died or were removed. That there is already a first-floor window at the appeal property facing some of the adjacent dwellings also does not justify the harm caused, and the overlooking possible from this window is not comparable to the extent of overlooking that is possible from the large roof area.
13. The Council suggest that if the appeal were to be successful, a planning condition should be imposed restricting the use of the roof. I have reservations as to whether a wording which would restrict access to the roof to only in emergency situations and not allow for maintenance would meet the tests set out in paragraph 56 of the Framework. However, it seems entirely possible that a condition could instead be worded more specifically to prevent the use of the roof as an outdoor amenity area. Such a condition would be both reasonable and necessary to prevent the significant harm I have found that would result if the decking were to remain in place and is able to facilitate a more frequently used outdoor amenity area.
14. Subject to such a planning condition being imposed, there would not be undue harm to the living conditions of the occupiers of adjacent dwellings if the development were to remain. The retention of the development on that basis would therefore accord with Policies P18, P56 and IP4 of the SP and Policy D6 of the LP, where they collectively seek to protect living conditions. There would also be no conflict with the aims of the Framework in the same respect.

Planning Balance and Conclusion

15. Whilst I have found that the development has not caused harm to the character and appearance of the area and that any harm caused to living conditions could be overcome by way of a planning condition, I attach significant weight to the issue of fire safety and the consequent conflict with Policy D12. This leads me to the view that there is conflict with the development plan as a whole. There are no material considerations which indicate that a decision should be made at variance with the plan.
16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Graham Wraight INSPECTOR