



Appeal Decisions

Site visit made on 7 March 2025

by **Simon Hand MA**

an Inspector appointed by the Secretary of State

Decision date: 21 March 2025

Appeal A Ref: APP/C5690/C/24/3349900

Land at Ground Floor Flat, 5 Kitto Road,, London, SE14 5TW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Melek Muslu against an enforcement notice issued by the Council of the London Borough of Lewisham.
 - The notice was issued on 17 July 2024.
 - The breach of planning control as alleged in the notice is unauthorised staircase and door (facilitating the unauthorised use of flat roof as roof terrace) in rear elevation.
 - The requirements of the notice are 1. Cease the use of the flat roof as a roof terrace. 2. Remove the door to rear elevation that facilitates access to the flat roof and remove the railings. 3. Remove the staircase to the rear of the of the property. 4. Make good all damage resulting from the compliance with the requirements of this notice. 5. Remove all materials, debris, waste and equipment resulting from compliance with the above requirements of this notice from the land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (g) 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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Appeal B Ref: APP/C5690/W/24/3349899

5 Ground Floor Flat, Kitto Road, London, SE14 5TW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Melek Muslu against the decision of the Council of the London Borough of Lewisham.
 - The application Ref is DC/24/134882.
 - The development proposed is partially retrospective application for the replacement of a window with door in the rear elevation and the proposed construction of an external staircase to upper ground floor level at Ground Floor Flat, 5 Kitto Road, SE14.
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Decisions

Appeal A 3349900

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.

Appeal B – 3349899

2. The appeal is dismissed.

Preliminary Matters

3. The development already in place is a door in the rear wall of the kitchen that leads onto a flat roof terrace. The flat roof is surrounded by railings and so can be used for sitting out etc. Opposite the door is a spiral staircase that leads down into

the back garden. The staircase is close to the boundary with the neighbour to the east and the edge of the roof terrace that links the door with the staircase has opaque glass panels that prevent direct overlooking from the roof to the neighbouring gardens. That is the development subject to the enforcement notice. The planning appeal is for a revised scheme that removes the roof terrace and just allows a corridor across the flat roof linking the door with the spiral stair. I shall deal with the enforcement notice appeal first.

Appeal A - Ground (a)

4. The flat roof terrace allows clear views across a number of neighbouring gardens on both sides of the property. The glass screens do prevent a person from staring down directly into the neighbour on the eastern side, but the back gardens are quite long and clear views are obtained of their garden from the garden end of the roof terrace and views into other neighbours' gardens are available too. Although the glass screen is helpful, when on the spiral stair clear views down into the neighbour's garden are available.
5. From the ground, the terrace is highly prominent and given the narrow garden widths, anyone on the edge of the terrace or on the spiral stairs would be in a prominent position which clearly significantly reduces the privacy of neighbours' gardens. Given the close urban grain of the area, overlooking from the backs of houses is common and to be expected, but by extending the opportunity for overlooking further into the back garden (by using the terrace and stairs) the situation is made much worse and there is a serious loss of privacy, both direct and perceived.
6. The site lies in the Telegraph Hill conservation area which in this location is made up of terraced Victorian houses which retain a degree of conformity. The roof terrace, and in particular the opaque screens and the spiral stair stand out as incongruous and harmful modern additions. Because the land seems to slope away from the houses, the sense of dominance is enhanced. From close to, the opaque screens are intrusive and over dominant. Although there is very limited visibility from public spaces the development is clearly visible from neighbours' houses and gardens and does not preserve the character and appearance of the conservation area.
7. The purpose of the spiral stair is to provide access for the ground floor flat to part of the back garden. The difference in levels means that at the rear the basement flat is effectively at garden level. Presumably the ground floor flat has long existed without access to a garden so while that would clearly be of some benefit it is not essential and does not outweigh the harm I have identified.
8. Policy 36 of the local plan requires development to preserve or enhance the character and appearance of the conservation area, while policy 31 deals specifically with roof terraces that should not result in a significant loss of privacy and amenity. The development falls foul of both policies and the appeal on ground (a) fails.

Appeal B

9. The difference between the two is that the general use of the roof as a terrace is removed so there would be less general overlooking of back gardens. However, the direct overlooking from the spiral stair and the roof adjacent to the stair

remains. The spiral stair protrudes beyond the rear wall of the extension with a small platform linking the two. It seems from the plans that another opaque screen is proposed on the platform that would further reduce overlooking. However, this would appear even more incongruous and dominant when viewed from neighbours' gardens.

10. The problem is to reduce overlooking more screens are required which increases the harm they cause. There is, in this case, no acceptable balance between the two. However the staircase and its approach is configured it is harmful. The benefit of an access to a garden does not outweigh this harm. The proposal is contrary to the same policies mentioned above.

Other Matters

11. The appellant refers to an appeal that has set a precedent at 27 Kitto Road. However, the context and details of that decision were quite different. It was a standard staircase that began on the original rear wall of the building (not an extension) so parts of the upper and lower sections of the stair were already screened by an adjacent extension. In the gap the steps were screened by a stepped timber screen. This would, it seems, have a greatly reduced impact on neighbours in terms of over-dominance and there would be much reduced opportunities for overlooking compared to this appeal proposal.
12. Other apparently similar developments in the area have been mentioned but I have no details of those and could not see any from the appeal site.
13. The appellant has also quoted extensively from the NPPF, the London Plan and the local plan, considering matters such as density of development, optimising use of urban land, making use of space above buildings, brownfield land, sustainable transport and so on, most of which are wholly irrelevant. This is a straightforward case with the issues of overlooking and design as identified by the Council in their reasons for refusal.

Appeal A – Grounds (f) and (g)

14. There is no genuine ground (f) appeal, that the requirements are excessive, as the (f) arguments are just a restatement of those made under ground (a).
15. The appellant's ground (g) arguments are that more time would be required to find a suitable builder and the occupiers of the flat would need time to find somewhere else to live. It is not explained why the occupiers of the flat would need to move out. The only work to affect them would be removing the door and replacing it with a window which should not take more than a couple of days with disruption only to the end of the kitchen. 3 months seems perfectly adequate to me.

Conclusion

16. I shall dismiss both appeals and uphold the enforcement notice.

Simon Hand

INSPECTOR

