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## Appeal Decision

Site visit made on 1 April 2025

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 April 2025

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**Appeal Ref: APP/T5720/C/23/3323766**

**31 Stanford Way, Streatham, London SW16 4HF**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Raheel Ahmed against an enforcement notice issued by the Council of the London Borough of Merton.
- The notice was issued on 24 May 2023.
- The breach of planning control as alleged in the notice is: *Without planning permission, the installation of French doors leading to the first floor flat roof, creating a roof terrace on the land.*
- The requirements of the notice are to:
  - 5.1 *Permanently remove the French doors leading to the roof terrace and reinstate the windows to original and make good.*
  - 5.2 *Permanently remove from the Land all fixtures and fittings resulting from compliance with 5.1 above.*
- The period for compliance with the requirement is: *Within one (1) month from the date this 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 of decision:** The appeal is dismissed, and the enforcement notice is upheld subject to the correction in the terms set out in the Formal Decision below.

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### Decision

1. The requirements at paragraphs 5.1 and 5.2 of the enforcement notice include the word 'permanently.' Having regard to the provisions of Section 181(1) of the Town and Country Planning Act 1990 as amended (the 1990 Act), which states that compliance with an enforcement notice shall not discharge that notice, the word 'permanently' is unnecessary. I shall therefore delete it from both paragraphs and in so I will correct the notice. I am satisfied that no injustice would be caused by doing so.
2. Subject to the corrections 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 Town and Country Planning Act 1990 as amended (the 1990 Act).

### Preliminary Matters

3. At the site visit and from some of the communication prior to the visit, it is clear that the French door has been removed from the first floor rear elevation and replaced by a casement window as required by the notice. However, there is no dispute that the development had occurred. Section 181(1) of the Act makes it clear that compliance with a notice does not discharge it. This appeal still needs to be determined in the absence of either its withdrawal by the appellant or by the notice being withdrawn by the Council.

4. There has been a revised National Planning Policy Framework (the Framework) published by the Government since the enforcement notice was issued. However, it does not raise new issues that are determinative for the purposes of my assessment and therefore injustice to the parties does not arise.

### **Appeal on ground (a), the deemed planning application**

#### **Main Issue**

5. Ground (a) is that planning permission should be granted for the matters alleged in the enforcement notice. The main issue therefore is the effect of the development on the living conditions of neighbouring properties with specific regard to visual intrusion and noise disturbance.

#### **Reasons**

##### *Living conditions of neighbouring properties – visual intrusion*

6. The appeal site is a single family dwellinghouse located at the end of a small terrace of properties in Streatham. The surrounding area is mainly residential with the houses located in close proximity to one another in a relatively tight layout. The constricted layout in the area provides a sensitive relationship and given the mix of dwellings there is a degree of mutual overlooking in the vicinity.
7. The appeal site has been subject to extensions and alterations including the provision of a single storey flat roof extension at the rear<sup>1</sup>. The permission granted by the Council, included a condition which prohibited the use of the flat roof as a roof garden, and that it be used for emergency purposes only. The appellant submitted a further application<sup>2</sup> which sought retrospective planning permission for the retention of the French windows installed and a glazed screen at the roof's edge, however this was refused.
8. The set of French doors on the rear elevation would provide access to the flat roof of the extension and thus would create a new roof terrace at first floor level. This would enable occupants at the appeal site to use this area for amenity purposes for prolonged periods of time. Any use of the roof terrace would provide the occupants with unrestricted views into the private spaces and garden areas of the adjoining properties at numbers 29 and 37 Stanford Way.
9. I would acknowledge that the respective gardens described above are already overlooked by windows on the upper floors of surrounding residential properties. Consequently, they are not entirely private spaces. Nevertheless, actual overlooking, and indeed a perception of overlooking from a roof terrace in a raised position, are significantly more intrusive than that which would be experienced from a typical upper floor window, given it would involve occupants visibly congregating and sitting out at a raised level for longer periods of time.
10. The primary function of the terrace would be for amenity use, particularly during more clement periods of the year when these neighbouring gardens are also likely to be occupied, thus providing unobstructed views of the neighbouring gardens, whether intended or not. The permanent, unrestricted access to the roof area would as a result provide an increase in actual and perceived overlooking and

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<sup>1</sup> London Borough of Merton Planning Ref: 21/P1029

<sup>2</sup> London Borough of Merton Planning Ref: 22/P2688

notable loss of privacy experienced from these locations. Whilst a degree of mutual overlooking is to be expected within a residential setting, the close relationship between the properties would create an unacceptable loss of privacy from the appeal site into the amenity areas of these neighbours. This would be to the detriment of their living conditions.

11. The appellant proposes that any overlooking could be mitigated through the provision of 1.7 meter high obscure glazed panels around the edge of the single storey flat roof. Whilst this treatment could mitigate overlooking and loss of privacy to a degree, it would provide additional bulk and mass at the first floor level, which would create a dominant feature, not intrinsic to the character of the area, thus adding further detrimental visual impact on the neighbouring properties and the area in general. As such, I give this only limited weight as an alternative.

*Living conditions of neighbouring properties – noise disturbance*

12. Given the prevalent residential use in the vicinity it is likely that background noise levels in the area would be generally quiet. The increased frequency of use of the first floor roof terrace in connection with the existing property would also be modest given it is a single dwelling and would be akin to residential uses and practices currently being undertaken at the appeal site by the occupants. Nevertheless, there is little substantive information before me in respect of background noise levels currently existing at the site, nor information before me in respect of any proposed measures that could suppress any potential increase in noise and disturbance. As such I must adopt a precautionary approach.

*Conclusion on ground (a)*

13. Overall, there would be a significant perceived and actual loss of privacy from the proposal, and potential increase in noise disturbance. This would result in unacceptable harm to the living conditions of the residents of neighbouring properties. Consequently, the proposal conflicts with the relevant provisions of policies DM D2, DM D3 and DM EP2 of the London Borough of Merton Sites and Policies Plan (MSPP), adopted July 2014 and policies D3 and D14 of the London Plan (LP), adopted March 2021. These policies collectively seek proposals to protect new and existing development from visual intrusion, noise, vibrations or pollution so that the living conditions of existing and future occupiers are not unduly diminished, amongst other things.
14. Furthermore, it would be contrary to the Framework which, also seeks a good standard of amenity for all existing and future occupants of buildings. The development is therefore unacceptable and the appeal on ground (a) fails.
15. However, I do not find conflict with MSPP policy DM D1, LP policy D2 or policy CS14 of the London Borough of Merton Core Planning Strategy, adopted July 2011, as these policies are generally concerned with design matters and sustainable densities, which are largely irrelevant to the main issue I have identified above, which is the effect of the proposal on the living conditions of neighbouring properties with specific regard to visual intrusion and noise disturbance.

## **Conclusion**

16. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with the corrections and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Robert Naylor*

INSPECTOR