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## Appeal Decision

Site visit made on 24 February 2020

**by V Bond LLB (Hons) Solicitor (Non-Practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 March 2020**

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**Appeal Ref: APP/T5720/C/19/3229942**

**Land at 183A Streatham Road, Mitcham, in the London Borough of Merton CR4 2AG**

- 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 Vasile Ilciuc against an enforcement notice issued by the Council of the London Borough of Merton.
- The enforcement notice was issued on 29 April 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a rear balcony to the existing rear roof dormer on the Land ("the Balcony").
- The requirements of the notice are (a) Demolish the Balcony; and (b) Restore the Land to that prior to the breach, to fully accord with the 'Proposed Plans and Elevations' of planning permission 16/P0505, dated 23/03/2016 attached hereto (c) Remove from the Land all materials, rubble used in connection with or resulting from compliance with steps 5(a) and 5(b) above .
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

**Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation.**

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### Procedural Matter

1. The site visit was carried out on an access required basis, with the appellant providing access to the site. The Council confirmed it was content for me to proceed to a decision in the circumstances. I attempted to view from the property at 181A Streatham Road but was unable to obtain access. I was content though that I had seen all that I needed to see in order to properly determine the appeal.

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

#### Background and Main Issues

2. Planning permission was granted<sup>1</sup> for the erection of a rear roof extension and installation of two rooflights to the front roof slope at the appeal property. Subsequently, works were carried out which included the installation of French doors to the dormer roof extension, along with the erection of a rear balcony,

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<sup>1</sup> Reference: 16/P0505

the latter being the subject of the enforcement notice. Retrospective planning permission in respect of the rear roof balcony<sup>2</sup> was refused.

3. The main planning issues are the effect of the unauthorised balcony on the character and appearance of the host property and area, and on the living conditions of neighbouring occupants, with particular regard to overlooking.

## **Reasons**

### *Character and appearance*

4. The appeal property forms part of a terrace which is largely undeveloped at roof level. Whilst dormer windows are a common feature in the roofscape of the wider area, roof level balconies are not. The unauthorised balcony is thus an alien feature in the roofscape which is visually intrusive by reason of its projection and siting. Consequently, it detracts from the low-key rear elevation of the host property and is clearly visible from public viewpoints on approach along Melrose Avenue.
5. Although some other properties in the area have similar railings to those used in the balcony, those in the immediate surrounding area are generally only enclosing staircases and terraces at first floor level. They do not therefore have the same harmful impact on the surrounding roofscape. The nearby four storey building at Melrose Court also has numerous balconies. However, this building is of an entirely different character to the modest appeal building and so is not directly comparable.
6. I find therefore that the unauthorised balcony has a harmful effect on the character and appearance of the host property and area. It conflicts with Policy CS14 of the Council's LDF Core Planning Strategy 2011 (CS) and with Policies DM D2 and DM D3 of the Council's Sites and Policies Plan 2014 (SPP) which together require proposals to relate positively to the surrounding buildings and to respect the character and appearance of the original building and wider setting. London Plan 2016 Policies 7.4 and 7.6 would also not be complied with as regards their expectations that development makes a positive contribution to the character of a place.

### *Living conditions*

7. The balcony overlooks the outdoor amenity area on the flat roof of 181A Streatham Road immediately adjacent. Such overlooking could potentially be for sustained periods, given that the balcony is large enough for sitting out.
8. The elevated position of the balcony relative to this outdoor area results in an invasive sense of overlooking, distinct from the mutual intervisibility between the flat roofs at first floor level. The projection of the balcony also enables overlooking over a greater extent of No 181A's outdoor area as compared to the view available from a roof level window/French door, again heightening the sense of invasiveness.
9. I note the appellant's comment that there is no record of permission having been granted for the use of the terrace at 181A. However, there is no evidence before me indicating that this is not lawfully used, and so I determine the appeal based upon the situation as observed at my site visit.

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<sup>2</sup> Reference: 19/0400

10. I find then that the unauthorised balcony results in harm to the living conditions of neighbouring occupants, with particular regard to overlooking. It conflicts thus with Policies DM D2 and DM D3 of the SPP which seek to protect the living conditions of existing occupiers. London Plan policy 7.6 which guards against losses of residential privacy, would also not be complied with.

### **Balancing and Conclusion on Ground (a) and the DPA**

11. Although the balcony offers additional amenity provision for the host dwelling, this does not outweigh the harm identified. I find that the unauthorised balcony conflicts with the development plan, read as a whole and there are no material considerations to justify a decision other than in accordance with the plan. For the above reasons, and taking into account all other matters raised, I conclude that the appeal on ground (a) should fail and planning permission be refused in respect of the DPA.

### **The Appeal on Ground (f)**

12. This ground of appeal is that the steps required by the notice to be taken exceed what is necessary to achieve the purpose of the notice. The purposes of an enforcement notice are set out in s173 of the Town and Country Planning Act 1990 as amended (1990 Act) and are: to remedy the breach of planning control (s173(4)(a)); or to remedy injury to amenity s173(4)(b)).
13. Since the notice requires the removal of the balcony and restoration of the property to the state it was in prior to the breach of planning control, its purpose is to remedy the breach. The reasons for issuing the notice refer to matters of amenity but these are distinct from the purpose.
14. The appellant seeks to vary the requirements to remove the reference to require compliance with the previous planning permission reference 16/P0505 and to enable the erection of a Juliet balcony.
15. As regards the reference to the 16/P0505 planning permission, since the notice attacks only the erection of the balcony, it should properly require only removal of the balcony and restoration of the building, along with removal of resultant materials. I shall vary the notice accordingly in this regard, along with a minor correction to make it clear that the land is to be restored to its *condition* prior to the breach.
16. Whilst I note that the Council does not appear to object to the erection of a Juliet balcony in place of the existing unauthorised balcony, s177 of the 1990 Act only permits me to grant planning permission in respect of the whole or part of matters alleged in the notice. To vary the notice as requested in respect of the erection of a Juliet balcony would amount to permitting a different development from that alleged.
17. The appeal on ground (f) therefore succeeds only to the limited extent outlined and I shall correct and vary the notice accordingly.

### **Overall Conclusion**

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

### **Formal Decision**

19. It is directed that the enforcement notice be corrected by:

- the deletion from paragraph 5(b) of the notice of the wording 'to that' and substitution of 'to its condition'

and varied by:

- the deletion from paragraph 5(b) of the enforcement notice of the wording ', to fully accord with the 'Proposed Plans and Elevations' of planning permission 16/P0505, dated 23/03/2016 attached hereto'.

20. Subject to this correction and variation 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.

*V Bond*

INSPECTOR