

Decision Maker: Plans Sub-Committee No. 1

Date: 24 November 2011

Decision Type: Non-Urgent Non-Executive Non-Key

Title: BALCONY AT 2 CLARENDON WAY, CHISLEHURST BR7 6RF

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Chief Officer: CHIEF PLANNER

Ward: Chislehurst

1. Reason for report

- 1.1 A complaint has been received regarding external doors leading onto a balcony with railings at first floor level in a side elevation of the above property, facing 4 Clarendon Way.
 - 1.2 Investigations and information submitted demonstrate that the doors, balcony and railings have been in place for more than four years and are therefore immune from enforcement action.
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2. **RECOMMENDATION**

- 2.1 No further action be taken.

3. COMMENTARY

- 3.1 Following receipt of a complaint an investigation has been carried out into external doors from a bedroom leading onto a balcony with railings at first floor level in a side elevation of the above property, facing 4 Clarendon Way.
- 3.2 A site inspection confirmed that French doors opening onto a balcony with railings. There is no evidence to suggest that the balcony, railings or doors have been installed recently, for example new rendering around the doors or balcony.
- 3.3 Following enquiries, the current owner has submitted further information to support the claim that the balcony, doors and railings have been in situ for four or more years. This comprises an estate agent's brochure including colour pictures dated 2006. This cross-references to public information regarding the sale of the property which confirms that the sale took place in January 2007. The brochure includes photographs in which the balcony and railings can be seen, a written description referring to the door and balcony, and floor plans which show an external door and balcony.
- 3.4 Further evidence has been received by way of a letter from the previous owner which confirms that the property was sold on 12th January 2007 with the balcony and railings in place. Enclosed with the letter was a copy of the approved building regulations plans and decision dated 9th March 1979 for the two storey extension where the balcony is located. The plan extract shows the doors, balcony and railings and reflects the construction on site. A further letter from the Council's Head of Building Control dated 21 March 2005 confirms that the works to implement the two storey extension in the above case had been completed.
- 3.5 Although the complainant claims that the balcony and railings were constructed within the last 2 years, there is insufficient evidence to support this. The available evidence indicates that the doors, balcony and railings were constructed more than four years ago.
- 3.6 Section 171B of the Town and Country Planning Act 1990 (as amended) sets out that a Local Planning Authority are unable to take enforcement action against building operations after a period of four years from the date on which works were substantially completed. The Act offers no discretion for the Local Planning Authority to take enforcement action in cases where the development was carried out more than 4 years ago. Should action be taken against works which have clearly been in place for four or more years, this would amount to unreasonable behaviour and a claim for costs would be likely to succeed.
- 3.7 Whilst the complainant's concerns regarding overlooking and loss of privacy to his property are appreciated, the issue in this instance is whether the doors, balcony and railings have been in place for four years or more. There is no possibility for consideration of planning merits if the Local Planning Authority is satisfied that the required four year period has passed.
- 3.8 In the circumstances the Council the balcony and railings are immune from enforcement action and it is recommended that no further action is taken in this case.

Non-Applicable Sections:	Policy, Financial, Legal and Personnel Implications
Background Documents: (Access via Contact Officer)	Enforcement files contain exempt information, as defined in Schedule 12A of the Local Government (Access to Information) Act 1985, and are therefore not available for public inspection.