
Appeal Decision

Site visit made on 28 March 2017

by Jason Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24th April 2017

Appeal Ref: APP/X5990/D/17/3169902

43 Artesian Road, London W2 5DB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Ms Deborah Bartlett against the decision of City of Westminster Council.
 - The application Ref 16/09640/FULL, dated 7 October 2016, was refused by notice dated 5 December 2016.
 - The application sought planning permission for installation of 1.1 metre high, black, metal railing to the roof of the closet wing without complying with a condition attached to planning permission Ref 15/09116/FUL, dated 22 December 2015.
 - The condition in dispute is No 3 which states that: *"You must not use the flat roof around which the railings are to be installed for sitting out or for any other purposes unless we have given you our written approval beforehand. You can however use the roof to escape in an emergency and for maintenance purposes."*
 - The reason given for the condition is: *"To protect the privacy and environment of people in neighbouring properties."*
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Decision

1. The appeal is allowed and planning permission is granted for installation of 1.1 metre high, black, metal railing to the roof of the closet wing at 43 Artesian Road, London W2 5DB in accordance with the application Ref 16/09640/FULL dated 7 October 2016, without compliance with condition number 3 previously imposed on planning permission Ref 15/09116/FUL dated 22 December 2015 but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the following new condition:
 - 1) You must not use the flat roof around which the railings are to be installed for sitting out or for any other purposes. You can however use the roof for the purposes of the placing of, watering and maintenance of pots and planters, escape in an emergency and for maintenance purposes.

Background and Main Issue

2. Railings have been erected on the roof of the closet wing to the rear of 43 Artesian Road in accordance with planning permission Ref 15/09116/FUL. Condition 3 of that permission restricts the use of the roof for sitting out upon or indeed for any other purpose other than escape in an emergency or for maintenance.
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3. It is now proposed that permission be granted for the railings subject to a condition which would allow the roof to be used for the purposes of watering and maintaining pots and planters which would be situated on the roof.
4. The main issue is, therefore, the effect of the use of the roof for the placement, watering and maintenance of pots and planters on the living conditions of neighbouring occupiers with particular regard to privacy and noise.

Reasons

5. The appeal relates to the flat roof of the first floor, rear addition of a mid-terraced property. It is an area of around 8sqm accessed solely from a bedroom. Railings have been erected around the roof whilst timber flooring has been laid. At the time of my site visit, no pots or plants were on the roof nor was any other domestic paraphernalia.
6. It has been put to me that the placement of pots and plants on the roof would lead to an increased level of activity from watering and maintenance to such an extent that it would subsequently result in a harmful loss of privacy for neighbours and would also generate harmful levels of noise.
7. Given the elevation of the roof, views are obtainable from it into the gardens and windows of neighbouring properties. Nevertheless, the closely knit grain of the terraced street means that the gardens and windows of the properties on this part of Artesian Road are already overlooked to a significant degree by one another.
8. The adjacent property, 45 Artesian Road, has a roof terrace which sits below that of the appeal property. It also has a garden at lower level and several windows in the rear of the property which serve habitable rooms. Likewise, No 41 has a garden, a glazed roof kitchen and several habitable windows to the rear. Views are obtainable from the terrace of the appeal property towards the gardens and windows of No 39 and other properties along Artesian Road.
9. However, the flat roof of the appeal property projects further rearwards than the adjacent properties and is located at a higher level. Due to the second floor addition of the appeal property, direct views into the rear windows of the properties either side are not readily available from the roof. One has to approach the railings and make a conscious effort to look towards the windows or indeed towards the gardens or rooms below in order to obtain direct views. It is unlikely this would be a regular or prolonged occurrence, in contrast to the readily achievable and sustained views which prevail in the area.
10. Moreover, whilst there would be an inevitable increase in movements on the roof due to the need to water and maintain plants on a regular basis, those activities would not require a significant amount of time to be spent on the roof and certainly not for prolonged periods.
11. Furthermore, the maintenance of potted plants is not inherently a loud activity. Sounds would likely be from footsteps or voices – actions which are unlikely to generate significant noise. Nor would such activities likely occur in hours when neighbouring residents would expect a higher degree of peace and quiet.
12. Indeed, I observed on my site visit that there were potted plants on the terrace at No 45. There is no evidence before me to suggest that the maintenance of those plants has given rise to harmful levels of noise and disturbance for the

adjacent occupiers. As a result, the use of the terrace for the storage of, watering and maintenance of plants would be unlikely to result in harmful levels of overlooking for neighbouring properties nor would it result in harmful levels of noise and disturbance.

13. The Council states that the proposal would lead to ambiguity in relation to the use of the terrace. However, I see no reason why a condition preventing the use of the terrace as an amenity area would be insufficiently precise or unenforceable, particularly as under Condition 3 in its current form it can be accessed for maintenance purposes. As the appellant points out the adjacent property No 45 was granted planning permission¹ for the railings around its flat roof terrace subject to a similar condition to the current wording of Condition 3. I have no reason to believe that the presence of the condition in respect of that property has led to ambiguity in the use of its terrace.
14. I conclude, therefore, that the use of the roof for the placement, watering and maintenance of pots and planters would not have a harmful effect on the living conditions of neighbouring occupiers with particular regard to privacy and noise. The proposal would, as a consequence, comply with Policy S29 of the Westminster City Plan Consolidated with all changes since November 2013, 2016 which states that the Council will resist proposals that result in an unacceptable material loss of residential amenity. It would also accord with Policy ENV13 of the City of Westminster Unitary Development Plan 2007 which states that developments should not result in a significant increase in the sense of overlooking.

Other Matters

15. The appeal site is located in the Westbourne Conservation Area which is of considerable historical significance. The proposal would result in the provision of additional landscaping on the rear roof of the property. On the evidence before me, I am satisfied that the use of the roof for pots and planters would preserve the character and appearance of the conservation area.

Conditions

16. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under s73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. The Council has suggested that I impose several conditions from the original planning permission. As I have no information before me about the status of the other conditions imposed on the original planning permission, I shall impose all those that are still subsisting and capable of taking effect.
17. The Council has suggested a condition which requires commencement of the development before 22 December 2018 to be within the original 3 year time limit of the original consent. However, the development has already commenced and such a condition is not therefore necessary.
18. For the reasons given above, the disputed condition is not necessary in its current form to protect the living conditions neighbouring occupiers. However, in order to protect the living conditions of neighbouring residents, I consider it reasonable and necessary to impose a revised condition as suggested by the

¹ 10/09713/FULL

appellant. I am satisfied that such a condition would be sufficiently precise and enforceable. Nevertheless, the condition should be imposed without a 'tailpiece' that would allow variation to the use of the terrace without a formal planning application as that would result in uncertainty over the nature of the proposal.

Conclusion

19. For the reasons given above, and with regard to all other matters raised, I conclude that condition No 3 imposed on planning permission 15/09116/FUL is not necessary in its current form to protect the privacy and environment of people in neighbouring properties. Consequently, the appeal should be allowed without compliance with the disputed condition, but subject to the other conditions imposed therein, so far as the same are still subsisting and capable of taking effect and subject to the new conditions referred to above.

Jason Whitfield

INSPECTOR