

Appeal Decision

Site visit made on 20 June 2017

by Farooq Rafiq BSc (Hons), MCD, MRTPI

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

Decision date: 11th July 2017

Appeal Ref: APP/K5600/D/17/3174522

32 Kenway Road, London, SW5 0RR

- 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 Mrs Ruth Pitman against the decision of the Council of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/16/07900 dated 18 November 2016 was refused by notice dated 3 February 2017.
 - The application sought planning permission for a single storey rear extension, replacement of all single glazed windows to double glazed, external paint colour to be changed without complying with a condition attached to planning permission Ref PP/15/01822 dated 21 May 2015.
 - The condition in dispute is No. 5 which states that: The roof of the extension as shown on the approved drawings shall not be used at any time as a terrace.
 - The reason given for the condition is: To avoid overlooking and disturbance to neighbouring properties and so accord with policies of the development plan, in particular policy CL5 of the Core Strategy.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Metal railings and decking were in place at the time of my visit. Although the railings are shown on the proposed plans, the Council have stated that they do not form part of the appeal application. For clarity, this appeal relates to the removal of condition 5, which I am dealing with accordingly.

Main Issue

3. The main issue is whether the condition in dispute is necessary to protect the living conditions of neighbouring occupiers with regard to privacy.

Reasons

4. The appeal site is a three storey mid-terrace dwelling that has previously been granted planning permission for a single storey rear extension. A condition was attached to prevent the roof of the extension being used as a terrace to avoid overlooking and disturbance to neighbouring properties. This proposal seeks the removal of Condition 5 to enable the use of this space as a roof terrace.
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5. At the time of my visit, I was able to see that from the roof area of the extension, it was possible to look down through the glazed roof of the adjoining property, No. 34 Kenway Road and into its kitchen area. Although these views are at an angle, they nevertheless afford clear views at close quarters from the roof area of the extension into this neighbouring building.
6. I acknowledge that there are views from No. 34's roof terrace towards the appeal property. The use of this neighbouring property's terrace is not however a matter before me and would not in any case justify the harm that would arise from the appeal proposal.
7. The appellant has suggested that a trellis could be installed on the boundary between the appeal property and No. 34 to restrict views. The details of such a boundary treatment have not been provided. As such, I cannot be sure how effective it would be in addressing overlooking between the properties, nor whether such an installation would avoid other harmful effects given the close siting of the appeal and neighbouring properties.
8. The Council also raise concerns in relation to No. 16 Hogarth Place which is located to the rear. Whilst I acknowledge the area behind the appeal property is highly enclosed, from my site observations, the two windows on this neighbouring property closest to the proposed roof terrace are small and are situated at a high level. They also contain glazing that is obscure or formed of other opaque material. Consequently, I do not consider there would be any unacceptable impact on the occupiers of this neighbouring property.

Conclusion

9. Notwithstanding my findings on No. 16 Hogarth Place, I conclude that the condition is necessary to protect the living conditions of neighbouring occupiers. Its removal would have an adverse effect on the living conditions of the occupiers of No. 34 Kenway Road and would conflict with Policy CL 5 of the Council's Consolidated Local Plan, which requires, amongst other matters, for development to ensure reasonable privacy for occupants of existing properties. It would also conflict with the National Planning Policy Framework's core planning principle (paragraph 17) that planning should seek to ensure a good standard of amenity for occupants of all existing and future occupants of land and buildings.
10. For the reasons given above and having considered all other matters raised, including those relating to the sites location in the Conservation Area and noise and disturbance, I conclude that the appeal should be dismissed.

F Rafiq

INSPECTOR