
Appeal Decision

Site visit made on 3 September 2020

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd October 2020.

Appeal Ref: APP/K5600/W/20/3251440

Flat 7, 4 Elm Park Gardens, London SW10 9NY

- 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 Mr Leon Pacini against the decision of The Council of The Royal Borough of Kensington & Chelsea.
 - The application Ref PP/19/06969, dated 14 October 2019, was refused by notice dated 10 December 2019.
 - The application sought planning permission for erection of front dormer and rear mansard extension without complying with a condition attached to planning permission Ref PP/16/01541, dated 29 June 2016.
 - The condition in dispute is No 2 which states that: except as required by condition 3, the development shall not be carried out except in complete accordance with the details shown on submitted plans Site Plan; Site Location Plan; 770/01 Rev B; 770/02 Rev B; 770/03 Rev B; 770/04 Rev B; 770/05 Rev B; 770/06 Rev B; 770/07 Rev B.
 - The reason given for the condition is: The details are material to the acceptability of the proposals, and to ensure accordance with the development plan.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. In 2016 planning permission was granted, subject to a number of conditions, for the erection of a front dormer and rear mansard extension. This included a condition specifying the approved plans (condition two). The current proposal seeks removal of condition two and replacement with a condition specifying the plans that reflect an amended design to facilitate the removal of the one metre corridor to the street side of the rear terrace for use as a terrace with balustrade.
3. However, the Council refused the application and consider the condition remains necessary, citing that the proposed amendment to the approved drawing would allow users of the roof terrace harmful views into the windows and amenity spaces of neighbouring properties.
4. Consequently, the main issue is whether the condition requiring the development to be carried out in accordance with the submitted plans is necessary having regard to the effect of the amended scheme on the living conditions of neighbouring residents with particular regard to privacy.

Reasons

5. The appeal property has an existing roof terrace surrounded by black railings. An approximately 1m strip of the roof is currently not part of the wider terrace and is accessible only by a gate within the railings. The proposal would increase the area of usable roof terrace by incorporating this strip and moving the railings to the edge of the roof area.
6. The neighbouring properties on Fulham Road, known as Elm Park Chambers, are largely in mixed use with commercial uses on the ground floor and accommodation above. A number of these properties appear to have terraces over flat roofs and small enclosed garden areas at ground floor level.
7. The existing terrace at Flat 7 already allows views towards the rear of these properties. I do not consider that the proposal would lead to any tangible degradation of privacy when considering the effect on the rear windows of properties on Fulham Road.
8. However, under the current arrangements, whilst possible, views into the rear roof terraces and external amenity areas are limited. The proposal would allow those using the roof terrace to get closer to the edge of the building. Thus facilitating direct views, above and beyond those which are currently possible, into the rear amenity spaces of the properties at Elm Park Chambers. In my view, the amendments to the roof terrace would cause harm to the living conditions of neighbouring residents by way of leading to unacceptable overlooking of the terraces and amenity spaces.
9. I note the appellant's assertion that higher railings would be required thereby reducing views into neighbouring properties. Nevertheless, the submitted plans do not appear to show markedly higher railings. Moreover, the railings are permeable and, irrespective of height, allow views through.
10. I acknowledge the appellant's offer to install a raised screen along the boundary to prevent any overlooking onto Fulham Road. However, the details of such a screen have not been provided and I am, consequently, unable to assess the broader impact of this intervention. Therefore, I am not persuaded that a raised screen could be installed in such a way so as to mitigate the identified harm without itself causing issues. Accordingly, I afford this mitigation limited weight in my assessment of the scheme.
11. I recognise the safety benefits of the proposed amendments in respect of the ongoing maintenance of the roof. However, I consider that such benefits could be secured through an alternative scheme which would not cause harm to the living conditions of neighbouring residents.
12. For the reasons set out above, I consider that the condition requiring the development to be carried out in accordance with the submitted plans is necessary having regard to the effect of the amended scheme on the living conditions of neighbouring residents with particular regard to privacy. As such the proposal would fail to accord with Policy CL5 of The Royal Borough of Kensington and Chelsea Local Plan, September 2019. This policy requires all development to ensure good living conditions for occupants of new, existing and neighbouring buildings by, amongst other things, requiring reasonable visual privacy.

Conclusion

13. The proposal would not accord with the development plan when it is considered as a whole. For the reasons given above I conclude that the appeal should be dismissed.

L J O'Brien

INSPECTOR