



Appeal Decision

Site visit made on 30 November 2021

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th December 2021

Appeal Ref: APP/N5660/D/21/3279308

11 Floris Place, London SW4 0HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Jonathan McIver against the decision of London Borough of Lambeth.
 - The application Ref 21/00476/FUL, dated 5 February 2021, was refused by notice dated 29 April 2021.
 - The development proposed is described as 'Erection of an external balustrade on an existing flat roof above the kitchen to the rear 11 Floris Place. A balustrade will be erected around the edge of the roofed area and slip-proof wooden flooring installed to allow the roofed area to be used as an aerobic exercise area for a disabled resident of the property. The balustrade design will be in keeping with existing balconies on other Floris Place properties and with the existing Juliette balcony at the front of 11 Floris Place'.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Appeal decisions must be based on the policies from the development plan prevailing at the time of determination. Policies Q2, Q5 and Q11 of the Lambeth Local Plan (September 2015) and the Draft Revised Lambeth Local Plan 2020 referred to on the Decision Notice have been superseded by their equivalents from the Lambeth Local Plan 2020-2035 (LP) (adopted 22 September 2021). The appellant is aware of the policies and has had opportunity to comment upon their relevance to the appeal.
3. The appellant's appeal submission includes two alternative amended drawings for obscure glazed panels 1300mm and 1600mm high for the proposed balcony (both referred as Drawing No DWG_P02). Having regard to the Wheatcroft principles (Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37]), these drawings did not form part of the original planning application and the appeal process should not be used as a means to progress alternatives to a refused scheme. In the interests of fairness and natural justice, interested parties would be prejudiced if I were to consider the amended drawings, so my findings relate to the scheme as determined by the Council.

Main Issues

4. The main issues are the effect of the proposed development on:
- the living conditions of neighbouring occupiers in Floris Place, Rectory Gardens and Rozel Road, with regard to overlooking and noise and disturbance; and
 - the character and appearance of the existing row of dwellings and its surroundings.

Reasons

Living conditions

5. The appeal concerns the roof of a single storey extension to the rear of a mid-terrace property. Each house has two Juliet balconies at first floor, with double doors behind, incorporating full-height areas of glazing. The doors can be opened inward and occupiers of the houses therefore benefit from outlook over neighbouring gardens.
6. The proposed roof terrace would enable unrestricted views back towards the first-floor windows of Nos 10 and 12 to either side and directly downward into ground floor windows and the areas of garden closest to those properties. While views into the gardens would be similar to those possible from the existing Juliet balconies, the proposed roof terrace would be more likely to result in persons sitting or standing for prolonged periods in locations that could lead to more harmful overlooking.
7. The residential properties and gardens situated in Rectory Gardens and Rozel Road are some distance from the windows and doors in the existing rear façade of the terrace of properties in Floris Place. While the proposal would also enable unrestricted views towards those properties, the separation distances between would ensure that overlooking would not be any more harmful to the privacy of the occupiers of those properties.
8. I appreciate that privacy screens to either side of the proposed roof terrace could mitigate the harms identified to neighbouring occupiers at Nos 10 and 12 and these were shown on the amended drawings submitted with the appeal, in for the purposes of fairness, I determined not to accept those drawings. Furthermore, these would be required to be of some height and would be in close proximity of the nearest Juliet balcony of each property, which could impinge on outlook from those properties. I am not therefore satisfied that agreement to means of screening could be appropriately controlled by way of a planning condition.
9. The proposed roof terrace would, by its very nature, be elevated higher than the garden of the appeal property and those neighbouring. While the appellant and his family may ultimately seek to utilise the proposed roof terrace for purposes other than exercising, there is no compelling evidence before me to suggest that they would be any more likely to create harmful noise or disturb neighbouring occupiers than they would be, were they to use their existing garden in the same capacity.
10. Despite my findings in relation to overlooking toward properties in Rectory Gardens and Rozel Road and noise and disturbance that could be caused by

use of the roof terrace, the loss of privacy to the windows and gardens of 10 and 12 Floris Place would have a significantly detrimental effect on the living conditions of the occupiers of those properties. Hence, the proposal would be contrary to the aims of Policy Q2 of the LP in this respect.

11. The appellant has also referred to Policy H5 of the LP and its supporting text, but these relate to housing standards in new residential development, so it is not relevant to the appeal proposal.

Character and appearance

12. Each of the houses within the row of properties is four storeys tall, the footprint of which incorporates a reasonable depth. Despite the extension at the rear of No 11, the row of properties has a uniform appearance, reflected in the consistency of their scale, architectural detailing, and materials of construction, particularly to the upper floors and the balustrades on Juliet balconies. These factors contribute to the character and appearance of the existing row of dwellings and how it is appreciated within its surroundings.
13. Given the elevated position of the proposal and the urban situation within which the site is situated, it is inevitable that it would be apparent from neighbouring properties and their gardens, but prominence and harm do not always go hand-in-hand. While the proposed roof terrace would occupy the whole of the roof of the single storey extension beneath, like the extension, it would be less than half of the depth of the house. The proposed balustrade would also be designed to match that on the Juliet balconies of the houses and the texture and colour of the proposed timber floor could be agreed by way of condition to ensure it more closely reflects the materials of construction of the house. With this in mind, the proposed roof terrace would not be of a form or scale that would dominate the appeal property or the wider row of properties and the design of the balustrade and timber floor would be a contextual response to the existing architectural detailing of the properties.
14. In light of the above, the proposed development would not have a harmful effect on the character and appearance of the existing row of dwellings and its surroundings. Hence, the proposal would accord with the design aims of Policies Q2, Q5 and Q11 of the LP.

Personal Circumstances and the Planning Balance

15. I have carefully considered the reasons why the appellant has applied for planning permission for the proposed roof terrace and, due to existing mobility and health conditions, the appellant's son would benefit from having an outdoor space linked to the existing lounge. Moreover, one of its intended purposes is for supervised exercise and physiotherapy for the appellant's son. I do not doubt this would improve his quality of life, health, and wellbeing, so these are personal circumstances that I afford weight in favour of the appeal.
16. In weighing the personal circumstances in the balance, this has to be considered against the significantly detrimental effect that the proposal would have upon the living conditions of the occupiers of 10 and 12 Floris Place. I also appreciate that the proposed space would be difficult to locate in the appellant's garden due to access constraints and soft ground.
17. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate

unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The appellant's son is registered disabled and therefore a person who shares a protected characteristic for the purposes of the PSED. I have also had regard to rights conveyed within the Human Rights Act.

18. In respect of the above, a refusal of planning permission is a proportionate and necessary approach to the legitimate aim of ensuring that the living conditions of the occupiers of the neighbouring properties can be reasonably safeguarded. Furthermore, the protection of the public interest cannot be achieved by means that are less interfering of the appellant's (including his son's) human rights. Therefore, whilst I acknowledge the personal circumstances of the appellant's son, I conclude that these are not matters which outweigh the harm that would be caused by the proposal in respect of my aforementioned conclusions on the first main issue.

Conclusion

19. On balance, and for the reasons outlined above, I conclude that the appeal should not succeed.

Paul Thompson

INSPECTOR