



Appeal Decision

Site visit made on 24 May 2022

by Hannah Ellison BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 July 2022

Appeal Ref: APP/X5990/W/21/3288898

Flat 4, 12 Northwick Terrace, London NW8 8JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for 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 12 Northwick Terrace Ltd, against the Council of the City of Westminster.
 - The application Ref 21/04727/FULL is dated 12 July 2021.
 - The application sought planning permission for alterations to fenestration and installation of balustrade to form balcony on flat roof at rear of first floor flat roof without complying with a condition attached to planning permission Ref 20/05953/FULL, dated 15 December 2020.
 - The condition in dispute is No 1 which states that:
The development hereby permitted shall be carried out in accordance with the drawings and other documents listed on this decision letter, and any drawings approved subsequently by the City Council as local planning authority pursuant to any conditions on this decision letter.
 - The reason given for the condition is:
For the avoidance of doubt and in the interests of proper planning.
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Decision

1. The appeal is dismissed and planning permission is refused for alterations to fenestration and installation of balustrade to form balcony on flat roof at rear of first floor flat roof without complying with a condition attached to planning permission Ref 20/05953/FULL, dated 15 December 2020.

Preliminary Matters

2. The appellant provided an amended plan with the appeal. Whilst I note that this plan was sent to the Council during the course of the planning application, it appears that no response was received. I have considered the amended plan under the principles established by *Wheatcroft*¹. The amendments would change the nature of the proposal to such a degree that to consider it would unacceptably prejudice those who should have been consulted on the change. This includes the Council and local residents. On that basis, and in the interests of procedural fairness, I have dealt with the proposal on the basis of the plans that were originally submitted with the application.
3. I note the concerns of the Council and neighbouring occupiers that the proposal could facilitate the enlargement of the useable balcony area, which could lead

¹ *Bernard Wheatcroft Ltd v SSE* [JPL 1982 P37]

to increased ability to overlook neighbouring properties and rear gardens and increase noise and disturbance. It is important that I consider this appeal based on the information before me and I note that the submitted plans indicate there would be a glass balustrade which would prevent access to the remaining flat roof. Moreover, the appellant has advised that the use of the remaining flat roof as a terrace is not being proposed. I have determined the appeal accordingly.

Background and Main Issue

4. Planning permission was granted for a balcony to the rear of Flat No 4 which is located on the first floor of 12 Northwick Terrace which is a large block of flats. This permission was subject to a number of conditions, of which No 1 concerned the approved plans. The appellant applied to vary this condition so as to amend the plans by way of including additional railings around the full extent of the roof of the ground floor extension below, frosted glass screen and balustrade and alteration of roof covering to an artificial grass system.
5. The Council failed to determine the variation of conditions application within the prescribed period and the appellant exercised their right to submit this appeal. During the course of the appeal the Council has outlined their concerns with the proposed variation of the plans list referred to in condition No 1 and has provided a putative reason for refusal.
6. Therefore, based on the evidence before me, the main issues are the effect of varying the approved plans on a) the character or appearance of the St John's Wood Conservation Area; and b) biodiversity.

Reasons

Character and appearance

7. The appeal site is located within the St John's Wood Conservation Area (the CA), whose significance appears to be partly derived from the tree-lined residential streets forming a low density, consistent, domestic townscape. The host building in which the appeal property is located is a terraced block of traditional proportions. It makes a positive contribution towards a high-quality street scape and the CA as a whole.
8. The existing balconies to the host building, particularly those to the rear, are limited in depth and overall size and thus they assimilate well with the strong vertical proportions and original characteristics of the building. The few examples of ground floor extensions have somewhat interrupted the consistent rhythm and design of the rear of the building. However, as they are of limited overall height, they are not overly discerning.
9. To the contrary, the vast increase in metal railings around the full extent of the rooftop below, the introduction of glass balustrading set back within this newly enclosed space and a frosted glass screen to the side would be readily apparent from various points due to their elevated positioning. Artificial grass is also proposed to the newly enclosed flat roof. Although metal railings are common in the locality, the proposed features would collectively appear overly cluttered and would draw the eye, thus emphasising the uncharacteristic projection to the rear of the building.

10. I note there are some larger terraces to the upper floors of the adjacent building; however, they appear integral to the building and do not project beyond its core elements, thus do not significantly interrupt its design, unlike the proposal before me.
11. By virtue of these factors, the proposal would be an intrusive addition that would harm the character and appearance of the CA. Given the scale of the development in context, the harm it causes to the significance of the CA is less than substantial. The National Planning Policy Framework (the Framework) is clear that irrespective of the level of harm, great weight should be given to the asset's conservation and, where a proposal would lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal.
12. It has been suggested that the use of artificial grass would improve the outlook from the appeal property and neighbouring properties and prevent noise to the flat below. The outlook over the flat roof towards neighbouring gardens, where there is green relief, is typical of an urban area and is not particularly unpleasant. There is also no substantive evidence to indicate that noise transfer is an existing problem to the flat below. Moreover, as the larger part of the enclosed rooftop would not be used by occupiers it is envisioned that noise would not therefore be an issue. As such, taken both individually and cumulatively, this proposal would result in very limited public benefits which would not therefore outweigh the identified harm to the CA, which carries great weight.
13. Accordingly, the proposal would neither preserve nor enhance the character or appearance of the CA. It therefore conflicts with Policies 38, 39 and 40 of the City of Westminster City Plan 2019-2040 (April 2021) (the City Plan) and the Framework which collectively seek to ensure, amongst other things, that developments have regard to the character of the area and conserve heritage assets.

Biodiversity

14. Policy 34 of the City Plan seeks to protect and enhance green infrastructure and notes that developments will, wherever possible, contribute to the greening of Westminster by incorporating trees, green walls, green roofs, rain gardens and other green features and spaces into the design of the scheme. There is potential at the appeal site to incorporate a green roof; however, the proposal includes an artificial covering. This would fail to contribute to the greening of the city. It is suggested that planters could be incorporated however these would not be permanent features and could die or be removed. For these reasons, the proposal would conflict with Policy 34 of the City Plan.

Other Matter

15. There is no conclusive evidence before me to indicate that the railings cannot be constructed across the flat roof below, in accordance with the original permission. It seems to me that the amended design is the preferred layout rather than one necessary to prevent damage to the flat below, to ensure longevity or to provide support to the external walls. I therefore afford this matter limited weight. The letters of support do not alter the conclusion I have reached.

Conclusion

16. The proposal conflicts with the development plan and there are no material considerations, including the Framework, that outweigh this conflict. Therefore, the appeal is dismissed.

H Ellison

INSPECTOR