



Appeal Decision

Site visit made on 30 May 2022

by B Phillips BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th August 2022

Appeal Ref: APP/N5660/W/22/3290376

First and Second Floor Flat, 51 Dalyell Road, London SW9 9SA

- 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 Michael Breen (Studio Charrette) against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 21/03102/FUL, dated 3 August 2021, was refused by notice dated 18 October 2021.
 - The development proposed is the creation of a roof terrace involving the installation of a timber balustrade.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have removed the word retrospective from the description of development above, as it does not describe development. However, for the avoidance of doubt, I saw on site that the timber balustrade and roof terrace is in place, in accordance with the plans before me, and I have considered the appeal on this basis.

Main Issues

3. The main issues are
 - the effect of the proposal on the character and appearance of the existing property and surrounding area; and
 - the effect of the proposal on the living conditions of the occupants of neighbouring residents, having particular regard to noise, disturbance and privacy.

Reasons

Character and Appearance

4. No 51 Dalyell Road is an end of terrace property converted into flats, with the upper flat set over the first and second floors. The rear of the terrace has some variation in terms of appearance, with one-two storey rear projections of varying depths, height and roof type, as is the case for the terrace opposite, where there is also a roof extension visible. The rear of the terrace immediately to the north also has differing rear projections visible and a rear roof terrace.

5. In this mixed context, despite its depth, the terrace, including the access door, and timber balustrade do not appear incongruous, and given the three-storey scale of the property and wider terrace, does not appear visually dominant. The original form of the building remains legible.
6. Given the above, the development does not harm the character and appearance of the appeal property nor the surrounding area. Accordingly, the development complies with the requirements of Policies Q5 and Q11 of the Lambeth Local Plan 2020-2035 (2021) (LP), which require development to positively respond to the original architecture and local context and character. There is also no conflict with the design advice set out in the 'Building Alterations and Extensions' Supplementary Planning Document (SPD) (2015), which requires a high standard of design.

Living Conditions

7. The existing rear facing fenestration of the appeal property, and the rear facing fenestration of the neighbouring properties means that there is already some intervisibility and mutual overlooking from windows to garden areas.
8. The terrace, however, is intended to allow for sitting or standing out and given its set forward compared to the existing rear fenestration, it offers clear views of neighbouring gardens to the rear and side. The high vantage point offered by the terrace results in a real sense of being overlooked from above, which substantially reduces privacy and detracts from the enjoyment of neighbouring outdoor space. Therefore, the terrace results in a level of overlooking exceeding the existing and results in a loss of privacy for users of the gardens of adjoining properties, to the detriment of the living conditions of the occupiers.
9. In addition, given its depth, it is possible to look back at the rear facing windows of the adjoining neighbour, 53 Dalryell Road. This results in a loss of privacy for the rooms served by these windows, to the detriment of the living conditions of the occupiers. Similarly, given the position of the terrace, it offers opportunity for clear views, at close proximity, of the windows at the rear of the properties along Combermere Road to the north. Again, the proposal results in a level of overlooking exceeding the existing and results in a loss of privacy for the rooms served by these windows, to the detriment of the living conditions of the occupiers.
10. Given the scale of the terrace, it is possible for a number of people to congregate at any given time for a number of activities. I acknowledge that the Public House and its beer garden immediately adjacent to the north could result in some noise and disturbance. However, given the height and proximity of the roof terrace to No 53 for example, the terrace introduces noise and disturbance close to resting and sleeping areas and serves to exacerbate the existing situation.
11. Whilst it is stated that the terrace has only been used for the drying of laundry by the occupants, there is no way of ensuring that this would continue to be the case for current or future occupiers. Since the number of guests in the property as a whole and the level of activity could vary widely depending on a number of factors, I am not satisfied conditions to control such activities, including hours of use, would be reasonable or enforceable.

12. I acknowledge suggestions relating to screening. Nonetheless, while conditions can be imposed regarding such matters, there are no details of these before me. Therefore, I cannot be confident that such mitigation would sufficiently address the concerns and would not create further impacts on the character and appearance of the building and area.
13. Therefore, I conclude that the development harms the living conditions of occupants of neighbouring residents, in respect to privacy, noise and disturbance. Accordingly, it conflicts with LP Policy Q2 which, amongst other matters, seek to ensure development provides acceptable levels of privacy and noise.

Other Matters

14. The balustrade does improve safety; however, it is not separable from the formal establishing of a roof terrace in this instance. Informal use of the rooftop is not a matter for this appeal. It is acknowledged that the development provides outdoor amenity space to a unit which currently lacks any, however, it does so in a manner that is harmful to the living conditions of neighbouring occupiers, in conflict with the development plan. This matter does not provide justification for harmful development.
15. The appellant points to a lack of harm with regards to matters such as outlook and daylight/sunlight provision, however these are neutral matters not in favour of the proposal.
16. The Council have not raised any issue with the impact of the development on the setting of the nearby Grade II listed Marquess of Lorne Public House, located to the north of the appeal property. The significance of this building relates to its historic interest and architectural quality. The proposed development is located close by and forms part of the mixed urban form, as described above, which provides the wider context of the rear of this asset. Therefore, although it is visible, it has a broadly neutral impact on the setting of the asset.
17. The proposal is unlikely to affect the appreciation of this or any other listed buildings and structures and accordingly I find that their significance is preserved, in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).

Conclusion

18. There are no material considerations that indicate the application should be determined other than in accordance with the development plan.
19. Although I have found that the proposed terrace and balustrade does not harm the character and appearance of the property and surrounding area, the harm identified to the living conditions of the neighbouring residents, having particular regard to privacy, noise and disturbance, means that the proposal must fail. The appeal is therefore dismissed.

B Phillips

INSPECTOR