The Planning Inspectorate

Appeal Decision

Site visit made on 13 September by S Wilson LLB MSc LRTPI

Decision by L McKay MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2022

Appeal Ref: APP/N5660/D/22/3298304
67 Mount Nod Road, Lambeth, London SW16 2LP

- 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 Elisha Koppel against the decision of the Council of the London Borough of Lambeth.
- The application Ref 22/00455/FUL, dated 7 February 2022, was refused by notice dated 6 April 2022.
- The development proposed is described as 'retrospective rear balustrades.'

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. The application form does not include an applicant name; however, this has subsequently been confirmed in writing and I have used that name in the header above.

4. I saw on site that balustrades had been installed at upper ground floor, lower first floor and upper first floor levels, which appeared to accord with the plans before me. I have therefore considered the appeal on the basis that the development has already taken place.

5. The development is balustrades around existing flat roofs or structures; however, the construction will allow those surfaces to be used as terraces. Therefore, I have considered the appeal on this basis.

Main Issue

6. The effect of the development on the living conditions of neighbouring properties with particular regard to privacy and noise disturbance.

Reasons for the Recommendation

Privacy

7. When I visited the site, I was able to access the upper and middle roof tops, which are enclosed by the metal balustrades, through the first-floor flat

windows. The balustrades do not directly face towards any immediate neighbour. However, when standing on the enclosed areas, it is possible to look back towards the windows in the rear of the appeal building and its neighbours either side. The third enclosed area, the lowest, is accessed from the ground floor flat and has stairs which lead down to an enclosed garden area. The evidence before me is that the balustrade around this area already benefits from planning permission.

8. From the upper roof top, facing the appeal building, it is possible to see clearly into the bedroom window of the flat above and the window of a habitable room of the adjacent flat to the right, albeit from a wide angle. From the middle rooftop direct, slightly elevated, short-range views into the bedroom window of the flat above are possible. Although there would have been some distant views towards these windows before, these are much closer and more direct views than would have been possible prior to the enclosure of the roof tops, which enables their use as a terrace.

9. From the middle rooftop, facing the appeal building, it is also possible to see directly into two habitable rooms of the adjacent flat to the left and at eye level. Whilst these windows can also be seen from a balcony below, those views are from much lower and at an angle, so are less intrusive. From this location it is also possible to look down from close range towards the balcony of the flat to the left and one floor lower, which forms part of its outdoor amenity space, and into the habitable room of that flat. Whilst the balcony could previously be viewed from wide angles from several windows, the use of this roof as a terrace will allow more direct, short-range views over this amenity space.

10. As a result, the development allows for a significant increase in overlooking of neighbouring properties, unacceptably reducing the level of privacy enjoyed by their present and future occupiers.

11. The overlooking is enabled, in some part, by the design of the metal balustrades with gaps in between the railings. The Council noted that privacy screens would be required to overcome the privacy issues; however, the development before me does not include screens and no details have been provided of what they could look like. Therefore, I cannot be certain that privacy screens would effectively mitigate the identified harm, nor can I be certain that any such screens would not introduce visual harm. Consequently, it would not be appropriate to require their provision by condition.

12. Consequently, the development allows for unacceptable harm to the living conditions of neighbouring properties in respect of privacy. Accordingly, it fails to comply with criterion ii. of Policy Q2 of the Lambeth Local Plan 2020-2035 (adopted 2021) (the Local Plan), which supports development which provides acceptable standards of privacy.

Noise disturbance

13. If the roof tops are used as a terrace, people sitting or standing in those spaces would be likely to generate noise through their normal activities, where there was none previously. Any noise generated will be on the roof of neighbouring flats, or in very close proximity to their windows. While some noise from residential activities is to be expected in a residential area, the development

allows for such activities to take place much closer to neighbouring properties than would be possible without the balustrades.

14. Whilst double glazing is in place at some of the neighbouring properties it is not installed in all. Even where double glazing can reduce the impact of noise, this is most effective when the windows are closed and would not have the same effect when the windows are open. It would not be reasonable to expect neighbours to keep windows closed when the enclosed areas were in use.

15. There is no substantive evidence before me that there are any measures already in place to mitigate the transfer of noise through the roof tops to the flat below, or that any are proposed.

16. Consequently, noise generated by people using the roof tops as terraces, as facilitated by this development, will result in significant disturbance to neighbouring properties, unacceptably increasing the level of noise disturbance to the present and future occupiers of the neighbouring properties.

17. Whilst the appellant suggests that they would be willing to submit a noise report, there is no such report before me. It would not be reasonable to secure it by condition after planning permission was granted, as there could be no certainty as to what such a report would find, or whether the noise impacts could be satisfactorily mitigated. As a result, there is no substantive evidence before me that the use of the roof tops as terraces does not and would not result in an unacceptable level of noise disturbance, to the detriment of the living conditions of the occupiers of neighbouring properties.

18. In conclusion, the development allows for unacceptable harm to the living conditions of neighbouring properties in respect of noise disturbance, and it has not been demonstrated that the adverse impact of noise can be reduced to an acceptable level. Accordingly, the development fails to comply with criterion v. of Local Plan Policy Q2.

Other Matters

19. The development has not resulted in loss of sunlight/daylight, loss of outlook or a sense of enclosure to neighbours. Furthermore, metal balustrades are not out of character in this area. The lack of harm in these respects is however a neutral factor and does not justify granting permission.

20. I have not been provided with the details of the previous planning permission beyond the description of development. Whilst the Council advises that the upper ground floor balustrade was allowed at that time, there is no substantive evidence before me that the upper two balustrades formed part of that permission. The appellant suggests that the previous permission did not preclude the use of the flat roof tops as terraces, however that does not confer any acceptability on such use of those areas. Some form of barrier would be needed to use the roof tops safely and planning permission would be required for any such barrier, given that the building is in use as flats. Therefore, it is understandable that no control of their use was sought through the previous permission. These matters do not therefore weigh in favour of this development.

Conclusion and Recommendation

21. The development is contrary to the development plan and there are no other material considerations to outweigh this finding. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

S Wilson

APPEAL PLANNING OFFICER

Inspector's Decision

22. I have considered all the submitted evidence and the Appeal Planning Officer's report. I agree with the recommendation for the reasons given above and on that basis the appeal is dismissed.

L McKay

INSPECTOR