



Appeal Decision

Site visit made on 24 January 2023

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 February 2023

Appeal Ref: APP/L5810/W/22/3306453

189 Flat, Castelnau, Barnes, Richmond upon Thames, London SW13 9ER

- 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 Nicholas Hartley-Aldred against the decision of Richmond Upon Thames London Borough Council.
 - The application Ref 22/1081/FUL, dated 31 March 2022, was refused by notice dated 3 August 2022.
 - The development proposed is described as 'a rear balcony at second floor level above the first floor bathroom flat roof. The area of the balcony will be within the external walls of the first floor bathroom. Access to the balcony will be gained via a doorway at the top of the staircase to the second floor. The balcony will be enclosed with an appropriate hand rail or glass.'
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs is made by Mr Nicholas Hartley-Aldred against the London Borough of Richmond upon Thames. This application is the subject of a separate decision.

Background and Main Issue

3. The Council advises that a condition attached to a previous planning permission for the renovation and extension of the appeal property (reference 13/2332/HOT) prevented the use of the newly created flat roofed areas as terraces. Be that as it may, I am required to assess the current proposal based on the current planning policy context and circumstances of the appeal site.
4. The Council has advised that they have no concerns regarding the impact of the proposed development on the living conditions of the occupants of 187 Castelnau. Based on all that I have seen and read I see no reason to take a contrary view. From the evidence before me, the main issue in this appeal is therefore;
 - i) the effect of the proposed development upon the living conditions of the occupants of the flats at 191 Castelnau with particular regard to privacy, outlook, daylight and sunlight and noise and disturbance and, the living conditions of the occupants of 193 Castelnau, with regard to privacy.

Reasons

First and Second Floor Flats at 191 Castelnau

Privacy

5. The proposal seeks to convert the existing flat roof of a 2-storey rear extension at 189 Castelnau to an outdoor terrace for the residential use of the occupants.

The appellant submits that the formation of the terrace would be for the occupants of the appeal property to benefit from an outdoor space, for purposes such as alfresco dining. Irrespective of its small size, the proposal would enable occupants and their visitors, to stand or sit within the terrace for social purposes.

6. Walls and railings would serve to enclose the roof which lies alongside the rear window of the second floor flat at 191 Castelnau (No 191). This window is relatively large, obscurely glazed and consists of a top-opening casement with a central meeting rail. It serves a small shower room. When closed, the obscure glazing to the window would go some way to protecting the privacy of the occupant. However, given the use of the room, it is likely that the window would be in frequent if not daily use, for ventilation purposes. Due to the size of the window and way in which it opens, it allows views across onto the proposed terrace area. It is therefore likely for reciprocal views to be possible from users of the terrace when the window is open, which the proposed walls or existing obscured glass would not mitigate.
7. Whether or not this would be the case, the extremely close relationship between the proposed terrace and neighbouring window would be such that occupants using the shower room would be greatly aware of the presence of people using the terrace. Sound generated from users of the terrace and the shower room would be audible to the other party. This would create a highly uncomfortable feeling for the occupants of the second floor flat at No 191, particularly when getting changed, along with a perception of being seen or watched. This would be aggravated when the window was open and further exacerbated by the small size of the shower room, with limited options for the occupants to gain privacy elsewhere within the room. The proposal would therefore significantly harm the level of privacy experienced by the neighbouring occupant of the second floor flat at No 191.

Outlook

8. The Council suggests that the proposal, including the extension of existing walls by 1.2m, would fail to meet the 45 degree BRE test when applied to the first floor rear window at No 191. There is no clear evidence before me as to which test the Council is referring to or, more specifically, how it should be applied in this particular circumstance.
9. Nevertheless, from the evidence presented it is apparent that the extension would be in proximity to the 2 windows belonging to the first and second floor flats within No 191. These windows are obscurely glazed and serve shower rooms. As such the rooms would not currently benefit from an open outlook, nor would they be expected to. The main living areas of these flats would remain unaffected, being to the front of the property facing the street. Accordingly, the proposal would not adversely affect the outlook afforded to the existing occupants.

Daylight and Sunlight

10. The rear elevation of the appeal property and the flats at No 191 face to the north-west. The rear windows of the first and second floor flats within No 191 will therefore receive little direct sunlight, limited if any, to a small amount of evening sunlight. Given the small-scale nature of the proposed works to the existing walls and that the adjacent rooms within the flats at No 191 are shower rooms which can be artificially lit, it is unlikely that the proposed development would give rise to a significant loss of sunlight. Neither would it

affect ambient levels of daylight to any significant degree. Thus, the living conditions of the neighbouring occupants in respect of daylight and sunlight would not be adversely affected.

Noise and Disturbance

11. Whilst small, the proposed outdoor terrace could be used for social purposes and in connection with social gatherings at the appeal property. This could create noise and disturbance arising from general conversation or the playing of music.
12. There are other roof terraces at first and second floor level nearby. The Council advises that many of them do not benefit from planning permission. The Council has also referred to the dismissal of an appeal in relation to a proposal for a roof terrace at 195a Castelnau.¹ The full circumstances of this proposal are not before me. However, it seems from the previous Inspector's decision, that there were concerns in relation to noise and disturbance arising from the proximity of the terrace to habitable rooms within neighbouring properties. The proposed terrace would not be sited alongside any habitable rooms belonging to the first and second floor flats of No 191. Consequently, the circumstances of the previous appeal are not comparable to those before me.
13. Furthermore, the existing terraces form part of the context of the appeal site. There is no evidence before me that enforcement action has been instigated to require the removal of the existing terraces or to prevent the use of flat roofed extensions, which appears to be the case at No 195a. Nor is there anything before me demonstrating that there have been complaints from neighbouring residents.
14. In the privacy section above, I have found harm arising from the presence of people on the proposed terrace in relation to the occupants of the second floor flat at No 191. This arises from the proximity of the proposed terrace to the shower room and the nature of its use. Notwithstanding this finding, the proposal would not generate harmful levels of noise and disturbance to the occupants of the second floor flat of No 191, given that their general living space is at the front of the property, beyond the shower room.

193 Castelnau (No 193)

15. The proposed terrace would only be around 6m from the second floor window of No 193 (as measured by the Council). Even if people were to be stood at the rear-most edge of the terrace, its shallow depth and proximity to the window would create such an oblique angle that direct views into the room are unlikely to be possible. Likewise, the presence of people on the terrace is not likely to be keenly felt, given the intervening angle and distance from the second floor window. Thus, the privacy afforded to the existing occupants of No 193 would not be harmed.

Conclusion – Living Conditions

16. For the above reasons, the proposed development would not have an adverse effect upon the living conditions of the occupants of the first and second floor flats within No 191 when considering outlook, daylight and sunlight and noise and disturbance. Neither would it adversely affect the privacy afforded to the occupants of No 193. Nevertheless, the proximity and use of the proposed terrace would be harmful to the living conditions of the occupant of the second

¹ APP/L5810/W/16/3150412

floor flat within No 191 with regard to privacy. Consequently, the proposal would be at odds with Policy LP8 of the Richmond upon Thames Local Plan 2018 (RLP), which seeks to ensure that all development protects the living conditions of existing and adjoining properties. This objective is shared with the House Extensions and External Alterations SPD (2015). It would also conflict with paragraph 130 of the Framework, which requires new development to have a high standard of amenity for existing users.

Other Matters

17. Reference is made to the importance of outdoor amenity space particularly following the recent pandemic. It is suggested that the London Plan (2021), specifically Policy D6, positively encourages the use of outdoor space for amenity purposes. Whilst more recent, there is no evidence before me that Policy D6 conflicts with or overrides Policy L8 of the RLP. I further note that paragraph 3.6.2 of the supporting text to Policy D6 suggests that the standards within the policy apply to new self-contained dwellings. The dwelling in this case already exists.
18. The appellant submits that the nearby Wetland Centre, although within walking distance, is chargeable and does not mitigate the need for a private outdoor space for the occupants of the appeal property. I do not underestimate the value of private outdoor space to residents, particularly in urban locations like this. However, privacy to the sole bathroom to No 191 is important. The living conditions for the occupants of the second floor flat at No 191 would be worse with the proposed development, than the living conditions at the appeal property without outdoor amenity space. I have not been referred to any policies within the London Plan that refer to the living conditions of neighbouring occupants, that would lead me to take a different view to the one I have reached above.
19. The Council advises that the appeal site relates to a Building of Townscape Merit (BTM) that is situated within the boundary of the Castelnau Conservation Area (CA). Given that I am dismissing the appeal in relation to the main issue, I have not been required to consider the implications of the proposal upon the BTM and CA further.

Conclusion

20. The proposed development would not be harmful to the living conditions of the occupants of the first and second floor flats of No 191 in respect of outlook, daylight and sunlight and noise and disturbance, nor the privacy of the occupants of No 193 in respect of the second floor window. However, in this instance, the lack of harm is neutral in the planning balance and does not outweigh the harm that would occur to the living conditions of the occupants of the second floor flat at No 191, with regard to privacy. Accordingly, the proposal would be at odds with the development plan taken as a whole, and there are no material considerations that outweigh this finding. The appeal is therefore dismissed.

M Clowes

INSPECTOR