



Appeal Decision

Site visit made on 18 July 2023

by F Rafiq BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2023

Appeal Ref: APP/X5990/W/22/3313868

26 Alexander Street, London W2 5NT

- 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 James Senior (Pembroke Developments Ltd) against the decision of City of Westminster Council.
 - The application Ref 22/05150/FULL, dated 28 July 2022, was refused by notice dated 8 November 2022.
 - The development proposed is the use of first and second floor flat roofs to the rear as terraces including 1.2m metal balustrades and 1.6m trellis fencing.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have utilised the description of development provided on the decision notice and appeal form as this more accurately describes the appeal proposal.

Main Issues

3. The main issues are the effect of the proposal on (i) the character and appearance of the appeal building and whether it would preserve or enhance the character and appearance of the Westbourne Conservation Area; and, (ii) the living conditions of neighbouring occupiers at 8 and 10 Kildare Gardens with regard to privacy.

Reasons

Character and Appearance

4. The appeal site forms part of a four-storey property situated in the Westbourne Conservation Area (Conservation Area). The regular gridiron layout of the area, formed mainly of terraces that have similar styling and proportions, provide for a unified townscape that positively contribute to the character of the Conservation Area.
5. The appeal proposal seeks to create terraces on the existing flat roof area at first and second floor levels to the rear of the building. They would be enclosed by 1.2m high black painted railings and also with 1.6m high intermittent timber trellis screens.
6. The proposal would result in the removal of sash windows and replacement with a number of double doors. This would result in the loss of historic features which would harm the character and appearance of the building and thus the Conservation Area.

7. The Council raise concerns on the size and position of the proposed roof terraces on the upper floors of the building. However, I was able to see existing terraces at first and second floor levels in the immediate vicinity of the appeal site, which contain planters and other items associated with roof terraces. The proposed use of painted black railings would be sympathetic to the Conservation Area and the timber trellis screens are also a feature that can be seen in the surrounding townscape. However, at second floor level, the terrace with the metal railing would visually split a window by abutting it part way across its width. This would appear visually awkward and would not be sympathetic to the window, which together with other architectural features make a positive contribution to the Conservation Area. Whilst the rear of the appeal site would not be seen from public vantage points, it would be visible from a number of neighbouring properties. Although the railing at first floor level would go beyond the bay forming the majority of the terrace's width, it would extend into a recessed area, and it would not therefore appear visually harmful.
8. Nevertheless, the proposal would be harmful to the character and appearance of the appeal building and would fail to preserve the character and appearance of the Conservation Area. The harm to the Conservation Area would be less than substantial and therefore in line with Paragraph 202 of the National Planning Policy Framework (Framework), this harm should be weighed against any public benefits of the proposal.
9. The provision of planting and part sedum roofs would contribute to urban greening and provide other environmental benefits. However, having considered this as a public benefit, it would not outweigh the harm that would be caused to the heritage asset. Accordingly, the proposal would conflict with the Framework in terms of its aims to sustain and enhance the significance of heritage assets and the desirability of development to make a positive contribution to local character and distinctiveness.
10. I therefore conclude that the proposal would conflict with Policies 38, 39 and 40 of the City Plan 2019-2040 (City Plan), which seek, amongst other matters, development that contributes positively to Westminster's townscape and ensuring heritage assets and their settings are conserved and enhanced in a manner appropriate to their significance. It would also conflict with Section 16 of the Framework, which states that great weight should be given to an asset's conservation.

Living Conditions

11. The proposed terrace would be enclosed in part by timber lattice trellis privacy screens. Whilst at 1.6m high, they would provide some privacy benefits, as they would be intermittently placed with gaps in between, they would still permit views from an elevated level to the rear gardens of properties to the west. Although the timber screen could be supplemented by evergreen planting, this would take time to mature, and I also cannot be sure the extent to which it would limit views and provide effective screening.
12. I appreciate that there are already terraces along this section of Alexander Street that permit views to neighbouring gardens. However, the appeal proposal would introduce direct overlooking of the outdoor amenity areas at 8 and 10 Kildare Gardens which adjoin the appeal site to the rear. Whilst existing windows already provide views to these outdoor spaces, they are not

comparable to the outdoor terraces which would introduce external activity closer to neighbouring gardens than existing windows. Although I was able to see the presence of mature trees and shrubs to the rear, these do not screen all of the neighbouring garden areas and would also provide less screening during winter months when trees and shrubs may not be in leaf.

13. To conclude therefore, the proposal would have an unacceptable harmful impact on the living conditions of neighbouring occupiers at 8 and 10 Kildare Gardens with regard to privacy. As such, it would be contrary to Policies 7 and 38 (C) of the City Plan, which seek, amongst other matters, for development to be neighbourly by preventing unacceptable impacts in terms of privacy and overlooking.

Other Matters

14. The appellant has made reference to an appeal decision¹ which is said to set a precedent for the appeal development. However, from the information provided, this referenced appeal at No. 43 Artesian Road was for a flat roof area to be used for the placing and watering of planters, maintenance and for emergency escape purposes and not for use as a roof terrace for sitting out on. Accordingly, I do not consider this referenced appeal is comparable with the appeal development before me.
15. My attention has also been drawn to an approval by the Council at 15A Needham Rd². The Council consider the context of this referenced site is different from the appeal site and from the summary of the Officer's Delegated Report provided by the appellant, it is also evident, that, unlike the appeal property, this referenced property had an existing terrace to the rear at third floor level. I am required to determine the appeal before me on its own merits which for the reasons set out would be harmful.
16. The appeal proposal would not give rise to any harmful enclosure or noise impacts. The privacy screens would also not lead to a loss of daylight or sunlight to neighbouring properties. These are however neutral matters and not ones which weigh in favour of the proposal.
17. The provision of outdoor space can contribute to health and well-being and roof terraces can also make a contribution to green infrastructure and support biodiversity improvements. Whilst these elements weigh in favour of the proposal, they do not outweigh the harm that I have identified on the main issues.
18. It is clear that the appellant has sought to work with the Council, including making amendments following such discussions. This appeal follows the Council's formal decision and I can confirm that I have dealt with it accordingly.

Conclusion

19. For the reasons given above, having taken account of the development plan as a whole, along with all other relevant material considerations, including the provisions of the Framework, I conclude the appeal should be dismissed.

F Rafiq INSPECTOR

¹ Appeal Ref: APP/X5990/D/17/3169902

² LPA Ref: 21/07986/FULL