



Appeal Decision

Site visit made on 29 August 2023

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 November 2023

Appeal Ref: APP/H5960/W/23/3315806

Flat B, 187 Mitcham Lane, London SW16 6PN

- 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 Razor Investments against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref 2022/4491, dated 21 November 2022, was refused by notice dated 16 January 2023.
 - The development proposed is the erection of a roof terrace with a 1.7m high, obscured glass balustrade, on the rear roof extension at the first floor level.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Whilst the appeal address within the banner above refers to 187 Mitcham Lane, for clarity I have used the address from the Appellant's Appeal Statement. The appeal therefore relates to Flat B, 187 Mitcham Lane.
3. Wandsworth Local Plan (LP) was adopted on 19 July 2023. The new LP supersedes previously referenced policies PL1 and IS3 of the Core Strategy (2016), and policies DMS1 and DMH5 of the Wandsworth Development Management Policies Documents (2016). I have assessed the proposal accordingly.

Main Issues

4. The main issues relating to this appeal are:
 - the effect of the proposal on the character and appearance of the host property and surrounding area, having particular regards to its height, siting and design; and
 - the effect on the living conditions of nearby residents with particular regards to privacy, noise and disturbance.

Reasons

Character and Appearance

5. The appeal site is a two storey semi-detached property subdivided into three flats, within a predominantly residential area. The front is bound by Mitcham Lane, a main road and bus route. The rear elevation is bound by the gardens associated to properties on Mitcham Lane, Corsehill Street and Dahomey Road. The appeal premises and adjacent properties are set slightly higher than the

properties on Corsehill Street and Dahomey Road with levels falling towards Fallsbrook Road. The change in level and positioning of the appeal premises in relation to Corsehill Street and Dahomey Road results in its rear elevation being clearly visible from the public realm and from the rear gardens of properties associated with Corsehill Street and Dahomey Road.

6. The rear of the appeal premises is three storey in height, including the existing dormer and single storey outrigger to the rear. A number of neighbouring properties on the street within which the appeal property is located benefit from a variety of single storey outriggers, none of which have roof terraces. The exception to this is No 183 Mitcham Lane (No 183), a detached property which occupies a corner plot situated on Mitcham Lane and Dahomey Road which has a two storey outrigger which extends approximately two thirds the width of the rear elevation with a single storey outrigger and roof terrace which occupies the remainder of the rear elevation.
7. The proposal would introduce a 1.7 metre high glazed obscure safety surround on the roof of the existing single storey outrigger. Whilst the safety surround would be set in from all edges and span approximately half the width of the existing outrigger, its elevated position along with its obscured nature conceals approximately half of the first floor. This together with the change in level of the adjoining gardens and resultant openness of the rear would result in the balustrade being readily visible. The visibility of the rear elevation would therefore result in the obscure safety surround appearing as an unduly prominent feature, incongruent within the existing rear context.
8. I accept that the rear of No 183 benefits from a roof terrace at the first floor with an open balustrade. However, the roof terrace does not appear to have planning permission and therefore unlikely to have been considered against policies within the development plan. As such the presence of the roof terrace does not provide justification for harmful development such as that proposed.
9. The flat roof at No 185 has been accessed due to the presence of potted plants and folded seating. However, there is no door or balustrade at the first floor and the Council has advised that the use of the roof as a balcony or roof garden or sitting area is precluded by a planning condition. Therefore, the roof of No 185 is not considered to be a roof terrace.
10. I conclude that the proposal would have a harmful effect on the character and appearance of the host property and surrounding area. Accordingly, the proposal conflicts with policies LP1 and LP5 of the LP, which seeks, amongst other things, to ensure the scale, massing and appearance of development relates positively to the prevailing local character, respecting the host property. There would also be conflict with guidance contained in the Wandsworth Local Plan Supplementary Planning Document – Housing (2016), which seeks, amongst other things, to ensure screening to roof terraces is sensitively designed to be unobtrusive and not appear as an incongruous add-on. Furthermore, there would also be conflict with the good design aims of the National Planning Policy Framework (Framework) which seeks, amongst other matters that development is sympathetic to the local character.

Living Conditions

11. The appeal property is semi-detached in nature, with Flat B situated at the first floor. Attached is No 185 and adjacent is No 189. Both neighbouring properties

have habitable rooms within the rear elevations and the new roof terrace would be situated at the first floor level in close proximity to windows serving living accommodation within them. Whilst located within a relatively high-density area, the rear garden environment of the appeal site and its neighbours is more peaceful than to the front of the dwellings close to the busy road of Mitcham Lane, with only one flat within No 187 (Flat A) benefitting from outdoor amenity space.

12. The proposal would permit outdoor activity associated to Flat B, elevated above the ground. Whilst there would be no direct loss of privacy due to the erection of a 1.7 metre high obscure screen, given the elevated position of the roof terrace above the gardens, the use of the area would give rise to a sense of overlooking, particularly if users of the roof terrace were standing up on the area. Such activity would be likely to harmfully erode the privacy levels in the rear garden environment of nearby residents, including those of the ground floor flat within the appeal property. As a consequence, the use and enjoyment of the gardens would be harmfully eroded by the proposal.
13. In reaching this view I am mindful that there is currently a degree of mutual overlooking from first floor windows into neighbouring gardens, however such views are unlikely to have the same impact given that it would be unlikely that somebody would be stood in a window for an extended period of time, which would be the case with the use of the proposal. The presence of the terrace at No 183 and the alleged use of the roof at No 185 does not alter my findings.
14. Furthermore, the proposal, whilst of a modest size, would allow a number of people to congregate on it, to dine and be entertained. Such activities would be likely to introduce noise at a high level, where there is currently none, including talking, laughing and music which would likely to be heard from within nearby properties particularly in the evening when rear windows may be open, and from within the rear garden environments. Such noise would be likely to be more audible than noise from within the gardens given the elevated nature of the proposal as fencing and landscaping provide a degree of noise attenuation in nearby gardens.
15. I accept that noise could be audible from open windows within the host property. However, noise created within a property would be attenuated by the walls and roof in the first instance. The use of the roof terrace would be likely to cause disturbance and be overbearing to nearby occupiers as a result. In reaching this view I am mindful that the appeal site is separated from No 189 by an alleyway, however from the evidence before me and having viewed the site, I do not consider that this distance is sufficient enough to mitigate potential harm.
16. For these reasons, I conclude that the proposal would have a harmful effect on the living conditions of existing nearby residents. I therefore find conflict with Policy LP2 of the LP which seeks to ensure amongst other things, that development does not adversely impact the amenity of existing occupiers and avoids levels of overlooking or (perceived overlooking) and undue sense of enclosure onto the private amenity space of neighbouring properties. There would also be conflict with the Framework which seeks, amongst other matters to ensure that development creates a high standard of amenity for existing users.

Other Matters

17. The appellant has drawn my attention to a number of examples in support of the proposal. Whilst I have been provided with plans, decision notices and officers reports for 2 of the examples, I cannot be certain that the sites are directly comparable to that before me. In terms of Flat B, 35 Comyn Road (Flat B No 35)¹, whilst the issues and proposal are similar, there are marked differences with the appeal site, specifically the number of existing first floor roof terraces within the immediate locality of Comyn Road including at No's 11, 17 and 27. As such the introduction of a further roof terrace at Flat B No 35 was not considered out of character within the rear elevation. With regards to No 18 Salcott Road (No 18)², whilst the issues and proposal were similar to the appeal scheme, it appears given the context the Council found the proposal was acceptable. It is clear from the examples quoted that the circumstances differ to those before me. Moreover, each application and appeal are determined on its own merits. In this case the other examples quoted do not justify harmful development.
18. The appellant has drawn my attention to a number of large outbuildings in the rear gardens adjacent to the rear boundary walls. Whilst these are set within the garden, detached from the main properties and used as ancillary accommodation, their presence is not comparable to the matter in hand.
19. With regards to the boundary with No 189, whilst I have seen the heavily screened boundary on site, the presence of planting in summer may be different in winter. As such the presence of a verdant screen does not alter the conclusions I have reached.
20. The appellant has drawn my attention to Policy D6 of the London Plan. Whilst I acknowledge that this policy relates to housing quality and standards, and amongst other matters, identifies providing specific levels of private outside space, the policy relates to new housing development and not alterations or extensions to existing dwellings and as such is not applicable in this instance.
21. The appellant has also drawn my attention to Policy DMH7 of the Wandsworth Development management Policies Document. I am aware that the Wandsworth Development Management Policies Documents (2016) has been superseded by the LP. The appellant has not referred me to any adopted policies within the LP which they consider relevant.
22. I acknowledge the use of an external private area would enhance the living conditions of occupants of Flat B, however such benefits should not be at the expense of the character and appearance the area or the living conditions of nearby occupiers. This does not outweigh the harm identified.
23. The absence of harm regarding fire safety, daylight, sunlight and outlook are neutral matters in the overall planning balance as they would be a likely requirement of any well-designed development.
24. I note the appellants concerns over the Council's general approach towards the proposal and lack of site visit. The appellant can clearly raise this with the Council in the first instance. They are not matters that are determinative in this case.

¹ 2019/2829

² 2020/1485

Conclusion

25. For the reasons set out above, and having had regard to all other matters raised, the proposal conflicts with the development plan taken as a whole. There are no other material considerations which indicate that the decision should be made other than in accordance with the development plan. I conclude that the appeal should be dismissed.

L Clark

INSPECTOR