



Appeal Decision

Site visit made on 30 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/N5660/W/23/3315717

Flat B, 96 Arodene Road, Lambeth, London SW2 2BH

- 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 Ltd against the decision of the Council of the London Borough of Lambeth.
 - The application Ref 22/03776/FUL, dated 21 October 2022, was refused by notice dated 19 January 2023.
 - The development proposed is the replacement of a first floor rear window with French doors and the erection of a roof terrace, with a 1.7m obscure glazed balustrade above the ground floor rear extension of 96 Arodene Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Whilst the appeal address within the application form refers to 96 Arodene Road, for clarity I have used the address from the Appellant's Statement. The appeal therefore relates to Flat B, 96 Arodene Road.
3. The appellant has requested that I consider changes which were not before the Council when it took its decision. These changes relate to the position of the balustrade from being set on the parapet to being inside the parapet of the single storey outrigger. I have considered whether to accept the changes applying the principles of 'Holborn Studios Ltd¹ and I am satisfied that it would not be unfair not to reconsult on the changes or that my acceptance of the revisions would deprive those who were entitled to be consulted on the changes that opportunity, given the nature and extent of the changes proposed. Accordingly, I have assessed the proposal on the basis of the submitted drawings.

Main Issues

4. The main issues relating to this appeal is the effect the proposal on:
 - the character and appearance of the host property and surrounding area, having particular regards to scale, design and materials; and
 - the living conditions of nearby occupiers having particular regard to outlook, noise and disturbance.

¹ Holborn Studio Ltd v The Council of the London Borough of Hackney (2017) EWHC 2823 (Admin)

Reasons

Character and appearance

5. The appeal property is a first floor flat located within a terraced property converted into three flats and set within a predominantly residential area. The rear elevation of properties on the terrace within which the appeal property is located contain few extensions or alterations. The exception to this is No 98 Arodene Road (No 98) which adjoins the appeal premises. No 98 benefits from a similar single storey outrigger at ground floor, with double doors at first floor providing access onto a roof terrace which has a post and rail balustrade. The remaining adjoining property No 94 Arodene Road (No 94) remains as a single dwelling with no extensions. The lack of extensions or alterations results in the rear elevation of this section of Arodene Terrace benefitting from a balanced, uncluttered and regular appearance.
6. The proposed roof terrace would be located on top of the single storey flat outrigger which extends outward from the three storey outrigger. The double window at the first floor would be replaced with French doors to allow access to the roof terrace and the balustrade would be set within the parapet around the edge of the terrace.
7. The first floor French doors would be flush to the rear wall of the outrigger and their size and design would not result in harm to either the character or appearance of either the host property or that of the immediate area. I am mindful however that the doors are part of a wider application and are linked to the use of the roof of the outrigger as an external terrace with a 1.7 metre high obscure glazed balustrade.
8. The use of the roof terrace as an area for sitting out on and entertaining would introduce outdoor activity into an area where there is none at present. Moreover, the 1.7 metre obscure glazed balustrade whilst constructed from lightweight materials would conceal views of the rear of the host property, and would by virtue of its elevated position, width and height, appear as an alien feature on the rear of the host property, which would be visible from within the rear gardens of nearby properties on Arodene Road and Virginia Walk (VW). The proposal would also disrupt the largely uniform rhythm of the rear of the terrace, even taking into account the roof terrace at No.98 which was subject to a lawful development consent², so it is unlikely that the same considerations that are before me would have been taken into account in its assessment.
9. I conclude that whilst I have found that the replacement of the first floor rear window with French doors would not harm the character or appearance of the host property or wider area, this would not be so in respect to the erection of a 1.7m obscure glazed balustrade and roof terrace. Accordingly, the proposal conflicts with Policies Q2, Q5, and Q11 of the Lambeth Local Plan (2021) which seeks, amongst other matters, to ensure development maintains visual amenity from adjoining sites, and responds positively to aspects of the locality regarding the relationship with other buildings and space. There would also be conflict with guidance contained in the Lambeth Building Alterations and Extensions SPD (2015) which seeks to ensure new projecting balconies are appropriate to the host building and that permanent screening does not compromise amenity. Furthermore, there would also be conflict with the good

² LPA Ref: 05/00087/LDCP

design aims of the Framework which seeks, amongst other matters to ensure development is sympathetic to local character.

Living conditions

10. The appeal property is situated in a relatively confined setting with other residential properties set close to the side, above, below and to the rear. As the roof terrace and balustrade would be associated with Flat B, its location at the first floor would be on the same level as the bedroom of No 94. This bedroom has a double width window which provides an unrestricted and open outlook out and over neighbours' gardens.
11. To the rear are properties associated with VW which are set at a higher level than Arodene Road, in close proximity to the party boundary of the appeal site. Although nearby dwellings in VW benefit from blank walls at the first floor, there are a number of windows to the ground floor which overlook the appeal premises.
12. The proposed balustrade would project outwards from the three storey outrigger and would be fully visible from the bedroom of No 94 as well as from the rear elevation of properties nearby in VW. Whilst the opaque screen would be light weight in materials, its elevated position together with the height of the balustrade and depth of projection from the outrigger would dominate views, restricting the open aspect currently enjoyed by occupants of No 94. Furthermore, its presence at first floor would dominate the rear elevation resulting in a reduction in the current visual spacing between the appeal site and properties within VW.
13. Furthermore, as No 94 does not benefit from any rear extensions the balustrade, because of its height and position would create the appearance of an additional storey when viewed from ground level, towering above occupants of No 94 when in their garden.
14. The new roof terrace would be large enough to entertain friends and allow dining upon it, notwithstanding it being accessed from a bedroom. With this mind, I consider that given the constrained nature of the site, together with its elevated position, the use of the area has the potential to allow noise and disturbance audible to nearby residents.
15. In reaching this view I acknowledge that that noise could be audible from open windows within the host property or from within the garden. However, noise created within a property would be attenuated by the walls and roof in the first instance. Whilst noise created from within the garden would be within an open environment and could be audible to nearby residents, as gardens to dwellings are usually set at ground level with boundary treatments dividing plots and bedrooms traditionally at first floor, the distance between the noise source and habitable rooms at first floor would be likely to mitigate the level of disturbance.
16. For the above reasons, I conclude that the proposed development would fail to ensure adequate outlook or living conditions for nearby occupants in conflict with Policy Q2 of the Lambeth Local Plan (2021) which seeks, amongst other matters to maintain existing standards of outlook, and restrict unacceptable noise and disturbance. There would also be conflict with the Framework which

seeks, amongst other matters to ensure that new 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 Appeal decisions I cannot be certain that the sites are directly comparable that are before me.
18. In terms of 19 Montrell Road (No 19), I note this was approved at appeal³. Whilst the issues and proposal are similar, there are marked differences with the appeal site, specifically the number of extensions and alterations to the rear of properties on Montrell Road referred to by the Inspector and the number of examples of other roof terraces in the wider area. As such the introduction of a further roof terrace at No 19 was not considered out of character within the rear elevation.
19. With regards to 144 Victoria Rise⁴, whilst the issues and proposal are similar to the appeal scheme, it appears that the site context is different specifically the size of the adjoining gardens, and distances between the development and the neighbouring properties to the rear. As such the introduction of a further roof terrace was not considered out of character within the rear elevation.
20. With regards to 11 Ashlake Road, whilst I note that this was approved at appeal⁵ and the issues and proposal are similar to the appeal scheme, it appears that the context is different, specifically the number of extensions and alterations to the rear of properties on Ashlake Road. As such the site is not comparable. Moreover, each application and appeal are determined on its own merits. In this case the examples quoted do not justify harmful development.
21. The appellant has drawn my attention to Policy D6 of the London Plan and provided an extract from this. Whilst I acknowledge that this policy relates to housing quality and standards, and amongst other matters, prescribes specific levels of private outside space, the Council has indicated that this policy relates to new housing and not alterations or extensions to existing dwellings. I have not been provided with evidence to demonstrate that this is not the case.
22. The appellant has drawn my attention to the Tapercrown Ltd (2006) caselaw⁶. Whilst I have only been provided with an extract, from the limited information before me I do not consider there would be any obvious alternative which would overcome the harm identified above.
23. The appellant has also drawn my attention to Policy H5 and specifically paragraphs 5.32 – 5.34 of the Lambeth Local Plan and The London Plan Housing SPG (2016) (SPG) specifically to paragraph 2.3.33. I acknowledge that those paragraphs in Policy H5 support the provision of outdoor space and that the SPG sets standards for private open space, however both policies relate to creation of new residential developments through new build or conversion not alterations to an existing dwelling which is the case subject to the appeal.

³ APP/N5660/W/22/3301186

⁴ 21/02556/FUL, 21/03893/FUL and 22/01404/FUL

⁵ APP/N5660/W/22/3310941

⁶ Tapercrown Ltd v First Secretary of State [2006] EWCA Civ 1744.

24. I acknowledge the use of an external private area would enhance the living conditions of occupants in Flat B, however the benefits do not outweigh the harm identified. Furthermore, I am therefore mindful of my duties under S38(6)⁷ of which the above policies form part.
25. With regards to the time taken for the Council to determine the original application, together with the service it has provided to the appellant, these are not in my scope to provide comment.
26. I note the appellants claim that the Council have introduced new evidence within their Statement of Case regarding "perceived overlooking". The Council refer to Policy Q2 within their second refusal reason. Point iii, of Policy Q2 specifically relates to adequate outlook and amongst other things states "perceived overlooking". I therefore do not consider the Council has introduced new evidence.

Conclusion

27. 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

⁷ S38(6) of Planning and Compulsory Purchase Act 2004.