



Appeal Decision

Site visit made on 24 October 2023

by H Senior BA (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 December 2023

Appeal Ref: APP/L5810/W/23/3321528

Flat 4, Chelsea House 9-11 White Hart Lane, Barnes, Richmond upon Thames, London SW13 0PX

- 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 Luigi Iannone against the decision of Richmond Upon Thames London Borough Council.
 - The application Ref 22/2904/FUL, dated 26 September 2022, was refused by notice dated 25 November 2022.
 - The development proposed is Proposed extension of existing fence / privacy screen to include entire flat roof terrace within the curtilage of the property. No changes to dwelling internally.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have been referred to emerging policies from the Richmond Publication Version Local Plan (Regulation 19 version) which was published for consultation on 9 June 2023. I have no details regarding the extent of any unresolved objections to the policies or whether they may be subject to change prior to adoption so I have given them limited weight and relied on the policies of the adopted development plan in making my decision.

Main Issues

3. The main issues are the effect of the proposal on:
 - the health and longevity of nearby trees; and
 - the living conditions of the neighbouring occupiers of 32 The Terrace having particular regard to outlook.

Reasons

Trees

4. There are a number of trees in close proximity to the appeal site including a number of branches overhanging the roof terrace. As they are within the Mortlake Conservation Area they are automatically afforded protection. I could see during my site visit that these are significant trees which contribute positively to the character and appearance of the area.
5. I accept that the closest tree is on the neighbouring property, which is 4m lower than the roof terrace. The appellant states there is no intention to disrupt the existing tree's growth by harming, cutting or diverting the growth of the

existing tree. It is also suggested that the fence could be adjusted to take account of the height of the tree crown. There is however no tree survey or other arboricultural evidence submitted with the application or appeal and the appellant's intentions to not harm the tree cannot be secured by any planning mechanism. Moreover, acceptance that the fence could or might need to be adjusted is evidence of conflict with this tree. Planning permission is sought for the fence in a particular location; it does not afford ad-hoc flexibility based on the position of the trees canopy and appellant's intention at a given point in time. This is therefore not persuasive in the absence of professional arboricultural evidence.

6. Given the trees are protected, the removal of branches cannot automatically be undertaken and so conflict arises between the trees and proposed enclosure of the terrace. In such circumstances, I need to adopt a precautionary approach, and so it would not be appropriate to leave the appellant to merely contact the owner of the trees or leave the matter to planning conditions as I cannot be sure that the tree would not be harmed from the proposed works.
7. I conclude that the proposal would conflict with Policies LP1, LP3 and LP16 of the Richmond Local Plan 2018 (RLP), which together amongst other matters seek to ensure that development protects and respects trees and landscape.

Living Conditions

8. The host dwelling is an upper floor flat within a mixed use building with commercial uses on the ground floor. To the rear of the flat there is access to an existing roof terrace which is partly fenced for the use of the occupiers of the flat. The proposal would see the fence extended to the full extent of the roof terrace.
9. There is disagreement between the parties about whether the adjacent garden to the north of the site is land in the ownership of 31 or 32 The Terrace. From the evidence from the Council, it would appear to be part of the garden of No 32. Regardless of ownership, the dwellings are some distance away from the proposal. The roof terrace is an existing feature which would be seen from the garden. The fence would be similar to that which exists on part of the roof terrace and would be extended closer to the edges of it.
10. Whilst the fence would be longer, the height and design would be similar to that which is currently in place. Due to the length and size of the garden area of the neighbouring dwelling, whilst the fence might be visible through the trees, which I accept could alter over time, it would nevertheless not be visually intrusive and overbearing.
11. I conclude that the proposal would not harm the living conditions of the occupiers of 32 The Terrace with particular regard to outlook. It would therefore not conflict with Policy LP8 of the RLP which amongst other matters seeks to ensure that development does not raise unacceptable disturbance to nearby occupiers through creating a sense of enclosure.

Other Matters

12. The host property lies within the Mortlake Conservation Area. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.

13. The Council, in determining the planning application concluded that the proposal would preserve or enhance the character or appearance of the conservation area, due to the position of the proposal which cannot be viewed from public spaces and that the materials of the fence would match the existing. From the evidence before me and my observations on site I have no reason to disagree.
14. I note the appellant's concerns regarding the Council's handling of the case. However, in determining this appeal, I am only able to have regard to the planning merits of the case.

Conclusion

15. There are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be dismissed.

H Senior

INSPECTOR

