



Appeal Decision

Site visit made on 11 September 2023

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

an Inspector appointed by the Secretary of State

Decision date: 02 FEBRUARY 2024

Appeal Ref: APP/K5600/W/23/3322802

12 Norland Place, Kensington and Chelsea, London W11 4QG

- 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 Fergus Chamberlain against the decision of the Royal Borough of Kensington and Chelsea.
 - The application Ref PP/23/00368, dated 17 January 2023, was refused by notice dated 24 March 2023.
 - The development proposed is a roof addition to front half of main roof and retention of the remaining rear section as a roof terrace.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single storey extension to the front half of the main roof and the erection of decking, wall lights and speakers in connection with the use of the rear half of the roof as an outdoor terrace, at 12 Norland Place, London W11 4QG, in accordance with the terms of the application, PP/23/00368 dated 17 January 2023 and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The description of development in the banner heading above, is taken from the planning application form but with the address removed for brevity. The term 'retention' does not describe an act of development. Whilst the application form indicates the appeal scheme includes the retention of a section of roof terrace, the submitted plans indicate that new decking is to be installed along with the relocation of existing lights and speakers. Therefore, it is necessary to determine the development applied for.
3. Section 55(1) of the Town and Country Planning Act 1990 indicates that development is the carrying out of building, mining, engineering or other operations, or the making of a material change of use of buildings or land. Planning permission is not therefore required for the use of the roof as an amenity space because it is a residential use within the curtilage of a residential property. Permission is however required for the associated operational development involved.
4. The appeal scheme therefore seeks permission for the erection of a single storey extension to the front half of the main roof and the erection of decking, wall lights and speakers in connection with the use of the rear half of the roof as an outdoor terrace. I have dealt with the appeal on this basis. I have amended the description of development in my decision, for the purposes of clarity.

5. The appeal site benefits from a certificate of lawfulness of existing use or development (CLEUD)¹. From the evidence before me, the certificate was granted on the basis that the use of the main roof as a terrace and building works including decking, a retractable rooflight, electricity cabinet and provision of lights and speakers were lawful, having been completed more than 4 years previously. It is not for me as part of this S78 appeal, to question the validity of the CLEUD. As no legal challenge has been made and the certificate has not been revoked, it is not a matter for me to reconsider.
6. The appeal was amended from the householder to written representations procedure, to ensure that new information submitted at the time of the appeal did not prejudice interested parties.
7. Planning permission was granted at the appeal site for a roof addition to the front half of the roof on 7 December 2023². On the evidence presented, this extant permission appears to be largely identical in scale and position to the proposal before me, but including a juliette balcony within the design. Whilst this constituted late evidence, it could not have been provided earlier in the appeal process. The Council and interested parties were given opportunity to comment and I have taken into account the responses received in my decision.

Main Issues

8. The main issues in relation to this appeal are;
 - i) the effect of the proposed development upon the living conditions of neighbouring occupiers, with regard to the loss of privacy and noise and disturbance; and
 - ii) if any harm and any conflict with the development plan would arise in respect of the first main issue, whether there are any material considerations to indicate that the appeal should be allowed, with particular reference to the CLEUD and the December 2023 permission.

Reasons

Loss of privacy

9. The appeal site comprises of a 2-storey mid-terrace dwelling located between the narrow streets of Norland Place and Prince's Yard to the north. It is a predominantly residential area where dwellings are densely developed. I observed that a number of dwellings including the appeal site and those in Prince's Yard utilise blinds to improve privacy due to the proximity and close relationship between neighbouring dwellings.
10. The rear elevation of the appeal dwelling lies in proximity to the front elevation of No 5 and 6 Prince's Yard with only the narrow yard between the two. No's 5 and 6 are 3 storeys in height and I observed, marginally higher than the parapet to the appeal property.
11. Although planning permission is not required for the use of the roof for residential purposes, the proposed decking and associated works would facilitate the use of the space on a more regular basis. A person standing on the proposed terrace adjacent to the rear parapet would have a clear and unobstructed view down into the habitable rooms of No's 5 and 6 at close quarters. More oblique and slightly set back views would also be possible

¹ Application reference CL/22/04591.

² Planning application reference number PP/23/06573.

towards No's 1–4 Princes Yard. This would therefore be harmful to the privacy of adjacent occupants. However, when utilising the outdoor seating, the appellant would largely be screened from views from the neighbouring dwellings in Princes Yard and vice versa due to the raised parapet.

12. The proposed extension would increase the height of the host property but at the front of the roof away from Prince's Yard. Set back roughly to the mid-point of the roof, the windows in the northern facing elevation of the proposed extension would be partially screened by the rear parapet, limiting the possibility of direct overlooking of No's 5 and 6. Any views from the proposed extension would therefore be over the flat roofs of these Prince's Yard dwellings to the north.
13. The close position of habitable windows within the rear elevation of the host dwelling and the front elevations of No's 5 and 6 in particular, already results in a high degree of overlooking between the neighbouring properties. As such, any overlooking from the proposed extension would not be materially worse than that which could already occur from the ground and rear windows of the appeal property.
14. It would not be possible for views to be obtained from the proposed extension into the rooflights of other properties within the terrace due to their shared orientation.

Noise and Disturbance

15. Norland Place and Prince's Yard, have a reasonably quiet residential character, a positive attribute for residents. Even so, it is a densely developed area close to the commercially active and well-trafficked Holland Park Avenue such that there is a degree of background noise.
16. The planning history of the appeal site indicates that previous roof top developments were dismissed at appeal or refused by the Council, due to concerns regarding the impact of such development on the living conditions of neighbouring residents including disturbance³.
17. The proposed extension and provision of new decking would enable the appellant to use the area for social purposes in connection with the use of the dwelling. This could create noise and disturbance arising from conversation or the playing of music. There are other outdoor spaces nearby including the external balconies to the dwellings within Prince's Yard which already exist close to the windows of neighbouring properties. I observed No 9 Norland Place also benefits from an outdoor roof terrace. All of these spaces are relatively small in contrast to that proposed.
18. No substantive evidence has been presented to demonstrate that the proposed extension would result in noise reverberating to a greater extent around Prince's Yard to the rear of the appeal site. The use of external space associated with residential properties is not an inherently noisy use, and gardens and terraces often sit cheek by jowl with other neighbouring dwellings where you can hear other occupants' conversations or activities. There is no reason to suppose that residents of the appeal property would behave in an unneighbourly manner, even if they were joined by guests on the terrace. As

³ Planning application reference number PP/06/00442 for the raising of the front and rear parapet walls (2006); pp/05/0117 for the erection of guarding at roof level to front and rear parts of building (2005) and appeal reference APP/C/91/K5600/608368/D6 (1992).

with any other residential property, if they were to do so, leading to noise nuisance, controls under Environmental Health legislation could be used.

19. In addition, occasional outdoor cooking is not unusual in gardens or outdoor terraces. It is likely to be weather dependant, infrequent and is thus not a matter that weighs against the proposal to a material degree.

Conclusion – Living Conditions

20. For the above reasons, the proposed extension would not have an adverse effect upon the living conditions of neighbouring occupiers. If used in the ordinary manner the proposed terrace would not give rise to noise and disturbance. However, the proximity and use of the terrace would cause harm to the living conditions of neighbouring occupiers with regard to privacy. Consequently, the proposal would be at odds with Policy CL5 of the Royal Borough of Kensington and Chelsea Local Plan (2019) and Policy N3 of the Norland Neighbourhood Plan (2014) which seek respectively, to ensure good living conditions for occupants of existing and neighbouring buildings and that the addition of an outdoor terrace is avoided where it is not a prominent feature of the terrace. It would also conflict with paragraph 135 of the Framework, which requires new development to have a high standard of amenity for existing users.

Other Material Considerations

21. Since the previous applications for planning permission were refused a CLEUD has been granted for the use of the roof as an outdoor terrace⁴. This therefore marks a new position in the planning history of the appeal site. The CLEUD confirmed that operational development carried out on the roof was lawful. These works facilitated the use of the roof as a terrace. Therefore, the existing roof can be legitimately used for purposes incidental to the enjoyment of the dwelling, including sitting out, socialising and gardening.
22. The fact that some interested parties did not know the terrace existed does not mean that it has not been used. Rather, it is likely to indicate that its previous use has not been particularly problematic or incompatible, despite its close relationship with neighbouring properties.
23. A loss of privacy to the occupants of the Prince's Yard dwellings could already occur from the existing roof terrace. The proposal would not materially worsen the existing situation to any significant degree.
24. Furthermore, it does not follow that additional living space would automatically result in an intensification of use of the terrace. In reality, the proposed extension would reduce the amount of external space available to the appellant and therefore coincidentally limit the number of people that could use the terrace and generate noise. The proposed extension is unlikely to facilitate a more frequent use of the terrace than is presently the case, given the permanent staircase and rooflight that already provide easy access to the roof. I find that the lawful use of the existing terrace is therefore a matter that attracts significant weight.
25. As discussed above, planning approval has recently been granted for the erection of a rooftop extension at the host dwelling⁵. Being of the same scale and position to the extension before me, there would be no greater effect on

⁴ Application reference CL/22/04591.

⁵ Planning application for a roof addition to the front half of the main roof, planning reference PP/23/06573.

daylight and sunlight afforded to neighbouring properties. The only minor difference with the approved scheme is the provision of a Juliette balcony within the northern elevation. There is no obligation on the appellant to finish a development once started, therefore were the proposed balcony not installed, the CLUED would still enable the rear terrace to be used for residential purposes. The fallback position would then amount largely to the same form of development which is before me. Thus, I attach considerable weight to the realistic prospect of this fallback position being implemented, given the appellant's clear intentions for a rooftop extension.

Other Matters

26. The Council did not refuse the proposal on the grounds that it would result in overdevelopment or harm to the living conditions of neighbouring occupants in respect of a loss of light. The proposed extension would increase the amount of built development at the appeal site, but it would be viewed in conjunction with the adjacent buildings and against the backdrop of the taller buildings that front onto Holland Park Avenue.
27. The appeal site is located within the Norland Conservation Area (NCA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be had to the desirability of preserving or enhancing the character or appearance of the conservation area.
28. The NCA is characterised predominantly by terraced housing of a consistent material palette and attractive architectural detailing, forming a tight urban grain that developed as part of a planned estate dating from the mid 1800's⁶. The appeal dwelling is one such mews building located in the picturesque street of Norland Place. It therefore has historic, evidential and aesthetic value that contributes positively to the significance of the NCA.
29. The Council does not object to the proposal on any basis of harm to the NCA. Notwithstanding the objection from the Norland Conservation Society, the appeal site does not form part of a completely uninterrupted and uniform terrace. The development to the north-east is more modern and consists of mansard roofs and the terrace to the south-west contains dwellings with dual pitched roofs set back from the rear elevation of the appeal site. There is therefore some flexibility in this specific location for a rooftop development. The tight grain of Norland Place and limited public vantage points of the appeal site other than from relatively close quarters, would ensure that the overall character of the NCA would be preserved.
30. Reference is made to the refusal of planning permission for the installation of a rear roof terrace at No 8 Norland Place⁷. Be that as it may, the full details of this case are not before me, including whether the property benefitted from a fallback position provided by a CLEUD or a planning permission. Likewise, there is no reference in appeal decision APP/K5600/D/21/3286902 that there were material considerations to weigh against the development plan. These decisions are not therefore comparable.
31. A precedent does not arise if there are legitimate reasons for permitting one development but not another. Other potential future proposals for roof terraces

⁶ As described in the Norland Conservation Area Appraisal (2020).

⁷ Planning application reference number PP/11/03390 refused in 2012.

within the area would need to be considered by the Council on their own merits. This would be consistent with the advice of the Courts⁸.

32. Party wall concerns are a matter for the parties involved.

Planning Balance

33. The proposed extension would not adversely affect the living conditions of neighbouring occupants specifically No's 5 and 6 with regard to privacy or noise and disturbance more widely. However, the proposed works to facilitate the use of the terrace would result in harm to privacy of neighbouring occupants at No's 1-6, resulting in conflict with the development plan. Balanced against this is the fallback position of an extant planning permission for a very similar extension and the existing lawful use of the roof as a terrace with associated works.

34. Planning law dictates that applications must be determined in accordance with the development plan, unless material considerations indicate otherwise⁹. Fallback positions and lawful uses can represent such material considerations.

35. In this instance, the development that could already occur would be very similar to the proposed development. Having carefully considered the evidence before me, the fallback position and existing lawful use carry significant weight in the planning balance, sufficient to outweigh the conflict with the development plan. In this regard my decision is consistent with the Courts¹⁰. In the face of the clear and directly comparable fall-back position, I can see no logical benefit or reason to withhold planning permission.

Conditions

36. The Council's suggested conditions have been considered in accordance with the Planning Practice Guidance and paragraph 56 of the Framework. Along with the standard time limit, conditions are imposed to require the use of natural slates in the interests of appearance and to list the plans in the interests of certainty.

37. A further condition was suggested relating to the provision of a construction management plan prior to the commencement of development. The appellant has agreed to this condition and given the potential impact on neighbouring occupiers arising from construction activities, it would not be unreasonable to impose such a condition.

Conclusion

38. For the reasons given above, I am led to determine this appeal otherwise than in accordance with the development plan. Accordingly, the appeal is allowed.

M Clowes

INSPECTOR

⁸ Poundstretcher Ltd v Secretary of State for the Environment [1988] 3 P.L.R. 69 as cited by an interested party (Welch).

⁹ Section 70(2)(a) and (c) of the Town and Country Planning Act 1990.

¹⁰ R(Gambone) v SSCLG [2014] EWHC 952 (Admin), [28]; Mansell [2017] EWCA Civ 1314, [27(2) and R(Holystone Civil Engineering Ltd) v SSLUHC [2023] EWHC 1739 (Admin), [51].

***** Schedule of Conditions *****

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development shall be carried out in accordance with the following approved plans;
 - Existing site plan drawing number (00) 002 Rev B
 - Proposed ground floor plan drawing number (01) 100 Rev A
 - Proposed first floor plan drawing number (01) 101 Rev A
 - Proposed second floor plan drawing number (01) 102 Rev A
 - Proposed roof plan drawing number (01) 103 Rev A
 - Proposed front elevation plan drawing number (01) 200 Rev A
 - Proposed section AA – long drawing number (01) 300 Rev A
 - Proposed section BB – short drawing number (01) 301 Rev A
- 3) No development shall commence until:
 - A) An Appendix A Checklist and Site Construction Management Plan (SCMP) for the development have both been submitted to, and approved in writing, by the Council's Construction Management Team, and then
 - B) Copies of the approved Checklist and Plan, and their written approval, have been submitted to the local planning authority to be placed on the property record.

The development shall be carried out in accordance with the approved Appendix A Checklist and SCMP so approved, or in accordance with a subsequent Checklist or SCMP as may be approved under this condition.
- 4) The roof slope of the extension hereby permitted shall be clad in natural slates and maintained as such thereafter.