



Appeal Decision

Site visit made on 5 February 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/H5960/W/23/3325695

Flat 3, 168-170 Battersea Park Road, Wandsworth, London SW11 4ND

- 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 Gil Netanel against the decision of the Council for the London Borough of Wandsworth.
 - The application Ref 2022/1799, dated 29 April 2022, was refused by notice dated 26 January 2023.
 - The development proposed is the construction of a roof terrace over rear addition roof at 3rd floor level.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the appeal was lodged, a revised National Planning Policy Framework ('the Framework') has been published. This has not raised any new matters which are determinative to the outcome of this appeal.
3. It has been brought to my attention that Wandsworth Local Plan 2023-2038 was adopted in July 2023 ('the LP'). The LP replaces the Wandsworth Local Plan Development Management Policies Document, adopted 2016 and therefore, LP Policy LP2 has superseded Policy DMS1. It is mandatory for me to take account of the most relevant and up to date information in reaching a decision, therefore I have dealt with the appeal on this basis. The appellant commented upon the emerging LP and has therefore not been prejudiced.

Main Issue

4. The main issue is whether the proposed development would harm the living conditions of the occupiers of the first floor flat within 168 Battersea Park Road, with particular regard to outlook, sense of enclosure, noise and disturbance, and daylight.

Reasons

5. The building comprises a commercial unit to the ground floor front elevation with four flats occupying the remainder of the building. Flat 3 is located on the third and fourth floors of the building, within 168 Battersea Park Road. To the rear of the building is a two-storey outrigger with a pitched roof that is inset from the side boundaries. It is proposed to construct a parapet brick wall on top of half of the two-storey outrigger to create a terrace that would be accessed via patio doors from the rear elevation of flat 3.

6. Adjacent to the proposed terrace there is a first floor window to the flat below. The information before me suggests that the window serves a main room that would be frequently used. To the northeast of this window is the wall of the neighbouring property's outrigger that extends above the height of the window. The sill height of the first floor window is above the eaves of the appeal building's outrigger and therefore enjoys a relatively open aspect to the north and northwest due to the roof of the outrigger sloping away from the window.
7. The proposed upstand would be constructed to a similar height as the header of the adjacent first floor window; it would project almost the full length of the outrigger; and it would be in proximity to the neighbouring first floor window. The addition of a 1.7m high screen on top of the upstand (that would be obscure glazed to prevent overlooking of neighbouring properties) would add to the overall height of the proposal. Together with the wall of the neighbouring property's outrigger on the opposite side of the first floor window, the proposal would result in a tunnelling effect that would adversely harm the outlook from this window and create a sense of enclosure.
8. I acknowledge that the roof slope of the existing outrigger encroaches on the BRE initial 45-degree daylight assessment on the horizontal axis from the first floor window. However, the proposal would likely exacerbate this. Furthermore, the proposal would also fail to meet the BRE initial 45-degree daylight assessment on the vertical axis. While the appellant asserts that light levels would not be adversely affected due to the proposed screen's material, this has not been substantiated with evidence. Accordingly, I have insufficient evidence before me to ascertain the affect of the proposal on light levels to the neighbouring property's first floor window.
9. The appellant has directed me to several examples of other terraces that have recently been approved by the Council, as well as other terraces in the area immediately surrounding the appeal site. I acknowledge that terraces can comply with the Council's development plan, and they are a feature of the area surrounding the appeal site. However, from the limited information before me, I do not consider that the examples are directly comparable to the appeal proposal due to their site specific circumstances. In any event, I must determine the proposal on its own merits.
10. The proposed terrace would have a relatively limited floor area and therefore it is unlikely to accommodate more than a small number of people. At the time of my site visit, I witnessed other terraces in proximity of the appeal site. Consequently, the occupiers of neighbouring properties are already subject to some noise and disturbance when these terraces are used. The proposed terrace would be constructed above a bedroom of the flat below. While this could have the potential to cause noise and disturbance to the occupiers of this room, the terrace would be constructed on top of an upstand and would be subject to Building Regulations to ensure sufficient sound proofing. I acknowledge that the proposed terrace would be sited closer to the neighbouring flat's first floor window than the existing terraces. However, due to the terrace's limited size and the presence of existing noise from other terraces, I do not agree that the neighbouring property would be unduly affected by noise and disturbance.
11. In reference to the main issue, I have found in favour of the appellant in respect of noise and disturbance, however, the proposed development would

harm the living conditions of the occupiers of the first floor flat within 168 Battersea Park Road, with particular reference to outlook and sense of enclosure. Furthermore, insufficient evidence has been submitted to assess the proposal's effect on the living conditions of the occupiers of the first floor flat within 168 Battersea Park Road in respect of daylight. Consequently, the proposal would be contrary to Policy LP2 of the LP which, amongst other things, seeks to ensure that development proposals do not adversely impact the amenity of existing and future occupiers or that of neighbouring properties. It would also be contrary to the Council's Housing Supplementary Planning Document, adopted 2016.

Other Matters

12. The design of the proposed development is not a matter in dispute between the main parties. I acknowledge the benefits of outdoor space, which was particularly heightened during the Covid-19 pandemic, however, this would not outweigh the harm I have identified.
13. It has been asserted that the Planning Officer dealing with the planning application viewed the proposal favourably but was subsequently refused by the Council. Although this may have been frustrating for the appellant, the Council is not bound by its officer's recommendations.

Conclusion

14. For the reasons given above, having regard to the development plan as a whole and all other material considerations, I conclude that the appeal should be dismissed.

A Berry

INSPECTOR