



Appeal Decision

Site visit made on 6 March 2024

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th March 2024

Appeal Ref: APP/K5600/W/23/3330922

First and Second Floor Flat, 65 Chesterton Road, London, W10 6ES

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Giovanni Malacarne against the decision of the Council of The Royal Borough of Kensington and Chelsea.
 - The application Ref is PP/23/03847.
 - The development is a rear roof terrace at second floor level.
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Decision

1. The appeal is allowed, and planning permission is granted for a rear roof terrace at second floor level, at First and Second Floor Flat, 65 Chesterton Road, London, W10 6ES, in accordance with the terms of the application, Ref PP/23/03847, and the plans numbered ST-01, EL-02 and PL-02, subject to the following condition:
 - 1) The black painted balcony railings hereby approved shall be retained as such at all times.

Preliminary Matters

2. The description of development on the application form is "*retrospective planning application for rear roof terrace at second floor level*". As the term retrospective does not relate to an act of development, I have omitted this and other superfluous text from the description in the banner heading.

Main Issue

3. Planning permission has been granted for a roof terrace covering just over half of the flat roof area above the closet wing to the rear of No.65 Chesterton Road. However, the roof terrace that has been created covers the whole of the flat roof area.
4. The main issue is therefore the effect of granting planning permission for the larger roof terrace, on the living conditions of residents of neighbouring properties.

Reasons

5. The supporting text to Policy CL5 of The Royal Borough of Kensington and Chelsea Local Plan September 2019 (the LP) states that when considering privacy, a distance of about 18 metres between opposite habitable rooms reduces inter-visibility to a degree acceptable to most people, but there are many instances in the historic fabric of the borough of distances less than this.

6. I am advised that the distance between the extended roof terrace and the rear windows of No.14 Bassett Road, which is directly behind it, is approximately 17m. Whilst this is slightly less than the 18m referred to in the supporting policy text, the roof terrace is no closer to this property, and results in no greater level of overlooking, than the existing upper floor windows in the rear elevation of the closet wing.
7. The supporting text also recognises that although roof terraces can result in serious intrusion into the privacy and quiet enjoyment of neighbouring residential properties, they provide valuable small areas of open space for residents. The supporting text is very clear that rather than applying fixed standards, in historic areas such as this, living conditions will be assessed having regard to all factors, including the area's character. The character of the area in this case is one of dense terraced housing, sub-divided into apartments, with limited outdoor space and privacy for residents.
8. The roof terrace is set in from the site boundaries, with the four windows closest to it, two on either side, all serving rooms belonging to the host apartment. As No.63 forms part of a separate terraced block, its rear windows are some distance from the roof terrace, and I was unable to see into any of those rooms from any part of the terrace.
9. Adjoining No.67 has windows in its rear elevation and in the side elevation of the closet wing facing the terrace. I have not been provided with any information to confirm which rooms each of these windows serve. However, the letter I have received from the occupier of No.67 makes specific reference to a bedroom and a bathroom. A bathroom is not generally considered to be a habitable room.
10. The extended roof terrace is no closer to the windows in No.67 than the approved terrace. Whilst it does provide views towards the windows from a slightly different angle, I was unable to see into any rooms or tell what room each of the windows served, even when looking down into windows on lower floors and regardless of whereabouts on the terrace I was standing.
11. In addition to the above, I acknowledge that the terrace affords clear views over many rear gardens and other rear roof terraces in the area. However, these are already overlooked by the windows and roof terraces of surrounding properties and this situation is made no worse by the small extension of the approved roof terrace.
12. Whilst I acknowledge that the larger terrace could accommodate more people, it remains a small domestic terrace. The level of noise created from its use will depend upon how considerate its users are. One or two people sat on a small roof terrace playing loud music could quite easily generate more noise and disturbance than a family sat talking quietly on a larger terrace. The same concern could apply to any garden, balcony or roof terrace. Ultimately, the extension relates to a small domestic use in a residential area, and in the unlikely event of a noise nuisance occurring, it would be covered by other legislation.
13. I therefore conclude that the extended size of the terrace does not result in an unacceptable level of harm to the living conditions of adjacent residents, over and above that of the approved terrace. As such it accords with Policy CL5 of

the LP, which seeks to ensure good living conditions for occupants of new, existing and neighbouring buildings.

Other Matters

14. Reference is made by a neighbour to a fixed seating area. This does not form part of the appeal proposal before me. I have not been provided with correspondence submitted in relation to other applications on the appeal site. However, I have considered all comments submitted in relation to this appeal and those provided by the Council that relate to the proposal currently before me.

Conditions

15. As the development has already been completed, a time limit condition is unnecessary. The approved drawing numbers are listed within the decision to provide certainty as to what has been approved. The railings are painted black, in accordance with the approved drawings. This matches other balcony railings in the area and respects the historic character of the building and its surroundings. Accordingly, a condition to ensure the railings remain painted black is reasonable to preserve the appearance of the area. As no other building works are proposed a materials condition is unnecessary.
16. The Council has suggested a condition to prevent any tall items such as plants, umbrellas, heaters, screens, trellises, or other items exceeding 1.1m in height from being placed on the roof terrace at any time. As most of these items would not be permanent fixed structures and would not constitute development, such a condition would be unreasonable, and very difficult, if not impossible, to enforce. Given that the erection of a different form of boundary treatment around the roof terrace, that does not accord with the approved plans, would require planning permission in any event, a condition to this effect is unnecessary and would fail to meet the relevant tests.

Conclusion

17. For the reasons given above the appeal is allowed.

R Bartlett

INSPECTOR