

Appeal Decision

Site visit made on 4 June 2024

by Martin Andrews MA(Planning) BSc(Econ) DipTP & DipTP(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th June 2024

Appeal Ref: APP/N5660/W/23/3333687

49 Josephine Avenue, London SW2 2JZ

- 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 Ms Miranda Sawyer against the decision of the Council of the London Borough of Lambeth.
 - The application, Ref. 23/01567/FUL, dated 23 May 2023 was refused by notice dated 28 July 2023.
 - The development proposed is the erection of a rear dormer with solar panels; partial removal of the existing pitched outrigger roof and replacement with a new flat roof terrace and extension to form an additional bathroom and roof access, and an enlarged bathroom window for the first-floor half landing.
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Decision

1. The appeal is dismissed.

Main Issues

2. The appeal scheme is a similar proposal to application ref. 22/02677/FUL refused in October 2022 but seeks to overcome the refusal reasons with a number of amendments and additional information. I consider that the main issues are (i) the effect of the proposed development on the character and appearance of the host building and the Rush Common and Brixton Hill Conservation Area ('the CA'), and (ii) the effect of the use of the proposed roof terrace on the living conditions for adjoining occupiers in terms of outlook, privacy and noise and disturbance.

Reasons

Character and Appearance

3. On the first issue, the appeal building is one of nine in a terrace from Nos. 41-57 on the west side of Josephine Avenue and shares an outrigger with No. 47. Both the Council and the appellant describe the heritage credentials of the CA but in summary the appeal relates to a building which was a planned development from the 1860s, comprising non-listed three storey houses with bay windows. The period design of these buildings including the ground and first floor bay windows and in roads with mature trees makes an important contribution to the character and appearance of the CA as perceived from the public domain. However, in the private realm to the rear of the dwellings, further bay windows together with the consistency of the design and external materials of the gabled returns are also of substantial merit.
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4. The appeal premises comprise the upper flat with accommodation on three floors including the rear return and the proposal is to create additional living space though the construction of a dormer on the main rear roof plane and alterations and additions to the existing outrigger, the latter to form a new WC and access to a new external roof terrace. In its assessment of the appeal application the Council refers to an L-shaped dormer, but on balance I agree with the appellant that it is more appropriate to consider the scheme as individual elements and then assess the cumulative impact.
5. Firstly, as regards the proposed dormer, this is of reduced size compared to that refused under application ref. 22/02677/FUL (1.2m; 0.7m & 0.75m less for the width, height and depth respectively). Nonetheless, application Drawing 021_A_300 Rev. P2 shows a box structure, with in my view three overly large windows, and only slightly set down from the ridge and in from the sides. I consider that with this scale and design the rear dormer would be a dominant structure, unsympathetic to the host building and in marked contrast with the dormer permitted under application 23/03951/FUL. This was of a design and proportions that follow the recommendations of the Lambeth Design Guide: Part 4 2023.
6. As regards the rear return, the wall and gable would be built up to provide a flat roof for an outdoor terrace. I consider that by eliminating the existing pitched roof with this second-floor addition, both the balance with its pair at No. 47 and the rhythm of the uniform outrigger gables with their mono pitched roofs in this stretch of the terrace, would be harmfully interrupted. I also regard it as being clear that any reasonable interpretation of Policy Q5 of the Lambeth Local Plan 2020-2035 (2021) ('the Local Plan') would give material weight to the retention of such features so as to ensure that new development sustains and reinforces local distinctiveness.
7. Furthermore, the return element of the main dormer to provide the access to the terrace and to accommodate the WC would be an additional flat roofed box structure that would add clutter to the roofscape and, in my view as evidenced by application drawing nos. 021_A_300 Rev. P2 & 021_A_201 Rev. P2, would have a visually awkward relationship with both the profile of the main part of the dormer and of the terrace.
8. Refusal Reason No. 2 refers to the enlargement of the sash window in the main rear wall of on first floor of the house and of a window on the return wall. I consider the latter to actually be an improvement on the existing, but the former would look somewhat out of place because of its elongated form compared to the other windows. However, I regard the inconsistency of the rear wall as a relatively minor discordance and of insufficient importance to add material weight to the arguments against the appeal scheme.
9. When taken individually, the window alterations can therefore be regarded as not being so harmful as to warrant a rejection of the proposal, but I consider the other two elements of the appeal scheme as individually causing unacceptable harm to the character and appearance of the appeal building. However, this harm is further compounded by their cumulative impact both as regards the inherent harm caused to No. 49's historic and architectural attributes, and to its visual impact.

10. As regards the latter it is argued for the appellant that in respect of the CA, because the alterations and additions would not be seen from the public realm, less weight should be given to objections to development in locations that are seen from mainly private vantage points. On this basis it would mean in this case that the front elevation is more important than the rear in terms of its importance to the CA's significance.
11. In principle I agree with this point but also take the view that incremental alterations to the rear of a property that do not follow the Council's design guide or could reasonably be perceived as being out of keeping with a building (in particular the main features associated with its period qualities) should be resisted. This is because of their individual adverse effects but also the cumulative impact if similar developments were to be carried out. I regard the appeal scheme to be a case in point as regards an inappropriate increment in the evolution of the CA.
12. In terms of other developments including specific decisions that are mentioned as supporting the case for the development, I am of the view that these would have to be either of such a number and/or of a concentration within particular parts of the conservation area to have already resulted in a change to its character or appearance for such 'precedents' to carry significant weight in my appraisal. From my visit to the site and the locality, I am not persuaded that the Council's refusal of permission on this issue is unsound.
13. Accordingly, for the above reasons and notwithstanding my favourable finding for the appellant on the second refusal reason, I find that the proposal would have an unacceptably harmful effect on the character and appearance of the host building and the CA in conflict with Policies Q2, Q5, Q7, Q8, Q11 & Q22 of the Local Plan; the Council's Building Alterations and Extensions SPD 2015 and Section 16: 'Conserving and Enhancing the Historic Environment' of Government policy in the National Planning Policy Framework December 2023 ('the Framework').
14. Having regard to paragraphs 205 and 208 of the Framework, the development would cause 'less than substantial harm' to the significance of the CA and at a low level within that term because the development is for alterations and additions to a single building. I have considered whether the matters cited for the appellant amount to public benefits that would outweigh the harm caused but dispute whether some would reasonably fit this description. And in any event, I conclude that even in combination they would not outweigh the harm caused.

Living Conditions for Adjoining Occupiers

15. On this issue, the Council considers that because of its elevated position directly opposite the rear return of No. 51, the proposed roof terrace would have the potential to cause a loss of privacy and outlook and cause noise and disturbance to the occupiers of this house.
16. With the proposed terrace in this particularly elevated position and bearing in mind the narrowness of the gap between the returns of Nos. 49 and 51, I am satisfied that there would be some loss of outlook for the occupiers of No. 51 from the windows of the main part of the dwelling at first and second floor levels, albeit with the adverse effects being tempered by the tangential line of

sight. And because of this relationship there would be an associated loss of privacy, or at least a perception thereof.

17. I also saw on my visit that No. 51 has a small wooden terrace with a table and a couple of chairs in the part of the garden between the end part of its return wall and the boundary fence with No. 49. Again, there is potential for that sitting out area to be affected by overlooking and because of its outdoor location also noise and disturbance.
18. On this issue therefore, I find that there would be a probability of the living conditions for the neighbours at No. 51 being harmed to some extent and that this would be in conflict with Local Plan Policy Q2 and Framework paragraph 135f). With that said, I note that in addition to, or instead of, planters the appellants might accept a condition requiring the provision of a frosted glass screen. This may have been sufficient to prevent a loss of privacy and satisfactorily attenuate any noise and disturbance to an acceptable level.
19. Accordingly, in the absence of the appeal scheme being considered harmful on the first main issue and noting that there is no written objection from the occupiers of No. 51, it may well have been possible to resolve this reason for refusal by the imposition of conditions. However, at both the application stage and in this appeal, I regard the refusal reason in respect of the effect on living conditions for neighbours as having been properly included. Furthermore, my conditionally favourable view for the appellant as regards neighbours' living conditions would not outweigh the harm caused to the building and the CA to which I have already referred.

Conclusion

20. For the reasons explained and having had regard to all other matters raised I conclude that on both main issues the Council was correct to refuse permission for the proposed development. The appeal therefore fails.

Martin Andrews

INSPECTOR