

Appeal Decision

Site visit made on 26 July 2024

by H Marriott MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Appeal Ref: APP/T5720/W/24/3340900

14A Finborough Road, London SW17 9HY

- 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 Ryan Turner against the decision of the Council of the London Borough of Merton.
 - The application Ref is 23/P3127.
 - The development proposed is the creation of a roof terrace to existing second floor flat roof, with privacy screen and replacement of window with door to terrace area.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Previous extensions to the appeal dwelling have been constructed on site including one which created a second-floor flat roof (Council ref: 21/P0402). Condition 4 of 21/P0402 states that the second-floor flat roof shall not be used as a roof garden, terrace, patio or similar amenity area. The reason given is to safeguard the amenities and privacy of the occupiers of adjoining properties. The Council has alleged that the appellant has breached this condition and suggests that as a consequence, the proposed development is partly retrospective. On my site visit the roof was not in use as a terrace. I have therefore considered the appeal on the basis of the development proposed and applied for.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the character and appearance of the area; and
 - the living conditions of the occupiers of No 12 Finborough Road (No 12), No 16 Finborough Road (No 16) and 16A Finborough Road (No 16A) with particular regard to privacy and noise and disturbance.

Reasons

Character and appearance

4. Finborough Road is a residential street consisting of two uniform rows of two-storey terraced dwellings, some of which have been converted to flats. A supermarket and its car park are located adjacent to the rear boundary of one of the terraces. Similar sized rear gardens enclosed with close boarded fencing are located to the rear of this terrace. Many of the dwellings within the terrace have been modified with extensions to the rear and loft conversions. This has resulted in a varied roofscape when viewed from the rear. Despite this, the buildings share similar characteristics in terms of their overall scale with some original gabled and pitched roof forms still evident and the trees and landscaping within rear gardens provide a soft edge to the car park. These characteristics make a positive contribution to the character and appearance of the area.
5. The appeal dwelling at 14A Finborough Road (No 14A) is a mid-terrace maisonette flat which occupies the first and second floors of the building with a separate flat (No 14) occupying the ground floor. The roof terrace would sit above an existing flat roof second floor extension. There are no other second floor roof terraces in this part of Finborough Road. The existing flat roof is not reflective of the original roofscape of the original building and the addition of the terrace including the glazed privacy screen would result in a vertical addition making it more conspicuous in views from the surrounding area.
6. It has not been made clear from the submitted details whether the glazed privacy screen would be translucent or obscure glazed. A translucent screen would more likely have a cluttered appearance by virtue of the visibility of domestic paraphernalia stored on the terrace. An obscure glazed screen, whilst having greater screening benefits, would appear more solid and elongate the roof form. Either way, it would result in a development that would both contrast with the form and appearance of the host dwelling and would not relate sympathetically to the character or appearance of the locality. Together with its prominent location at a high level to the rear of the host dwelling, the proposed development would appear incongruous in views from neighbouring properties.
7. I conclude that the proposed development would have a harmful effect on the character and appearance of the area. In this regard, the proposed development would conflict with Policy D3 of The London Plan (2021) (TLP), Policy CS 14 of the London Borough of Merton LDF Core Planning Strategy (2011) (CPS) and Policies DM D2 and DM D3 of the Part of Merton's Local Plan Sites and Policies Maps (2014) (MLP) insofar as they require development to respond to a site's context, respect the local character of the area, achieve a high quality design and to respect the form, scale, bulk, and proportions of the original building. It would also be contrary to the National Planning Policy Framework (2023) (the Framework), insofar as it requires planning decisions to achieve well-designed places.

Living Conditions

8. The kitchen/dining room located on the first floor of No 14A under the proposed roof terrace contains two windows on its side facing towards No 16 and a Juliet balcony window on its first rear facing window. A bedroom window is also located on the first floor of the rear elevation of No 14A. Two further windows are located at the rear of the second floor level serving bedrooms. As such, the level of privacy afforded to the occupiers of No 12, No 16 and No 16A is already partly compromised as a result of views that can be achieved from these windows.
9. Even so, there are currently no windows in the side elevation of No 14A facing directly towards No 12 and existing views from its rear windows towards the private amenity area serving No 12 are oblique which affords the occupiers a limited, yet important degree of privacy. Even if the privacy screen were to be obscure glazed, views over the top of the privacy screen and directly into the private rear garden area of No 12 would still be possible, particularly when a person is stood on the proposed roof terrace. Consequently, the proposal would result in a material increased loss of privacy to the occupiers of No 12. A condition requiring a privacy screen of a height to prevent this would add to the harm identified under the first main issue.
10. Due to the position of the proposed roof terrace set away from the boundary of No 16 and No 16A, and the more direct views currently afforded by the views from the side windows located within No 14A, an increased level of overlooking and associated loss of privacy would be unlikely to result.
11. No 14A is located in a busy urban environment adjacent to a supermarket, roads and trainline. The roof terrace would also be used as a private amenity area similar to many other gardens located in close proximity to the appeal site. Consequently, despite the likely use of the proposed roof terrace for prolonged periods, I consider it unlikely that increased levels of noise and disturbance would be materially greater than existing noise and disturbance levels in the area given existing background noise levels. I am therefore satisfied that the proposal would not result in any materially adverse levels of noise and disturbance to the occupiers of No 12, No 16 or No 16A.
12. I conclude that the proposed development would have a harmful effect on the living conditions of the occupiers of No 12 with regard to privacy. The proposed development would conflict with Policy D3 of the TLP, and Policies DM D2 and DM D3 of the MLP insofar as they require development to deliver appropriate privacy and amenity and ensure living conditions of existing occupiers are not unduly diminished. The appeal proposal also does not accord with the Framework as it requires development to have a high standard of amenity for existing and future users.
13. The Council's decision notice in respect of this main issue also refers to Policy CS 14 of the CPS which principally relates to design. This has not been determinative in relation to this main issue which in any case does not overcome the conflict with the other identified policies in the LP.

Other Matters

14. I acknowledge the benefits that would be derived from the provision of an area of outdoor amenity space for occupiers of No 14A. Additionally, the appellant has drawn my attention to Policy DM D2 which requires a minimum level of private outdoor space to be provided for flatted dwellings. As this appeal proposal is not for the creation of a new dwelling, this is not a factor that has been determinative in relation to the main issues. In any event, such provision would not justify the harm to the character and appearance of the area and the privacy of the occupiers of No 12 that I have identified in this case. Neither does the lack of objection/support from neighbours
15. The appellant has drawn my attention to the existing terrace at first-floor level on Finborough Road, which is located at a lower height than the appeal proposal and so is not as conspicuous. With regards to the series of terraces at second floor level on properties on the adjoining London Road, these are positioned more discreetly to the side of and between chimney stacks. All the examples put forward are also smaller than the appeal proposal. My attention has also been drawn to the glazed privacy screen proposed at 42-46 London Road, although I do not know the planning circumstances behind this latter example. In any case, I have considered the development on its own merits and these examples do not justify the site-specific harm identified.
16. Whilst the CPS and MLP were adopted at least a decade ago, their policies most relevant to the main issues are broadly consistent with the Framework and I therefore attach full weight to them.
17. The appellant has made representations relating to the Council's handling of the pre-application enquiry and planning application. The Council is not bound by informal comments made at pre-application stage, nor am I. Moreover, the Council's chosen case officer is not a matter for me in deciding this appeal. I have therefore made my decision on the basis of the merits of the proposal, the most relevant local and national planning policy and my own planning judgement.

Conclusion

18. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

H Marriott

INSPECTOR