



Appeal Decision

Site visit made on 3 December 2024

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2024

Appeal Ref: APP/X5990/W/24/3350382

Top floor flat, 321 Shirland Road, London W9 3JJ

- 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 L Del Roio against the decision of City of Westminster Council.
 - The application reference is 24/02325/FULL.
 - The development proposed is Creation of a roof terrace on part of an existing second floor rear flat roof to include metal railings round the terrace and replacement of an existing window with a doorway.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is a difference in the spelling of the appellant's name on the application form and the appeal form. I have used the spelling from the application form in the banner heading above.

Main Issue

3. The main issue is the effect of the proposed development upon the living conditions of occupiers of 319 and 323 Shirland Road, and 108 Portnall Road, regarding loss of privacy.

Reasons

4. The appeal site comprises part of the flat roof of a two-storey rear projection from a mid-terraced property in use as flats. The terrace extends to the east and west, and the other terraced properties share a similar physical arrangement to No 321. Private gardens are located at the rear, beyond which is the end terraced property of 108 Portnall Road.
5. The proposed development seeks to utilise part of this flat roof as an outdoor terrace for amenity purposes. The terrace would be bound by 1.1m high railings, which would align with the outer extent of the larger chimney stack, set in from the rear edge of the flat roof by approximately 1.7m.
6. The existing chimney stack is a tall and substantial structure. Its position would mean that only an acute angle of view would be possible towards a habitable room window on the rear elevation of 319 Shirland Road, the view of which is also partly restricted by its low position in relation to the flat roof projecting from No 319. A window positioned much closer to the party wall contains obscured glass and I am advised serves a stairwell only. The

adjoining flat roof at No 319 is not presently utilised for any purpose. Therefore, I am satisfied that the proposal would not harm the living conditions of occupiers of this property.

7. However, views towards the rear of 323 Shirland Road would not be restricted in the same way. While the full depth of the roof would not be utilised, future users of the proposed terrace would have views back towards the habitable room at the rear of No 323 at third floor level. While I appreciate that this view would be at an angle, it would not be so acute as to restrict views into this window. While it would only provide a view of a portion of the room, it would be at very close quarters, resulting in an uncomfortably close relationship and a loss of privacy for occupiers of this neighbouring property. I appreciate that blinds and curtains can assist in this regard, particularly in urban areas. However, an outlook from this room should be possible, as well as opening of the window, without incurring an unacceptable loss of privacy. As such, the proposal would harm the living conditions of occupiers of this neighbouring property to an unacceptable level.
8. While there are no windows to the main side elevation of 108 Portnall Road, it would be possible to look down towards an outdoor terrace associated with this property and the garden of No 323. I appreciate that this is a dense urban area where there is already a degree of mutual overlooking. I noted at my visit the presence of roof terraces further along the rear of Shirland Road, with differing boundary treatments. The information before me suggests that these existing terraces do not benefit from planning permission. Even so, the rear kitchen window of the host property provides views of the outdoor areas of neighbouring properties, and this is likely to be the case from other properties along the terrace also. Nevertheless, in comparison to views from internal rooms, the proposed roof terrace with only low-level railings, would provide a more open view from an elevated position, which the setting back of the roof terrace would only mitigate to an extent. As such, occupiers of neighbouring properties would experience a greater loss of privacy and a greater sense of being overlooked, when using their outdoor space, than presently exists.
9. The National Planning Policy Framework requires that consideration should be given to whether otherwise unacceptable development could be made acceptable, through the imposition of conditions. The type of boundary treatment proposed would do little to address the concerns I have identified above. While there may be alternative forms of boundary treatment which could offer some degree of screening, no such measures are before me. Given the elevated position of the roof and visibility from Portnall Road, the suitability of any alternative would need careful consideration in terms of its appearance, as well as its effectiveness in addressing the loss of privacy. Consequently, in the circumstances of this case, it would not be appropriate to secure alternative provision by imposition of a condition.
10. I have been provided with examples of roof terraces that have been granted planning permission by the Council, and one granted on appeal, albeit the main issue identified in the latter related to character and appearance, not living conditions. I have considered these decisions carefully and I appreciate the importance of consistency in decision making. While some of these examples relate to terraced properties like the appeal scheme, I cannot be certain from the information before me that they are all directly comparable, particularly in relation to the use of rooms in neighbouring properties, the

proximity and relationship to neighbouring windows, the depth of the terraces proposed, or the type and extent of any screening included, in each case. Nor can I be certain that in assessing the impact on living conditions, that I would have reached the same conclusions as the Council in all cases. These other examples do not alter my findings that the appeal scheme would harm the living conditions of occupiers of neighbouring properties.

11. To conclude on this main issue, while the proposal would not harm the living conditions of occupiers of 319 Shirland Road, it would harm the living conditions of occupiers of 323 Shirland Road and 180 Portnall Road. The proposal would conflict with policies 7, 33 and 38 of Westminster's City Plan 2019 – 2040, adopted April 2021, which collectively, and amongst other matters, require that the quality of life and wellbeing of existing and future occupiers is not adversely affected by negative impacts, that all development is of a design that ensures a good standard of amenity for new and existing occupiers, and that development is neighbourly and protects privacy.

Other Matters

12. The appeal scheme would provide external amenity space for occupiers of this top floor flat, where presently there is none. I have no doubt that this would be a valuable space for existing and future occupiers of this flat, promoting health and well-being and providing a higher standard of amenity. In doing so, it would attract some support from those policies of the development plan that seek to ensure that all development is designed to promote the health and well-being of people. The proposal has attracted the support of a number of neighbouring residents also. However, similar benefits could possibly be achieved by alternative means, without impacting to the same extent on privacy. The weight I afford to these benefits of the proposal, is not sufficient to outweigh the harm arising from the loss of privacy to occupiers of neighbouring properties.

Conclusion

13. For the reasons given above, the proposed development conflicts with the development plan when taken as a whole and there are no other material considerations worthy of sufficient weight to suggest the decision should be made other than in accordance with the development plan. Therefore, the appeal should be dismissed.

S Brook

INSPECTOR