



Appeal Decision

Site visit made on 24 April 2025

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2025

Appeal Ref: APP/X5990/W/24/3355283

35E Sutherland Avenue, London W9 2HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for [outline] planning permission
 - The appeal is made by Miss Nancy Searle against City of Westminster Council.
 - The application reference is 24/01043/FULL.
 - The development proposed is the replacement of an existing window at rear elevation of third floor level with a door to access the flat roof terrace.
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Decision

1. The appeal is allowed and planning permission is granted for the replacement of an existing window at rear elevation of third floor level with a door to access the flat roof terrace at 35E Sutherland Avenue, London W9 2HE in accordance with the terms of the application, Ref 24/01043/FULL, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The external materials, methods of construction, and finished appearance of the development hereby permitted shall match those of the existing building.
 - 3) Except for demolition works, building work which can be heard at the boundary of the site shall take place only between 08.00 and 18.00 from Monday to Friday, between 08.00 and 13.00 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

Demolition works shall take place only between 08.00 and 18.00 from Monday to Friday, and shall not take place at any time on Saturdays and Sundays, or on Bank or Public Holidays.

Procedural Matter

2. The proposed development was described on the planning application form as “replace 1x existing back of flat facing single glazed sash window on the third floor of the property for a door in a style in keeping with the existing window. The door will more easily facilitate the use of the flat roof as a terrace. The flat roof terrace area is currently accessed via the window”. A revised wording was used on the appeal form and, as it provides a more concise but no less accurate description of the proposal, I have adopted it for the banner heading and my formal decision above. The description still reflects the nature of the development as it was considered by the Council.

Background and Main Issue

3. The Council had not determined the planning application before the appeal was lodged. Its appeal statement indicated that it considers the development would lead to a loss of privacy for the occupier of the flat immediately west of the appeal property.
4. The main issue is therefore the effect of the proposed development on living conditions for the occupiers of the top floor flat at No 33 Sutherland Avenue, with particular regard to loss of privacy.

Reasons

5. 35 Sutherland Avenue is a five-storey building, divided internally into five self-contained flats. This appeal relates to Flat E, the topmost flat, which extends across the third floor and roofspace level. The flat roof of a small rear outrigger, which runs to second floor level, is used as an external terrace; it is currently accessed through a sash window. The proposed development is the enlargement of that opening and the replacement of the existing window with a set of French doors.
6. It is the Council's case that "the use of the flat roof as a terrace (enabled by the insertion of a door) would directly infringe on the privacy of neighbours". However, the appellant is not seeking planning permission for the use of the flat roof as a terrace; their evidence is that the terrace was created more than a decade ago. My role is to determine the appeal on the basis of the development which has been applied for. If the Council considers that the terrace use is not lawful it is open to it to take planning enforcement action, while the appellant would be able to apply to have the matter determined under section 191 of the Act; those routes would be unaffected by my determination of this appeal.
7. At present, although the sash window opening is reasonably large, getting onto the terrace through the window requires a degree of agility. Replacing the window with a door would make it quicker and easier to access the terrace, and would allow its use by residents or visitors who cannot, or would not wish to, manoeuvre themselves through the window. These factors would be likely to lead to some increase in the usage of the terrace.
8. I saw on my site visit, as had been set out in the Council's evidence, that it is possible to see from the terrace into the living room window of the adjacent flat at No 33 Sutherland Avenue from around 2.5m. That view, which is at an acute angle, is possible only from the extreme south-western corner of the terrace. Moving anywhere else on the terrace, the viewing angle is narrowed further such that seeing into the neighbouring flat becomes difficult or, to all practical intents and purposes, impossible.
9. The rooftop area used as a terrace is capable of comfortably accommodating perhaps three or four chairs and a small table. While the appeal scheme would make it easier for people to access the terrace, its small size means that it would be incapable of hosting large gatherings; furthermore, its spatial relationship with the flat at No 33 would remain unchanged from the present position. The use of the roof as a terrace means that the flat at No 33 has already suffered some loss of privacy, albeit a limited one. In my view, that situation would not be significantly

worsened by the moderate intensification in use of the terrace which is likely to arise because of this appeal scheme.

10. I conclude that the proposed development would not cause unacceptable harm to living conditions for the occupiers of the top floor flat at No 33 Sutherland Avenue. I therefore find no conflict with Policy 7 of the 2021 City Plan 2019—2040, or with Policy D3 of the London Plan 2021, which seek to ensure that development protects amenity, including by avoiding unacceptable impacts in terms of privacy and overlooking.

Other Matter

11. The appeal site is within the Maida Vale Conservation Area, and I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area. As heritage assets are irreplaceable, the Framework states that they should be conserved in a manner appropriate to their significance (paragraph 202), and that any harm that is less than substantial must be weighed against the public benefit of the proposal (paragraph 215).
12. The proposed doors would be of timber, an appropriate material for the building and the area, and of a traditional design. The new doors and opening would be at a high level on a rear elevation, and in a discreet location where they would not be prominent in public views. The Council was satisfied that the character and appearance of the Conservation Area would be preserved. None of the evidence before me or what I saw at the time of my site visit leads me to a different conclusion on this matter.

Conditions

13. I have considered the conditions suggested by the Council having regard to the tests in the National Planning Policy Framework and the advice in the Planning Practice Guidance. Where necessary I have altered the ordering and proposed wording in the interests of clarity and effectiveness.
14. In addition to the standard time limit condition (1), a condition relating to materials (2) is necessary to protect the character and appearance of the area, and to comply with Policies 7 and 33 of the 2021 City Plan 2019—2040.
15. A condition limiting the times that noisy works can be carried out (3) is necessary to protect neighbours' living conditions, and to comply with Policies 7 and 33 of the 2021 City Plan 2019—2040. I have omitted the references to piling and excavation work suggested by the Council, as it is evident that there would be no need for such operations as part of this development.

Conclusion

16. For the reasons given above the appeal should be allowed.

M Cryan

Inspector