
Appeal Decision

Site visit made on 15 November 2016

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 December 2016

Appeal Ref: APP/U5930/W/16/3156630

13 Queens Lodge, Queens Road, Leytonstone E11 1BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr David Binns of Homecare Limited against the decision of the Council of the London Borough of Waltham Forest.
 - The application Ref 161247, dated 11 April 2016, was refused by notice dated 15 June 2016.
 - The application sought planning permission for the conversion of property from care home to 5 flats (1 x 3 bed, 2 x 2 bed and 2 x 1 bed) with alterations to frontage (amended plans) without complying with conditions attached to planning permission Ref 143507, dated 23 March 2016.
 - The conditions in dispute are Nos 3 and 4 which state that:
(3) All windows in the side elevation of the development hereby permitted shall be fitted and permanently maintained with obscure glass, and shall be non-opening below transom level.
(4) The existing entrance ramp shall be modified in such a way as to be in accordance with DDA compliance, details which shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. The agreed details shall be fully implemented prior to first occupation of any of the flats hereby approved. The agreed details shall thereafter be permanently for the life of the development.
 - The reasons given for the conditions are:
(3) To prevent overlooking and loss of privacy in the interests of the amenities of the adjoining property, in accordance with Policy CS13 of the Waltham Forest Local Plan – Core Strategy (2012) and Policy DM32 of the Waltham Forest Local Plan – Development Management Policies (2013).
(4) To ensure that adequate access is provided for all residents and visitors to comply with policy CS2 of the adopted Waltham Forest Local Plan – Core Strategy 2012, policy DM30 of the adopted Waltham Forest Local Plan – Development Management Policies 2013 & adopted Inclusive Housing Design Supplementary Planning Document 2011.
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Decision

1. The appeal is allowed and planning permission is granted for the conversion of property from care home to 5 flats (1 x 3 bed, 2 x 2 bed and 2 x 1 bed) with alterations to frontage (amended plans) at 13 Queens Lodge, Queens Road, Leytonstone E11 1BA in accordance with the application Ref 161247 dated 11 April 2016, without compliance with condition numbers 3 and 4 previously imposed on planning permission Ref: 143507 dated 23 March 2016, subject to the following condition:
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1. The development shall be carried out in accordance with plan numbers 1253/PL/01, 1253/PL/02, 1253/PL/03, 1253/PL/04, 1253/PL/05, 1253/PL/10 B, 1253/PL/11 B, 1253/PL/12 A, 1253/PL/13 B, 1253/PL/14 B and 1253/PL/15 A.

Application for costs

2. An application for costs was made by Mr David Binns of Homecare Limited against the Council of the London Borough of Waltham Forest. This application is the subject of a separate Decision.

Procedural Matter

3. Development on site had been commenced at the time of my visit and was at an advanced stage in terms of converting the building ready for occupants of the 5 No flats, with kitchens and bathrooms fitted.
4. At my site visit it was apparent that some of the windows in the flank elevation facing 11 Queens Road were configured differently in terms of position and style to those shown on drawings 1253/PL/11 Rev B, 1253/PL/12 Rev A and 1253/PL/14 Rev B pertaining to planning permission Ref: 143507. However, the role of this appeal is not to consider any new windows in the flank elevation facing No 11, but whether the windows that formed the basis of the Council's decision¹ to grant planning permission for the flats should be fitted and permanently maintained with obscure glass and non-opening below transom level. As such, I have approached this decision in this manner.

Background and Main Issues

5. The appellant considers condition No 3 not to be necessary, relevant to the development to be permitted, precise, enforceable and reasonable in all other respects. In terms of condition No 4 the appellant considers the condition, in addition to the items listed for condition No 3, not to be relevant to planning.
6. I have noted submissions have been made by the occupant in No 11 relating to an application to install a bi-fold door² which the Council have yet to determine.
7. Thus, I consider the main issues are: (i) the effect of removing condition No 3 would have on the living conditions of the occupants of No 11, with regards to privacy; and (ii) the effect of removing or varying Condition No 4 on the future access for occupants of and visitors to the development.

Reasons

Condition 3

8. The flank elevation of No 11 is directly opposite the flank elevation of the appeal site. Both elevations contain multiple windows of varying shapes and sizes. While it is suggested the main elevation of No 11 is the flank elevation facing the appeal site, I do not consider this is the case given the large bay windows in the front elevation of No 11 that address Queens Road.
9. Windows in the flank elevation of No 11 do serve a variety of rooms at ground and first floors, in particular. Those on the ground floor extend beyond the

¹ Council Application Ref: 143507

² Council Application Ref: 162665

built form of the appeal site and include a mixture of a large bay window, high level windows and roof lights, whilst those at first floor include a large bay window and a window set back from and above the ground floor side extension. A boundary fence roughly 1.7 metres high extends in-between the properties.

10. The condition specifies that windows in the side elevation of No 13 are fitted with obscure glass, and shall be non-opening below transom level. However, the approved plan Ref: 1253-PL-14 Rev B shows the windows in this elevation are all of different styles and sizes. Whilst the appellant could have clarified the term 'transom' with the Council, the condition applies a blanket approach to all of the windows which is not precise, given that not every window had the same number of panes or had a horizontal transom across its full width.
11. While, it is relevant to consider the affect the flats would have on the living conditions of the occupants in No 11, given the previous use as a care home, a number of the rooms have been used as bedrooms previously. Windows B, I, J and K would serve bedrooms in the flats. Even though the future occupants may or may not spend a similar amount of time in these rooms as the occupants of the care home who are said to have spent a lot of time downstairs, this does not alter the relationship that has already existed. Although the Council aimed to improve a situation, it is undisputed that the relationship was nevertheless pre-existing. Thus, the blanket condition is not relevant to the development to be permitted.
12. Windows A and C would serve a bedroom and kitchen dining room respectively. Window A faces the boundary fence and a brick wall of No 11. While the position of window A would allow views towards the bay windows and doorway serving the living room of No 11, these would be at an angle. Although window C is opposite the flank living room windows of No 11, these are high level and partially screened by the boundary fence, leaving only the uppermost part visible. Thus, even if windows A and C were open, the privacy of the occupants in No 11 would not be significantly affected. For these reasons, requiring obscure glazing and non-opening windows is not necessary or reasonable.
13. Window G is top opening only, and although it would serve a kitchen, I am not persuaded that the relationship between this window and No 11 would be so fundamentally different in terms of the occupant's privacy. Window D serves a corridor and looks onto the boundary fence and similarly does not affect the privacy of No 11. In terms of window F, future occupants of flat 5 would have an outlook towards the flank elevation bay windows and windows in the side extension of No 11. However, I do not consider that this would result in a loss of privacy for the occupants of No 11 because this window is relatively small and top opening only which would mean occupants could only obtain these views if they peered out of the window itself. Window H is the bathroom of flat 5. Whilst this opening would allow views to a variety of windows in No 11 and the appellant and the neighbour dispute as to whether the window opened, I do not consider that an open window or the lack of obscure glazing would give rise to significant harm, given the use of the room as a bathroom.
14. For these reasons, in terms of condition No 3, I conclude that the living conditions of the occupants in No 11, with regards to privacy would be maintained. Accordingly, the condition is not necessary, precise, enforceable, reasonable or relevant to the development to be permitted. While Policy CS13 of the Waltham Forest Local Plan – Core Strategy (Core Strategy) and Policy

DM32 of the Waltham Forest Development Management Policies Local Plan (DMPLP) seek to secure satisfactory living conditions for surrounding occupants is maintained, I conclude that the proposal is not in conflict with the development plan.

Condition 4

15. An existing ramp extends from the footway in front of the appeal site to the main entrance. The parties accept it is currently too steep to comply with the provision of the Council's Inclusive Housing Design Supplementary Planning Document (IHDSPD). Nevertheless, this ramp was in existence prior to planning permission being sought to convert the care home and would have facilitated access to it. Moreover the Council accept that it would not be possible to install an adequate ramp that would comply with the IHDSPD.
16. The condition found on the decision notice cites 'DDA compliance', however this reference either lacks precision of clear standard to attain or as the appellant points out, refers to legislation that has been revoked.
17. Policy CS2 of the Core Strategy and Policy DM30 of the DMPLP encourage new development to be accessible to all members of the community. Thus, the condition does relate to planning objectives. However, the overall accessibility of the development does mean that flats 1, 3, 4 and 5 can only be accessed via stairs. So, even if a solution could be found to facilitate a different form of access for occupants and visitors to use from Queens Road, individuals would only be able to access flat 2 in any event.
18. I note the Council's suggested variation however it seeks details of a scheme prior to the commencement of development. This point has passed. Regardless, the Council accept that it would not be possible to install a ramp compatible with their guidance. Although a stepped access subject of a separate application³ has been approved by the Council, this scheme would not enable access for all.
19. For these reasons, I conclude that the future access for occupants of and visitors to the development would be retained. The condition is not necessary, precise, enforceable, reasonable or relevant to the development to be permitted. Although Policy CS2 of the Core Strategy, Policy DM30 of the DMPLP and the IHDSPD seek to ensure development is accessible to all, I conclude that the proposal is not in conflict with the development plan.

Other Matters

20. Although reference is made to an application⁴ being considered by the Council for bi-fold doors and the effect they may have on the privacy of No 11, this is a matter for the Council. Matters relating to the quality of building works are subject to separate Building Control legislation. As planning is concerned with land use in the public interest, the value of the flats is purely a private interest and has had no bearing on my decision.

³ Council Application Ref: 162728

⁴ Council Application Ref: 162665

Conclusion

21. For the reasons set out above I conclude that the appeal should be allowed. I will grant a new planning permission without the disputed conditions. In terms of the remaining conditions, a condition relating to the commencement of development is not needed since the development has already been started. While views are expressed about condition No 2⁵, I consider that a plans condition is necessary in the interests of certainty, even with the development at an advanced stage as it has not yet been completed. Also, in this regard, I do not have plans showing any changes to the approved window configuration and even if I did, they have not been subject to public consultation.

Andrew McGlone

INSPECTOR

⁵ Council Application Ref: 143507