

Appeal Decision

Site visit made on 31 January 2017

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

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

Decision date: 13 March 2017

Appeal Ref: APP/N5090/W/16/3163224

80 Wise Lane, Mill Hill, London NW7 2RG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr P Lazard against the decision of the Council of the London Borough of Barnet.
 - The application Ref 16/4315/S73, dated 30 June 2016, was refused by notice dated 23 August 2016.
 - The application sought planning permission for erection of a two storey detached dwelling family house including basement garage and rooms in roof-space following demolition of existing house without complying with a condition attached to planning permission Ref H/04421/12, dated 5 March 2013.
 - The condition in dispute is No 7 which states that: "the flat roofs of the projecting ground floor rear elements on the rear elevation of the property hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or siting out area".
 - The reason given for the condition is: "to ensure that the amenities of the occupiers of adjoining properties are not prejudiced by overlooking in accordance with policy DM01 of the Adopted Barnet Development Management Policies DPD (2012)".
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. Planning permission Ref H/04421/12 included the provision of balustrades or 'Juliet balconies' in front of the two rear bedroom windows. However, balustrades have instead been installed further out from the bedroom windows, which enable access onto the flat roofs given that the windows are the full height of the bedrooms with door openings. The Council maintain that they create a balcony space in front of each window, in breach of condition 7 of the above planning permission. The Council considers that this has a negative effect on the living conditions of occupants of the adjoining properties in terms of privacy.
 3. The main issue therefore is the effect that removing the disputed condition would have on the living conditions of occupants of the adjoining properties with regard to privacy.
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Reasons

4. The appeal property at 80 Wise Lane and its neighbours either side at Nos 78 and 82 are large detached properties with roughly similar footprints and rear building lines. Each property has a large patio at the back of the house and the rear gardens slope upwards from these patios. The property at No 82 has a ground floor kitchen window on the corner of their house closest to the rear elevation of the appeal property. The property at No 78 does not have any windows on the flank elevation nearest to the appeal property apart from an obscured glazed window at first floor that appears to serve a bathroom.
5. The views from the balconies, while angled, are directly towards private external space for the adjoining properties, including their patios, and into a habitable room in the form of the kitchen window at No 82. The views of the adjoining gardens are more open and expansive than the views from the windows of each bedroom, and are accentuated by the rising elevation at the rear. Given that the views are towards parts of the adjoining gardens and houses where a greater degree of privacy is expected, they have an intrusive effect.
6. As a consequence, the use of the flat roofs as balconies results in harm to the living conditions of occupants of 78 and 82 Wise Lane with regard to privacy. Thus, it is contrary to Policy DM01 of the Barnet Development Management Policies 2012, Policy CS5 of the Barnet Core Strategy 2012 and Policy 7.6 of the London Plan 2015. Amongst other things, these policies seek to avoid harm to adjoining occupiers in terms of privacy. In addition, the Council's Residential Design Guidance Supplementary Planning Document 2013 highlights the importance of positioning windows and balconies to ensure that adequate privacy is maintained.
7. I note the appellant's willingness to provide 1.7 metre obscure glazed screens to the side of each balcony to address overlooking issues. It would reduce the views to the kitchen window at No 82 and the patios of both properties, notwithstanding the height of any given individual, but would not screen views from the front of both balconies towards the adjoining gardens.
8. I also note that there is no intention to use the balconies on a regular or intensive basis, and that the use will largely be limited to the summer months when the weather allows. However, it is probable that such use would coincide with a greater use of the adjoining patios and gardens, and so the likelihood of overlooking would be high. Moreover, even infrequent use would risk privacy issues.
9. I acknowledge the appellant's desire for obscure glazing in front of the bedroom windows to safeguard the privacy of its occupants. However, the disputed condition relates to the use of the roofs as balconies and not to the location and design of any balustrades. In any event, the need to provide obscure glazing underlines the degree of intervisibility between the appeal property and its neighbours.
10. Therefore, I consider that the disputed condition is necessary to protect the living conditions of the occupants of the adjoining properties with regard to privacy. The condition also meets the other tests for conditions set out in paragraph 206 of the National Planning Policy Framework in that it is relevant to planning and the approved development, enforceable in terms of the ability

to detect a change in use, precisely worded and reasonable in all other respects.

Other Matters

11. One of the adjoining neighbours has alleged a breach of conditions 5 and 9 of planning permission H/04421/12 relating to windows on the side elevation. However, this is beyond the scope of this appeal and not a matter I can comment upon. It is something that the Council could look into if necessary.

Conclusion

12. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Tom Gilbert-Wooldridge

INSPECTOR