
Appeal Decision

Site visit made on 27 March 2017

by Susan Ashworth BA (Hons) BPL MRTPI

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

Decision date: 5th May 2017

Appeal Ref: APP/X5990/D/16/3163815
53b Clifton Hill, London NW8 0QE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Green against the decision of City of Westminster Council.
 - The application Ref 16/06547/FULL, dated 11 July 2016, was refused by notice dated 20 September 2016.
 - The development proposed is described as 'application for planning permission to regularise the currently unconsented works at 53b Clifton Hill. These works were the subject of planning consent 15/01668/FULL, but were constructed in a way which varied from the approved drawings'.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. 53b Clifton Hill is a converted former coach house, in residential use. Permission was granted on 1 December 2015 for the erection of a dormer and three rooflights to the rear roof slope, installation of new rooflights to front roof slope and alterations to front elevation¹ (the approved scheme). The dormer was not constructed in accordance with the approved plans and the structure as built now forms the subject of the appeal.
3. The description of the development as set out on the Council's Decision Notice is 'Full width rear dormer and three rooflights to the rear roof slope, installation of new rooflights to front roof slope'. This description is a concise summary of the proposal set out in the banner heading above.
4. The principal differences between the approved and as built schemes are that the dormer is taller, does not incorporate a set back at the sides, incorporates three inward opening windows and has an external material of felt rather than zinc. No objections have been raised by the Council to the front or rear rooflights, or to the felt covering and I have no reason to disagree.
5. The property is attached to 53 Clifton Hill, a Grade II Listed Building, and lies within the St John's Wood Conservation Area. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in deciding whether to grant consent for works or development affecting a listed building, to have special regard to the desirability of preserving the building, its setting, or any features of special architectural or

¹ Application Ref: 15/01668/FULL

historic interest it possesses. Section 72(1) requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas.

6. The Council has raised no objection to the design of the proposal and, although it increases the bulk of the building, it preserves the listed building and its setting. The dormer is not unduly prominent from the public realm and, given the extant approved scheme, I am satisfied that it preserves the character of the Conservation Area.

Main Issue

7. The main issue in this case is the effect of the development on the living conditions of the neighbouring occupiers at 56 Abbey Road.

Reasons

8. No 53b is located to the rear of its plot such that its rear wall abuts the boundary with the neighbouring property No 56 Abbey Road. Originally the building had a pitched roof with three roof lights on the rear roof slope. The dormer that forms the subject of the appeal has been constructed across the width of the building and serves two bedrooms and a bathroom. It incorporates three sets of timber framed casement windows fitted with obscure glass.
9. Policy S29 of Westminster's City Plan July 2016 states that the Council will resist proposals that result in an unacceptable material loss of residential amenity and developments should aim to improve the residential environment. Policy ENV 13 of the City of Westminster Unitary Development Plan 2007 states that developments should not result in a significant increase in the sense of enclosure or overlooking, or cause unacceptable overshadowing, particularly on gardens, public open space or on adjoining buildings, whether in residential or public use. The justification for the policy sets out amongst other things that the space between buildings is important to allow people to enjoy life without feeling enclosed. It notes that the encroachment of new buildings and extensions into such spaces can, by small degrees, adversely affect the quality of life. Even when there may be no material loss of daylight or sunlight, new development can still be unacceptable because of an increase in the sense of enclosure.
10. No 56 Abbey Road has a rear extension incorporating a glazed conservatory/ kitchen and living room which have windows facing across the garden directly towards the appeal site. The distance between these windows and the appeal property is very limited. As a result the dormer dominates the outlook from within these rooms. Moreover, the additional height on top of an already tall boundary wall has increased the sense of enclosure. I acknowledge that the proposal has not resulted in a material loss of daylight or sunlight but nevertheless, the dormer is an overbearing feature that has had an adverse impact on the living conditions of the neighbouring residents.
11. I saw at my site visit that the windows are positioned at a high level within the rooms they serve. In the two bedrooms, fitted cupboards restrict access to the windows and I saw that they are awkward to open. Whilst the cupboards are not permanent features it seems to me that given the restricted, inward, opening mechanism, any views out of the windows when they are open are

very limited. The use of obscure glass prevents outlook when the windows are closed. Consequently I am satisfied that the proposal does not result in direct overlooking or a loss of privacy.

12. However, as a result of their high position immediately adjacent to the boundary directly facing the neighbours' garden, conservatory/ kitchen and living room, the windows create a sense of being overlooked. The fact that the windows are capable of being opened, whether or not overlooking occurs, contributes to that sense. Consequently the dominating effect of the dormer is compounded by what appears from the neighbours' side to be a long line of windows.
13. I have taken into consideration the appellant's view that the development is not significantly different to the approved scheme in terms of its impact on the neighbours' living conditions. However, it seems to me that the cumulative impact of the increase in height of the structure, combined with an alteration to its massing through the loss of the recesses at the sides has resulted in a more overbearing structure than that approved. I accept that the volume of the areas of set back as indicated on the approved drawings is modest. Nevertheless, it seems to me that having such recesses in the structure's form would assist in both relieving its massing and decreasing the sense of being overlooked. As such the differences between the two schemes are material and significant in relation to the impact of the scheme on the living conditions of the adjoining occupiers.
14. I noted at my site visit that there is a large, mature shrub in the garden of No 56 which effectively screens part of one of the sets of windows. However, this shrub is not a permanent fixture of the garden and moreover does not screen the development in its entirety.
15. I am unconvinced by the appellant's assertion that the approved drawings are diagrammatic and that as a consequence the dormer has been built further back than might have been necessary. The approved plans clearly indicate the position of the dormer in relation to the top part of the wall. Moreover it is clear that the structure as a whole is higher than was intended and has been built without the set-backs. I have taken into consideration the appellant's willingness to accept conditions to reduce the projecting eaves and to fix the windows shut although I understand that this was a condition of the approved scheme. However, whilst a reduction in the eaves would reduce some of the bulk of the structure and fixed windows would reduce the sense of being overlooked, such measures would not outweigh the harm I have identified.
16. My attention has been drawn to a planning permission granted in 2009 for the demolition of the existing property and construction of a new house with a terrace at first floor rear level.² I do not have all the details of this permission and cannot therefore be sure it is the same as the scheme before me or that the context that led to the decision being made was the same as it is now. Moreover, this permission was not implemented and has now lapsed. Accordingly it carries no weight as a fallback position.
17. The appellant has set out details of the protracted nature of the meetings and amendments that led to the final consideration of the approved scheme. I note that certain elements of the scheme had at times met with officer support.

² Application Ref: 08/04431/FULL

These prolonged committee deferrals and negotiations suggest to me that the decision on the approved scheme was finely balanced and at the limits of acceptability. This matter is not, in any event, determinative and I have considered the proposal as presented to me.

18. Consequently, for the reasons set out, the 'as built' scheme has resulted in unacceptable harm to the living conditions of the residents of the adjoining property. As such it is contrary to Policy S29 of Westminster's City Plan 2016 and Policy ENV 13 of the City of Westminster Unitary Development Plan 2007 as set out above.

Conclusion

19. For the reasons set out and taking into account all other matters raised, the appeal is dismissed.

S Ashworth

INSPECTOR