
Appeal Decision

Site visit made on 9 May 2017

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 24 May 2017

Appeal Ref: APP/T5720/W/17/3168108

50 Fortescue Road, Colliers Wood, London SW19 2EB

- 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 P Hayton against the decision of the Council of the London Borough of Merton.
 - The application Ref 16/P4182, dated 20 October 2016, was refused by notice dated 15 December 2016.
 - The development proposed is the extension and conversion of the existing dwelling house to comprise one, three-bedroom flat and one studio flat.
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Decision

1. The appeal is allowed and planning permission is granted for the extension and conversion of the existing dwelling house to comprise one, three-bedroom flat and one studio flat at 50 Fortescue Road, Colliers Wood, London SW19 2EB, in accordance with the terms of the application Ref 16/P4182, dated 20 October 2016, subject to the conditions as set out in the attached Schedule.

Preliminary matters

2. The Council's third reason for refusal contains a number of typos. These are acknowledged by the Council and corrected in its statement. The appellant has had opportunity to comment. No party has therefore been prejudiced.
3. The lawfulness or otherwise of the rear roof extension and second floor terrace is not a matter for me to determine. It is open to the appellant to apply for a determination under Sections 191/192 of the above Act in relation to this matter. My decision on this appeal under Section 78 of the Act does not affect the issuing of a determination under Section 191/192 of the same.

Main Issues

4. The main issues are:
 - whether the proposed development would provide acceptable living conditions for future occupants, with particular regard to the provision of external living space and noise;
 - the effect of the development on the living conditions of the occupiers of neighbouring properties with particular reference to outlook; and
 - the effect of the proposed development on the character and appearance of the area.
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Reasons

5. The appeal relates to an end of terrace, two storey property, with additional accommodation in the roof space. It is proposed to convert the existing dwelling into one, three bedroom flat (flat 1) and one studio flat (flat 2).

Living conditions

6. Policy 3.5 of the London Plan states that housing developments should be of the highest quality internally and externally and sets out the minimum space standards for new developments, adopted from the nationally described space standard¹. Similarly Policies CS 9 and CS 14 of the LDF Core Planning Strategy (CPS) seek to encourage well designed housing by ensuring that all residential development complies with the most appropriate minimum space standards. Policy DM D2 of the Sites and Policies Plan and Policies Map (SPP) also seeks to ensure appropriate provision of outdoor amenity space which accords with appropriate minimum standards.
7. On the basis that studio flat 2 provides a shower room rather than a bathroom, it would meet the minimum internal space standard of 37m². However, it would not meet the requirement to provide external amenity space of at least 5m². Nevertheless, occupants would have reasonable access to outdoor recreation space nearby such that the lack of dedicated outdoor amenity space would not be sufficient reason on its own to warrant withholding planning permission in this instance. Whilst I have considered this scheme on its own merits, I note that similar conclusions were reached by the Inspector for the appeal decision² referred to by the appellant.
8. There would though be an unconventional internal layout whereby the accommodation for flat 1 would be split over three floors with studio flat 2 on the middle floor. Consequently, the combined potentially noisy lounge, kitchen and bathroom of flat 2 would be positioned above and below bedrooms of flat 1. Whilst rooms in similar use should ideally be placed vertically above one another, to reduce disturbance from sound transmission, this is not always possible in the conversion of older properties. Nevertheless, I am satisfied that appropriate sound insulation can be secured by way of condition. The appellant has agreed to the same.
9. The Council's second reason for refusal states that the proposed rear extension would be unduly dominant to the detriment of neighbouring amenity. However, the Council's officer report and appeal statement says that the proposal would have no impact on neighbour amenity, including that of outlook. I agree with the latter position in that the limited depth of the extension, relative to that of the existing outrigger, would ensure no overbearing effect to the occupants of No 52 Fortescue Road. Moreover, the main rear building line of the appeal property sits behind that of No 48 Fortescue Road and the extension would be set back from the boundary with the same, thereby preventing an unduly domineering presence.
10. I therefore conclude that the proposal would provide acceptable living conditions for future occupants and would not conflict with Policy 3.5 of the London Plan, CPS Policies CS 9 and CS 14 or Policy DM D2 of the SPP. In accordance with Policy 3.3 of the London Plan, the proposal would increase

¹ DCLG. Technical housing standards - nationally described space standard (March 2015)

² Appeal Ref: APP/Z5060/C/15/3029776

housing supply, albeit modestly. Moreover, I have not been provided with evidence to suggest the proposal would compromise the objectives of Policy 3.4, which relates to optimising housing potential.

11. I have also found that the proposal would not be harmful to the living conditions of neighbouring residents and as such would not conflict with London Plan Policy 7.6 or SPP Policy DM D3, insofar as these policies seek to protect amenity within the Borough.
12. Although the Council has expressed concern that the top floor could be become a separate studio flat, this is not the proposal currently before me.

Character and appearance

13. Unlike the rest of the host terrace, the rear outrigger of the appeal property is "squared off" and provides a flat roof terrace enclosed by parapet wall. The external materials are also different to that of the ground floor and the neighbouring part of the outrigger. Whilst the appellant may not have carried out such works, I doubt that these are part of the original design.
14. The rear of the site currently backs onto brownfield industrial land. However, the Council has advised that this has recently been approved for new residential development. If implemented, this would increase the visual sensitivity of the rear of the terrace from its present position and the proposed development may well be visible from the public realm, as well as from individual properties. Nevertheless, the extension would effectively pull forward the existing built form at roof level such that it would not appear significantly different from the land to the rear. Also, due to its setback behind the existing parapet wall, it would not be overly prominent from neighbouring properties.
15. I therefore conclude on this main issue that the proposal would not materially harm the character and appearance of the area and as such would not conflict with London Plan 7.6, CPS Policy CS14 or SPP Policy DM D3. These policies state, amongst other matters, that all development needs to be designed in order to respect, reinforce and enhance local character.

Other matters

16. Without prejudice to the outcome of the appeal, the Council has requested that the appellant be instructed to enter into a Section 106 Obligation to make the development 'permit free'. This differs from the Council's officer report and main part of the its appeal statement which states that for the proposal to be considered acceptable it could be possible to make the development of the studio flat permit free so as not to have a harmful impact on parking in the area. Other than stating that the site falls within a Controlled Parking Zone, no further evidence has been submitted to support the Council's position on this matter.
17. Accordingly, on the basis of the evidence before me, I am not convinced that in an area with good access to public transport, that a Section 106 Obligation to restrict a single studio flat to being permit free is necessary to make the development acceptable in planning terms. In these circumstances such an obligation would not be in accordance with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the National Planning Policy Framework.

Conditions

18. I have had regard to the conditions that have been suggested by the Council. In addition to the standard condition that limits the lifespan of the planning permission, I have specified the approved plans for the avoidance of doubt and in the interests of proper planning.
19. A condition relating to external finishes is necessary to ensure a satisfactory appearance to the development. As the Planning Practice Guidance advises that care should be taken when using pre-commencement conditions, I have amended the trigger for this condition to relate to the commencement of external works. A pre-commencement condition relating to sound proofing is however necessary to safeguard the living conditions of future occupiers. A condition relating to hours of construction is necessary to protect the living conditions of existing residents.
20. In accordance with CPS Policy CS 15, a condition is necessary to ensure the development minimises water use and CO 2 emissions. A condition relating to secure cycle storage is necessary to encourage access by non-car modes. A condition relating to refuse storage facilities is necessary to serve the needs to development.

Conclusion

21. For the reasons given above, and taking into account all other matters raised, I conclude the appeal should be allowed.

Richard S Jones

INSPECTOR

SCHEDULE OF CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 1303/1; 1303/2D; 1303/3D; 1303/4F; 1303/5; 1303/6 and 1303/7.
3. No external work shall commence until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved sample details.
4. No development shall commence until a scheme for the soundproofing of the flats to prevent the transmission of noise and vibration between the two residential units has been submitted to and approved in writing by the local planning authority. The development shall not be occupied unless the measures have been carried out in strict accordance with the approved details. The measures shall thereafter be retained.
5. No demolition or construction work or ancillary activities such as deliveries shall take place before 0800 hours or after 1800 hours Mondays - Fridays inclusive, before 0800 hours or after 1300 hours on Saturdays or at any time on Sundays or Bank Holidays.
6. The development hereby approved shall not be occupied until details of secure cycle parking facilities for the occupants of the flats have been submitted to and approved in writing by the local planning authority. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the flats and thereafter retained for use at all times.
7. Prior to the occupation of the flats, refuse and recycling facilities shall be provided in accordance with details submitted to and approved in writing by the local planning authority. The refuse and recycling facilities shall be retained in accordance with the approved details permanently thereafter.
8. No part of the development hereby approved shall be occupied until evidence has been submitted to the local planning authority demonstrating that the development has achieved not less than the CO2 reductions (ENE1) (a 25% reduction compared to 2010 part L regulations), and internal water usage (WAT1)(105 litres/p/day) standards equivalent to Code for Sustainable Homes level 4.