

Appeal Decision

Site visit made on 9 May 2017

by G J Fort BA PGDip LLM MCD MRTPI

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

Decision date: 25 May 2017

Appeal Ref: APP/G5180/D/17/3168183 3 Camden Park Road, Chislehurst BR7 5HE

- 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 and Mrs A and B Wilson against the decision of the Council of the London Borough of Bromley.
 - The application Ref DC/16/04462/RECON, dated 22 September 2016, was refused by notice dated 23 November 2016.
 - The application sought planning permission for the demolition of garage and part front side of house (west side) and erection of a side and rear extensions ALT.2 Scheme without complying with a condition attached to planning permission Ref APP/G5180/D/13/2193757, dated 24 April 2013.
 - The condition in dispute is No (2) which states that: The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building. .
 - The reason given for the condition is: to ensure the satisfactory appearance of the finished scheme.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of garage and part front side of house (west side) and erection of side and rear extensions ALT.2 Scheme at 3 Camden Park Road, Chislehurst BR7 5HE in accordance with the application DC/16/04462/RECON made on the 22 September 2016 without complying with condition Nos (1), (2) and (3) set out in planning permission APP/G5180/D/13/2193757 granted on 24 April 2013, but otherwise subject to the following conditions:
 - 1) The development hereby permitted relates to the following approved plans:
 - a) CR-562-PD-ALT 2-00;
 - b) CR-562-PD-ALT 2-01 (REV A 01-11-12);
 - c) CR-562-PD-ALT 2-02 (REV A 28-09-14);
 - d) CR-562-PD-ALT 2-03 (REV A 28-09-14);
 - e) CR-562-PD-ALT 2-S1; and
 - f) CR-562-PD- 04.
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- 2) Before the first occupation of the eastern extension hereby permitted the dormer window on the north facing roof slope shall be fitted with obscured glass and shall be permanently retained in that condition.

Background and Main Issues

2. The appeal is against a condition attached to a planning permission granted at appeal¹, specifying the use of matching materials in the external construction of the approved development. I saw at my site visit that the external facing of the development had been finished in render and tile hanging, as opposed to brick that was the principal facing material employed within its host dwelling. The appeal thus relates to a retrospective application to remove the disputed condition and I have assessed it in these terms.
3. I consider the main issues in this appeal to be firstly, whether the removal of the disputed condition would preserve or enhance the character or appearance of Chislehurst Conservation Area; and secondly, the effects of the removal of the disputed condition on the living conditions of the occupants of 30 Yester Road in terms of outlook.

Reasons

The Conservation Area

4. I saw that the area in which the appeal property sits is characterised by very substantial residential properties, set within generous grounds, in a verdant and park-like setting. The Conservation Area's significance resides to a considerable degree from this development pattern and the form and architectural detailing of its constituent properties. However, I saw both within the appeal property's immediate environs, and within its wider surroundings, the materials palette employed in the facing of buildings is very varied including elements of brick, render and tile hanging. As a consequence, this mixture of elements adds variety to the streetscene, and means that there is no predominant facing material that characterises Chislehurst Conservation Area.
5. Thus within this wider and immediate context, the facing materials employed on the appeal building do not vary from a prevailing development pattern and thus do not read as incongruous or visually obtrusive elements of the streetscene. As a consequence, and mindful of my duty arising from section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I consider that the removal of the disputed condition would preserve the character and appearance of the Conservation Area. For these reasons too the facing material employed in the development does not result in harm to the Conservation Area's significance. As a result, I conclude that removal of the disputed condition would not conflict with the National Planning Policy Framework or Policy BE 1 of Bromley's Unitary Development Plan (adopted July 2006) (the UDP) insofar as, amongst other matters, they seek to ensure that the significance of heritage assets is sustained, and that development does not detract from the existing streetscene.

¹ Appeal reference: APP/G5180/D/13/2193757

Living Conditions

6. The appeal property's rear garden borders that of 30 Yester Road. The employment of render as a facing material on the appeal building has not altered its overall proportions or siting. As a result, I consider that, whilst its colour is lighter than brick-facing, it has not resulted in a structure that is materially more overbearing or enclosing than walls faced in brick. I also saw that, due to the lower level of 3 Camden Road, a considerable proportion of the available view of the appeal property from the garden of No 30 was of its tile covered roof, rather than its rendered walls. As a result of these matters I consider that the use of render on the appeal property has not resulted in a level of visual intrusion that materially diminishes the outlook available from the garden of 30 Yester Road.
7. I note that a tree within the garden of No 30, alongside the boundary of the appeal property may have to be removed, and I am aware that the trees on the other side of the boundary could be removed. These activities could reduce the amount of screening between the properties, making the walls of the appeal building more visible from the garden of No 30. However, given my conclusions on the limited bearing that the facing material has on the quality of outlook available from No 30, I consider that these matters would not weigh against the removal of the condition to any material degree.
8. Thus for the reasons given above, I consider that removal of the disputed condition would not materially diminish the outlook available from the garden of 30 Yester Road, and thus would not cause significant harm to the living conditions of that property's occupants in this regard. Its removal would therefore not conflict with Policy BE1 of the UDP insofar as it seeks to ensure that new development respects the residential amenity of the occupiers of neighbouring buildings.

Other Matters

9. I note comments regarding the privacy effects of the development at the appeal site; however, removal of the disputed condition would not make any material difference to the privacy arrangements of the properties. Accordingly, this matter does not alter my conclusions on the main issues given above.
10. Although I have been supplied with no substantive evidence in this regard, I am aware that the occupants of No 30 consider that the development at the appeal site has had an effect on the health of a tree in their garden. However, given the subject matter of the disputed condition, this consideration does not weigh against its removal to any material degree.
11. I am also mindful of comments regarding the retrospective nature of the appeal, following, as it does, implementation of the development in breach of the disputed condition. However, this is essentially a procedural matter that has only a very minimal bearing on an assessment of the planning merits of the case.

Conditions

12. I have assessed the conditions attached to the original planning permission in terms of the tests given in paragraph 206 of the Framework. This states that conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and

reasonable in all other respects. Moreover, the advice contained in the Government's Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under this section of the Town and Country Planning Act 1990 should also repeat the relevant conditions from the original planning permission unless they have already been discharged. As a consequence, I have imposed all those that I consider to remain relevant, and in the event that any have been discharged that is a matter that can be addressed by the parties.

13. For the avoidance of doubt, I have attached a condition specifying the approved plans, although I have altered the wording of this from the condition previously attached to reflect the retrospective nature of the development. I note from the planning history of the site that the plans were amended to alter the windows² and I have been copied details of these by the Council. Accordingly I have specified the approved amended plans in the relevant condition.
14. In order that the proposed development avoids harmful effects to the privacy of the occupants of 30 Yester Road, I have attached a condition requiring the installation of obscure glazing in the dormer window of the north-facing roof-slope of the eastern extension.
15. However, as the proposed development has started, I have not found it necessary to attach the implementation condition. Furthermore, as outlined in the reasons given above, I consider the matching materials condition to be unnecessary; and due to this and the retrospective nature of the appeal, I also consider it to be unnecessary to require the appellant to supply samples of the facing materials to the Council.

Conclusion

16. Removal of the disputed condition would not conflict with the development plan insofar as the policy that has been drawn to my attention is concerned. Accordingly, for the reasons given above, and having regard to all other matters raised I conclude that the appeal should succeed.

G J Fort

INSPECTOR

² Under the terms of an application for Non-Material Amendment: Council reference 12/03279/AMD