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## Appeal Decision

Site visit made on 7 November 2017

**by Mrs J Wilson BA BTP MRTPI DMS**

**Inspector appointed by the Secretary of State**

**Decision date: 15<sup>th</sup> January 2018**

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**Appeal Ref: APP/E5330/W/17/3179820**

**Land at the rear of 76 Vanbrugh Park, London SE3 7AN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Tom Collins against the decision of Royal Borough of Greenwich Council.
- The application Ref 16/0428/F, dated 10 February 2016, was approved on 17 February 2017 and planning permission was granted subject to conditions.
- The development permitted is the construction of a new part 2/part 2.5-storey over basement house fronting Heathway with off street parking and amenity space.
- The conditions in dispute are Nos 2, 13, 14, 15 and 21 which state that:
  - (2) Prior to the commencement of development, full details (including samples) of all facing materials and finishes, including windows, to be used on the dwelling hereby approved shall be submitted to, and approved in writing by, the Local Planning Authority and the scheme shall thereafter be implemented in accordance with the approved drawings.
  - (13) The development hereby permitted shall achieve no less than a thirty five per cent (35%) reduction in building carbon dioxide emissions over Part L 2013 of the building regulations. No development shall take place until an energy statement is submitted to and approved by the Local Planning Authority detailing how the development proposals, in accordance with the energy hierarchy, meet the required 35% reduction target.
  - (14) The development shall be implemented in accordance with the details approved under condition 13 and prior to the first occupation of the building the developer shall submit evidence that the 35% reduction over Part L 2013 of the building regulations has been achieved.
  - (15) The dwelling hereby permitted must achieve the following energy performance standards:
    - (i) All houses and flats whose material operations have commenced on or after 1<sup>st</sup> October 2016 must achieve zero carbon dioxide emissions.
    - (ii) No part of the development hereby permitted shall be occupied until evidence of the energy performance standard referred to in part [(i)] [(ii)] of this condition having been achieved, has been submitted to, and approved in writing by, the Local Planning Authority
  - (21) Prior to the first occupation of the dwelling the balustrade to the rear first floor balcony shall be in situ to a height of 1 metre and shall be finished in opaque glass, the glass balustrade to the second floor terrace shall be in situ to a height of 1.6 metres, shall be obscured glass and shall be set back 3 metres from the front building line of the approved house. Each glass balustrade shall thereafter be maintained in good order and shall not be replaced without first obtaining the written consent of the Local Planning Authority.
- The reasons given for the conditions are:
  - (2) In order that the Local Planning Authority may be satisfied with the external appearance of the building, its impact on the character and appearance of the street scene and the Blackheath Conservation Area and ensure compliance with

- policies 7.4, 7.6 and 7.8 of the London Plan (2016) and policies H5, DH1, DH3 and DH(h) of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (adopted July 2014) and the Blackheath Conservation Area Character Appraisal.
- (13) To minimise future carbon dioxide emissions and mitigate climate change, and to comply with policy 5.2 of the London Plan and policy E1 Royal Greenwich Local Plan: Core Strategy with Detailed Policies (adopted July 2014).
- (14) To minimise future carbon dioxide emissions and mitigate climate change, and to comply with policy 5.2 of the London Plan and policy E1 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (adopted July 2014).
- (15) To minimise future carbon dioxide emissions and mitigate climate change, and to comply with policy 5.2 of the London Plan (2016) and policy E1 of the Royal Greenwich Local Plan: Core Strategy with Detailed Policies (adopted July 2014)
- (21) In order that the residential amenity of adjoining occupiers is preserved and to ensure that the development complies with the aims of Policy DH(b) of the Royal Greenwich Local Plan: Core Strategy with Detailed Polices (adopted July 2014)
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## Decision

1. The appeal is allowed in part and the planning permission Ref 16/0428/F for the construction of a new part 2/part 2.5-storey over basement house fronting Heathway with off street parking and amenity space at Land at the rear of 76 Vanbrugh Park, London SE3 7AN granted on 17 February 2017 by the Royal Borough of Greenwich Council, is varied by deleting conditions 13, 14 and 15; and by deleting conditions 1 and 21 and substituting alternatively worded conditions set out below.

### Condition 1

The development hereby permitted shall be carried out in accordance with the following approved plans: 1097-001 Rev P1, 0010 Rev 1, 1000 Rev 1, 1001 Rev 1, 1002 Rev 1, 1003 Rev 1, 1004 Rev 1, 1100 Rev 02, 1101 Rev 1, 1201 Rev 1, 1202 Rev 02, 1203, Rev 02, 1204 Rev 02, 1500 Rev 1, 1501 Rev 1, 1502 Rev 1, 1503 Rev 1, 1504 Rev 1, and DFCP 3697 TPP Allocated Drawing No 01. Daylight and Sunlight Assessment, Arboricultural Impact Assessment, Design and Access Statement and Basement Assessment.

### Condition 21

Prior to the first occupation of the dwelling the balustrade to the rear first floor balcony shall be in situ to a height of 1 metre and shall be finished in opaque glass, the glass balustrade to the second floor terrace shall be in situ to a height of 1.6 metres and shall be obscured glass. Each glass balustrade shall thereafter be maintained in good order and shall not be replaced or removed.

## Procedural Matters

2. I note that all plans supplied in this case have revision numbers which are not the same as those referred to in the Council's decision notice. I have considered this appeal on the basis of the plans provided as agreed by both main parties. It is however necessary to delete condition 1 and replace it with a new one listing the correct plans.
3. The appellant's original statement addressed three conditions, 2, 15 and 21. In addition the proposal also requests the removal of an informative attached

to the planning consent. As informatives do not carry any legal weight, and the matter is intrinsically linked to that of Condition 2 regarding materials, there is no need for me to address the removal of this informative. An addendum to the original statement was submitted seeking to also remove conditions 13 and 14. All parties were given the opportunity to comment in relation to these two further conditions and no party would be prejudiced by my consideration of them.

4. The Council have confirmed that they agree that condition 15 should be removed. However as interested parties have made comments in respect of the condition I shall address it.

### **Main Issues**

5. The main issue is whether the disputed conditions are necessary, reasonable and relevant to the development permitted.

### **Reasons**

#### *Condition 2*

6. Heathway, though within the Blackheath Conservation Area (CA) displays an eclectic mix of properties of both old and contemporary design. Materials vary from white and pale coloured renders to charcoal coloured zinc finishes. Modern buildings also utilise large areas of glass. Equally, brick colours vary and range from yellow London brick to mottled grey bricks. There is no predominant architectural style to the surrounding buildings though those immediately adjacent to the site are generally of honey coloured brick. Elsewhere along Heathway darker coloured brick is extensively used. I also viewed the property referred to in Langton Way which appears in a very different context. Even so neither instance reads visually with the appeal site.
7. The appeal proposal would be a contemporary structure incorporating a mix of glazing with zinc detailing along with handmade anthracite brick which would be visually dominant particularly the south elevation. The statutory duty in Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character of a conservation area warrants a more subtle approach than the anthracite coloured bricks would represent. The use of a brick with a less dense and less uniform colour would enable the modern design to visually sit more comfortably in its context. To this end I do not intend to vary condition 2 in the manner suggested by the appellant. The effect of this is that the Local Planning Authority will continue to have the remit to approve the materials as set out in the condition and to their satisfaction to ensure compliance with policies 7.4, 7.6 and 7.8 of the London Plan (2016) and policies H5, DH1, DH3 and DH(h) of the Royal Greenwich Local Plan, Core Strategy with Detailed Policies (2014) (CS) and the Blackheath Conservation Area Character Appraisal.

#### *Condition 13*

8. The Council's justification for this condition, which requires a 35% reduction over Part L of the building regulations, is Policy E1 of the CS and Policy 5.2 of the London Plan. These policies require all development to reduce energy demands in the Borough, however the specific reductions covered by part B of

Policy 5.2 apply to major developments. As a single dwelling, this requirement does not apply.

9. The Council explain that the CS and detailed policies have been assessed to be in general conformity of the London Plan and this is not in dispute. However Policies E1 and 5.2 do not require the imposition of such a condition for a development of this scale and the Council have not provided evidence to demonstrate otherwise. This is consistent with the findings of my colleague in the Blackheath Autos appeal<sup>1</sup> quoted by the Council.
10. I therefore conclude that condition 13 is not necessary, relevant to planning, or to the development permitted, in mitigating climate change. Removing this condition would not conflict with the requirements of CS Policy E1 and London Plan Policy 5.2; which seek to reduce the demand for energy.
11. In reaching this conclusion I have had regard to the representations made by interested parties requesting that this condition be retained as thinner walls may compromise structural integrity and environmental benefits should not be removed. However these matters are governed by building regulations and are not within the remit of this appeal.

#### *Condition 14*

12. As condition 14 is linked to condition 13 and seeks to require that the evidence of compliance with condition 13 is provided prior to the first occupation of the dwelling and I have concluded that condition 13 it is not necessary, the same applies to condition 14. For the same reasons, removing this condition would not conflict with the development plan.

#### *Condition 15*

13. A Written Ministerial Statement in March 2015 (WMS) confirmed that the government does not intend to proceed with Zero Carbon Emissions requirement for small schemes and on this basis the Council have agreed that the condition should be removed. Whilst interested parties have made representations that new developments should not be allowed to disregard the environment and that the London Plan should be complied with, I must have regard to the WMS on this matter and in particular the threshold below which the requirement for zero carbon would not apply.

#### *Condition 21*

14. This condition relates to detailing of glazed balustrades on the first floor and second floor balconies, the point in dispute between the parties is the position of the second floor balustrade. Regarding the first floor rear boundary the neighbour raises concerns over the size and height of the terrace stating that there would be intrusion into existing skylights; that privacy would be compromised and that development would cause loss of light and considerable activity may take place there. The rear terrace is at a lower level than the eaves of the neighbours building and whilst eye height would be around the same level as the roof lights, the distance between them would not afford a direct view into the adjacent property. Similarly the terrace serves a bedroom rather than living or social space and its use would be likely to be less than the living space on the lower ground level.

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<sup>1</sup> Ref APP/E5330/W/16/3165949

15. In respect of the second floor terrace (facing Heathway) to which the disputed element of condition 21 relates, the Council do not take issue with the height, or opaque glazing of the balustrade to this second floor terrace. The wording of the condition would require the scheme to be adjusted to reposition the balustrade 3 metres back into the site. The Council argue that this is necessary to comply with policy DH(b) of the CS which in turn states that development will only be permitted where it does not cause an unacceptable loss of amenity to adjacent occupiers by reducing the amount of daylight, sunlight or privacy they enjoy or which does not result in an unneighbourly sense of enclosure.
16. The Council in evidence cites the dwelling on the opposite side of the road at 'The Little House' as the property with which they are concerned and in relation to the overlooking and loss of privacy aspects of policy DH(b). Indeed representations from occupiers of that property highlight that use of the terrace would invade their privacy, allow views into every room in their home and that no other roof terrace in Heathway sets this unwelcome precedent whether opaque or not.
17. Essentially therefore the issue in contention is whether the forward edge of the opaque glass balustrade in the position shown on the approved plan and at a height of 1.6 metres would result in an unacceptable impact in respect of overlooking and the protection of privacy to the occupiers of The Little House than it would achieve if it were to be positioned 3 metres back into the site.
18. The appellant argues that the screen at its revised height would not cause any difference in impact to the neighbours in a revised position than it would if it remained in its original position. As the balustrade would be opaque, views across Heathway would be restricted to the height of 1.6m. At this height any sight lines towards windows in the adjoining property from a height above 1.6 metres would be oblique particularly given that the properties would be set at an angle from each other. Moreover in the absence of detailed evidence substantiating that a 3 metre difference is critical to preventing overlooking I do not find that the additional wording inserted into the condition requiring the repositioning of the balustrade (and which effectively modifies the approved plan) is justified.
19. I therefore conclude that whilst the bulk of the wording in condition 21 is necessary and reasonable to protect the living conditions of the adjacent properties, the words "and shall be set back 3 metres from the front building line of the approved house" are unjustified. I therefore intend to delete Condition 21 and replace it with an alternative one without the disputed wording which would still meet the requirements of Policy DH(b) of the CS.

#### *Condition 1*

20. The Council requested amendments to the original application prior to the Planning Committee; plan references in the decision notice were taken in error from the committee report and did not reflect the amendments. In order to correct this deficiency I intend to remove condition 1 and replace it with an alternative incorporating the correct drawing numbers and revisions.

#### **Other matters**

21. I have taken into account the comments of the Blackheath Society and Heathway Residents and Neighbourhood Watch Association and from the

occupiers of neighbouring properties with regard to the effect of the development will have on them. However, these matters do not lead me to a different conclusion.

### **Conclusion**

22. I have concluded that conditions 13, 14 and 15 should be deleted and that Conditions 1 and 21 should be replaced and in these respects the appeal succeeds. For the reasons set out I consider that condition 2 should be retained unaltered.

*Janet Wilson*

INSPECTOR