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## Appeal Decision

Site visit made on 20 December 2018

**by David Storrie DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 July 2019**

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**Appeal Ref: APP/A5720/D/18/3208706**

**13 Primrose Way, Wembley, HA0 1DS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Ashraf Jan against the decision of the Council of the London Borough of Ealing.
  - The application Ref 181006VAR, dated 4 March 2018, was refused by notice dated 27 April 2018.
  - The application sought planning permission for part single and part two storey side/rear (wrap around) extension (following demolition of single storey side/rear extensions and garage/store); alteration of roof from hip to gable end; rear roof extension incorporating Juliet balcony; and installation of three roof lights to front roof slope without complying with a condition attached to planning permission Ref 174445FUL, dated 7 November 2017.
  - The condition in dispute is No 2 which states that: The development hereby approved shall be carried out in accordance with drawing title numbers Design & Access Statement dated 04/09/2017; Site Plan scale 1:1250; Existing Floor and Roof Plan rev. 01; Existing Elevations rev. 01; Proposed Floor and Roof Plan rev. 01; Proposed Elevations rev. 01; and Proposed Section A-A rev. 01.
  - The reasons given for the condition is: For the avoidance of doubt, in the interest of proper planning.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The development has been implemented but has not been constructed fully in accordance with the plans approved under application reference 174445FUL and as set out in condition 2 of that permission. A number of plans were submitted in support of the application; Approved Floor and Roof Plans, Revision 01, 27/02/2018; Approved Elevations, Revision 01, 27/02/2018; Current Built Elevation, Revision 01, 27/02/2018, Current Built Floors and Roof Plan, Revision 01, 27/02/2018, and Current Build Elevation, Revision 02, 09/04/2018.
3. Although entitled Current Built Elevation and Current Built Floors and Roof Plan (revision 01, 27/02/2018), the plans show *Proposed* elevations and floor plans. These plans refer to *Current Built* whereas the later plans of the 09/04/2018 refer to *Current Build* and show *Current* elevations as opposed to proposed. I am unsure what the distinction is between these words, but the plans are

different in-so-far as they relate to the first-floor element of the two-storey side/rear extension and the side elevation. No floor plans were submitted with the Current Build Elevations.

4. The appellant says they were advised to apply for a variation to condition 2 of the original planning permission to allow for these changes to the approved development and seeks to retain the development carried out in breach of that condition. The Council considers that the amendments have a detrimental effect on the architectural integrity of the host building and approved development and the character of the area and so cannot be accepted as minor material amendments. As such, it refused the application to regularise the breach of condition 2. This background has led to my identification of the main issue below.

### **Main Issue**

5. The main issue is the effect that not complying with condition 2 would have on the character and appearance of the host building and the surrounding area.

### **Reasons**

6. Section 73 of the Town and Country Planning Act 1990 allows for the consideration of development without complying with conditions subject to which a previous planning permission was granted. One of the uses of a section 73 application is to seek a minor material amendment, where there is a relevant condition that can be varied. There is no statutory definition of a 'minor material amendment' but it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.
7. The Council have published a helpful *Code of Practice for Minor Material Amendments following a grant of planning permission (2011)*. It sets out a number of key tests that include whether the proposed change is material/significant in terms of its scale in relation to the original approval. The Council Officer report sets out the differences between the approved plans and what has been built. This is not disputed by the appellant.
8. The main change from the approved plans is to the dimensions and height of the first floor rear roof extension which have increased. This element is now materially different from the approved plan. Whilst this elevation would not be in public view, I consider that the degree of change cannot be considered minor. The proposed change results in a scale and bulk of development that is harmful to the character and appearance of the host dwelling, introducing an awkward roof design at odds with the existing roof slope and form.
9. Whilst the appellant has drawn my attention to additions to neighbouring properties at the rear, I do not consider these to be comparable to this proposal which should be considered on its own merits.
10. The proposed changes to the approved development would have a detrimental effect on the character and appearance of the host dwelling by virtue of their increased scale and bulk. Such changes cannot be considered minor and would conflict with policies 7.4, and 7.6 of the London Plan (2016) and policies 7.4 and 7B of the Ealing Development Management Development Plan (2013). These policies, amongst other things, seek a high standard of design for new

development that has a minimal impact on the character of the area, and respects the architectural integrity of the original dwelling.

11. For the above reasons the appeal is dismissed.

*David Storrie*

INSPECTOR