

# Appeal Decision

Site visit made on 30 July 2019

**by G Powys Jones MSc FRTPI**

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

**Decision date: 13<sup>th</sup> August 2019**

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**Appeal Ref: APP/X5990/D/19/3231114**  
**34 Aldridge Road Villas, London, W11 1BW**

- 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 Ms Mimi Pakenham against the decision of the City of Westminster Council.
  - The application Ref 18/09126/FULL, dated 25 October 2018, was refused by notice dated 12 April 2019.
  - The development is the erection of rear single storey extension at lower ground floor.
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## Decision

1. The appeal is dismissed.

## Preliminary and procedural matters

2. Reference has been made to the planning history of the property. Of particular significance is a relatively recent permission granted by the Council for *'the erection of single storey rear extension at lower ground floor level and alterations to fenestration at rear ground floor level.'*<sup>1</sup> According to the Council, the permitted extension had a depth into the garden of 3.5m, measured from the original rear elevation.
3. The appellant says that when building this extension, the contractor miscalculated and the shell of the extension was built at a depth of 4.56m from the rear wall. The external elements of the extension are almost complete, the roof is on, and the appellant, in effect, wishes to retain that built and to complete it in accordance with the submitted plans.
4. Reference is also made to a previous refusal of planning permission for a proposed rear extension of 5m in depth<sup>2</sup>. The planning history of the property is material to my considerations, attracting due weight.
5. The Council's officers recommended the original application subject of this appeal for approval. However, members of the Council's Planning Applications Sub-Committee disagreed with the recommendation, and refused planning permission for the reasons set out in the decision notice.
6. Arrangements had been made for me to assess the development from the neighbouring property, 36 Aldridge Road Villas, which I did.
7. In addressing the Council's second reason for refusal, the appellant submitted a Daylight and Sunlight Assessment with the initial appeal documents, which the

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<sup>1</sup> Ref 17/05558/FULL dated 11 August 2017.

<sup>2</sup> Ref 17/03197/FULL dated 06 June 2017.

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other principal parties to the appeal had not seen before. Having regard to the Court of Appeal judgment<sup>3</sup>, and in the interests of natural justice, I sought the Council's views on the Assessment, together with those of the residents of 36 Aldridge Road Villas. The Council responded in the following terms:

*It is the Council's view that as this document was not submitted at the time of the planning application, it should not be permitted to be accepted at the appeal stage. However, notwithstanding this, the City Council refused the application on the harmful impact on the adjoining neighbour's amenity on grounds of an increased sense of enclosure. Whilst there may be cases where the losses of light may be within the BRE guidance, there can still be an unacceptable increase in the sense of enclosure.*

8. One of the residents of No 36 commented in particular about what were regarded as several inaccuracies in the Assessment, and that it did not convey a true account of the effect of the development on his amenities.
9. Since the relevant parties have been provided with the opportunity to comment upon it, I shall accept the Assessment as part of the evidence. The comments made upon it by the parties shall be taken into account.
10. The appeal property is located within the Aldridge Road and Leamington Road Conservation Area (CA).

### **Main issues**

11. The main issues are: (a) whether the character or appearance of the CA would be preserved or enhanced, and (b) the effect of the proposals on the living conditions of the residents of 36 Aldridge Road Villas with particular reference to light and visual impact.

### **Reasons**

#### *Conservation Area*

12. The appeal property is an attractive end of terrace four-storey dwelling. The works subject of the appeal have taken place at the rear where, at lower ground or garden level, an extension has been partially built, replacing the previously existing protruding bay window. The extension occupies the full width of the dwelling and is built to the shared boundary with 36 Aldridge Road Villas. As previously explained, planning permission was previously granted for an extension of this type – but the one built is deeper by just over a metre than that approved.
13. The detailed design of the proposal, including the proposed French Doors opening out to the garden, is similar to that previously granted approval. Given the visually sheltered location of the extension it would go unnoticed in the public realm. Some neighbours would see it, but when compared with that already approved, I share the officer-expressed view that the increased depth of the extension would not result in material harm to the appearance of the host property or the CA.
14. I therefore conclude that the development, if completed, would not prove harmful to the visual amenities of the CA so that its character and appearance would be preserved. Accordingly, no conflict arises with those provisions of policies S25 and S28 of Westminster's City Plan and policies DES1, DES 5, DES

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<sup>3</sup> R (Ashley) v Secretary of State for Communities and Local Government 2012 (EWCA) Civ 559

9 of the Council's Unitary Development Plan, directed to achieving high quality design and to protecting the area's heritage assets from inappropriate development.

*Living conditions*

15. Of most concern to the Council is the effect of the development on the lower ground accommodation of the adjoining property, 36 Aldridge Road Villas. The room at most risk of any ill-effects arising from the development is a large habitable room used for dining, with a kitchen area. Glazed doors open out onto a patio and the garden. Above the glazed door is a decorative balcony, reached from the garden by a set of external steps.
16. The boundary between the appeal property and No 36 is demarcated by a solid wall topped with a lattice fence. The extension has been built so that its side wall adjoins the boundary. Before the erection of the extension, which lies to the south of No 36, I suspect that the lattice fence would have facilitated the entry of dappled sunlight onto No 36's patio area and to its lower ground glazed openings, particularly during the afternoon and early evening.
17. In my view, the 3.5m depth extension permitted by the Council would have itself materially affected the amount of sunlight and daylight reaching No 36's habitable room and its patio area. The additional meter or so in depth would, in my view, make no material difference in this regard. But as the Council rightly implies in its response to the production of the appellant's Daylight and Sunlight Assessment, the Council did not object on this basis.
18. In my judgment, the approved extension, given its height and position virtually on the shared boundary, would itself have materially altered No 36 occupants' perception and consequent enjoyment of their dining room and patio area. Whilst the additional unauthorised depth of just over a metre may seem inconsequential to the appellant, to my mind, it renders the extension, as built, inappropriately oppressive by enhancing a tunnelling-effect when viewed from the habitable room. Thus the adverse sense of enclosure experienced by the occupants of No 36 as a consequence of building the approved scheme would be unacceptably accentuated by the additional unauthorised depth and bulk of the as-built structure.
19. I therefore conclude that the development, as built, is un-neighbourly and harmful in its effects on the occupants of No 36 by reason of its adverse visual impact upon them, materially affecting the living conditions they could reasonably be expected to enjoy. Accordingly, a clear conflict arises with the provisions of policy S29 of the Westminster City Plan and policy ENV 13 of the Westminster Unitary Development Plan, which, in combination, seek to protect residential amenity from any material ill-effects of development proposals.

**Other matters**

20. All other matters raised in the representations have been taken into account, including the references made to the design and operation of the glazed door openings above the extension. These, in the interests of protecting privacy, were meant to open inwards according to the approved plans, but they do not, and neither is there a Juliette balcony, as originally approved. However, these are matters that could have been made subject of a condition in the event of the appeal succeeding.

21. No other matter raised is of such strength or significance as to outweigh the considerations that led me to my overall conclusions.

**Overall conclusions**

22. I find in favour of the appellant in respect of the first main issue, that of the effect of the development on the character and appearance of the CA. However, I find against her in respect of the second main issue - that concerned with neighbouring living conditions. This is sufficient reason to dismiss the appeal.

*G Powys Jones*

INSPECTOR