



Appeal Decision

Site visit made on 13 August 2019

by Christopher Butler BA (Hons) PG Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2019

Appeal Ref: APP/H5960/W/19/3225488

2 Worcester Gardens, London SW11 6LR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Indigo Estates against the Council of the London Borough of Wandsworth.
 - The application Ref 2018/4997, is dated 21 October 2018.
 - The development proposed is the excavation of the basement with front and rear lightwells and a ground floor wrap around extension, first and second floor rear extensions and rear dormer roof extension. Internal reconfiguration to create 3 separate dwellings (1 x 4 bedroom maisonette, 1 x 3 bedroom maisonette, 1 x 2 bedroom apartment).
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Decision

1. The appeal is dismissed

Preliminary Matters

2. This appeal is against the failure of the Council to give notice within the prescribed period of a decision on this application. However, the Council in accordance with best practice prepared a report as to what their professional officers would have recommended had they been in a position to determine the appeal. The report was presented to the Council's Planning Applications Committee on the 24 April 2019. The Members of that Committee determined that had they been in a position to determine the application, they would have refused planning permission, contrary to their professional officers' recommendation to them.
3. Within the Committee report reference is made to amended plans and recommended conditions in the event of the appeal against non-determination being allowed, including a condition specifying drawing numbers of the plans considered in the determination of the submission.
4. The drawing numbers listed in that condition differed from the drawing numbers submitted with the original appeal documentation and as such clarification as to the correct drawing numbers was sought from the appellant. The appellant confirmed the correct drawing numbers by e-mail on 13 August 2019 stating "...please find revision 3 of D101 through to D104 attached." The appellant also provided copies of those drawings.

5. As such the correct drawing numbers are 2018-003-2WG X000, 2018-003-2WG D101 Rev 3, 2018-003-2WG D102 Rev 3, 2018-003-2WG D103 Rev 3 and 2018-003-2WG D104 Rev 3. These drawing numbers match the drawing numbers considered by the Council and are drawings upon which third party representations were made to the Council. As such I do not consider that the interests of the Council or any third parties would be prejudiced by my determination of the appeal in the consideration of the drawing numbers listed above.

Main Issue

6. The main issue is the effect of the development on living conditions of the future occupiers of the basement and ground floor flat with particular regard to outlook and light.

Reasons

Effect of the development on living conditions of the future occupiers of the basement and ground floor flat with particular regard to outlook and light.

7. The Council's letter responding to the appeal sets out their objection as being the lightwell serving the basement level bedrooms, of the basement and ground floor flat, would be undersized, provide inadequate day light and a poor degree of outlook resulting in an unacceptable sense of enclosure for future occupiers.
8. Policies DMS1 and DMS4 of the Wandsworth's Development Management Policies Document (Adopted March 2016) (DMPD) are applicable in assessing proposed development in regard to quality of accommodation provided for the future occupiers. Policy DMS1 of the DMPD seeks to ensure that development does not harm the amenity of occupiers through overshadowing, daylight or unsatisfactory outlook, whilst Policy DMH4 of the DMPD seeks to ensure a satisfactory environment for housing is provided and that adequate daylight to habitable rooms is achieved.
9. The Council has also made reference to its Supplementary Planning Document: Housing (Adopted November 2016) (SPD), which aims to help architects and developers to formulate design proposals prior to submission of an application and provide more certainty as to the issues that the Council considers when determining applications and the methods they use to make such assessments. The SPD seeks to ensure residential development in the Borough achieves the highest possible standards in design and advises that consideration should be given to the application of the SPD alongside delivery of the Council's adopted Core Strategy and DMPD.
10. Whilst I acknowledge the proposed development meets the nationally described and local floorspace standards, the basement bedroom windows would directly face each other across a narrow and confined lightwell space. Bearing this in mind together with the height of the lightwell, at effectively two storeys (basement and ground levels), and the fact that 2 habitable room windows are served off it, the lightwell will have a detrimental, oppressive and unacceptable sense of enclosure on the occupiers of those habitable rooms. It is clear to me that the two bedrooms within the basement area would have poor levels of outlook and are likely to receive reduced levels of light. In the absence of any substantive evidence to indicate otherwise the development would fail to

provide a good quality internal environment and would be contrary to Policies DMS1 and DMS4 of the DMPD, which seek to ensure development does not harm the amenity of occupiers and that a satisfactory environment for housing is provided.

Other Matters

11. The appeal site is located within the Clapham Common Conservation Area, which is defined by the wide, open space of Clapham Common and the often grand houses that front onto it. There is a variety of housing types, but the predominant type of housing is terraced. Many of the original features of these houses survive.
12. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a statutory duty upon decision makers to safeguard the significance of heritage assets for future generations. It states that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of conservation areas.
13. The development in terms of its impact on the Conservation Area will have a limited effect as it will not be overly visible from public vantage points. As such it is clear to me that the proposed development would not interfere with views into or out of the Conservation Area and the proposed development would have a neutral impact on the setting of the Conservation Area. To put it another way the proposed development would preserve the setting of the Conservation Area and therefore accord with the conservation requirements of Paragraph 7.8 of the London Plan - The Spatial Development Strategy for London Plan (March 2016), Policies PL1 and Part A of IS3 of the adopted Wandsworth Local Plan Core Strategy (March 2016), Part (b) of policy DMS2 of the DMPD and Chapter 16 of the National Planning Policy Framework (the Framework).
14. I note the appellants reference to the presumption in favour of sustainable development, as set out in paragraph 11 of the Framework, as being a material consideration. Where development plan policies are out of date in respect of housing supply this means my giving weight to granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
15. The development would create some short-term economic benefits through construction related employment, and investment in the local economy following its occupation. Additionally, in social terms the proposed development would result in a net addition of 2 units of accommodation, making a small contribution to housing need and the government's aim to significantly boost housing. I attach moderate weight to these factors.
16. Irrespective of the above, when weighed against the harm that would arise from the poor levels of outlook and levels of sunlight to the two bedrooms that face into the narrow and confined lightwell space within the maisonette at ground / basement level the development is unacceptable in terms of the provision of suitable accommodation in this regard. These are matters to which I attach significant importance and weight. Therefore, the adverse impacts of granting permission for the scheme as proposed would significantly and demonstrably outweigh the benefits of the scheme in this case.

17. I note the appellant considers benefits of the development, including the large open plan living area at ground floor level and the fact that the ground floor maisonette has its own dedicated large rear garden. I also note the shared front garden area and the fact that the site is located in close proximity to Clapham Common.
18. I also recognised the applicant's desire to compromise and increase the size of the lightwell. However, I have no scheme before me to demonstrate that this could be achieved and imposing a condition requiring such amendments would not be reasonable. As such it would fail to meet the tests for the imposition of planning conditions¹.
19. Even had details of such amendments been submitted with the appeal, the published procedural guidance² is clear that the appeal process should not be used to evolve the scheme. A significant level of representation was made by interested parties on the proposed development and consideration of revised plans / documents, not previously seen by the council or third parties would prejudice their interests. In the absence of consultation with interested parties, it would not be appropriate to consider revised plans / documents in the appeal process.
20. The appellant has drawn attention to a number of similar projects granted by the Council. I have not been provided with any specific details of those planning permissions and am not aware of the planning background to those cases. Irrespective of this, each case must be considered on its own merits.

Conclusion

21. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. I have found conflict with saved policies DMS1 and DMS4 of the DMPD and therefore consider that the proposal conflicts with the development plan as a whole.
22. Overall, taking account of the Framework and the above considerations, including the benefits of the development, I find that material considerations do not indicate that planning permission should be granted for the development as it conflicts with the development plan.
23. For the reasons given above I conclude that the appeal should be dismissed.

Christopher Butler

INSPECTOR

¹ Planning practice Guidance Use of Planning Conditions - Paragraph: 003 Reference ID: 21a-003-20190723

² Procedural Guide 'Planning Appeals - England 2018'