



Appeal Decision

Site visit made on 5 November 2019

by J Williamson BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 December 2019

Appeal Ref: APP/V5570/W/19/3225728

164A Liverpool Road, Islington, London, N1 1LA

- 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 Adrian Aghababaie against the decision of the Council of the London Borough of Islington.
 - The application Ref P2018/2616/S73, dated 27 July 2018, was refused by notice dated 5 October 2018.
 - The application sought planning permission for rear extension and additional storey to first-floor flat including demolition and rebuilding of existing side and rear walls and roof without complying with a condition attached to planning permission Ref P2017/3904/FUL, dated 28 February 2018.
 - The condition in dispute is No 2 which states that: The development hereby approved shall be carried out in accordance with the following approved plans: PL-001, PL-104 Rev D, PL-105 Rev E, PL-106 Rev D, PL-200, PL-201, PL-202, PL-203, PL-300, PL-301 Rev B, PL-302 Rev C, PL-303 Rev B.
 - The reason given for the condition is: To comply with Section 70(1)(a) of the Town and Country Act 1990 as amended and Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.
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Decision

1. The appeal is allowed and planning permission is granted for rear extension and additional storey to first-floor flat including demolition and rebuilding of existing side and rear walls and roof, at 164A Liverpool Road, Islington, London, N1 1LA, in accordance with application Ref P2018/2616/S73 without compliance with condition No 2 previously imposed on planning permission Ref P2017/3904/FUL, dated 28 February 2018, and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 28/02/2021, which is the expiration date of the original planning permission Ref P2017/3904/FUL.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: PL-001, PL-104 Rev E, PL-105 Rev F, PL-106 Rev E, PL-302 Rev D, PL-303 Rev C.

Procedural matters

2. The Council's reason for condition 2 on approved application Ref P2017/3904/FUL is given above. However, the wording is a little unclear. I consider the following wording provides clarity: To comply with Section

70(1)(a) of the Town and Country Planning Act 1990, as amended, for the avoidance of doubt and in the interest of proper planning. I have dealt with the appeal on this basis.

3. Since the determination of application P2018/2616/S73, the National Planning Policy Framework (the Framework) has been revised. Policies within the Framework are material considerations which should be considered for the purposes of decision-making from the date of its publication. The parties have had the opportunity to comment upon the Framework as part of the appeal and I have therefore determined the appeal on that basis.
4. A s73 application can be used to seek a 'minor material amendment'. 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.¹

Background and Main Issue

5. The appellant sought to vary/remove condition No 2 on approved application P2017/3904/FUL by replacing the approved plans with amended plans. In summary, the amendments consist of 2 alterations, one at the front of the proposed mansard style extension and one at the rear.
6. The main issue is whether the condition is necessary in order to preserve or enhance the character or appearance of the Barnsbury Conservation Area (CA).

Reasons

7. The site is located within the Barnsbury CA, which is characterised by predominantly Georgian and Victorian buildings arranged in a sequence of squares and terraces. Liverpool Road is a main route running through the CA. The immediate surroundings of the appeal site consist of terraces, predominantly 2-4 storeys high, mainly in residential use, though some properties have shop frontages or commercial uses at ground-floor level. The buildings have varied architectural styles, heights, building lines, set-backs, detailing and materials. Though many of the buildings are constructed and finished using traditional materials, modern materials have been used successfully in the area. There are also contemporary roof additions and several buildings have examples of mansard roofs or dormers.
8. The site consists of a first-floor flat positioned within a two-storey brick building located on the eastern side of Liverpool Road. Part of the flat is located above a commercial garage. The building has an unaltered roofline consisting of flat roof sections enclosed by parapets and a staggered building line at the front. It is not of significant architectural merit and given the range of architectural styles, roof forms, building lines and materials visible in the immediate setting, it has a neutral effect on the CA.
9. The proposal comprises a mansard style roof extension that would create second-floor accommodation. The development would require the demolition of existing side and rear walls and roof and alterations to a rear facing wall. The main external materials would be roofing slate cladding to the mansard walls and Corton cladding on the rear first-floor wall. Existing timber fence panels along the boundaries of the rear terrace would also be replaced.

¹ Paragraph: 017 Reference ID: 17a-017-20140306 of the Planning Practice Guidance.

10. Compared with the approved scheme, Ref P2017/3904/FUL, the front elevation would still be divided into 2 sections, with the section adjacent to the top floor of No 162² being set further forward than the section adjacent to No 166. However, the section of front elevation adjacent to No 162 would project a little further forward than the approved scheme. I appreciate the Council's concern should this front elevation project beyond the front elevation of the top floor of No 162. However, my interpretation of the proposed amended plans is that it would not extend beyond the existing edging located at the side of the top floor of No 162, and as such would not appear to project beyond its front elevation.
11. Given that views of where the proposed extension would adjoin No 162 at the front of the building would be very limited, ie only from a short section of Liverpool road whilst travelling in a northerly direction, I consider that the difference between the 2 schemes in this regard would be barely perceptible from public vantage points. Nor would it be perceptible from surrounding properties.
12. The other principle difference between the proposed scheme and that approved relates to the rear elevation of the proposed mansard style extension. Thus, on the approved scheme the rear elevation is straight. On the appeal proposal the rear elevation would be staggered, similar to the stagger on the front elevation, but with the projection at the opposite side, adjacent to No 166. Although the officer report referred to a projection a depth of 2.6 m, the parties now agree that this section of the rear elevation would only project a depth of around 1.7 m, which I consider to be modest in scale. This projection would still be set a little behind the adjoining rear elevation of No 166. I note the Council has expressed concerns that the stagger in the extension at the rear would not appear as a traditional mansard addition. Though this would be the case, the Council has already approved such a stagger on the front elevation, and I consider the staggering on both elevations to be acceptable within the site's context.
13. The rear elevation of the building is well screened from public vantage points. Nonetheless, I acknowledge that the proposal would be visible from the rear elevations of some of the properties on Milner Square. That said, the extension would be set to the rear of the rear terrace, partially screened by fencing and trees in some of the rear gardens of the properties opposite the site on Milner Square. Consequently, views of the proposal from properties on Milner Square would be restricted. As such, I consider the modest size of the proposed alteration at the rear of the extension would not harmfully alter the design of the proposal, its relationship with the host and neighbouring properties or its relationship with the CA.
14. Bearing the above factors in mind, I consider the proposed amendments to the approved scheme are minor material amendments that would not substantially alter the development to that approved. As such, I conclude that it is not necessary for condition 2 on approved application Ref P2017/3904/FUL to refer to the plans approved in order to preserve the character or appearance of the CA. However, I consider it is necessary for a condition to be attached to any approval, specifying the new plans to which the permission relates, in order to preserve the character and appearance of the CA.

² The property is identified as number 162 on the plans and referred to as 162a in the officer report. I have used the property numbering provided on the plans for ease of reference.

15. Both parties have drawn my attention to a previous appeal that was dismissed³. The Inspector concluded that the scale, massing and proportions of roof extension, together with its complex roof design, would be viewed as a dominant, bulky and disproportionate addition to both front and rear elevations. He also concluded that the use of zinc cladding and glazing would emphasise the incongruous appearance of the proposed extension. In light of these findings the Inspector concluded that the proposal would harm the appearance of the building and would not therefore preserve or enhance the character or appearance of the CA.
16. Compared with the proposal before me, the proposal in that appeal included demolishing the existing conservatory and replacing it by the extension at the rear projecting beyond the footprint of the conservatory. The extension also projected beyond the rear elevations of both neighbouring properties. The extension at the front was also a little larger. The roof design was relatively complex and the siting and use of modern materials was extensive. The appeal scheme before me is significantly smaller, with a relatively simple roof design and more traditional materials used on the front elevation and a change in the modern materials used at the rear as well as a significant reduction in the extent of areas where modern materials would be used.
17. The statutory duty in Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of a CA, which is therefore a matter of considerable importance and weight. In addition, paragraph 193 of the Framework requires decision-makers to give great weight to the conservation of a designated heritage asset. CAs are designated heritage assets. I have found that the appeal proposal would preserve the character and appearance of the CA and as such it would not cause any harm to it.
18. I consider the proposed development would accord with policies CS8 and CS9 of Islington's Core Strategy (2011), DM2.1 and DM2.3 of Islington's Local Plan: Development Management Policies (2013), 7.6 and 7.8 of The London Plan: Consolidated with alterations 2011 (2016) and the heritage policies in the Framework. These policies collectively, and among other things, seek to ensure developments are of the highest quality design, reflect and positively contribute to local character and conserve or enhance the built and historic environment. The proposal would also accord with guidance in Islington's Conservation Area Design Guidelines (revised version 2002) and the Urban Design Guide Supplementary Planning Document (2017).

Conditions

19. As a section 73 application cannot be used to vary the time limit for implementation⁴, I have specified the date by which the permission shall be begun, for the avoidance of doubt. To preserve the character and appearance of the CA, and for the avoidance of doubt, I have specified the plans to which this approval relates.

³ APP/V5570/W/16/3160044 dated 22nd December 2016.

⁴ Paragraph: 015 Reference ID: 17a-015-20140306 of the Planning Practice Guidance.

Conclusion

20. For the reasons outlined above, I conclude the appeal is allowed. A new planning permission is granted, subject to the conditions listed.

J Williamson
INSPECTOR