
Appeal Decision

Site visit made on 21 January 2020

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 March 2020

Appeal Ref: APP/H5390/W/19/3239206
2-10 Hopgood Street, London W12 7JU

- 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 Alexander Williams against the decision of the Council of the London Borough of Hammersmith & Fulham.
- The application Ref 2019/01584/VAR, dated 22 May 2019, was refused by notice dated 18 July 2019.
- The application sought planning permission for mansard roof extensions to a terrace of five residential properties without complying with a condition attached to planning permission Ref 2018/03271/FUL dated 29 November 2018.
- The condition in dispute is No.4 which states that: The development hereby approved, consisting of mansard roof extensions to Nos. 2, 4, 6, 8 and 10 Hopgood Street as shown on the approved drawings, shall be carried out and completed as a single combined building operation. No part of any of the extensions shall be occupied until the development has been completed with all external materials and finishes in place.
- The reason given for the condition is: In order to ensure full compliance with the planning permission hereby approved, and to prevent harm arising from the completion of only one or some of the extensions, which would result in an unbalanced appearance that would be detrimental to visual amenity, contrary to Policies DC1 and DC4 of the Local Plan (2018).

Decision

1. The appeal is allowed and planning permission is granted for mansard roof extensions to a terrace of five residential properties at 2-10 Hopgood Street, London W12 7JU in accordance with application Ref 2019/01584/VAR without compliance with condition number 4 previously imposed on planning permission Ref 2018/03271/FUL dated 29 November 2018 but subject to the conditions set out in the attached schedule.

Procedural Matter

2. The application form details the site address as No.8 Hopgood Street. However, it is clear that the proposal relates to 2-10 Hopgood Street and this is the basis on which I have considered the appeal.

Background and Main Issue

3. Planning permission was granted for a scheme of mansard roof extensions under Ref 2018/03271/FUL. Following the grant of planning permission subject to

conditions, the appellant has sought to vary condition 4 on the grounds that it fails the test of reasonableness.

4. The main issue therefore is whether the condition meets the six tests for the use of conditions contained in the National Planning Policy Framework 2019 (the Framework) and in Planning Practice Guidance (PPG)¹. Each test needs to be satisfied for every condition applied.
5. The appellant seeks to vary condition No.4 so that it would read: 'The development hereby approved, consisting of mansard roof extensions to Nos. 2, 4, 6, 8 and 10 Hopgood Street as shown on the approved drawings, shall be carried out and completed where practical and feasible as a single combined building operation'

Reasons

6. The buildings to which the appeal relates form the main body of an attractive, well-established and traditional terrace of residential properties subject to different homeowners and leaseholders at 2-10 Hopgood Street, just off the busy Uxbridge Road in Shepherd's Bush.
7. Where extensions would be joint ventures, such as in this case, if none of the householders have any control over their neighbour's land a condition requiring the completion of all of the extensions as a single operation, or one which prevents occupation of any extension until they are all completed, is not a reasonably enforceable condition and should not therefore be used. I have no evidence before me that indicates the individual owners have any control over their neighbour's land and no planning agreement which would bind the land and any successors in title is before me.
8. Therefore, condition 4 is not enforceable and is not reasonable in all other respects. Subsequently it fails to satisfy the six tests for the use of conditions.
9. The appellants proposed wording, by introduction of the phrase 'where practical and feasible' would not be precise. The proposed revised condition would therefore also fail to satisfy the six tests.
10. However, given my findings above, condition 4 should therefore be removed in entirety. It is not necessary for me to go on to consider whether issues relating to the character and appearance of the area necessitate such a condition.

Conditions

11. The guidance in the PPG makes it clear that decisions under Section 73 of the Town and Country Planning Act 1990 (as amended), (which I will refer to as 'the Act') should also repeat the relevant conditions from the original approval. The submissions of the appellant do not raise any issue with those other conditions. In accordance with the PPG guidance I shall reimpose them unchanged apart from some minor changes to wording in the interests of clarity and amendment to the approved plans condition to include reference to the plans.
12. Section 73(5) of the Act states that permission must not be granted under this section for the development of land in England to the extent that it has an effect to change a condition subject to which a previous planning permission was granted by extending the time within which a development must be started. I have also therefore adjusted condition 1 accordingly.

¹ Planning Practice Guidance Paragraph: 003 Reference ID: 21a-003-2019072

13. The Framework sets out that conditions should be kept to a minimum and shall only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have no evidence before me to indicate that the remaining conditions would fail any of the tests and have included them on this basis.

Conclusion

14. For the reasons set out above and having taken into account all other relevant matters, the appeal is allowed subject to the attached schedule of conditions.

T J Burnham

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from 29 November 2018.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos: 09; 10; 11 Rev. A; 12 Rev. A; 13 Rev. A; 14; 16.
- 3) Any alterations to the elevations of the existing buildings, including works of making good, shall be carried out in the same materials as the existing elevation to which the alterations relate.
- 4) The roof extensions hereby approved shall be clad in natural slate or artificial slate.
- 5) The party walls of the roof extensions hereby approved shall be constructed with London stock brickwork to match the existing buildings.
- 6) The party walls of the roof extensions shall not project more than 250 millimetres above or beyond the external faces of the main roof structures.
- 7) The new windows hereby approved in the front and rear elevations of the mansard roof extensions shall be of timber frame construction and in a sliding sash style.
- 8) No plumbing, extract flues or pipes, other than rainwater pipes, may be fixed on the front elevation of any of the roof extensions.
- 9) No part of the roof of the buildings or the extensions hereby approved shall be used as a roof terrace or other form of open amenity space. No alterations shall be carried out; nor planters or other chattels placed on these roofs. No railings or other means of enclosure shall be erected on the roofs, and no alterations shall be carried out to the rear elevation of the application property to form access onto these roofs.
- 10) No water tanks, water tank enclosures or other structures shall be erected upon the flat roofs of any part of the extensions hereby permitted.
- 11) The dormer window surrounds to the roof extensions hereby approved shall be clad in lead and retained as such for the lifetime of the development.