



Appeal Decision

Site visit made on 24 September 2019

by Christopher Butler BA (Hons) PG Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2020

Appeal Ref: APP/W5780/W/19/3227801

Warehouse Rear of 316 to 324 Ilford Lane, Ilford IG1 2LT

- 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 Mr Asad Chaudhry (Interface Properties) against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 5154/18, dated 12 December 2018, was refused by notice dated 11 March 2019.
 - The development proposed is described as the retention of an additional mansard window.
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Decision

1. The appeal is allowed and planning permission is granted for the retention of an additional mansard window at the Warehouse Rear of 316 to 324 Ilford Lane, Ilford IG1 2LT in accordance with the terms of the application, Ref 5154/18, dated 12 December 2018, subject to the following condition:
 - 1) Planning permission is approved for the additional mansard window only, as detailed on approved Location / Block Plan (Drawing Number A00 REV A) and approved plans: Drawing Numbers A02 REV A; A04 REV A; A07 REV A; and A09 REV A.

Preliminary Matters

2. The description of development in the heading above has been taken from the planning application form. However, in Part E of the appeal form it is stated that the description of development has changed, but the appellant has been clear, in their appeal submissions¹, that they never agreed to these changes and allege the Council made the change to the description of development unilaterally.
3. The Council in their appeal submission indicate that the description of the application was changed to more accurately reflect the plans submitted and that whilst they *"...would ideally have consulted the applicant about this as best practise, there is currently no legislation requiring Local Authorities to consult applicants when amending this description."*² The Council has failed to provide any evidence, written or otherwise, confirming a revised description of development has been agreed by the appellant and as such I have used the description of development given on the original planning application form and

¹ Appellants Planning Appeal Statement and Appellant's document entitled "No agreement was made to change the description."

² Council's Appeal Statement – Paragraph 2.2

have only considered the development applied for, being the retention of an additional mansard window.

4. The Council in their decision notice have referred to the adjoining road as both St Luke's Avenue and St Lukes Avenue. I have noted that the appellant in their Planning Appeal Statement refer to this adjoining road as St Lukes Avenue and that signatories to the petition made directly to the Council have referred to this road in the same way. Therefore, I shall also refer to the adjoining road as St Lukes Avenue.

Main Issue

5. The main issue is living conditions, with particular regard to overlooking and loss of privacy to: i) habitable rooms and rear amenity area of No.1 St Lukes Avenue; and ii) other nearby properties in St Lukes Avenue and Wingate Road.

Reasons

6. This appeal relates to the insertion of an additional mansard window within the roof space of this recently extended four storey building. It is located towards the northern end of the west facing elevation, which adjoins the drive and outbuilding of No.1 St Lukes Avenue (No.1). The mansard window has been built making this application retrospective.
7. No.1 adjoins the appeal site on the west and is a two storey end of terrace house, where the gable end faces east towards the appeal site. To the rear of this property, and shared with the adjoining property to the west (No.3 St Lukes Avenue (No.3)), is a two storey rear projection. This projection is gabled on the southern end, but hips back into the main roof slope. Beyond this projection is a single storey element. No.3 has a similar single storey rear projection, which extends further south than the single storey element that projects from No.1. The single storey flat roofed outbuilding that sits at the end of No.1's driveway is located just to the rear of the east facing gable of this property and extends south beyond the two storey rear gable projection. However, this outbuilding does not extend quite as far as the single storey flat roof projection of this property.
8. Policy LP26 of the Redbridge Local Plan 2015-2030 (adopted March 2018) (RLP) promotes high quality design and amongst a number of other criteria specifies that development should not "*...result in an adverse impact upon the amenity of neighbouring occupiers...*" This includes loss of amenity arising from overlooking and loss of privacy.
9. The mansard window extension serves the stairwell that leads to the top floor of this recently extended building. The stairs, which immediately adjoin the window within this mansard addition, leads to the landing area that is set away from the window at the head of the stair. As such, the window that serves this stairwell and landing area is, for planning purposes, a non-habitable room.
10. The window within the mansard window extension is approximately in line with the rear eaves line of the east facing gable of No.1. There are no windows in the east facing elevations of No.1 and whilst there is a door, the position of the flat roof outbuilding restricts overlooking of that door to such a degree that no unacceptable overlooking or loss of amenity occurs. Furthermore, the location of the development, the fact that it serves a non-habitable room and the

positions of the outbuilding, means that the development would not result in unacceptable overlooking of the private amenity area of this property.

11. Equally, the same is true of other adjoining residential properties in St Lukes Avenue and Wingate Road. The positioning of the development, together with the fact that the window within it serves a non-habitable room, relative to the adjoining properties, their habitable room windows and their private amenity areas, is such that the distances involved, together with intervening structures (rear projections, outbuildings, boundary enclosures, Etc.) ensures that no unacceptable level of overlooking or loss of amenity occurs.
12. In view of the fact that the window within the development serves a non-habitable room, when taking the above factors into account, even should someone stand at the window overlooking would not occur to such a degree as to make the development unacceptable. As such no unacceptable loss of amenity through overlooking or loss of privacy occurs and the development does not result in an un-neighbourly addition that results in a serious loss of privacy or amenity to habitable room windows or the private amenity area of No.1 St Lukes Avenue or other nearby properties in St Lukes Avenue and / or Wingate Road. Therefore, the development is not contrary to Policy LP26 of the RLP

Other Matters

13. I have noted the concerns of local residents, made directly to the Council, but these primarily relate to the installation of six windows that have been installed within the rear elevation of the appeal building. However, for the reasons set out above, this appeal only relates to the retention of an additional mansard window and not any other works undertaken by the appellant. In regard to those other works, that do not form part of this appeal, it would be for the Council, as the Local Planning Authority, to determine whether that development requires planning permission and, if it does, how best to pursue any breach of planning control it considers may have occurred.
14. I have also noted concerns related to noise and disturbance, parking and highways safety. However, this appeal relates to the retention of an additional mansard window and as such I do not consider that any material noise, disturbance, parking or highways safety would / have arisen as a result of this limited development.
15. Local residents have also referred to Article 8 (Right for Respect for Private and Family Life) and Article 1 of the First Protocol (Protection of Property) of the European Convention on Human Rights (ECHR). However, the six windows that have been installed within the rear elevation of the appeal building fall outside the scope of this appeal, which is for the retention of an additional mansard window only. I have found that the additional mansard window sought to be retained does not result in any unacceptable overlooking or a loss of privacy of any adjoining property.
16. Given the above, the representations made to the effect that the rights of the local residents under Article 8 and Article 1 of the First Protocol of the ECHR, would be violated if the appeal were allowed are not well-founded, because I have found that the additional mansard window does not cause unacceptable harm to the living conditions of the adjoining residential occupiers, including No.1 St Lukes Avenue and other residential properties in St Lukes Avenue and

Wingate Road that have rear gardens in close proximity to the appeal site. The degree of interference that would be caused would be insufficient to give rise to a violation of rights under Article 8 and / or Article 1 of the First Protocol of the ECHR.

Conditions

17. Should the appeal be allowed the Council, in accordance with good practice, has recommended conditions it would seek to be imposed. These include: a condition detailing the approved plans for the avoidance of doubt and in the interests of certainty; and a condition that seeks to ensure the external surfaces of the development match that of the existing building in the interests of the character and appearance of the area.
18. As the development has commenced, an implementation condition is not necessary. A condition specifying the approved plans would meet the 6 tests related to the imposition of planning conditions³ and therefore should be imposed. However, I have worded this condition to be explicit in the fact that the planning permission is conveyed for the additional mansard window only, as set out in the description of development given on the original planning application form.
19. In terms of a condition requiring external surfaces of the development to match those of the existing building, the appeal is retrospective as the additional mansard window is in place. As such, the Council's suggested condition related to external surfaces of the development is not necessary as the mansard roof has already been built and it is acceptable in terms of its use of materials and appearance. Therefore, a condition requiring external surfaces of the development to match those of the existing building is not necessary and fails to meet at least one of the 6 tests mentioned above.

Conclusion

20. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Christopher Butler

INSPECTOR

³ See: Planning Practice Guidance: Use of planning conditions Paragraph: 003 Reference ID: 21a-003-20190723