



Appeal Decision

Site visit made on 9 June 2020

by D Peppitt BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2020

Appeal Ref: APP/A5270/W/20/3246119

62 Sydney Road, West Ealing, London W13 9EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr and Mrs I Hussain against the decision of the Council of the London Borough of Ealing.
- The application Ref 193479HH, dated 30 July 2019, was approved on 18 October 2019 and planning permission was granted subject to conditions.
- The development permitted is: Conversion of existing dwelling house into two self-contained flats (1x 2 bedroom and 1 x 1 bedroom), alteration of roof from hipped to gable end, rear roof extension, installation of two rooflights to front roofslope and single storey rear/side extension with associated refuse, recycling and cycle parking facilities.
- The conditions in dispute are No 3, No 4 and No 5 which state that: Condition 3 - *"All external materials to be used in the development shall be as per submitted application form and Condition 2 - Approved plans."*; Conditions No 4 *"Prior to commencement of the development, details shall be submitted to the Council for approval in writing, of an enhanced sound insulation value of at least 5dB above the maximum Building Regulations value, for the floor/ceiling /wall structures separating different types of rooms/ uses in adjoining dwellings, namely, living rooms above bedrooms of separate dwelling. Approved details shall be implemented prior to occupation of the development and thereafter be permanently retained."*; and Condition No 5 - *"The site is within the worse mode aircraft 1 day noise contour predicted for 2016 (60 dB). Details shall be submitted to the Local Planning Authority for approval before the development is commenced, for the insulation of the building envelope, with windows shut and other means of ventilation provided, which will achieve the internal criteria for sensitive rooms, as specified in Supplementary Planning Guidance 10. The details should also include the provision of alternative means of ventilation in accordance with Authority's criteria. The works should be completed before occupation and permanently retained thereafter."*
- The reasons given for the conditions are: Condition No 3 *"To ensure that the materials harmonise with the surroundings, in accordance with policies 1.1 & 1.2 of the Ealing Core Strategy (2012), policies 7.4 and 7B of the Ealing Development Management Development Plan Document (2013), policies D1 and D2 of the Draft New London Plan 2018, policies 7.4 & 7.6 of the London Plan (2016) and the National Planning Policy Framework (2019) - section 12 Achieving well-designed places."*; Condition No 4 *"To ensure that the amenity of occupiers of the development site is not adversely affected by noise, in accordance with Interim Supplementary Planning Guidance 10 - Noise and Vibration, policy 1.1(j) of the Ealing Core Strategy (2012), policy 7A of the Ealing Development Management Development Plan Document (2013), policy 7.15 of the London Plan (2016), policy D13 Draft New London Plan 2018 and the National Planning Policy Framework (2019) - Section 2 Achieving sustainable development and Section 12 Achieving well-designed places."*; and Condition No 5 *"To ensure that the amenity of occupiers of the development site is not adversely affected by aircraft noise, in accordance with in accordance with Interim Supplementary Planning Guidance 10 - Noise and Vibration, policy 1.1(j) of the Ealing Core Strategy (2012), policy 7A of the Ealing Development Management Development Plan Document (2013), policy 7.15 of the London Plan (2016), policy D13 Draft New London Plan 2018 and the National*

Decision

1. The appeal is dismissed insofar as it relates to Conditions No 3 and No 4. The appeal is allowed insofar as it relates to Condition 5 and the planning permission Ref 193479HH for the conversion of existing dwelling house into two self-contained flats (1x 2 bedroom and 1 x 1 bedroom), alteration of roof from hipped to gable end, rear roof extension, installation of two rooflights to front roofslope and single storey rear/side extension with associated refuse, recycling and cycle parking facilities at 62 Sydney Road, West Ealing, London W13 9EY granted on 18 October 2019 by the Council of the London Borough of Ealing, is varied by deleting Condition No 5.

Application for costs

2. An application for costs was made by Mr and Mrs I Hussain against the decision of the Council of the London Borough of Ealing. This application is the subject of a separate Decision.

Procedural Matter

3. The application form states that it was revised on 20 August 2019, however, for the purposes of the banner heading above, I have used the original date on the application form as that was when it was originally dated.

Background and Main Issue

4. The site has planning permission for the conversion of the existing property into two self-contained flats. The appellant's appeal form principally focusses upon their dispute with a pre-commencement condition (condition no 5) that requires insulation of the building envelope in relation to noise from flight paths associated with Heathrow. The appellants contend that it is an error, because it was not applied to a nearby recent approval at No 48 Sydney Road¹.
5. The appellants' appeal form states that Conditions Nos 3, 4 and 5 are not correct. However, Condition Nos 3 and 4 do not relate to aircraft noise, which is the header of the appellants statement of case and only Condition No 5 has been marked with an asterisk next to it in the decision notice submitted by the appellants. Nevertheless, as the appellants contend that Condition Nos 3 and 4 are also incorrect, I have included them in my assessment of this appeal. Condition No 3 relates to the use of external materials to be in line with the approved plans and the application form and Condition No 4 relates to the living conditions.
6. The main issue is therefore whether conditions Nos 3, 4 and 5 are necessary, relevant and reasonable in terms of the character and appearance of the site and surrounding area and the living conditions of the existing and future occupiers, with particular reference to noise and disturbance.

¹ Planning approval reference 190864FUL

Reasons

Condition No 3

7. The appeal site is a two-storey, semi-detached house located on the eastern side of Sydney Road. The property has a two-storey outrigger and been extended by a single storey rear extension to the existing rear elevation of the outrigger.
8. Condition No 3 relates to the external materials to be used in the development and requires that they shall be as per the submitted application form and Condition 2 - Approved plans. This is a standard condition attached to planning permissions to ensure that materials used are appropriate to help the additional and thereby materials harmonise with the surroundings. From the evidence before me there is no substantive evidence to suggest that this is not reasonable or necessary.
9. Accordingly the removal or amendment of this condition would be contrary to Policies 1.1 and 1.2 of the Ealing Core Strategy (2012), Policies 7.4 and 7B of the Ealing Development Management Development Plan Document (2013), Policies D1 and D2 of the Draft New London Plan 2018, Policies 7.4 and 7.6 of the London Plan (2016) and the National Planning Policy Framework (2019) - section 12. All of these policies and guidance are seeking development to be high quality and to reflect the local character of the area.

Condition No 4

10. Condition 4 was recommended by the Council's Environmental Health Officer due to the type of conversion taking place at the property in order to mitigate noise sensitive rooms in neighbouring properties and the room stacking of the proposal. This condition was deemed necessary due to the noise and disturbance generated by the occupiers and not for the location of the site in relation to aircraft noise. The sub-division of the property will lead to the occupation by two independent households and two separate entrances. From the design of the internal layout the entrance for the top floor accommodation would be by the bedroom of the ground floor, and the sitting room and lounge would be above the ground floor bedrooms.
11. As such a condition requiring sound insulation measures is necessary, relevant and reasonable in order to protect the living conditions of the existing adjacent occupiers of No 64, and also the future occupiers of the appeal property from unacceptable levels of internal noise and disturbance. From the evidence before me, there is no substantive evidence to suggest that this is not necessary.
12. As such, its removal would be contrary to Policy 7A of the Ealing Development Management Development Plan Document (2013) together with Policy 1.1(j) of the Ealing Core Strategy (2012), Policy 7A of the Ealing Development Management Development Plan Document (2013), Policy 7.15 of the London Plan (2016), Policy D13 Draft New London Plan (2018) the Interim Supplementary Planning Guidance 10 - Noise and Vibration, and the National Planning Policy Framework (2019)- Sections 2 and 12. These policies, amongst other things are seeking to properly regulate and ameliorate emissions applies also to functionally separate areas within a given development, for instance between separate flats or dwellings.

Condition No 5

13. Condition No 5 was recommended by the Council's Environmental Health Officer due to it being under the flight path routes from Heathrow according to their records. As such it was inserted to mitigate against any harm to the living conditions of existing and future occupiers in terms of noise and disturbance from aircraft noise.
14. The appellants have provided an email from a Community Communication Officer from Heathrow Airport who stated that the property is not currently eligible for assistance as it does not fall within either The LHR 2004/2005 Night Restrictions Contour; or The LHR 1994 Day Noise Insulation Scheme Boundary. As such the appeal property is not subject to the highest levels of aircraft noise.
15. There is no substantive evidence before me to suggest that the property is therefore within an area affected by unacceptable levels of aircraft noise and that the development without Condition No 5 would adversely affect the living conditions of the existing and future occupiers, with particular reference to noise and disturbance.
16. The appellants have also stated that a nearby property at No 48 did not have such a condition attached to a planning approval. Whilst I have been provided with the decision notice I have not been provided with the full details regarding that scheme, although I note that the Council suggests that this may have been an error and that it may have been missed.
17. Condition No 5 is not relevant, reasonable or necessary in the interests of the living conditions of the existing and future occupiers, with particular reference to noise and disturbance. As such, there would be compliance with Policy 1.1(j) of the Ealing Core Strategy (2012), Policy 7A of the Ealing Development Management Development Plan Document (2013), Policy 7.15 of the London Plan (2016), Policy D13 Draft New London Plan (2018), the Interim Supplementary Planning Guidance 10 - Noise and Vibration and the National Planning Policy Framework (2019) - Sections 2 and 12. These policies and guidance, amongst other things, are seeking to protect ambient noise levels, achieving and maintaining a clean and healthy environment for all communities.

Conclusion

18. For the reasons given above, I conclude that the appeal should be allowed in part and dismissed in part. Conditions No 3 and No 4 should be retained in their current form and I will vary the planning permission by deleting the disputed Condition No 5.

D Peppitt

INSPECTOR