



Appeal Decision

Site visit made on 3 September 2020

by Rory MacLeod BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2020

Appeal Ref: APP/N5090/W/20/3248590 88 Rushmore Avenue, London NW9 6RB

- 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 Mohammed Ajmal Hakim against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/5716/HSE, dated 22 October 2019, was approved on 23 December 2019 and planning permission was granted subject to conditions.
 - The development permitted is single storey rear extension.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall be carried out in accordance with the following approved plans: 001, 002, 003 (received 23 December 2019) 004 (received 23 December 2019), Site location plan.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with Policies CS NPPF and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012).
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal relates to a mid-terrace house. It has an original single storey rear projection to the kitchen adjacent to a matching projection at 90 Rushmore Avenue. The rear facing window to the habitable room alongside this is flush with the main rear wall to the house and aligns with the adjacent rear wall and habitable room window to 86 Rushmore Avenue to the other side boundary.
3. As originally submitted, and shown on a plan dated 21/10/2019, the application proposed a single storey rear extension 4m deep when measured along the boundary with no.86 and with a straight rear line. This was replaced by a plan dated 13/12/19 showing a rear extension with a staggered rear line having a depth of 3.5m to both side boundaries. However, the application was amended again with a plan dated 23/12/19 to show a rear extension with a staggered rear line having a depth of 3.0m to both side boundaries. The change was to accord with the Council's policies on the impacts of such extensions. It was this final plan that was approved. The appeal statement states, "*the client wants to proceed with this appeal to get a 3.5m extension to the rear on both sides of the neighbour*". In effect, the appeal is seeking approval for the second set of plans. The appeal form indicates the appeal concerns 'a condition to which you object'. This is presumably condition 1 that lists the approved plans.

4. The main issue therefore is whether the condition is necessary and reasonable having regard to the effect of the proposal on the living conditions of neighbours and on the character and appearance of the area.

Reasons

5. The appeal is seeking permission for a larger extension than that approved rather than a change to a matter controlled by a planning condition relating to the approved extension. An extension 3.5m deep along the boundary with no.90 would be marginally deeper than the extension originally proposed with a straight rear line. It is not clear to me if the occupiers of neighbouring properties have had opportunity to comment on an extension 3.5m deep along both boundaries. Whilst the appellant claims that the neighbours are happy with the proposal, there is no evidence to confirm that they have been notified of the proposal and are content with it. It would not be appropriate to allow the appeal on this basis.
6. The appellant could submit a new planning application seeking a determination on the plans showing a rear extension 3.5m deep to both boundaries as the Council suggests. Alternatively, it would be possible to submit to the Council an application for a 'Minor Material Amendment' to the approved application as condition 1 on the original permission lists the approved plans and can be varied. There is no statutory definition of a minor material amendment; however, Planning Practice Guidance explains what might constitute a 'minor material amendment'¹. There is a right of appeal if the application is refused.
7. The appellant has referred to 'new Permitted Development' rules under which a rear extension deeper than favoured by the Council may be approved. An application to the Council under the 'Prior Approval' procedures rather than an application for planning permission would need to be followed in this scenario.
8. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise². The Council have assessed the effect of the proposal on the living conditions of neighbours and on the character and appearance of the area in accordance with the adopted development plan referred to in the reason for condition 1. In the absence of material considerations before me to indicate that it would be safe and appropriate to provide approval for the desired extension through the method sought in this appeal, I have not examined fully the planning merits of the deeper extension, the subject of this appeal, in relation to the main issue set out in paragraph 4 above. I therefore must conclude that condition 1 as drafted is necessary and reasonable.

Conclusion

9. For the reasons given, and having regard to all other matters raised, the appeal should be dismissed, and the condition retained in its present form.

Rory MacLeod

INSPECTOR

¹ See Planning Practice Guidance ID 17a-017-20140306

² Section 38(6) of the Planning and Compulsory Purchase Act 2004