



Appeal Decision

Site visit made on 5 August 2020

by L J O'Brien BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th November 2020.

Appeal Ref: APP/H5390/W/20/3248669

35 Napier Avenue, London SW6 3PS

- 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 Nic Byrom against the decision of the Council of the London Borough of Hammersmith & Fulham.
 - The application Ref 2019/03486/VAR, registered on 2 December 2019, was refused by notice dated 13 February 2020.
 - The application sought planning permission for demolition of existing three storey dwellinghouse and erection of a replacement part one, and part three storey plus-basement single family dwellinghouse; erection of an external staircase from basement to garden level at the rear of the property without complying with a condition attached to planning permission Ref 2019/01449/FUL, dated 12 September 2019.
 - The condition in dispute is No 2 which states that: The development shall not be erected otherwise than in accordance with the detailed drawings hereby approved.
 - The reason given for the condition is: In order to ensure full compliance with the planning permission hereby approved and to prevent harm arising through deviations from the approved plans, in accordance with Policy DC1, DC4 and DC8 of the Local Plan 2018.
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Decision

1. The appeal is dismissed.

Background and Main Issues

2. The appeal site is currently a construction site following the implementation of planning permission ref 2019/01449/FUL which gave permission for the demolition of the existing three storey dwelling and the erection of a replacement part one, and part three storey plus-basement single family dwelling. This permission was granted subject to a number of conditions.
3. The proposal is for the variation of condition 2 of that planning permission to allow amendments to the approved drawings to include increasing the size of the ground and first floor rear extensions and alterations to the roof of the single storey back addition.
4. The Council refused the application as they were of the view that the amendments to the scheme would have an unacceptable impact on visual and residential amenity.

5. Consequently, the main issues are:

- the effect of the proposal on the character and appearance of the area; including whether or not the proposal would preserve or enhance the character or appearance of the Hurlingham Conservation Area (CA); and
- the effect of the proposal on the living conditions of the occupiers of 33 Napier Avenue with particular regard to outlook and light.

Reasons

Character and appearance

6. 35 Napier Avenue is situated within the Hurlingham CA. Napier Avenue is said to draw its significance from the wide street and front garden trees as well as the regular pattern of development with a vertical emphasis. The Council's documentation also highlights the importance of rear views of properties in the area and states that inappropriate rear extensions can have a negative impact. I would broadly agree with this assessment of the CA, though I note the appellant's statement that No 35 was not previously typical of other properties within the CA.
7. I am required by Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (The Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
8. At ground floor level, the proposal would occupy a deep footprint with the proposed 'extension' projecting a significant distance. However, in my view the plot and proposed building are sufficiently large to accommodate a projection such as that proposed without compromising the character or appearance of the dwelling. Furthermore, rear projections of a similar depth are present at neighbouring properties and further alterations have been approved by the Council thus ensuring that the proposed projection would not appear incongruous.
9. At first floor level the proposed 'extension' would project substantially from the rear elevation of the building and would span almost the entire width of the property. Consequently, this element of the proposal would appear disproportionately large, bulky and visually dominant. The flat-roofed design of the projection serves to emphasise its bulk. Thus, in my view, the first floor element of the proposal would represent an unsympathetic addition which would fail to respect the scale and proportions of the building as a whole. Therefore, in my view, the proposal would cause harm to the character and appearance of the area.
10. Whilst I acknowledge that the proposal would be to the rear of No 35 and not visible from the public realm it would, nevertheless, be prominent in views from some neighbouring properties.
11. I recognise the appellant's efforts to create a sympathetic scheme in the interests of protecting the character and appearance of the area. The design aims to achieve this by sympathetically matching the surrounding palette of materials, complementing the design of other buildings in the area and replacing a discordant post war building. These considerations are, however, not sufficient to outweigh the harm set out above.

12. In addition to the requirement under section 72 of The Act, the CA is also a designated heritage asset as defined by the National Planning Policy Framework (the Framework), which seeks to ensure that heritage assets are conserved in a manner appropriate to their significance.
13. In this case due to the small scale of the proposal and the limited elements of the scheme which would be harmful, the proposed development would cause less than substantial harm to the significance of the designated heritage asset. Paragraph 196 of the Framework indicates that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
14. I acknowledge that the proposed replacement building has been sensitively designed and would restore the streetscape at the front thus enhancing the character and appearance of the CA in this respect. This would, indeed, represent a public benefit of the scheme. However, this benefit would also be secured should this proposal be dismissed and the permission implemented in accordance with the approved plans. As such, I afford this public benefit limited weight in my assessment of the scheme.
15. Consequently, the public benefits of the scheme I have identified would not outweigh the harm to the designated heritage asset and the proposed development would not pass the paragraph 196 balancing exercise.
16. Therefore, the proposal would fail to preserve or enhance the character or appearance of the CA. Consequently, the development would not accord with Policy DC1 of the Hammersmith and Fulham Local Plan, February 2018 (LP) which states that all development within the borough should create a high quality urban environment that respects and enhances its townscape context and heritage assets.
17. The proposal would also be at odds with Policy DC4 of the LP which requires a high standard of design in all alterations and extensions to existing buildings and sets out that these should be compatible with the scale and character of existing development and should never dominate the parent building. The aims of Policy DC8 of the LP would also not be met; this policy sets out the Council's intention to protect, restore and enhance its heritage assets by, amongst other things, only permitting applications affecting designated heritage assets if the significance of the heritage asset is conserved or enhanced.
18. Furthermore, the proposal would be at odds with Key Principle HS4 of the Planning Guidance Supplementary Planning Document, February 2018 (SPD) which sets out the suggested parameters for rear additions.

Living conditions

19. The proposal would undoubtedly be large and would have very little separation from the neighbouring dwelling at No 33. At first floor level the proposed 'extension' would be of a considerable depth and width and would project well beyond the rear elevation of No 33. Due to its size and its proximity, when viewed from the rear of No 33, the proposal would appear as a visually intrusive and dominant form of development which would appear overbearing. The outlook from No 33 would be significantly harmed by the scale of the

proposal to the detriment of the living conditions of the occupiers of that property.

20. A Daylight, Sunlight and Overshadowing Report prepared by Avison Young in April 2019 (DSOR) was submitted by the appellant in support of the appeal. The DSOR states that there would be no adverse impacts from the development. The Council's Delegated Report also sets out that, on the basis of the submitted report, they consider the proposal satisfactory in terms of its impact on daylight, sunlight and overshadowing to neighbouring residential properties.
21. Notwithstanding this, the Council's reasons for refusal make reference to the significant detrimental impact on the amenity of the occupiers of No 33 with regard to loss of daylight/sunlight. I also note the concerns raised by the occupier of No 33 in this regard. However, the Council have not provided any further evidence to substantiate this element of their reasons for refusal. Furthermore, I have not been provided with substantive evidence to dispute the DSOR's conclusion that any change to light levels reaching neighbouring properties would not have an adverse impact and the scheme would be BRE compliant. I therefore consider that the proposal would not cause harm to the living conditions of neighbouring occupiers in respect of light.
22. For the reasons set out above, I consider that whilst the proposal would not cause harm in respect of light, the proposal would harm the living conditions of the occupiers of 33 Napier Avenue with particular regard to outlook. Accordingly, the proposal would not conform with Policies DC4 or HO11 of the LP. Amongst other things, these policies, require a high standard of design and seek developments that respect the principles of good neighbourliness, in particular, protecting existing residential amenities.
23. The Council make reference to Key principle HS7 of the SPD. However, as the appellant points out, this principle is concerned with the effect of a proposal on windows located lower than the proposed extension and, as the Council's concerns relate largely to the first floor of No 33, this principle carries limited weight in my assessment of the scheme before me.

Other Matters

24. I note the appellant's suggestion that the proposed scheme would be extremely similar to the existing planning permission granted in 2019. The approved scheme, however, would be more sympathetic in design terms and markedly smaller than the scheme before me. Most significantly, in light of my reasoning set out above, the first floor element of the approved scheme would be significantly less deep than the current appeal scheme and would be set in, albeit minimally, from No 33. Consequently, the previously approved scheme would not have caused undue harm to the character and appearance of the area or to the living conditions of the occupiers of neighbouring properties.
25. Whilst the appellant makes reference to the existence of permissions which have been granted at neighbouring properties which could be considered similar, each case must be determined on its individual merits and the circumstances in each case are likely to be different. For example, I note the reference to the approved extension at No 37 Napier Avenue (2019/01895/FUL). However, whilst the ground floor element at No 37 would

be similar to that proposed in this instance, the first floor projection at No 37 would be significantly smaller and set in from the side elevation.

26. I acknowledge that the proposal would meet the aims of a number of the development plan policies in other respects. However, this would not outweigh the harm and resultant policy conflict I have identified when considering the development plan as a whole.
27. I have given careful regard to all of the above considerations. However, none are sufficient to dissuade me from the conclusions I have reached that the proposal would cause harm to the character and appearance of the area and would harm the living conditions of the occupiers of 33 Napier Avenue with particular regard to outlook.

Conclusion

28. The proposal would not accord with the development plan when it is considered as a whole. For the reasons given above I conclude that the appeal should be dismissed.

L J O'Brien

INSPECTOR