



Appeal Decision

Site visit made on 27 October 2020

by R Walker BA Hons DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 November 2020

Appeal Ref: APP/A5270/W/20/3248316

17 Carbery Avenue, Acton W3 9AD

- 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. David Phillips against the decision of the Council of the London Borough of Ealing.
 - The application Ref 194110VAR, dated 20 September 2019, was refused by notice dated 14 November 2019.
 - The application sought planning permission for the retention of single storey and two storey rear extension, involving removal of side and rear parapet, reduced width (1m) to first floor rear extension adjacent boundary No.15 Carbery Avenue and retention of replacement garage without complying with a condition attached to planning permission Ref 184913HH, dated 20 June 2019.
 - The condition in dispute is No 3 which states that: *"The development hereby approved shall be begun within 3 months and completed within 6 months of the date of this permission."*
 - The reasons given for the condition are: *"In the interests of the character and visual appearance of the property and surrounding area, in accordance with policies 7.4 and 7B of the Development Management Plan (2013), and policies 7.4 and 7.6 of The London Plan (2016)."*
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Decision

1. The appeal is allowed and planning permission is granted for the retention of single storey and two storey rear extension, involving removal of side and rear parapet, reduced width (1m) to first floor rear extension adjacent boundary No.15 Carbery Avenue and retention of replacement garage at 17 Carbery Avenue, Acton W3 9AD in accordance with application Ref 194110VAR without compliance with condition number 3 previously imposed on planning permission Ref 184913HH, dated 20 June 2019, but subject to the following conditions:
 - 1) The development hereby approved shall be carried out in accordance with drawing title numbers: Ref: 02-10; 02-11B; 02-14D; EAL18/08/01 Rev A; and EAL18/08/02/Rev D;
 - 2) The proposed materials (render, window frames, and facing brick materials) shall match number 15 Carbery Avenue, and elsewhere as specified in the approved drawings;
 - 3) The development hereby approved shall be completed within 6 months of the date of this permission; and
 - 4) No part of the roof of the extension shall be used as or altered to form a balcony, roof garden, roof terrace or similar amenity area.

Background

2. There is extensive planning history at the property relating to unauthorised extensions and the erection of a garage, amongst other things. The planning permission Ref 184913HH (the planning permission) was granted by the Council to modify the extensions and retain the garage. It is therefore, in part, retrospective.
3. The application (Ref 194110VAR) was submitted to remove condition 3 as the appellant considered the 6-month completion timeframe to be unreasonably restrictive. The Appeal Statement subsequently advises that a varied condition giving a completion deadline of 31 December 2020 would also be acceptable.
4. Further to this, the appellant has advised that in response to the Covid-19 pandemic (the pandemic) the tenancy has been extended at the appeal property to 30 September 2021.

Main Issue

5. Taking the above background into account, the main issue is whether the condition is reasonable or necessary in the interests of the character and appearance of the area.

Reasons

Existing condition

6. There has been no change in circumstances regarding the effect of the existing unauthorised extensions on the character and appearance of the surrounding area from that established in previous appeals. In this respect, I agree that the cumulative effect of the existing unauthorised extensions are unduly dominant features which unacceptably harm the character and appearance of the surrounding area.
7. The Planning Practice Guidance (PPG) advises, amongst other things, that conditions must be clearly seen to be fair, reasonable and practicable.
8. Given that the planning permission included the retention of elements such as the replacement garage, the permission has been implemented and the requirement for the development to begin within 3 months is superfluous.
9. However, the removal of condition 3 in its entirety would mean that there would be no specific timeframe for the completion of the works approved under the planning permission. This would effectively prolong the harm caused by the unauthorised elements indefinitely. Therefore, the requirement to complete the works within a reasonable timeframe in this instance would be fair, reasonable and practicable.
10. I therefore find that the removal of condition 3 would harm the character and appearance of the area conflicting with the requirements of Policies 7.4 and 7B of the Development Management Development Plan Document (2013), and Policies 7.4 and 7.6 of The London Plan (2016). These stipulate, amongst other things, that development should compliment the existing built areas building pattern, scale and detailing.

Alternative condition

11. The 6-month deadline within condition 3 has expired. Thus, compliance with the condition and the completion of the works approved under the planning permission would no longer be possible were I minded to dismiss this appeal.
12. I have had regard to the appellant's alternative condition requiring the works to be completed before the 31 December 2020. However, I am mindful that this was put forward when the appeal was lodged in March 2020. No building works were being undertaken during my site visit and such a timeframe for completion now would not be reasonable given the date of my decision.
13. I recognise that the pandemic has impacted the housing rental market sector. However, I am mindful that the date of the planning permission and previous planning and enforcement history all precede the pandemic. I cannot be certain that the circumstances that apply now with the tenancy agreement would not also be relevant in the future.
14. The terms of the tenancy agreement are private legal matters between the parties. Some disruption would occur to the occupants of the host property during the implementation of alterations. However, given the level of harm from the existing built form and the circumstances outlined above, it would be unreasonable to seek to align the completion of the development with the period for the tenancy agreement.
15. As such, it would be reasonable to vary the condition giving a further 6 months from the date of this decision to complete the works. This would be a proportionate timeframe for the level of works required and a pragmatic response to the circumstances of this particular case. I am not persuaded by any of the evidence presented that such a timeframe would be unduly restrictive or would not satisfy the relevant tests.

Other Matters

16. Concerns regarding the processing of the application are not matters that I can assess as part of this application. The validity or not of such matters do not effect the planning merits of the appeal.

Conditions

17. Decision notices for the grant of planning permission under section 73 are also required to restate the conditions imposed on earlier permissions that continue to have effect. In this respect, in addition to varying condition 3, I have retained the plans condition (1) to provide certainty, the materials condition (2) in the interests of the character and appearance of the development and a condition restricting the use of the roof of the extension as a balcony (4) in the interests of the living conditions of the occupiers of neighbouring properties.

Conclusion

18. For the reasons set out above the appeal is allowed.

Robert Walker

INSPECTOR