



Appeal Decision

Site visit made on 23 November 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 February 2021

Appeal Ref: APP/H5960/D/20/3254225 94 Hotham Road, London SW15 1QP

- 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 and Mrs Mercate-Butcher against the decision of the Council of the London Borough of Wandsworth.
- The application Ref 2020/0505, dated 10 February 2020, was refused by notice dated 24 April 2020.
- The application sought planning permission for alterations including erection of roof extension over two-storey back addition, without complying with conditions attached to planning permission Ref 2019/2670, dated 22 August 2019.
- The conditions in dispute are Nos 2 and 5 which state that:
 - 2. The development shall be carried out in accordance with the reports, specifications and drawings detailed 17-007/25 Rev A, 17-007/26 Rev A, 17 007/27 Rev A, 17-007/28 Rev A, 17-007/30 Rev A, 17-007/32 Rev A, 17007/33 Rev A;*
 - 5. Prior to occupation of the development the windows in the side elevation at first floor level of the development shall be obscure-glazed and non-opening (unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed). The windows shall so be maintained and retained as such.*
- The reasons given for the conditions are:
 - 2. To ensure a satisfactory standard of development and to allow the local planning authority to review any potential changes to the scheme.*
 - 5. To control overlooking and safeguard the privacy of neighbours in accordance with Council policy DMS1(c) of the Development Management Policies Document (adopted March 2016) coupled with the requirements of the National Planning Policy Framework 2019.*

Decision

1. The appeal is allowed, and planning permission is granted for alterations including erection of roof extension over two-storey back addition, at 94 Hotham Road, London SW15 1QP in accordance with the application, Ref 2020/0505, made on 10th February 2020, without complying with conditions Nos 2 and 5 set out in planning permission No 2019/2670, granted on 22 August 2019 by the Council of the London Borough of Wandsworth, but otherwise subject to the conditions listed below:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved drawing numbers: 17-007/26B, and 17-007/32C.

- 2) All external materials used in the construction of the development hereby approved shall match the type, texture, tone, colour, size and profile of those used on the existing building and shall be retained permanently.
- 3) The rooflights hereby approved, shall be of a conservation area specification i.e. in-line and flush within the roof pitch that they would be located.

Application for costs

2. An application for costs was made by Mr and Mrs Mercate-Butcher against the decision of the Council of the London Borough of Wandsworth. This application is the subject of a separate Decision.

Procedural Matter

3. The application form indicated that the development had not started at the time of submission. However, during my site visit I noted that building works were at an advanced stage and the windows that are the subject of the appeal were already installed.

Background and Main Issue

4. The current proposal is to remove the requirement in condition 5 for the first-floor flank wall bathroom windows (the bathroom windows) to be obscure glazed. The Council imposed this condition to ensure that overlooking from these windows would be mitigated and that the privacy of neighbouring occupiers would be protected. Condition 5 also has the effect of ensuring windows are unopenable 1.7m above the internal floor level.
5. Condition 2 refers to the approved drawings. In drawing number 17-007/32 Rev B, the bathroom windows are annotated to require them to be fixed shut 1700mm above the finished floor level. The current proposal proposes to replace this drawing with one which removes that requirement, thus allowing them to be openable.
6. Therefore, the main issue is the effect that varying condition 2 and removing condition 5 would have on the living conditions of nearby occupiers, with particular regard to privacy.

Reasons

7. No 94 Hotham Road (No 94) comprises an end of terrace dwelling that has its flank wall facing the rear gardens and elevations of properties on Erpingham Road. The bathroom windows in dispute have already been installed and incorporate clear glazing. According to the appellant, these windows maintain a distance of about 3m from the rear boundary of the closest Erpingham Road property, while the nearest dwelling is approximately 18.5m away. In the absence of any evidence to the contrary I have no reason to dispute these separation distances.
8. During my site visit I was able to view the neighbouring gardens and some rear facing windows of properties at Nos 51-57A Erpingham Road from the bathroom windows. The existing boundary trees and the roof of a single storey outbuilding at the rear of No 55, screen to some extent, clear views into those

neighbouring gardens and rear facing windows, yet not to the degree that overlooking is entirely eliminated.

9. Although, there will be some loss of privacy, the bathroom windows maintain an acceptable distance from the nearest neighbouring property windows, whilst the boundary trees and the roof of No 55's outbuilding sufficiently obscure views, from within the bathroom, towards neighbouring gardens ensuring no unacceptable loss of privacy to those neighbouring occupiers.
10. Notwithstanding the above, I have been referred to photographs of a previous clear glazed window that served the first-floor bathroom (previous bathroom window). This window was wider and would have allowed for more expansive views towards the Erpingham Road properties. I am of the view, that the new bathroom windows will have a similar, if not lesser, effect than the previous opening and will not result in any further overlooking or unacceptable harm to the privacy of the neighbouring occupiers at Erpingham Road.
11. In respect of the previous bathroom window, the Council have referred to it not having planning permission and if permission would have been sought, they would have ensured it was obscure glazed and unopenable in accordance with the provisions of the GDPO¹. However, drawings that relate to a 2014 consent issued by the Council for a single storey side extension at the appeal property, show the previous clear glazed bathroom window on the approved drawings. The Council did not impose a condition on that consent to obscure glaze the previous window, and I have not been referred to any enforcement proceedings or complaints in relation to it.
12. Therefore, I conclude that varying condition 2 and removing condition 5 would not have an unacceptable effect on the living conditions of nearby occupiers, with particular regard to privacy. Moreover, given the specific circumstances of the case it would not be reasonable or necessary to impose these conditions in the form of their current wording. I therefore find no conflict with Policy DMS1 of the Wandsworth Local Plan, Development Management Policies Document, adopted March 2016. This policy requires, amongst other things, that developments do not harm the amenity of occupiers of nearby properties through an unacceptable loss of privacy.

Other Matters

13. The appeal site is located within the Landford Road Conservation Area (LRCA) and encompasses many of the surrounding residential streets. The significance of the LRCA is derived from the street trees, landscaped private gardens, the historic street pattern and the architectural quality of houses. The new windows that form part of the appeal proposal are modest in scale and located discretely on the dwelling's flank elevation, without harming any of the dwelling's original detailing. Consequently, they would at the very least preserve the appearance of the LRCA.

Conditions

14. I have considered those conditions imposed on the approved scheme and conditions suggested to me, amending them were necessary in accordance with the Planning Practice Guidance (PPG).

¹ Class A.3 of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development (England) Order 2015

15. The plans condition is necessary as the development has commenced and must be completed in accordance with the listed drawings in the Decision. I have reworded this to include reference to the new drawings.
16. Conditions are necessary in the interests of local character and appearance in relation to the type of rooflights installed and for the development to be completed in materials and finishes to match the main dwelling.
17. Since the development was nearing a state of completion at the time of my site visit, I have not imposed a time limit condition.

Conclusion

18. For the reasons given above, and having considered all matters raised, I conclude that the appeal should succeed. I have granted a new planning permission without the disputed condition No 5 and I have reworded the plans condition to include reference to the new drawings. I have also reinstated those undisputed conditions that are still subsisting and capable of taking effect.

RE Jones

INSPECTOR