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## Appeal Decision

Site visit made on 9 February 2021

**by Victor Callister BA(Hons) PGC(Oxon) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 April 2021**

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**Appeal Ref: APP/H5960/W/20/3260546**  
**28 Westbridge Road, London SW11 3PW**

- 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 Roger and Lizzie Stewart against the decision of the London Borough of Wandsworth Council.
  - The application Ref 2020/1382, dated 15 April 2020, was refused by notice dated 1 July 2020.
  - The application sought planning permission for excavation and construction of new two storey building at rear without complying with a condition attached to planning permission Ref 2009/2883, dated 16 November 2009.
  - The condition in dispute is No 2 which states that: The approved building shall be used only for purposes ancillary to the main dwelling house at No 28 Westbridge Road, and shall not be used as a separate dwelling.
  - The reason given for the condition is: To prevent the establishment of an independent dwelling without the prior approval of the local planning authority.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. Since Wandsworth Council's (the Council) refusal of the application Ref 2020/1382, the Mayor of London has adopted a new London Plan. In line with the Planning Practice Guidance, my consideration of the issues of this appeal has, therefore, been on the basis of the National Planning Policy Framework (the Framework), the policies of the Wandsworth Local Plan Core Strategy (2016) (the Core Strategy), the Wandsworth Local Plan Development Management Policies Document 2016 (the Local Plan DMPD) and the London Plan (2021) (the London Plan). The appellant and the Council have confirmed that this is not prejudicial to their cases.
3. I have also sought the Council's and appellant's view on a recent Court of Appeal decision: *Finney v Welsh Ministers & Others* [2019] EWCA Civ 1868. The Court has held that an application under s73 may not be used to obtain a permission that would require a variation to the terms of the "operative" part of the planning permission. Both parties have confirmed that they do not regard the proposal as presenting a variation to the terms of the "operative" part of the planning permission.

## **Background and Main Issue**

4. In 2009 the planning permission Ref: 2009/2883 (the Permission) was given for excavation and construction of a new two storey building at the rear of 28 Westbridge Road (No.28), this application was supported by submissions by the appellant that detailed the intended use of the building as a residential annexe to the dwelling house at No.28, with particular reference to family needs. The council applied a condition on the approval that requires that the approved building be used only for purposes ancillary to the main dwelling house and not used as a separate dwelling.
5. The permission was subsequently implemented and the appellant has confirmed in their submission that the building has been and continues to be used in accordance with the permission. The appellant has, however, set out how they anticipate that their family needs will change and submitted application Ref 2020/1382, which sought to remove Condition No.2 attached to the Permission. This would enable the approved development to be used as a separate dwelling not ancillary to the property at No.28, without the prior approval of the local planning authority. The Council refused that application stating that the use of the building as a separate self-contained dwelling and subdivision of the appeal site would be an inappropriate form of development and would cause harm to the significance of the Westbridge Road Conservation Area (the CA). Subsequently, the appellant exercised their right to appeal that decision.
6. In light of the above, and based on the evidence before me, I consider the main issues to be whether subdivision of the existing single dwelling to create 2 independent dwellings would be inappropriate development with reference to the intensification of an existing residential area and the effect on the character of the CA.

## **Reasons**

### *Intensification of an existing residential area*

7. The appeal site is made up of a four storey Victorian semi-detached house set behind a generous front garden. The rear garden is in a form that wraps around the garden at 26 Westbridge Road and adjoins the narrow side access passage to 24 Westbridge Road. The rear boundary is defined by the rear unmade access lane to houses fronting Westbridge Road, including the appeal site, which leads from Bolingbroke Walk. The rear garden contains a building that forms a 2 storey four bedroom residential detached annexe, set within an excavated area and is accessed from the garden area at the rear of the main house by a raised walkway. This annexe building is set directly on the boundary of the appeal site with the unmade access lane, where it appears as a single storey building above ground level, due to the depth of the excavation within which it sits. This reflects the form and appearance of single storey outbuildings of neighbouring and other residential properties in this area.
8. The proposal is for the development of land without complying with a condition attached to the Permission for the existing building, which requires that the approved building shall be used only for the purposes ancillary to the main dwelling house at No 28 Westbridge Road, and shall not be used as a separate dwelling. The reason given for the condition by the Council is to prevent the establishment of an independent dwelling without the prior approval of the local planning authority.

9. The plans submitted with the application show that the proposal would result in the appeal site being subdivided, creating two independent dwellings sitting in their own plots with their own separate gardens. The rear garden to No.28 would be reduced to that part to the immediate rear of the house, up to the area of the raised walkway over the excavation within which the existing annexe sits. The remainder of the existing garden, including that part to the rear of No.26 and No.24, would form the garden to the existing annex building as a newly created independent dwelling.
10. As the Permission for the residential annex was for a building within the garden of the dwelling at No.28, the proposal would not, therefore, result in any additional built form in the existing garden to No.28. Notwithstanding that the appellants have indicated that they are increasingly using the existing residential annex building independently of the original house at No.28, there are still clear interdependencies between the two existing buildings, which form part of a single family dwelling. The proposal would, however, allow the building that is the subject of the permission to be used as an independent dwelling house, rather than as a residential annexe to an original dwelling house. This would allow for the creation of two independent dwelling houses from the existing single dwelling house.
11. The proposal would also result in the original house at No.28 continuing to have its main frontage and access on Westbridge Road, but without access to the rear unmade access lane that leads from Bolingbroke Walk. It would, therefore, result in the building that is the subject of the Permission having its only street frontage and main access fronting onto this unmade access lane.
12. Chapter 11 of the Framework sets out that planning decisions should support development that makes efficient use of land, taking into account the desirability of maintaining an area's prevailing character and achieving appropriate densities.
13. Policy H2 of the London Plan seeks to increase the contribution of small sites (below 0.25 hectares in size) to meeting London's housing needs as a strategic priority. Incremental intensification of existing residential areas within an area with a public transport accessibility level (PTAL) of between 3–6 are expected to play an important role in contributing towards meeting the housing targets for small sites set out in the London Plan, including through new build, infill development, residential conversions, redevelopment or extension of existing buildings, including non-residential buildings and residential garages, where this results in net additional housing provision.
14. According to the material provided to me for the purposes of this appeal, the rear building that forms the existing residential annexe is located on that part of the appeal site that has a PTAL of 2, rather than the PTAL of 3 of the main house at No.28. For this reason, I find that the proposal, by allowing for the subdivision of the existing single dwelling in to two independent dwelling houses, would lead to an intensification on a site not justified for inclusion under the small site criteria set out in the London Plan. Therefore, the proposal would allow for unjustified and harmful intensification of this residential area that would be contrary Policy H2 of the London Plan.

#### *Character of the CA*

15. The original house at 28 Westbridge Road (No 28) is a non-designated heritage asset, recognised by it being part of a run of locally listed buildings at 24-52

(even) Westbridge Road within the CA. The special character of this area is in the interesting mix of good quality early middle and late Victorian terraces and semi-detached villas in a row of four streets on the east side of Battersea Bridge Road. Westbridge Road is the most varied in the form of its mid Victorian villas which contribute to its significance.

16. CA is a heritage asset to which I have a statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. I must pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area.
17. The Framework sets out how planning authorities should seek the conservation and enhancement of the historic environment and establishes that good design is a key aspect of sustainable development, indivisible from good planning
18. The subdivision of the appeal site resulting from the proposal would involve the creation of two separate private residential garden spaces. This subdivision could be achieved with a suitable boundary treatment and it would appear that no further physical alteration would be required to enable occupation of the annex as a separate independent dwelling. The Council have accepted that this would not result in harm to the character or appearance of No.28 as a locally listed building, and I see no reason to demur from this conclusion.
19. The houses that make up this part of the local area, including No.28, appear to have gardens that have been subdivided and amalgamated in a variety of formats and to have been the subject of a variety of outbuildings and annexes. All the garden spaces, annexes and outbuildings do, however, relate to the use of the properties as individual dwellings that front on to the street. This results in a main street frontage to the dwellings and a clear interrelationship between the gardens and a subordinate relationship with their annexes and outbuildings. This is a traditional pattern of development of Victorian villas, which forms part of the character of the CA.
20. I accept the appellant's argument that the proposed subdivision of the garden would not present a visual change that would cause any harm to the appearance of the CA. However, the subdivision of the appeal site would create a separate dwelling out of the existing annexe, which would address the rear access lane as its main street frontage. Notwithstanding that the existing annexe exists, its use as an independent dwelling would result in a pattern of development not in keeping with the existing hierarchy of a main house with subordinate outbuilding or annexes and, therefore, the existing form of development that helps to define the character of the CA identified above.
21. Although I find that the proposed development would not materially harm the character or appearance of the host property as a non-designated heritage asset or that of the row of houses of which it forms part, the proposal would detract from the existing pattern and hierarchy of development that helps to define the character and appearance of the CA. The change of the annexe to a separate dwelling would, therefore, be discordant in the context of the existing pattern of development and the concomitant character of the CA and would not preserve or enhance the character of the CA, the harm to which would be less than substantial.
22. The appellant has suggested a condition on a planning approval that would, due to the distances involved, require the use of private contractors for the collection

of waste and recycling. In accordance with the paragraph 55 NPPF I have, therefore, considered whether an otherwise unacceptable development could be made acceptable through the use of conditions.

23. To allow conditions to be applied to a permission in accordance with Planning Practice Guidance (PPG), it is first necessary to be able to establish what, if any, adverse impacts a development may have, in order to enable development to proceed with conditions that would mitigate those adverse impacts where it would otherwise have been necessary to refuse planning permission. In this case I have established that, whilst the proposed condition would allow for the effective management of a practical consequence of the proposal, it is the creation of the separate dwelling house and the subdivision of the appeal plot that result in the adverse impacts. I do not, therefore, consider that a condition requiring the use of private contractors for the collection of waste and recycling could be applied to a permission for the proposal to make it acceptable and would, therefore, not be in accordance with paragraph 55 of the Framework and the PPG.
24. For the reasons given above, I find that the creation of a new dwelling house, as allowed by the proposal, would create an inappropriate form of development and would not accord with Policy H2 of the London Plan, Policy PL 4 of the Core Strategy and Policies DMS 1, DMS 2 and DMH 4 of the Local Plan DMPD, Westbridge Road Conservation Area Appraisal and Management Strategy (2007) and the Wandsworth Local Plan Supplementary Planning Document-Housing (2016), which seek to ensure that the development of small sites make a contribution to housing delivery within an area with a suitable PTAL level, that residential development is permitted on appropriate sites and that it preserves or enhances the character of a conservation area. For these reasons, the proposal would also not accord with sections 11, 12 and 16 of the Framework.
25. I have given due consideration to the appeal decision referred to by the appellant in this case and assessed it accordingly as a material consideration. Notwithstanding that this relates to a similar proposal for the development of a dwelling house on garden land, I have given limited weight to this in my determination of this appeal as I must determine the appeal proposal before me on its own merits.

### **Planning Balance and Conclusion**

26. I acknowledge the appellant's view that the proposal would better meet their projected family needs and potentially future occupiers of the proposed 2 separate dwellings that would result from the proposal. However, in general, planning decisions should be made in the wider public interest. In this context, the harm I have identified, including the less than substantial harm to the CA outweighs these benefits. Accordingly, I consider the disputed condition, Condition 2, to be necessary, relevant to planning, relevant to the development permitted, enforceable, precise and reasonable in all other respects. Dismissing the appeal is a proportionate response in this instance.

*Victor Callister*

INSPECTOR