



Appeal Decisions

Site visit made on 26 March 2021

by Christopher Miell MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2021

Appeal A:

Appeal Ref: APP/A5840/W/20/3258223

43C Amott Road, London SE15 4HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by CJ Gibson of Ondine Building Company Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref 19/AP/0724, dated 4 March 2019, was refused by notice dated 26 February 2020.
 - The application sought planning permission for construction of part ground and first floor rear extension with loft conversion (rear dormer and 3x front facing rooflights) and internal restructuring to create 1x additional flat without complying with a condition attached to planning permission Ref 17/AP/1711, dated 28 June 2017.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans: Plan - AM 00 03 PLANS – PROPOSED; Plan - AM 00 04 ELEVATION & AXOS; and Plan - AM 00 05 ELEVATION (NEIGHBOURS).
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Appeal D:

Appeal Ref: APP/A5840/W/20/3261397

43C Amott Road, London SE15 4HU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by CJ Gibson of Ondine Building Company Ltd against the decision of the Council of the London Borough of Southwark.
 - The application Ref 20/AP/2244, dated 10 August 2020, was refused by notice dated 7 October 2020.
 - The application sought planning permission for construction of part ground and first floor rear extension with loft conversion (rear dormer and 3x front facing rooflights) and internal restructuring to create 1x additional flat without complying with a condition attached to planning permission Ref 17/AP/1711, dated 28 June 2017.
 - The condition in dispute is No 1 which states that: The development hereby permitted shall not be carried out otherwise than in accordance with the following approved plans: Plan - AM 00 03 PLANS – PROPOSED; Plan - AM 00 04 ELEVATION & AXOS; and Plan - AM 00 05 ELEVATION (NEIGHBOURS).
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
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Decision

1. Appeal A is dismissed.
2. Appeal D is allowed and planning permission is granted for construction of part ground and first floor rear extension with loft conversion (rear dormer and 3x front facing rooflights) and internal restructuring to create 1x additional flat at 43C Amott Road, London SE15 4HU in accordance with the application Ref: 20/AP/2244, dated 10 August 2020, without compliance with condition number 1 previously imposed on planning permission Ref: 17/AP/1711 dated 28 June 2017 and subject to the attached schedule of conditions.

Background

3. The appeal property is a mid-terrace Victorian building situated on the southern side of Amott Road. On 28 June 2017, planning permission¹ was granted by the Council to convert the property into three self-contained flats. To facilitate the conversion, various alterations and extensions to the property were approved by the Council, which included the construction of a part ground and first floor rear extension and a loft conversion with a rear dormer.
4. The appellant explains that the development was completed in February 2018. The respective flats are now known as Nos 43A (ground floor unit), 43B (first floor unit) and 43C Amott Road (second floor unit, which includes a mezzanine level). The main parties agree the development was not undertaken in accordance with the approved plans listed on the planning permission.
5. In March 2019, the appellant submitted two applications to the Council seeking planning permission under the provisions of section 73A of the Town and Country Planning Act 1990 ('the Act') for the development of land carried out without complying with conditions subject to which a previous planning permission was granted. The first application² (Appeal A) concerned the unauthorised works to Flat No 43C, whilst the second application³ (Appeal B) concerned the unauthorised works to Flat Nos 43A and 43B. The respective applications were refused planning permission by the Council in February 2020 and April 2020.
6. In August 2020, the appellant submitted two further applications to the Council seeking planning permission under the provisions of section 73A of the Act for the development of land carried out without complying with conditions subject to which a previous planning permission was granted. The third application⁴ (Appeal C) concerned the unauthorised works to Flat Nos 43A and 43B, whilst the fourth application⁵ (Appeal D) concerned the unauthorised works to Flat No 43C. The respective applications were refused planning permission by the Council in September 2020 and October 2020.
7. The appellant has submitted appeals under section 78 of the Act against the Council's refusal to grant planning permission in respect of all four applications. I have been appointed to determine all four appeals. The appeal references are APP/A5840/W/20/3258223 (Appeal A), APP/A5840/W/20/3258225 (Appeal B),

¹ Council Ref: 17/AP/1711

² Council Ref: 19/AP/0724

³ Council Ref: 19/AP/0725

⁴ Council Ref: 20/AP/2249

⁵ Council Ref: 20/AP/2244

APP/A5840/W/20/3261396 (Appeal C) and APP/A5840/W/20/3261397 (Appeal D).

8. Appeal A and Appeal D relate to the development at Flat No 43C, whilst Appeal B and Appeal C relate to development at Flat Nos 43A and 43B. I have considered each proposal on its individual merits and prepared two separate decision letters. This decision letter concerns Appeal A and Appeal D. I have prepared a separate decision letter in respect of Appeal B and Appeal C.

Planning Policy

9. The London Plan 2021 (the 'LP 2021') was published by the Mayor of London on 2 March 2021. The LP 2021 comprises the spatial development strategy for London and forms part of the development plan. The LP 2021 supersedes the London Plan of 2016. It is incumbent upon me to take into account the most relevant and up to date information in reaching a decision and I have therefore dealt with these appeals on this basis. The main parties have had an opportunity to address this matter as part of the appeal process.
10. The Council refer to the emerging New Southwark Plan within their evidence. In accordance with paragraph 48 of the National Planning Policy Framework (the 'Framework'), weight may be given to policies within emerging plans. The weight given is determined by the stage of preparation of the emerging plan, the extent of unresolved objections and the degree of consistency of the relevant policies to the Framework. In this instance, I have not been provided with any substantive details of the status of this emerging plan. Therefore, I attribute the plan and policies very limited weight as a material planning consideration.

Procedural Matters

11. The appellant explains⁶ that key dimensions are lacking from the 'as-built' drawings submitted in respect of Appeal A. However, he goes on to state that the drawings provided in respect of Appeal D accurately reflect the 'as-built' condition of the loft extension including the position of the dormer within the roof slope and the associated roof terrace to the rear of the building. These matters have not been disputed by the Council.
12. No substantial evidence has been provided by the appellant to explain what 'key dimensions' are missing/lacking from the submitted plans in respect of Appeal A. Consequently, I cannot be certain as to the extent of works that would be granted planning permission if I were to allow Appeal A. Due to this level of uncertainty, and, given my decision to allow Appeal D, which resolves the relevant matters in dispute between the main parties in respect of the development at Flat No 43C, it follows that I must dismiss Appeal A.

Main Issue

13. In respect of Appeal D, the main issue is the effect of the development upon the character and appearance of the area.

Reasons

14. Appeal D seeks approval for an alternative loft conversion which has been undertaken at the appeal property and forms Flat No 43C. The main differences

⁶ Letter from Interpolitan Planning Consultants dated 31 March 2021 (Ref: P1818/GR)

when compared to the approved plans from the original planning permission are as follows: the insertion of an additional rooflight to the front roof slope; internal changes to the floor plan of Flat No 43C; an increase in the ridge height level of the roof; an increased depth and height to the rear dormer, with a marginal reduction to the approved width; and the creation of a larger outdoor roof terrace area to the rear roof slope.

15. The submitted plans also show that the position of the existing glazed balustrade would be changed to address concerns about overlooking previously expressed by the Council in the determination of the first application (Appeal A). In respect of the current proposal, the Council have concluded that these proposed works would safeguard the living conditions of the neighbouring occupiers in respect of privacy⁷.
16. Based on my site observations, which included viewing the extent to which views of the neighbouring garden areas could be obtained from the proposed recessed roof terrace area, I agree with the Council's position on this matter. Therefore, the effect of the development upon the living conditions of the neighbouring occupiers does not fall to be a main issue in this appeal.
17. In determining the fourth application (Appeal D), the Council concluded that the insertion of the additional rooflight to the front roof slope and the increase in the height to the ridge level of the roof have an acceptable effect upon the character and appearance of the area.
18. On my site visit, I noted that the additional roof light and increased ridge height of the appeal property successfully assimilated into the local context of Amott Road, which is characterised by a variety of two storey property types with differing roof profiles. Therefore, I agree with the Council's position on this matter.
19. The submitted drawings show that the rear dormer has been constructed larger than the approved plans. Despite this, on my site visit I observed that the dormer was set back from the eaves of the host building and sat below the ridge of the parapet wall, and thus it achieves a subordinate relationship with the host building. Moreover, I noted that the use of high-quality modern standing seam zinc cladding for the exterior of the dormer provides a visually attractive juxtaposition when the development is viewed in the context of the immediate area's predominately historic roofscape whereby most roofs are covered with dark coloured tiles. This includes views of the development from Keston Road.
20. I am cognisant that the constructed rear dormer occupies an extensive proportion of the rear roof slope. However, this would also be the case if this appeal was dismissed and the rear dormer was subsequently altered to comply with the approved plans listed on the original planning permission. Indeed, the appellant explains that the volume of the permitted rear dormer is 17.5 cubic metres, whereas the volume of the built dormer is 20 cubic metres. Given the minor difference between the volume of the approved and constructed dormer window, this alone would not be a reason to refuse planning permission.
21. For the reasons set out above, I conclude that the development has an acceptable effect upon the character and appearance of the area. Therefore,

⁷ Officer Report in respect of Council Ref: 20/AP/2244

- the development accords with Saved Policies 3.12 and 3.13 of the Southwark Plan (2007) (the 'SP') and Policy 12 of the Southwark Council Core Strategy (2011) in so far as they require new development to achieve a high quality of both architectural and urban design, which takes account of the local context and makes a positive contribution to the character of the area.
22. Accordingly, the development is consistent with Policy D3 of the LP 2021, which, amongst other things, states that development proposals should enhance local context by delivering buildings and spaces that positively respond to local distinctiveness through their layout, orientation, scale, appearance and shape, with due regard to existing and emerging street hierarchy, building types, forms and proportions.
23. Moreover, the development is consistent with the aims of paragraph 127(c) of the Framework which explains that "planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change".
24. The reason for refusal on the Council's decision notice in respect of Appeal D refers to Policy 3.2 of the SP. This policy relates to the protection of amenities of occupants of the development and properties within the surrounding area. Given the Council's position that the development would safeguard the living conditions of the neighbouring occupiers in respect of privacy, in addition to my own site observations, I find that the development accords with Policy 3.2 of the SP.
25. The reason for refusal on the Council's decision notice also states that the development is contrary to guidance contained within the Southwark Council 2015 Technical Update to the Residential Design Standards (2011) Supplementary Planning Document (the SPD).
26. The SPD is a comprehensive document which provides detailed guidance on the standard of design expected from residential development in Southwark. Despite this, it is unclear from the Council's evidence which section(s) of guidance contained within the SPD the development conflicts with.
27. In any event, the standards set out within the SPD are only guidance and are an indicator of what is likely to be acceptable. In this instance, I have assessed the proposal on its own individual planning merits and found it to be acceptable. As such, a failure to adhere to some of the standards in the SPD is not sufficient in itself to dismiss the appeal.

Other Matters

28. A local resident has expressed concern that the second-floor roof terrace could be used as a 'party space' by occupiers of the development, which would cause noise and disturbance to local residents. However, no such concerns have been expressed by the Council. In any event, whilst I recognise that the roof garden could facilitate a moderate sized gathering, no substantive evidence has been put forward by the interested party to demonstrate that such gatherings are a frequent occurrence. Moreover, the roof terrace can only be accessed internally via No 43C, which suggests its use would likely be limited to occupiers of the No 43C and their guests, as opposed to all occupants of the flatted development.

Conditions

29. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under Section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged. To this regard, no substantive evidence has been put forward to demonstrate that any conditions from the original planning permission have been discharged by the applicant. Nevertheless, as works have commenced at the site, it is not necessary to impose the statutory time limit condition.
30. I have considered the conditions against the tests as laid out in paragraph 55 of the Framework. In the interests of precision, where necessary, I have amended the wording of the conditions. In respect of the plans list condition, I have listed the approved plans, as it is necessary that the development is carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty. As the plans list has changed, it is no longer necessary to impose Condition No 8 of the original planning permission.
31. To protect the living conditions of neighbouring occupiers, it is necessary to impose a condition relating to the installation and retention of the glass balustrading.

Conclusion

32. For the reasons outlined in the Procedural Matters section of this decision letter, I conclude that Appeal A should be dismissed.
33. For the reasons given above, and taking into account all other matters raised, I conclude that Appeal D should be allowed.

Christopher Miell

INSPECTOR

Appeal D: Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Number D11 (Prop. Site/Roof & Location Plans); Drawing Number D12A (Proposed Floor Plans); and Drawing Number D13 (Proposed Rear Elevation and Section A-A), except in respect of the ground and first floor details shown on Drawing Number D13 (Proposed Rear Elevation and Section A-A).
- 2) Within 3 months of the date of this decision, details (1:50 scale drawings) of the facilities to be provided for the secure and covered storage of cycles shall be submitted to and approved in writing by the local planning authority.

Once the details have been approved in writing by the local planning authority, the facilities shall be completed at the site in accordance with the approved details. These works shall be completed within 3 months of the date of the local planning authority's decision to approve the details of the cycle storage facilities and retained as such thereafter.

The cycle storage facilities shall be kept available at all times for the storage of cycles.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 3) The windows on the eastern elevation of the outrigger and the shower room window of the top floor shall be obscure glazed and fixed shut and shall not be replaced or repaired otherwise than with obscure glazing.
- 4) Each dwelling hereby permitted shall be constructed to achieve at least the optional standard 36(2b) of Approved Document G of the Building Regulations (2015).
- 5) The dwellings hereby permitted shall be designed to ensure that the following internal noise levels are not exceeded due to environmental noise:

Bedrooms - 30dB LAeq, T * and 45dB LAFmax

Living rooms - 30dB LAeq, T **

* - Night-time 8 hours between 23:00-07:00

** - Daytime 16 hours between 07:00-23:00

- 6) The materials to be used in the implementation of this permission shall not be otherwise than as described and specified on the drawings hereby approved.
- 7) Within 3 months of the date of this decision, the glazed balustrade shall be repositioned as shown on the approved plans. If the works are not undertaken within 3 months of the date of this decision, the use of the roof terrace for any purpose shall cease. Upon implementation of the works specified in this condition, the works shall thereafter be retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.