



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 B:

Appeal Ref: APP/A5840/W/20/3258225

43A and 43B 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/0725, dated 4 March 2019, was refused by notice dated 22 April 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 C:

Appeal Ref: APP/A5840/W/20/3261396

43A and 43B 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/2249, dated 10 August 2020, was refused by notice dated 25 September 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 B is dismissed.
2. Appeal C 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 43A and 43B Amott Road, London SE15 4HU in accordance with the application Ref: 20/AP/2249, 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 B and Appeal C. I have prepared a separate decision letter in respect of Appeal A and Appeal D.

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 the drawings provided with regard to Appeal C accurately reflect the 'as-built' condition of the rear extension including the cladding material. Whereas the 'as-built' elevations submitted in respect of Appeal B are inaccurately drawn in respect of the external cladding and the height/alignment of the rear extension. These matters have not been disputed by the Council.
12. Given that the plans submitted in respect of Appeal B contain several inaccuracies, I cannot be certain as to the extent of works that would be granted planning permission if I were to allow Appeal B. Due to this level of uncertainty, and, given my decision to allow Appeal C, which resolves the relevant matters in dispute between the main parties in respect of the development at Flat Nos 43A and 43B, it follows that I must dismiss Appeal B.

Main Issue

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

Reasons

14. Appeal C seeks approval for an alternative two storey rear extension which has been undertaken at the appeal property and provides accommodation for Flat Nos 43A and 43B. The main differences when compared to the approved plans

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

- from the original planning permission are as follows: an increase in height of approximately 0.3m; an increase in width by approximately 0.7m; a decrease in depth by approximately 0.4m; and a change to the external material palette, which now comprises standing seam zinc cladding over both floors.
15. In addition to the above, the 'as-built' plans show that alterations have been undertaken to the fenestration arrangement at the rear of the property. For the avoidance of doubt, these works fall within the scope of this appeal. The Council have raised no concerns regarding the acceptability of these works. The constructed fenestration arrangement is in-keeping with the host building and local vernacular. Therefore, I find these works to be acceptable.
 16. Despite the additional height and width, the ridge of the extension sits well below the second floor windows of the host property, with the intervening second floor brickwork providing visual relief between the extension and the rear dormer above. Moreover, the width of the extension retains an appropriate setback away from the neighbouring property. Therefore, the overall bulk, scale and massing of the rear extension achieves a subservient relationship with the host building.
 17. Moreover, the use of standing seam zinc cladding has a harmonious relationship with the rear dormer at the appeal property, whilst its striking black colour over both floors creates an aesthetically pleasing contrast when viewed in the context of the lighter coloured brickwork of the host building and neighbouring properties.
 18. The Council have expressed concerns about the singular material palette and argue that it creates a 'blocky' extension which fails to harmonise with the host property. Given my findings above, I do not share the Council's position.
 19. For the reasons set out above, I conclude that the development has an acceptable effect upon the character and appearance of the area. Therefore, 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.
 20. 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.
 21. 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."

Conditions

22. 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.

23. 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.

Conclusion

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

Christopher Miell

INSPECTOR

Appeal C: Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Number D001A (Existing Site/Roof and Location Plans); Drawing Number D002 (Existing Ground Floor Plan); Drawing Number D003A (Existing First Floor Plan); Drawing Number D004 (Existing Second and Third Floor Plans); Drawing Number D005A (Existing Elevations); and Drawing Number D006A (Existing Section BB), except in respect of the roof plan and third floor details shown on Drawing Numbers D001A; D004; D005A; and D006A .

- 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.