

Appeal Decision

Site visit undertaken on 7 May 2021

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision Date: 15 June 2021

Appeal A Ref: APP/H5390/W/21/3268277

35 Napier Avenue, London SW6 3PS

- 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 application is made by Mr Byrom (Launcelot Napier Ltd) against the decision by the London Borough of Hammersmith and Fulham.
 - The application, ref. 2020/02942/VAR, dated 16 November 2020, was refused by notice dated 12 January 2021.
 - The application sought the 'Material amendment to planning permission reference: 2019/01449/FUL dated 12 September 2019 for the "Demolition of existing three storey dwellinghouse and erection of a replacement part one, and part three storey plus-basement single family dwellinghouse; erection of an external staircase from basement to garden level at the rear of the property." Amendments sought are the replacement of the approved single storey ground floor rear conservatory style extension with a brick-built single storey rear extension including a flat roof with a roof lantern,' dated 30 September 2019.
 - The condition in dispute is No.2 which states that: 'The development shall not be erected otherwise than in accordance with the detailed drawings hereby approved.'
 - The reason given for Condition No.2 is 'In order to ensure full compliance with the planning permission hereby approved and to prevent harm arising through deviations from the approved plans, in accordance with Policy DC1, DC4 and DC8 of the Local Plan 2018.'
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Appeal B Ref: APP/H5390/W/21/3268294

35 Napier Avenue, London SW6 3PS

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Craig Byrom (Launcelot Napier Ltd) against the decision by the London Borough of Hammersmith and Fulham
 - The application, ref. 2020/03015/FUL, dated 17 November 2020, was refused by notice dated 13 January 2021.
 - The development proposed is the erection of a part one, part two and part three storey single family dwellinghouse; retention of the basement.
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Appeal C Ref: APP/H5390/W/20/3255900
35 & 37 Napier Avenue, London SW6 3PS

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Byrom (Launcelot Napier Ltd) against the decision by the London Borough of Hammersmith and Fulham.
 - The application, ref. 2020/00988/FUL, dated 24 April 2020, was refused by notice dated 28 April 2020.
 - The development proposed is the erection of rear extensions at ground and first floor level following the demolition of existing conservatory and enlargement of the existing basement to no. 37 Napier Avenue; erection of a part one, part two and part three storey plus-basement single family dwellinghouse at no. 35 Napier Avenue; erection of external stair cases from basement to ground floor level at the rear of no. 35 and 37 Napier Avenue.
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Appeal A:

1. The appeal is dismissed.

Appeal B:

2. The appeal is dismissed.

Appeal C:

3. The appeal is dismissed.

Preliminary Matters

4. This decision deals with two planning appeals under s78 of the Town and Country Planning Act 1990, and an appeal for variation of a condition under s73 of the Town and Country Planning Act 1990. Whilst each of the appeals are to be considered individually under these processes, as the cases are for the same/adjacent sites, and are similar in their nature and considerations; to avoid repetition and for the avoidance of doubt, I have dealt with each of the appeals within this single letter.
5. With regards to Appeal B, I have taken the description of the development from the Council's Decision Notice as this more succinctly reflects what is being applied for. I note that the Council's description of the proposed development is also repeated on the applicant's appeal form.
6. At the time of my site visits both Nos 35 and 37 Napier Avenue were cordoned off as a building site where construction works were currently in progress. Despite the works currently taking place, I was still able to make an assessment of each of the appeals from what I could see on my site visit and from the information contained in the appeal documents.
7. Each of the appeals includes a number of elements that require planning consent such as the erection of a dwelling, basements, ground and first floor rear extensions. The Planning Officer Report in each of the appeals notes that the contention is with the ground floor and first floor rear extensions, rather than with the remaining elements. With this in mind, I have no reason to dispute the opinion of Council officers regarding the acceptability of the other elements of the scheme with this letter being focused purely upon the proposed rear extensions.

8. During the course of the appeals, the applicant in their Statement of Case (SoC) for Appeal B has submitted amended plans¹ and has sought that I consider these amendments as part of the appeal. The main differences between the refused scheme and the amended plans is the further reduction in the side setback of the first floor from 1.1 metres to 2 metres from the boundary with No.33 Napier Avenue. In general, the appeal process is not the appropriate place to evolve the scheme; and the scheme that is considered at appeal ought to be the same one that was considered by the Council. There is no evidence that the amended plans formed part of the scheme that the Council made its decision on, or that these amendments have been subject to any form of consultation. In accordance with the 'Wheatcroft Principles',² it would not be appropriate to consider these amended plans within my decision as the acceptance of such would deprive those who should have been consulted on the changed development of the opportunity of such consultation. As such, I will base my decision solely upon the plans that were assessed by the Council during the original planning determination.
9. The applicant's SoC for Appeals A and B mentions policies of the London Plan 2016. Since the lodgement of these appeals, the London Plan has been superseded by the London Plan 2021. Whilst neither of the appeals were refused on the basis of London Plan policies, I have referred to the most recent version of the London Plan in this letter.

Background and Main issues – Appeals A, B and C

10. In 2019, planning permission³ was granted for the demolition of No.35 Napier Avenue and its replacement with a part one, and part three storey plus-basement family dwelling. The development of the site has commenced with the existing dwelling having been demolished and construction works taking place to erect a new building as approved in this permission.
11. Taking the above into account the main issues are:
 - For Appeals B and C; the effect of the proposed ground and first floor rear extensions upon the character and appearance of the building and the locality, with particular regard to the Hurlingham Club Conservation Area (CA).
 - For Appeal A, whether Condition No.2 of Planning Permission Ref 2019/01449/FUL is necessary and reasonable; and for Appeals B and C; the effect of the proposed ground and first floor rear extensions upon the living conditions of No.33 Napier Avenue, with particular regard to outlook, enclosure, and access to light;

¹ Drawing 2001.4/Rev A – Proposed Site Plan; Drawing 2002.4/Rev A – Proposed Basement Plan; Drawing 2003.4/Rev A – Proposed Ground Floor Plan; Drawing 2004.4/Rev A – Proposed First Floor Plan; Drawing 2005.4/Rev A – Proposed Second Floor Plan; Drawing 2006.4/Rev A – Proposed Roof Plan; Drawing 2200.4/Rev B – Proposed Section A-A; Drawing 2201.4/Rev B – Proposed Section B-B; Drawing 2300.4/Rev A – Proposed Street Elevation; Drawing 2301.4/Rev B – Proposed Rear Elevation; Drawing 2302.4/Rev B – Proposed Side Elevation; Drawing 2304.4/Rev A – Proposed Side Elevation, Viewed from No.33.

² Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

³ Hammersmith and Fulham Council Planning ref: 2019/01449/FUL

Reasons – Appeals A, B and C

Legal and Policy Context

12. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA), in respect of development affecting conservation areas, states that special attention shall be paid to the desirability of preserving or enhancing the character and/or appearance of the area.
13. In undertaking extensions to the existing buildings, the London Borough of Hammersmith and Fulham Local Plan 2018 (LP) Policy DC1 seeks to ensure that development achieves high quality and inclusive design that respects and enhances townscape context, whilst LP Policy DC4 seeks that alterations are compatible with the scale and character of existing development; successfully integrated into the architectural design; and subservient in terms of bulk, scale, materials and design. Additionally, Policy DC8 seeks that development conserve or enhance the significance of the Council's heritage assets.
14. According to paragraph 193 of the National Planning Policy Framework (the Framework), great weight should be given to an asset's conservation, irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to their significance. Paragraph 194 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. Paragraph 196 requires that, where a proposal would lead to 'less than substantial harm,' the harm should be weighed against the public benefits of the proposal.

Site Description and Significance of the CA

15. The CA is centred around the landscaped grounds of the Hurlingham Club, recreational pitches of Hurlingham Park and the surrounding residential development. Napier Avenue borders the Hurlingham Club and Hurlingham Park, with the surrounding residential streets containing a formally laid out speculative housing development which appears to date from the early twentieth century. Both sides of the road contain pairs of large semi-detached dwellings with small gaps between dwellings providing glimpses between buildings to trees and greenery beyond.
16. There is a symmetry between the dwellings which have the same characteristics and design elements with their positioning as pairs of dwellings with gaps presenting an architectural integrity and authenticity to the design of the street. The dwellings to the eastern side of Napier Avenue (where the appeal site lies) through their design have a higher status than dwellings on the opposite side of the road. Dwellings along the eastern side have red brick facades (some of which have been painted) and decorative stone banding across front facades with brick detailing around fenestration with keystones and decorative mouldings. Each of the dwellings has large two storey canted bay windows and a gabled dormer projecting from either side of the front façade. Some of the dwellings retain decorative ridge tiles, and well vegetated front gardens, however a number of the boundary walls have been removed for vehicular parking.
17. The use of traditional materials such as timber, brick and terracotta tiles along with the similar designs reinforce a uniformity and authenticity which creates a formal picturesque townscape which along with vegetation and

gardens give a spacious and distinctive character. To the rear the distinctive character continues with vegetated rear gardens evident, and whilst some dwellings have extended to the rear from original designs, extensions are generally subservient with rear extensions and small first floor extensions which extend for around half the width of the rear façade. The historic roof form and appearance of many of the dwellings remains intact, particularly along the eastern side of Napier Avenue which can be experienced from the Hurlingham Club and Hurlingham Park. The Hurlingham club consists of a private and well vegetated landscaped parkland around Hurlingham House. Hurlingham Park is a Council park and recreation area containing formalised pitches, play equipment, and well vegetated surrounds. Each of these elements described above contribute to the local distinctiveness and significance of the CA.

Effect upon the Character and Appearance of the locality, including the CA

18. With regards to the proposed ground floor rear extension, identical proposals have been presented in Appeals B and C where the ground floor of No.35 would project as long as the ground floor of No.37. I note reference to an appeal⁴ where the ground floor extension had similar dimensions and was seen as being acceptable in terms of character and appearance within the CA and to the host building, and I have no reason to dispute this opinion. As such the ground floor rear extension in Appeals B and C would be an appropriate addition to the existing buildings and will not be discussed further with regards to character and appearance.
19. Turning to the proposed first floor rear extension, in Appeal B the first floor would project 4.12 metres from the rear of the host building and would be setback 1.1 metres from the side boundary with No.33 Napier Avenue. Whilst there are first floor rear extensions situated along the rear facades of surrounding buildings along Napier Avenue, they are typically around half the width of the rear façade and have relatively short projections to reduce their massing and bulk. I note reference to the deeper first floor rear extensions at No.s 37 and 39, however these appear to be uncharacteristic and the exception within the eastern side of Napier Avenue. The majority of rear first floor extensions have a similar projection to the depth which was originally approved for No.35⁵ and this is the predominant characteristic for the area.
20. The proposed first floor rear extension would therefore have an uncharacteristic depth and width which would not be a subservient addition to the building and would therefore have an incongruous appearance that is harmful to the character and appearance of the CA when considering the design of the host building and the surrounding character and appearance of the locality. This harm would be 'less than substantial' as defined by paragraph 196 of the Framework.
21. The first floor rear extension for Appeal C is proposed on both Nos 35 and 37 where the extensions would be wider than the dwellings and would join along the common boundary, enclosing the characteristic gap between the dwellings at first floor level and projecting for the width of both properties. Whilst I acknowledge the comments from the applicant that the gaps

⁴ Appeal Ref: APP/H5390/W/20/3248669

⁵ Hammersmith and Fulham Planning Ref: 2019/01449/FUL

between the dwellings are narrow and their visibility is reduced from their setback from the street scene; the visual gap between each pair of dwellings is a positive characteristic of this particular street scene and is part of the architectural integrity in the design of the dwellings which make up this section of Napier Avenue. It should also be noted that the duty under S72 of the PLBCA needs to consider tangible and intangible elements from both a private and public realm. To me, the combined depth and width of the proposals would have an awkward and dominant appearance and would result in a loss of positive characteristics such as visual gaps and architectural integrity and design of the street. As such I disagree that there would be no harm caused to the character and appearance of the CA with the loss of the gap causing harm to the integrity and authenticity of the design and layout of the dwellings along the street. This would cause 'less than substantial' harm to the character and appearance of the CA in this location.

22. Paragraph 196 of the Framework requires that, where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal. I turn to this assessment now, below.

Public Benefits

23. Public benefits from both Appeals B and C would include the reinstatement of a dwelling where the front façade would replicate those along the street which would result in benefits towards the character and appearance of the CA. Other benefits would include short term employment opportunities from the construction of the scheme, the effective use of land and the resultant benefits to occupants as a result of increased living spaces. However, these benefits for both appeals are not distinct to these individual appeals, as previous planning consent would enable the dwelling and alternative extensions to be constructed should the appeals fail. As such, the public benefits of Appeals B and C which I have identified would not clearly outweigh the less than substantial harm caused to the CA.

Living Conditions, with regards to outlook, enclosure, and access to light

24. Appeals A, B and C are each concerned with outlook, and enclosure, whereas Appeal C additionally has concerns with regards to loss of light. In support of their case against loss of light, the applicant has submitted a Daylight, Sunlight and Overshadowing report.⁶ The report is the same as submitted for a different application which was subject to the forementioned appeal. Whilst the report has not been updated to reflect the specifics of Appeal C, it is evident in the drawings within the report that the dimensions of the proposed extension and the consideration of issues in the previous appeal with regards to living conditions are the same.
25. In the forementioned appeal the Inspector noted that whilst there was a loss of light as a result of the proposal, that the levels were still acceptable when considering the loss against the recommendations set out for daylight in the Building Research Establishment (BRE) publication '*Site layout planning for daylight and sunlight*.' No additional evidence has been presented by the Council with regards to their concerns in Appeal C, and taking this into

⁶ By Avison Young, Dated April 2019

account, I too am satisfied that the proposal in Appeal C would not cause an unacceptable loss of light and would therefore be acceptable in this respect.

26. Turning to outlook and enclosure; for Appeal C, this appeal has an identical scenario as assessed in the aforementioned appeal. I have no reason to dispute the existing assessment where it was found that the combined height of the ground and first floor which is proposed to be situated on the boundary would be a dominant addition which would cause harm to living conditions of No.33 by reason of sense of enclosure and loss of outlook.
27. Appeal A contains the same first floor rear extension as the approved consent, with the difference being the length of the ground floor extension. No.33 Napier Avenue contains a lightwell for the lower ground floor and ground floor extension. The proposed rear ground floor extension in Appeal A would project 3.5 metres past the rear extension at ground level of No.33 and would create a blank boundary wall of 4.2 metres in height. I appreciate that the rear is to be fully glazed, and whilst making the extension appear more lightweight, does not make the extension invisible. The appeal documents show that prior to the current construction works there were trees and vegetation taller than the extension along the joint boundary with No.33, however I am not persuaded that a brick wall has the same appearance or generates similar feelings as to the sense of enclosure or overbearingness as would vegetation which tends to soften, rather than appear quite hard and austere. I also note reference to the ground floor extensions approved at Nos 37 and 33, however the extension to the rear are not the same and have different considerations needing to be applied on its merits. The proposed boundary wall of the ground floor extension as a result of its height, depth and physical appearance would present a dominant proposal which would cause unacceptable detriment to the living conditions of No.33 as a result of overbearingness and outlook.
28. Whilst Appeal B has similar considerations to Appeal A in terms of the sense of enclosure and poor outlook caused by the blank boundary wall at ground floor level, the proposal for Appeal B also reduces the setback at first floor level to 1.1 metres as well as increasing the depth of the first floor rear extension. The extant approval for the first floor rear extension appears adequately setback from No.33 to avoid an increased sense of enclosure and loss of outlook from first floor level; however this is not the case for Appeal B. The proposed depth and lack of setback from the first floor, whilst setback more than Appeal C, Appeal B still retains an increased bulk and massing of the rear extension with the increased combination of brick wall at ground and first floor levels. This would accentuate the harm from Appeal A which is caused as a result of sense of enclosure and loss of outlook to both the ground and first floor levels of No.33.

Conclusions – Appeal A

29. I therefore conclude that the proposed first floor to No.35 and No.37 Napier Avenue would cause adverse detriment to the living conditions of No.33 Napier Avenue. This would conflict with LP Policies DC4 (as described previously) and HO11 (which seeks to ensure protection of existing residential amenity).
30. On this basis, Condition No.2 on Planning Permission 2019/01449/FUL is reasonable, enforceable, relevant to planning, and necessary.

Conclusions – Appeal B

31. I conclude that the proposed first floor extension to No.35 Napier Avenue fails to preserve or enhance the character and/or appearance of the CA and would also cause detriment to living conditions of No.33 Napier Avenue by reason of sense of enclosure and loss of outlook. This would conflict with LP Policies DC1, DC4 and HO11 as described previously.

Conclusions – Appeal C

32. I conclude that the proposed first floor extensions to No.35 and No.37 Napier Avenue fail to preserve or enhance the character and/or appearance of the CA and would also cause detriment to living conditions of No.33 Napier Avenue by reason of sense of enclosure and loss of outlook. This would conflict with LP Policies DC1, DC4 and HO11 as described previously.

Other Matters

33. The applicant's SoC in Appeals A and B refers to Policies 3.5, 7.4 and 7.6 of the London Plan 2016, which were design, character and architecture related policies, and which have recently been replaced by the policies of the London Plan 2021. The Council do not refer to the London Plan policies in their decision notices, and the design policies of the Council's Development Plan are broadly consistent with those of the London Plan 2021. Given that there has been a clear conflict with the policies of the Council's Local Development Plan, there is no need to further test the proposed scheme against the policies of the London Plan 2021.

Overall Conclusion – Appeals A, B and C

34. For the reasons given above, and having considered all other matters raised, Appeals A, B and C are dismissed.

J Somers

INSPECTOR