



Appeal Decision

Site visit made on 8 March 2022

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/N5090/W/21/3282003

179 West Heath Road, Hampstead, London NW3 7TT

- 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 Ian Lipowicz, Kerrington Ltd against the decision of the Council of the London Borough of Barnet.
 - The application Ref 21/3295/S73, dated 14 June 2021, was refused by notice dated 20 July 2021.
 - The application sought planning permission for 'conversion of flat 1 into 2no self-contained flats including basement extension with lightwell and single storey rear extension. Associated refuse and recycling' without complying with conditions attached to planning permission Ref 19/4587/FUL, dated 7 April 2020.
 - The conditions in dispute are Nos 1 and 8 which state that:
 - 1 - *The development hereby permitted shall be carried out in accordance with the following approved plans: 01a, 01, 02, 03, 04, 05B, 06B, 07A, 08A.*
 - 8 - *The roof of the rear extension hereby permitted shall only be used in connection with the repair and maintenance of the building and shall at no time be converted to or used as a balcony, roof garden or similar amenity or sitting out area.*
 - The reasons given for the conditions are:
 - 1 - *For the avoidance of doubt and in the interests of proper planning and so as to ensure that the development is carried out fully in accordance with the plans as assessed in accordance with Policies CS NPPF and CS1 of the Local Plan Core Strategy DPD (adopted September 2012) and Policy DM01 of the Local Plan Development Management Policies DPD (adopted September 2012).*
 - 8 - *To ensure that the amenities of the occupiers of adjoining properties are not prejudiced by overlooking in accordance with policy DM01 of the Development Management Policies DPD (adopted September 2012).*
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Decision

1. The appeal is allowed and planning permission is granted for 'conversion of flat 1 into 2no self-contained flats including basement extension with lightwell and single storey rear extension. Associated refuse and recycling' at 179 West Heath Road, Hampstead, London NW3 7TT in accordance with application ref 21/3295/S73 dated 14 June 2021, without compliance with conditions 1 and 8 previously imposed on planning permission ref 19/4587/FUL and subject to the conditions in the attached schedule.

Background and Main Issue

2. The appeal relates to a proposal to vary condition 1 and to remove condition 8 of permission granted under application reference 19/4587/FUL ('the original permission') in order to allow the addition of privacy screening and a glass

balustrade to the flat roof of the permitted extension, and its use as a terrace for the ground-floor flat to be created.

3. The main issue is the effect of the proposal on the living conditions of the occupiers of neighbouring dwellings with particular regard to privacy and noise disturbance.

Reasons

4. The appeal building is already of greater depth than the adjacent dwellings at 177 and 183 West Heath Road. As a result, the proposed terrace would be set some way beyond the rear elevations of these neighbours. However, screening is proposed to the sides of the terrace which would prevent views back towards windows to the rear of Nos 177 and 183 and into the adjacent parts of their gardens. There would be oblique views towards the rear parts of the neighbouring gardens, and views towards the external amenity space for the basement-level flat at the rear of the site, but these would be similar to views that would already be available from windows to the appeal building and other neighbouring properties, and consequently I do not consider that this would cause a harmful loss of privacy.
5. Given that the terrace would serve a single dwelling, its overall size and that the dwelling would also have additional outdoor space to the rear of the site, I can further see no reason that it would be likely to result in levels of usage or activity that would be unusual within a residential area. I acknowledge the position of the terrace to the rear of the neighbouring dwellings, but there is no compelling evidence that levels of noise or disturbance associated with its use would be likely to be so significant as to be intrusive to nearby occupiers. I am not therefore persuaded that the proposal would result in harmful noise or disturbance so as to detract from neighbouring living conditions.
6. The Council has raised concern that the screening to the terrace would create an unsatisfactory space with a sense of enclosure. However, I am satisfied that the generous width of the space and outlook towards the rear would be sufficient to ensure that the degree of enclosure would not be oppressive, and I find that the terrace would offer outdoor space of suitable quality. In any event, the availability of additional private amenity space to the rear of the site means that occupiers would not solely be reliant on the terrace for outdoor space, and while there may be no operational planning need for the terrace, that is not a factor that alters my consideration of the planning merits of the proposal.
7. For these reasons, I conclude that the proposed variation of condition 1 and removal of condition 8 would not unacceptably harm the living conditions of neighbouring occupiers through noise disturbance or loss of privacy. Accordingly, I find no conflict with Policies DM01 or DM02 of the Development Management Policies 2012 which require, amongst other things, a high standard of amenity for occupiers of new development and neighbouring properties, including through adequate privacy. The proposal would also accord with the Supplementary Planning Document: Sustainable Design and Construction 2016 insofar as it broadly seeks protection for privacy and from noise disturbance, and sets out that gardens and windows should not be significantly overlooked.
8. The Council's reason for refusal additionally referred to the Core Strategy 2012, although no policies were cited. The Council has confirmed that this was an error, and I have considered the appeal on that basis.

Conditions

9. I have imposed a replacement condition which contains the updated plan numbers (condition 1), and a revised time limit for commencement in accordance with the original permission (condition 2). I have also imposed a condition requiring the implementation of indicated screening to the sides of the terrace which I consider is necessary in the interests of the living conditions of neighbouring occupiers (condition 8). This differs from the Council's suggested condition which referred to screening to a height of 1.7m to the sides and rear of the terrace, as I do not find in light of my conclusions on the main issue that there are compelling reasons to require screening of this height to the rear. I also consider given the relationship with neighbouring properties that 1.8m high screening to the sides of the terrace as has been indicated on the submitted plans would be necessary to ensure suitable standards of privacy.
10. In addition, the Planning Practice Guidance makes clear that permission granted under Section 73 of the Act should restate the conditions imposed on the earlier permission that continue to have effect. I have no information before me about the status of the other conditions imposed on the original planning permission, but in the event that some have in fact been discharged, that is a matter which can be addressed by the parties. I have therefore imposed all those that I consider remain relevant as they appeared on the original permission decision.

Conclusion

11. For the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 01a, 01, 02, 03, 04, P-011 and P-012.
- 2) The development hereby permitted shall begin before 7 April 2023.
- 3) Before the development hereby permitted is first occupied, details of the sub-division of the amenity area(s) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the details approved under this condition before first occupation and retained as such thereafter.
- 4) Prior to the first occupation of the units, copies of Pre-completion Sound Insulation Test Certificates shall be submitted to the Local Planning Authority, confirming compliance with Requirement E of the Building Regulations 2010 (or any subsequent amendment in force at the time of implementation of the permission).
- 5) The materials to be used in the external surfaces of the extension shall match those used in the existing building.

- 6) Before the building hereby permitted is first occupied, the proposed windows in the lower ground floor elevation (north) facing the access road shall be glazed with obscure glass only and shall be permanently retained as such thereafter and shall be permanently fixed shut with only a fanlight opening.
- 7) Before the development hereby permitted is first occupied, details of enclosures and screened facilities for the storage of recycling containers and wheeled refuse bins or other refuse storage containers where applicable, together with a satisfactory point of collection shall be submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in full accordance with the details as approved under this condition prior to the first occupation and retained as such thereafter.
- 8) Before the development hereby permitted is first occupied, obscure glazed privacy screening shall be installed to both sides of the terrace facing 177 and 183 West Heath Road in accordance with the details shown on plan nos P-011 and P-012, and the screening shall be retained as such thereafter.
- 9) Prior to the first occupation of the new dwellinghouse(s) (Use Class C3) hereby approved they shall all have been constructed to have 100% of the water supplied to them by the mains water infrastructure provided through a water meter or water meters and each new dwelling shall be constructed to include water saving and efficiency measures that comply with Regulation 36(2)(b) of Part G 2 of the Building Regulations to ensure that a maximum of 105 litres of water is consumed per person per day with a fittings based approach used to determine the water consumption of the proposed development. The development shall be maintained as such in perpetuity thereafter.
- 10) Before the development hereby permitted is first occupied, cycle parking spaces and cycle storage facilities for eight stands shall be provided in accordance with a scheme to be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the details as approved under this condition and the spaces shall be permanently retained thereafter.
- 11) Prior to the first occupation of the development hereby approved it shall be constructed incorporating carbon dioxide emission reduction measures which achieve an improvement of not less than 6% in carbon dioxide emissions when compared to a building constructed to comply with the minimum Target Emission Rate requirements of the 2010 Building Regulations. The development shall be maintained as such in perpetuity thereafter.