



Appeal Decision

Site Visit made on 23 November 2021

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2022

Appeal Ref: APP/K5600/W/20/3256658
Flat 1, 97 Addison Road, London W14 8DD

- 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 Mohammadreza Azizi against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref PP/20/01977, dated 23 March 2020, was refused by notice dated 29 June 2020.
 - The development proposed is retention of single storey rear extension at upper ground floor level and partial excavation of rear lightwell (part retrospective).
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Decision

1. The appeal is allowed and planning permission is granted for retention of single storey rear extension at upper ground floor level and partial excavation of rear lightwell (part retrospective) at Flat 1, 97 Addison Road, London W14 8DD in accordance with application Ref PP/20/01977, dated 23 March 2020, subject to the conditions in the attached schedule.

Procedural Matter

2. The description of development in the banner heading and decision above, is the same as that used in the appeal form and refusal notice. This accurately describes the proposal and removes the superfluous wording referred to in the development description in the application form. My approach, therefore, does not prejudice any of the parties.

Main Issue

3. The main issue is the effect on the living conditions of occupiers of the basement Flat A, 97 Addison Road (Flat A), with regard to outlook and light.

Reasons

4. The proposal, a single storey extension to the rear of Flat 1, 97 Addison Road (Flat 1) has already been built and replaced a covered balcony extension leading off a kitchen (kitchen balcony). The balcony extended out and over a bedroom window and part of the light well serving the basement Flat A. The bedroom window is also surrounded by the internal walls of the light well, a bathroom extension and a common boundary wall. Even before the construction of the proposed extension, those structures that surround the window diminish the outlook from within the room it serves and the level of daylight entering it.
5. The appeal proposal is a revised scheme following a previous appeal decision (Ref APP/K5600/W/20/3256658). In that decision the Inspector determined

that the single storey rear extension would be deeper and lower than the kitchen balcony. The lower floor of the extension would result in harm to the living conditions of occupiers of Flat A through a material reduction in daylight and a loss of outlook to the bedroom window.

6. The appellant has submitted further information with the appeal, as well as proposed remedial measures that include the construction of a light chute adjacent to Flat A.
7. A drawing has been submitted showing the construction depth of the proposed extension and the previous balcony extension to be the same. Accordingly, the appellant indicates there has been no lowering of the floor vertically towards Flat 1's bedroom window. This has also been confirmed in a witness statement submitted by the site foreman that carried out the works. However, it is not clear whether the submitted drawing was based on a detailed survey of the previous balcony structure before it was removed. There are also no accurate survey drawings showing the original balcony and its height above the basement lightwell and bedroom window of Flat A, to compare site measurements with.
8. The appellant has provided photographs of the proposed and previous structures in context with the existing brick boundary wall. The pictures have annotations showing the same number of brick courses from the top of the wall to the underside of each structure. From this the appellant concludes that the two structures are constructed at the same height and therefore the proposal has not been lowered over the basement lightwell.
9. The images however are not clear as the brick courses are viewed at an angle while the white paint finish obscures the cement pointing between the bricks making it difficult to verify the appellant's calculations. Moreover, I do not have a similar comparison between the lowest part of the structures and top of Flat A's bedroom window. Those perspectives have been provided by the occupier of Flat A, yet the pictures are somewhat blurred and have not been taken from the same position. Moreover, neither set of images have been annotated with measurements or contain dates. Therefore, based on the images submitted, I am unable to come to any clear position on whether the structures have the same depth.
10. In addition, there is no clear evidence showing the position of the previous wooden beam on the underside of the kitchen balcony or the new steel beams supporting the proposed extension. Without these details it cannot be verified whether they are in the same place relative to the bedroom window.
11. The appellant indicates that an application for the rear extension was submitted to the Council's Building Regulations division. Whilst I do not doubt this, I have not been presented with any technical drawings that relate to that submission, nor is there any corroboration from officers within that division, that the drawings submitted are accurate or whether inspections of the works have taken place.
12. Consequently, the additional information does not convince me that the extension is not deeper and lower than the previous structure, and in this respect, I have no reason to take a different view to the previous Inspector.

13. The proposed light chute would excavate part of the appellant's garden patio creating an angled surface that would significantly lower the height of the light well's rear wall. This would reduce the degree of enclosure around Flat A's bedroom window and consequently improve the outlook from within the room. Although this would not resolve the enclosing effect of the proposed extension over the bedroom window, it would result in the window looking out on to a less restrictive space.
14. As there is limited accurate evidence before me other than images and retrospective drawings of the previous kitchen balcony, I am unable to place any significant weight on the results of the appellant's Daylight and Sunlight study.
15. Notwithstanding this, the light chute would open-up the enclosed area in front of Flat A's bedroom window and allow more daylight to enter the space. This would in turn make the space less gloomy when viewed from Flat A's bedroom. Whilst that daylight may not be directly captured by the bedroom window given the projecting and overhanging nature of the extension above, there would be direct views of the area that would be more exposed to daylight along with consequential improvements to the living conditions of the flat's occupiers. The situation would be improved further by the proposal to paint the side wall of the adjacent outrigger above the light well in white as this finish would better reflect light towards the light well. This would match the other walls at the rear of the property and would not harm its appearance in the context of the surrounding conservation area.
16. In conclusion, the proposed development, which includes the remedial works described above would materially improve the living conditions of the occupiers of Flat A beyond the current situation, resulting in an acceptable effect on their daylight and outlook. It would therefore accord with Policy CL5 of the Local Plan (2019) where it requires proposals to ensure no material worsening of daylight standards or harmful increase in the sense of enclosure.

Other Matters

17. The occupier of Flat A indicates that the extension's additional depth and structural mass has resulted in internal damage to walls and the emergence of damp areas within the flat. Photographs have been provided showing the defective areas. However, without any specific evidence such as technical reports from structural and damp-proof specialists it cannot be proved with any certainty that those issues are directly attributed to the works carried out at the appeal property.
18. Concerns have been raised regarding the likelihood of flooding within the lightwell following remedial works. The potential for this can be safeguarded through the implementation of surface water drainage works to be secured through a planning condition.
19. Matters relating to land ownership and any tenancy agreement fall outside of this appeal, however, it is noted from the appellant's lease that the area to be excavated falls under his property's demised area.

Conditions

20. The Council has not provided any suggested conditions, nonetheless I have considered those suggested by, amending them where necessary in accordance

with the Panning Practice Guidance (PPG). I have sought the views of the main parties on conditions that require the agreement and implementation of further details relating to the appeal development.

21. The plans condition is necessary as the development has been undertaken and I have listed the plans in the Decision.
22. A condition regarding the provision of a light chute is imposed to ensure that the required details are submitted, approved and implemented so as to make the development acceptable in planning terms. Similarly, the side wall of the rear closet wing must be painted white. There is a strict timetable for compliance with those conditions because permission is being granted retrospectively, and it is not possible to use a negatively worded condition to secure the approval and implementation of the light chute and the painting of the adjacent closet wing before the development takes place. The conditions will ensure that the development can be enforced against if the requirements are not met, thus complying with the relevant test in the PPG.
23. The additional remedial works relating to the painting of the boundary wall, the internal walls of the light well, the removal of guttering and the insertion of a skylight within the neighbouring bathroom have not been attached as conditions, as they would likely relate to areas of the building and property that fall outside the control of the appellant.

Conclusion

24. For the reasons given I conclude that the appeal should succeed.

RE Jones

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be carried out in accordance with the following approved plans: location plan, site plan, drawing numbers RPC003 Rev 1 and RPC006 Rev 1.
2. Notwithstanding the approved drawings, within 6 months of the date of this decision a scheme for a light chute with associated surface water drainage and a railed enclosure within the site, are submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 6 months of the local planning authority's approval, the extension hereby permitted shall be demolished within 3 months to ground level and all materials resulting from demolition shall be removed until such time as a scheme is approved and implemented.

If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the extension hereby permitted shall be demolished within 3 months to ground level and all materials resulting from demolition shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved scheme specified in this condition, that scheme 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.

3. The upper ground floor flank wall of the closet wing to the rear of the appeal site shall be finished in white masonry paint within 6 months of the date of this decision. If the work prescribed by this condition is not carried out within the specified timeframe the extension hereby permitted shall be demolished to ground level within 3 months and all materials resulting from demolition shall be removed until such time as the work is implemented.

Upon implementation of the work specified in this condition, that scheme 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.

*****End of Schedule*****