The Planning Inspectorate

Appeal Decision

Site visit made on 1 April 2022

by P. D. Biggers BSc Hons MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 May 2022.

Appeal Ref: APP/Y5420/D/22/3291608
109 Wargrave Road, Tottenham, London N15 6TU.

- 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 David Seidenfeld against the decision of the London Borough of Haringey Council.
- The application HGY/2021/1989, dated 22 June 2021, was refused by notice dated 05 November 2021.
- The development proposed is erection of a Type 3 roof extension.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether there would be a detrimental effect from the proposed development on the operation of the solar arrays on the neighbouring property at No 107 Wargrave Avenue as a result of overshadowing and a detrimental effect on climate change.

Reasons

3. The appeal site sits on the north side of Wargrave Avenue in a terrace of originally two storey properties constructed in brick and render under mainly tiled roofs. No 109, along with a number of properties in the street, currently has a large front and rear box dormer and the proposal is to replace this with a Type 3 roof extension which is also now a common feature on Wargrave Avenue. The neighbouring property at No 107 has a large photovoltaic solar array on the south facing slope of the main roof to assist in the generation of electricity and a smaller solar thermal array on the rear facing flat roof dormer to assist with water heating.

4. It is common ground between the parties that given the already changed character of Wargrave Avenue that the principle of the Type 3 roof extension would be acceptable in terms of its effect on the character and appearance of Wargrave Avenue and in line with advice in the *South Tottenham House Extensions Supplementary Planning Document* (SPD). It is also common ground that in respect of living conditions for neighbouring occupiers in respect of privacy and overlooking, outlook and light to windows and garden areas there would be no impact. The impact specifically on the renewable energy installations I consider below.

5. Case law in the case of [McLennan, R v Medway Council & Anor [2019] EWHC 1738 (Admin) (10 July 2019) in which The High Court quashed a decision by Medway Council has established that:

"*interference with the solar panels is a material planning consideration…. in addressing, (however modestly, on an individual scale), issues of climate change*". The case further establishes that mitigation of climate change is a legitimate planning consideration in the public interest and that even individual micro-generation schemes are in the public interest. The case also establishes that, even though the Framework and planning policy may deal essentially with new development, it would be illogical to regard climate change as suddenly becoming immaterial, once the development had taken place. Therefore, in this appeal case the effect of the proposal on the existing solar arrays on No 107 is clearly a material consideration and it remains to determine the weight that should be attached to this consideration.

6. No 109 sits on the east side of No 107 and its solar arrays and therefore the only issue is the extent to which there would be a reduction in sunlight to the collectors during the morning. For the majority of the day the arrays would be unaffected by the proposal.

7. The appellant provided an assessment of the impacts carried out by consultant engineers to support the application following an objection from the neighbours at No 107. Initially the assessment failed to consider the solar thermal collector which heats the hot water at No 107 and failed to consider that the type of photovoltaic collector installed does not operate if any part of the panels are shaded. A supplementary assessment was provided in response.

8. This revised assessment concluded that in respect of the solar thermal collector to the rear of No 107 the appeal proposal, although shading the panel in the winter months in the morning, would have no effect on the generation of hot water as due to sun angles and air temperatures on winter mornings the collector would not be generating hot water. In the summer from April onwards the collector would not be shaded at all after about 08.00 and prior to that, although the collector would be shaded by the proposal, the existing flat roof dormer is argued to already shade the collector. Therefore, the report concludes there would be no impact on the generation of hot water. However, it has been put to me that the analysis should have been based on the four equinox dates rather than simply two assessments and that the Chartered Institute of Building Services Engineers (CIBSE) Guide J which has been used has been archived. The CIBSE website clearly states that Guide J was archived in 2015 and is made available for reference only and should not be used on current projects. There is therefore substantial uncertainty as to what cumulative effect these two factors would have on calculations and the ability to generate hot water without resorting to the use of fossil fuels and the consequent increase in greenhouse gases from the property.

9. The revised assessment regarding the photovoltaic collector on the frontage concludes that although there would be overshadowing particularly in the summer around 08.30 and 09.30 the overall additional effect on generating capacity from the Type 3 roof extension compared to the flat roof dormer would be small. I have been invited to conclude that if much more significant reductions in sunlight to windows would be acceptable then a small reduction in sunlight and consequent reduction in generating capacity would not constitute an unacceptable impact. However, the same caveats on the assessment of the impact on the solar thermal collector would apply in respect of the photovoltaic collectors and the overall impact remains unclear. In any event, at a time when all development should be minimising its effects on the climate, a failure to either provide direct or indirect mitigation for even small losses could cumulatively become significant.

10. It has been put to me that if the concern is with the reduction in generating

capacity of the installations at No 107 and the reduced public benefit of this in mitigating climate change then this could be compensated by imposing a condition on any grant of planning permission for the appeal proposal requiring the loss to be made up. I have given careful consideration to this in the light of the tests which all conditions must meet but have concluded that such a condition would fail in a number of respects.

11. First no scheme is proposed by the appellant to base a condition on. A scheme requiring the generation of renewable energy at No 109 would be too vague. Secondly, the extent of loss of generating capacity in the plant at No 107 and therefore the extent of mitigation required remains unclear. Thirdly, the condition must be reasonably related to the development in hand. All these points mean that a condition would fail the tests of being precise and enforceable and the condition would consequently be open to challenge.

12. The *National Planning Policy Framework* (the Framework) at Section 14 requires the planning system to support the transition to a low carbon future in a changing climate and support renewable and low carbon energy and associated infrastructure. The Framework expects development to comply with local requirements for decentralised energy supply unless it can be demonstrated to be non-viable. The appellant has presented no such case. The *London Plan 2021* (LP2021) at Policy SI 2 seeks a 10% reduction in greenhouse gas emissions from residential development and the supporting text states that Boroughs should ensure that all developments maximise opportunities for on-site electricity and heat production from solar technologies (photovoltaic and thermal). Policy SP4 of the *Haringey Local Plan Strategic Polices* (HLPSP) requires all new development to take measures to reduce energy use and that all new development will be required to achieve a reduction in predicted carbon emissions of 20% from onsite renewable energy generation. Policy SP11 on design seeks to ensure that impacts on climate change are minimised. The strategic policies are supported by the *Haringey Local Plan Development Management DPD* (HLPDM) which at Policy DM21 requires all proposals to apply the Energy Hierarchy to minimise energy use in order to meet and if possible reduce minimum carbon dioxide reduction requirements.

13. The proposal itself has not been demonstrated to meet these requirements nor has it been demonstrated that they would not be viable. As established in the above case law, although the policies relate principally to new development proposals, it would be illogical that concerns with climate change, which would have supported the retrofitting of solar energy installations at No 107, would suddenly no longer be a concern. LP2021 Policy D6 and HLPDM Policy DM1 both require developments to provide sufficient and appropriate amounts of sunlight and prevent overshadowing amongst other things and thus the proposal would also conflict with these policy objectives.

Conclusion

14. It is accepted by the parties that the proposed roof extension to the appeal property would have some impact on the ability of the solar collectors on No 107 to operate, with consequent impacts on the delivery of renewable energy to the property and in a small way adversely affecting the mitigation of climate change. I accept that the extent of the impact may be limited. However, given the rapidly developing climate emergency and the failure of the appellant to propose any renewable generation scheme of his own which could both mitigate the loss and reduce greenhouse gas emissions of the significantly enlarged house at No 109 in accordance with national and local policies, I attach significant weight to the issue.

15. I have had regard to the Public Sector Equality Duty contained in the Equality Act 2010 and I understand the appellants' wish to achieve additional accommodation through the roof extension and in that way make sustainable and effective use of housing land, an objective which is encouraged by the Framework in Section 11. However, sustainable and effective use of the dwelling would not, of itself, outweigh the adverse impacts in this case.

16. I am not persuaded that the shortcomings can be satisfactorily resolved by the imposition of a condition and therefore the conflict with LP2021 and HLP policies from the current proposal are not offset. It remains open to the appellant to adapt the roof extension and resubmit the proposal with a fully detailed renewable generation scheme that mitigates the impacts and meets the policies.

17. In reaching my decision I have had regard to the matters before me and for the reasons above the appeal should be dismissed.

P. D. Biggers

INSPECTOR