



Appeal Decision

Site visit made on 15 July 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 28 July 2022

Appeal Ref: APP/X5990/W/22/3295544

Lyndhurst Court, 36–38 Finchley Road, London NW8 6ES

- 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 Mrs Wilson of Lyndhurst Court (St Johns Wood) Ltd against the decision of City of Westminster Council.
 - The application Ref 21/06304/FULL, dated 9 September 2021, was refused by notice dated 21 January 2022.
 - The development proposed is installation of new windows on side and rear elevations of Lyndhurst Court, and timber steps to existing ground floor balcony of 1 Lyndhurst Court.
-

Decision

1. The appeal is dismissed insofar as it relates to the installation of new windows on the side and rear elevations of Lyndhurst Court. The appeal is allowed insofar as it relates to the timber steps and planning permission is granted for the installation of timber steps to existing ground floor balcony of 1 Lyndhurst Court at Lyndhurst Court, 36 – 38 Finchley Road, London NW8 6ES in accordance with the terms of the application, Ref 21/06304/FULL, dated 9 September 2021 (so far as relevant to that part of the development hereby permitted) and subject to the following condition:
 - 1) The timber steps hereby permitted shall be retained in accordance with following drawings: OS/Block Plan (000); Proposed Plans (101) and Proposed Elevations (111).

Preliminary Matters

2. I have taken the address from the Council's decision notice, as this relates to the whole of the appeal property, as opposed to just flat 1. I have also used the Council's description of development, as this more accurately describes the development.
3. The windows to flat 1 have already been replaced. The timber steps to the existing ground floor balcony in the same flat have also been installed. These elements of the development are therefore retrospective in nature.
4. The main parties agree that the timber steps are minor in their impact, and would not harm the character and appearance of the building nor the privacy of neighbouring occupiers. Given the steps are not readily visible from within St John's Wood Conservation Area, they would also not impact on its setting. I have no reason to disagree with these conclusions. This element of the development is therefore considered acceptable. Given it is distinct and severable from the installation of windows, a split decision is possible in this

instance, and planning permission can be granted for this element of the development alone. The main issues and subsequent reasoning therefore concern the installation of new windows only.

5. Concerns have been raised by some leaseholders within the appeal property that ownership certificates were not properly served in connection with the appeal application. Nonetheless, in terms of the timber steps, their installation primarily affects the owner/occupier of flat 1 (who supports the application), so other owners would not be unfairly prejudiced by this element of the proposal. In terms of the windows, given that I am dismissing this aspect of the development, I am satisfied that no party's interests would be unduly prejudiced by my determining the appeal, which would not negate nor supersede any private legal rights relating to land ownership.
6. As part of this appeal, the appellant has submitted updated plans which now incorporate elements of obscured glass on some of the proposed windows. This is to overcome the privacy concerns set out in one of the Council's reasons for refusal. However, the lessees of some of the flats within the appeal property would be materially affected by these changes. In line with the principles set out in *Wheatcroft*¹, it is therefore essential that these occupiers have the opportunity to comment on the revised plans, to ensure fairness and transparency of process. There is no evidence before me to suggest such consultation has taken place. I have therefore determined the appeal with regard to the plans and drawings originally submitted with the planning application, to ensure interested parties are not unfairly prejudiced.

Main Issues

7. The main issues are:

- the effect of the proposed development on the character and appearance of the host property;
- the effect of the proposed development on the living conditions of the occupiers of the appeal property, with particular regard to privacy; and
- whether the proposed development would preserve or enhance the setting of the CA.

Reasons

Character and Appearance

8. The appeal property comprises an eleven-storey block of flats, located on the eastern side of Finchley Road. The building is laid out in a "T" arrangement, and benefits from shared amenity space to its rear. Notwithstanding the windows on the top storey, the majority of fenestration is comprised of dark grey timber. Some windows also include elements of aluminium framing. These features provide an attractive and welcome contrast to the mass of red external brickwork used in the building, which in turn amplifies the prominence and significance of the fenestration. Indeed, given the extent of fenestration across all sides of the building, the windows contribute significantly to its overriding character.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

9. The proposed development seeks to replace the windows on the rear and side elevations of the appeal property. Whilst no detailed plans of the new windows have been submitted, they would be similar to the replacement windows already installed in flat 1 of the building, which are made of a red/brown UPVC. Given that the materials of the new windows are similar in colour and tone to the existing red brickwork, the contrast between the external materials is lost. This reduces the prominence of the windows, which in turn detracts from the overall appearance of the building. Whilst it may be possible to change the colour of the UPVC to a dark grey (in-keeping with the existing fenestration framing), no details have been presented to demonstrate that this would be possible. Such an important element of the proposal's design should therefore not be left solely to condition in this instance.
10. Notwithstanding the colour and materials of the new windows, there would be a number of other key differences with the existing fenestration, particularly along the rear-most elevation. Many of the existing windows on this elevation are inset with a thin aluminium frame, which adds a horizontal emphasis to the windows and their openings. This horizontal emphasis is further amplified by the narrowness of the side panels on either side of the substantive window pane. Conversely, the new windows at ground floor level introduce an additional element of framing within the central window bay, which gives a vertical emphasis to the fenestration. This effect is further compounded by the inclusion of three equal window panes, as opposed to a larger central panel which is flanked on either side by narrower panes of glass. Owing to these factors, the vertical emphasis of the new windows appears discordant with the horizontal emphasis of the existing fenestration.
11. Whilst these differences would not necessarily be harmful to the overall appearance of the building if all of the windows were to be replaced in unison, the appellant has indicated that it would be left to individual lessees to replace the windows in their respective flats. This means some lessees may choose not to. In turn, there would invariably be a piecemeal approach to development, with some occupiers choosing to incorporate the new windows, and some choosing to retain the existing fenestration. This would lead to a fragmented and inharmonious design to the building, which would be harmful to its overall appearance. A management plan is unlikely to overcome this risk, as many of the individual lessees have confirmed they are not receptive to the new window design.
12. For these reasons, the development would hamper the character and appearance of the appeal property. It would conflict with Policies 38 and 40 of the Council's City Plan (2019 – 2040), which together seek to ensure new development is sensitively designed and responds properly to local character. These policies also say that any alterations should not obscure important architectural features nor disrupt any uniformity of patterns that contribute positively to a building's visual impact.

Privacy

13. Owing to the "T" formation of the appeal property, certain flats include a window within a recess on the northern side of the building, at an adjacent right-angle to windows in neighbouring flats. This arrangement means there is scope for mutual overlooking between the two flats. The existing fenestration

includes privacy screens within the affected flats, to help mitigate against such impact.

14. No privacy screens have been proposed as part of the proposed development. Without these screens, the potential for mutual overlooking between the affected flats would not be adequately mitigated. In turn, this could lead to an unacceptable loss of privacy for the affected occupiers.
15. Although it may be possible to overcome such concerns by incorporating obscured glazing into the relevant windows, affected occupiers should be given the opportunity to comment before any such changes are imposed. This is because the inclusion of obscure glass could materially impact on the outlook experienced from their properties. Once again, this factor should therefore not be left entirely to condition.
16. Without the inclusion of any measures to reduce the scope for mutual overlooking between certain flats within the appeal property, the development risks an unacceptable loss of privacy to affected occupiers, which would be harmful to their living conditions. The development would therefore conflict with Policies 7 and 38 of the City Plan, both of which seek to ensure new development protects the amenity and wellbeing of existing, future and neighbouring occupiers, with particular regard to privacy and overlooking.

Conservation Area

17. The appeal property is located near to St John's Wood Conservation Area (CA). The CA is characterised by a low-density townscape, with wide tree-lined streets. This gives an attractive sense of verdancy to the area, which is further amplified by the generous gardens of the residential properties located in the area. Owing to its substantial height, glimpsed views of the upper part of the appeal property are possible from certain public vantage points within the CA. Nonetheless, given the intervening distance between the building and these spaces, the detailed design specifics of the fenestration cannot readily be appreciated from these locations. In turn, I do not consider that the proposed changes to the fenestration would materially impact on the setting of the CA.
18. In this regard, the development would be consistent with Policy 39 of the City Plan, which seeks to ensure new development properly safeguards heritage assets and their settings within the Council's area.

Other Matters

19. Whilst I acknowledge that the proposed new windows would provide benefits in terms of insulation and energy efficiency, such benefit would not overcome the risk of harm to the character and appearance of the building.

Conclusion

20. For the reasons given above, I conclude that the appeal should be allowed insofar as it relates to the timber steps and dismissed insofar as it relates to the installation of new windows on the side and rear elevations of the appeal property.

James Blackwell

INSPECTOR