



Appeal Decision

Site visit made on 17 October 2022

by M Cryan BA(Hons) DipTP MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03/01/2023

Appeal Ref: APP/T5720/W/22/3296287

73 Cavendish Road, Colliers Wood, London SW19 2EY

- 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 Dr Y Patel against the decision of the Council of the London Borough of Merton.
 - The application Ref 21/P3982, dated 6 November 2021, was refused by notice dated 6 January 2022.
 - The application sought planning permission for the erection of side/rear extension to create a new semi-detached dwelling without complying with a condition attached to planning permission Ref 20/P3965, dated 2 February 2021.
 - The condition in dispute is No 2 which states that:
"The development hereby permitted shall be carried out in accordance with the following approved plans: CR/06 Rev C; CR08 Rev A; CR 05 Rev B; CR 07 Rev B".
 - The reason given for the condition is:
"For the avoidance of doubt and in the interests of proper planning".
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Decision

1. The appeal is allowed and planning permission is granted for the erection of side/rear extension to create a new semi-detached dwelling at 73 Cavendish Road, Colliers Wood, London SW19 2EY in accordance with the application Ref 21/P3982, dated 6 November 2021, without compliance with condition number 2 previously imposed on planning permission Ref 20/P3965, dated 2 February 2021, and subject to the conditions in the attached schedule.

Background and Main Issues

2. The appeal site is a two-storey dwelling on Cavendish Road at its junction with Norfolk Road at the end of a short terrace of five similar properties; the side boundary of the property (including its rear garden) faces Norfolk Road. Planning permission was granted in February 2021 for the redevelopment of the property; I refer to this hereafter as "the original permission".
3. Under the original permission, a two-storey extension, approximately 3m wide, would be built to replace an existing garage at the side of the property. At the rear, a part one-, part two-storey extension would be added; this would have a depth of around 5.4m at ground floor level and around 3m at first-floor level. The whole extension would have a hipped roof, and would be finished in materials (render and roofing tiles) to match the existing building. The existing

dwelling would be reconfigured internally, and the side parts of the extension used to create a new, self-contained, one-bedroom dwelling.

4. The appellant is now seeking the approval of alternative plans. The only difference of any substance from the original permission is that the depth of the two-storey part of the rear extension would be increased from around 3m to around 3.275m. The Council is of the view that the depth, height, form and siting of the proposed larger rear extension would be harmful both to living conditions for occupiers of the neighbouring dwelling at 71 Cavendish Road, and to the character and appearance of the area.
5. Accordingly, I consider that the main issues in this appeal are the effects of varying the disputed condition on:
 - Living conditions for the occupiers of 71 Cavendish Road, with particular regard to loss of daylight and sunlight and whether or not the proposed extension would be overbearing; and
 - The character and appearance of the area.

Reasons

Living conditions

6. The proposed two-storey part of the rear extension would occupy approximately two thirds of the width of the appeal property. It would be set towards the Norfolk Road side of the rear elevation and, from the officer's report in relating to the original permission, I understand that the projecting side elevation facing 71 Cavendish Road (which would accommodate an enlarged existing first-floor rear bedroom) would be around 2.8m from the common boundary. No 71 lies west, and slightly to the north, of the appeal property.
7. I saw on my site visit that the two windows nearest to the appeal property on the first floor at the rear of No 71 have obscure glazing; although I did not go into the neighbouring house it seems highly likely therefore that these windows serve the WC and bathroom of No 71, in a mirror image of the arrangement of the appeal property. The next window along appears to serve a bedroom but, given the symmetrical layout of the dwellings as originally constructed, it must also be *at least* 2.8m from the shared boundary. This means that side of the proposed rear extension on the appeal property would be more than 5.8m from the rear bedroom window on the first floor of No 71.
8. There will, of course, be times when even a marginal increase in size has unacceptable consequences. In this case however, given the reasonably generous horizontal separation between the proposed extension and the nearest habitable room window on the first floor of No 71, I am satisfied that the limited increase in the depth of the extension sought by the appellant would be acceptable. The proposed first floor extension would not be as deep as the existing ground floor extension at the rear of No 71, so there could be no harmful effects on ground floor rooms in the neighbouring property.
9. I conclude that varying the disputed "approved plans" condition to allow a 3.275m deep first-floor extension would not cause any harmful loss of daylight or sunlight for the occupiers of No 71, nor would the proposed extension be overbearing when seen from that property. The development would therefore

comply with Policy CS14 of the 2011 Merton Core Strategy ("the MCS"), Policy DM D2 of the 2014 Merton Sites and Policies Plan ("the MSPS"), and Policies D3 and D4 of the London Plan 2021. Among other things, these policies seek to ensure that development is well-designed so that it ensures the provision of appropriate levels of sunlight and daylight, and quality of living conditions.

10. The decision notice also indicated conflict with Policy DM D3 of the MSPS, but that policy relates to managing heritage assets; the appeal site is not within a Conservation Area or the setting of a Listed Building, and I find no conflict with the provisions of DM D3.

Character and appearance

11. None of the other properties in the short terrace including the appeal property (65 to 73 Cavendish Road) has a two-storey rear extension at present. The proposed development would therefore appear as a unique form of development within its immediate context. The siting of No 73 on a corner plot means that, in spite of the proposed extension being at the rear, it would be visible from and play a part in the streetscene of Norfolk Road.
12. However, the hipped roof form would respond to the character of the original dwelling, while the proposed materials and finishes would be in keeping with its appearance and that of the other houses in the terrace. The ridge and eaves heights would be the same as the scheme approved in 2021. Again, I acknowledge that there will be times when even a small increase in the size of a scheme might have a harmful effect on the character or appearance of an area. However, in this case the appeal site's corner plot widens towards the rear and provides it with what, by the prevailing standards of the neighbourhood, I saw to be a relatively spacious side and rear aspect. Given this, and the other positive factors which I have identified here, I do not consider the Council's fears that a 3.275m deep extension would be "incongruous and bulky in form" to be well-founded.
13. I conclude that the increased depth of the rear first-floor extension for which the appellant now seeks approval would not be harmful to the character or appearance of the area. The development would therefore comply with Policy CS14 of the MCS, Policy DM D2 of the MSPS, and Policies D3 and D4 of the London Plan. Among other things, these policies seek to ensure that development is well-designed and relates positively and appropriately to the siting, rhythm, scale, density, proportions, height, materials and massing of surrounding buildings. Again the decision notice also indicated conflict with Policy DM D3 of the MSPS, but for the same reasons as for the preceding main issue I find no conflict with the provisions of that policy.

Conditions

14. I have deleted the disputed Condition 2; it is replaced with a new condition defining the new approved plans. In line with the requirements of Section 73(5) of the Town and Country Planning Act 1990, the time limit for implementing this permission runs from the date of the original permission, and I have therefore also replaced the original Condition 1 to this effect.
15. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. Conditions 3 to 10 of the

original permission are therefore reimposed, for the same reasons as they were originally required.

Conclusion

16. For the reasons given above I conclude that the appeal should succeed. I will therefore grant a new planning permission without the disputed Condition 2 but substituting for it a new Condition 2 defining revised approved plans. The other undisputed conditions which are still subsisting and capable of taking effect are restated.

M Cryan

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than the expiration of planning permission Ref 20/P3965 on 2 February 2024.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - CR 05 Rev D
 - CR 06 Rev D
 - CR 07 Rev D
 - CR/08 Rev A
- 3) The facing materials used in the development hereby permitted shall match those of the existing building in materials, style, colour, texture and, in the case of brickwork, bonding, course ng and pointing.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification), no extension, enlargement or other alteration of the new dwellinghouse granted under this permission, other than that expressly authorised by this permission shall be carried out without planning permission first obtained from the Local Planning Authority.
- 5) No development shall take place until a scheme for the storage of refuse and recycling has been submitted in writing for approval to the Local Planning Authority. This shall include provision for both the retained and approved new dwelling on the site. No works which are the subject of this condition shall be carried out until the scheme has been approved, and the new dwelling shall not be occupied until the scheme has been approved and has been carried out in full. Those facilities and measures shall thereafter be retained for use at all times from the date of first occupation.
- 6) No development shall commence until details of secure cycle parking facilities for the occupants of, and visitors to, the development have been submitted to and approved in writing by the Local Planning Authority. This shall include provision for both the retained and approved new dwelling on the site. The approved facilities shall be fully implemented and made available for use prior to the first occupation of the development and thereafter retained for use at all times.
- 7) The new dwelling hereby approved shall be occupied until evidence has been submitted to, and approved in writing by, the Local Planning Authority confirming that the development has achieved CO2 reductions of not less than a 19% improvement on Part L regulations 2013, and internal water consumption rates of no greater than 105 litres per person per day.
- 8) Access to the flat roof of the development hereby permitted shall be for maintenance or emergency purposes only, and the flat roof shall not be used as a roof garden, terrace, patio or similar amenity area.
- 9) The vehicle parking area shown on the approved plans shall be provided before the commencement of the buildings or use hereby permitted and

shall be retained for parking purposes for occupiers and users of the development and for no other purpose.

- 10) The development hereby permitted shall not be occupied until the rear boundary treatment shown on the plans hereby approved has been installed and shall be retained thereafter.