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## Appeal Decision

Site visit made on 6 December 2022

**by C Rafferty LLB (Hons), Solicitor**

**an Inspector appointed by the Secretary of State**

**Decision date: 23<sup>rd</sup> March 2023**

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**Appeal Ref: APP/Y5420/D/22/3305997**

**109 Wargrave Avenue, 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 Mr David Seidenfeld against the decision of the Council of the London Borough of Haringey.
  - The application HGY/2022/1865, dated 30 June 2022, was refused by notice dated 25 August 2022.
  - The development proposed is the erection of a Type 3 roof extension.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of a Type 3 roof extension at 109 Wargrave Avenue, Tottenham, London N15 6TU in accordance with the terms of the application Ref HGY/2022/1865 dated 30 June 2022 subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan Drawing No. WA.109-111.LP dated 18 June 2021; Existing Floor Plans Drawing No. WA.109.EX.101 dated 29 June 2022; Existing Elevations Drawing No. WA.109.EX.102 dated 29 June 2022; Proposed Floor Plans Drawing No. WA.109.PR.101 dated 29 June 2022; Proposed Elevations Drawing No. WA.109.PR.102 dated 29 June 2022; Existing & Proposed Section Drawing No. WA.109.EX&PR.103 dated 29 June 2022; and Energy Statement.
  - 3) The solar photovoltaic system shall be installed in accordance with the approved plans and thereafter shall be operated, maintained and retained as installed.

### Main Issues

2. The main issue is the effect of 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 site is a two storey terraced dwelling on the residential street of Wargrave Avenue. It has a front and rear dormer, which the proposal seeks to replace with a Type 3 roof extension. No. 107, the neighbouring property to the west, is a two storey dwelling with a photovoltaic solar array on its front roof slope for electricity generation and a solar thermal array to the rear for hot water.

4. The main issue relates to the effect of the proposal on the neighbouring renewable energy installation due to overshadowing. This topic has previously been addressed by the courts<sup>1</sup>. It was held that the fact a neighbour may have to pay increased energy costs due to producing less electricity from their solar panels may not be a material consideration. However, it was established that overshadowing of solar panels is a material planning consideration with regard to the part they play in addressing climate change, and that even individual microgeneration schemes are in the public interest.
5. A similar scheme at the site to that proposed was the subject of a previous appeal decision<sup>2</sup>, a copy of which has been provided. This was identical to the current proposal but for the fact that it did not include a photovoltaic solar array, which it is now proposed to be installed at the site. The Inspector found the assessment of overshadowing and energy generation had been undertaken in accordance with outdated guidance such that the loss of generating capacity in the equipment at No. 107 was unclear. In addition, it was held that there was a failure to provide mitigation for any such loss in generating capacity that may arise. The Inspector concluded that *"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"*.
6. As No. 107 is to the west of the site, the main issue relates to the extent to which there would be a reduction in sunlight to the equipment in the morning, with it being otherwise in shade for much of the day. The appellant has submitted an updated assessment of potential shading with this appeal. It is based on updated guidance that has not been queried by the Council or interested parties, and assesses the situation during morning hours at various times of the year, based on the four equinox dates. Illustrations for shading are also provided in the report.
7. With regard to the rear solar thermal array, the assessment finds that overshadowing as a result of the proposal occurs during the mornings of the winter and spring periods, at times the collector would not be generating hot water due to air temperature. It further concludes that the proposal would not overshadow the array in summer after 08:00. Overall it therefore finds that the proposal would have no impact on the generation of hot water at No. 107.
8. With regard to the front solar array, the assessment finds limited overshadowing as a result of the proposal during winter months. More notable impacts arise during these periods: 08:30 April/ August; 07:30, 08:30, 09:30 March/ September; and 07:30, 08:30 May/ July, at which times the additional percentage of the array that would be in shade ranges from 23-75%. The assessment calculates this to be an average daily loss of 1.67% of the energy generating capacity of the panels, which it states equates to 300kwh per year.
9. Based on my observations, and in the absence of technical or substantive evidence to the contrary, I have no reason to doubt the findings of the assessment provided by the appellant. As such, the proposal would result in a loss of the generation of 300kwh per year of renewable energy at No. 107. While this represents a modest amount of the overall energy generating capacity of the panels, it would nevertheless have a detrimental effect on climate change in negatively impacting the generation of renewable energy.

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<sup>1</sup> McLennan, R v Medway Council & Anor [2019] EWHC 1738 (Admin)

<sup>2</sup> APP/Y5420/D/22/3291608

10. To address this, a photovoltaic solar array would be installed at the appeal property. Submitted information estimates the annual generating capacity of these panels to be over 2000kwh. This would generate a level of renewable energy that would be well in excess of that lost at No. 107 due to overshadowing. It would therefore result in a net increase of renewable energy generation, which in serving to address climate change, would be in the public interest.
11. The appeal has also been accompanied by an Energy Statement, outlining how the proposal would follow the principles of the energy hierarchy through energy efficient design and measures to reduce the risk of potential overheating. It reviews various energy efficient systems and low or zero carbon energy sources, highlighting which would not be viable at the appeal site, and that photovoltaic panels offer high carbon saving. The statement concludes that the proposal will achieve the required level of carbon reduction through an enhanced fabric and energy efficient systems alone, in addition to generating energy by the proposed solar panels.
12. For the reasons given I find the proposal would have a detrimental effect on the operation of the solar arrays on the neighbouring property at No 107 Wargrave Avenue as a result of overshadowing. However, this harm is outweighed by the proposed installation of solar panels at the appeal property which would ensure that overall it would have a positive effect on climate change. It would not conflict with Policies D6 and SI2 of the London Plan 2021, Policies SP4 and SP11 of the Haringey Local Plan Strategic Policies 2013 - 2026 or Policies DM11 and DM21 of the Haringey Development Management DPD 2017 insofar as they seek to ensure quality and sustainable development that applies the energy hierarchy, reduces carbon and greenhouse gas emissions, and ensures that climate change impacts are minimised.

### **Other Matters**

13. Interested parties have raised concerns that the proposal would also result in overshadowing of habitable rooms and gardens of neighbouring properties in addition to causing harm to the character of the area. I note that these did not form part of the reasons for refusal in this case and that the Council has not raised such concerns. On my observations and the submitted information I have no reason to disagree with the Council on these matters.
14. I acknowledge that the proposal has not adapted the roof extension from the previous scheme beyond the installation of the solar panels. Nevertheless, I find that the proposal before me would overcome the concerns of the previous Inspector with regard to impacts on climate change.
15. The potential for the proposal to establish a precedent has been raised. However, it has been assessed based on the specific circumstances of the site and the evidence before me. Little weight can be given to precedent in decision making as each case is considered on its own merits. Concerns regarding a party wall agreement are a civil matter and are therefore beyond the scope of this appeal.

### **Conditions**

16. The standard time limit condition as well as a condition that the development is carried out in accordance with the approved plans are necessary in the

interests of certainty and proper planning. The approved plans condition includes reference to the Energy Statement. A condition relating to the materials is not necessary as it is noted on the plans that these will match the existing building. I have also attached a condition that the solar panels shall be operated, maintained and retained at the site in the interests of climate change.

### **Conclusion**

17. For the reasons given, the proposal would accord with the development plan when taken as a whole. There are no material considerations worthy of sufficient weight that indicate the appeal should be determined other than in accordance with the development plan. The appeal should therefore be allowed subject to the conditions in paragraph 1 of this decision.

*C Rafferty*

INSPECTOR