

Appeal Decision

Site visit made on 9 June 2023

by A M Nilsson BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2023

Appeal Ref: APP/A5840/D/23/3321090

13 Chadwick Road, London SE15 4RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr. Wrendulph Saint-Hilaire against the decision of London Borough of Southwark.
 - The application Ref 22/AP/3750, dated 28 October 2022, was refused by notice dated 17 March 2023.
 - The application sought planning permission for the construction of a rear part single, part double storey extension without complying with a condition attached to planning permission Ref 20/AP/2716, dated 24 December 2020.
 - The condition in dispute is No. 1 which states that: The development shall be carried out in accordance with the following approved plans; 13CHD P-02 PROPOSED FLOOR PLANS Plans - Proposed 22/10/2020 and 13CHD P-04 PROPOSED ELEVATIONS Plans - Proposed 24/11/2020.
 - The reason given for the condition is: For the avoidance of doubt and in the interests of proper planning.
-

Decision

1. The appeal is allowed and planning permission is granted for the construction of a rear part single, part double storey extension at 13 Chadwick Road, London, SE15 4RA in accordance with the application Ref 22/AP/3750 made on the 28 October 2022 without complying with condition No. 1 set out in planning permission Ref 20/AP/2716 granted on 24 December 2020 by the Council of the London Borough of Southwark but otherwise subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of the original decision, that being 24 December 2020.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Existing/Proposed Plans – Drawing Number P003 (dated 19/01/23); Existing/Proposed Elevations – Drawing Number P006.
 - 3) The materials to be used in the implementation of this permission shall not be otherwise than as described and specified in the application and on the drawings hereby approved unless the prior written consent of the local planning authority has been obtained for any proposed change or variation.
 - 4) The flat roof of the single storey rear extension hereby permitted shall not be used other than as a means of escape and shall not be used for any

other purpose including use as a roof terrace or balcony or for the purpose of sitting out.

- 5) The dwelling shall not be occupied until details to demonstrate how the highest standards of fire safety would be achieved, have been submitted to, and approved in writing by the local planning authority, unless, and to the satisfaction of the local planning authority, it can be demonstrated that there is reasonable justification for an exemption. The approved details shall be implemented prior to occupation of the dwelling and shall thereafter be retained as such at all times.

Preliminary Matters

2. The application subject to this appeal is for a minor material amendment¹. It seeks approval of revised but not substantially different design to an extension approved in December 2020². This type of application is possible as a condition was imposed on the original permission specifying the approved plans. The appeal seeks removal of the condition and replacement with a condition specifying the plans that reflect the amended design.
3. The development that has taken place has breached condition 1 which requires that the development shall be carried out in accordance with the following approved plans; 13CHD P-02 PROPOSED FLOOR PLANS Plans - Proposed 22/10/2020 and 13CHD P-04 PROPOSED ELEVATIONS Plans - Proposed 24/11/2020.
4. The appellant seeks to vary the approved plans to require that the development shall be carried out in complete accordance with the details shown on the submitted plans, Existing/Proposed Plans – Drawing Number P003 (dated 19/01/23); Existing/Proposed Elevations – Drawing Number P006.
5. The Council are of the view that the development that has been carried out on site is not the same as in the currently proposed plans. I observed on my site visit that the development that had been undertaken appeared to be the same as the submitted plans. Either way, I have considered the appeal on the basis of the submitted plans. It is not within the confines of this appeal for me to provide legal confirmation that the development which has been undertaken is the same as that shown on the submitted plans.

Main Issues

6. The main issues are 1) the effect that varying the condition would have on the living conditions of occupants of 15 Chadwick Road with regard to outlook, and 2) whether or not the development would achieve the highest standards of fire safety.

Reasons

Living conditions occupants of 15 Chadwick Road

7. The appellant's evidence sets out the differences between the approved plans and the plans that are sought to replace the approved plans, and the appellant has summarised the amendments to include; increasing the depth of the

¹ See Flexible options for planning permissions: Guidance, March 2014 (Ministry of Housing, Communities & Local Government)

² Planning permission ref: 20/AP/2716

ground floor element of the two storey rear extension by 0.5m and increasing the ridge height of the two storey rear extension by 0.13m and the width by 0.76m; altering the ground floor rear doors and replacing the first floor rear window with a Juliet balcony; and reducing the height of the single storey ground floor rear extension by 0.2m and centring the roof lantern.

8. The appeal property is a two-storey double fronted end of terrace dwelling. It is located on the southern side of Chadwick Road. Many of the surrounding properties have two and single storey rear extensions that creates small gaps between the rear and sides of properties before opening out into the rear garden.
9. The proposed amendments to the approved scheme would increase the projection of the ground floor element of the two-storey section. Given its overall height and siting, this would not cause harm to the outlook of any surrounding residential properties.
10. The increase in the overall height is by a relatively minor amount. The increase in the width of the two-storey section would, however, bring this bulk of the extension closer to no. 15 Chadwick Road than the approved scheme. A reasonable separation from no. 15 Chadwick Road of approximately 4 metres would, however, be maintained. Although the extension would be visible from the property and its garden, this separation combined with the overall scale, siting and mass of the extension would not cause unreasonable harm in terms of the outlook from the property nor would it result in an unreasonable sense of enclosure.
11. The proposed development would conflict with the Residential Design Standards Supplementary Planning Document (SPD) (2011 (Updated 2015)) which outlines that rear extensions should not exceed 3 metres in height to prevent a feeling of enclosure and that 3 metres is usually the maximum depth that can be added. This would also apply to the extant consent and despite the conflict, I have found that the circumstances of this case are such that the impact would not be unreasonable.
12. The Council have referred to conclusions made by an Inspector in a previous appeal. It is clear however in the evidence that there are differences from the scheme previously considered and the scheme before me. Either way, I am not bound by the previous decision and have drawn my own conclusions based on the evidence before me and my observations on my site visit.
13. The variation of the disputed condition would therefore not have an unacceptable impact on the living conditions of occupants of no. 15 Chadwick Road with regard to outlook. It would comply with Policy P56 of the Southwark Plan (2022) and Policy D4 of the London Plan (2021) which outline, amongst other things, that development should not be permitted when it causes an unacceptable loss of amenity to present or future occupiers or users, having regard to, amongst other things the outlook of occupiers. It would also comply with the requirement of the National Planning Policy Framework (2021) that development achieves a good standard of amenity.
14. Although the proposed development would conflict with the Residential Design Standards SPD in terms of its height and projection, it would comply with the guidance that outlines that extensions should not unacceptably affect the amenity of neighbouring properties. This includes outlook.

Fire Safety

15. The Council also refused planning permission as they considered the Reasonable Exception Statement that was submitted was incomplete and no justification was provided as to why the proposal would be exempt from a Planning Fire Safety Strategy. The Council considered that the proposal, therefore, failed to demonstrate how it would achieve the highest standards of fire safety in line with the requirements of Policy D12(A) (Fire Safety) of the London Plan (2021).
16. This policy sets out the criteria that development should achieve to ensure they achieve the necessary standards of fire safety. For a householder development such as this, it is possible for developers to submit a Reasonable Exception Statement in the event that the current fire safety measures are appropriate and will not be adversely affected by the development.
17. In the current appeal, I observed on my site visit that although the dwelling was furnished it did not appear to be occupied. I recognise that the development amounts to the extension of an existing dwelling and there is nothing unusual about its layout or means of access. I also acknowledge that, as outlined in the supporting text to Policy D12, the matter of fire safety compliance is also covered by Part B of the Building Regulations.
18. Having regard to these factors, I consider that it would be appropriate to impose a planning condition preventing occupation of the property until the appellant has submitted details to demonstrate how the highest standards of fire safety would be achieved, unless, and to the satisfaction of the local planning authority, the appellant can demonstrate there is reasonable justification for an exemption.
19. Through imposing this condition, the development would comply with the requirements of Policy D12 of the London Plan (2021) in relation to fire safety.

Other Matters

20. Objections were received in relation to the loss of light. This is not pertinent to the main issue and did not form part of the Council's reasons for refusal. Given the siting of the extension, combined with the orientation of the properties in a southerly direction, compared to the extant consent, I do not consider that the amendments would cause an unreasonable loss of daylight or sunlight. I note that the Council were of the same view.
21. Representations received refer to the planning history as it relates to the rear extension. I acknowledge that repeated notifications of applications, including where development has been undertaken that is not in accordance with previously approved plans, can be of frustration to interested parties. However, these do not provide a reason to dismiss the appeal where I have found the proposed development to be acceptable on its own merits.
22. It is considered in representations that allowing the amendment would encourage others to do exactly what they want regardless of existing laws and regulations. The planning process does not preclude retrospective applications. Developers carrying out work without, or in breach of, the appropriate consent do so at their own risk. I have confined my decision to the plans before me, including having regard to the extant consent and other material planning considerations.

23. Objection has been received in relation to the impact on privacy. The matter of privacy is not pertinent to the main issue and did not form part of the Council's reasons for refusal. The level of overlooking is, however, not considerably greater than that of the previously approved first floor window. The design does not allow for wide ranging views, and I do not consider that this element of the development causes unacceptable harm. In line with the Council's suggested condition, I have imposed a condition preventing the use of the flat roof as a balcony.
24. The appeal property is situated within the Holly Grove Conservation Area (HGCA). I have had regard to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires that special attention be given to the desirability of preserving or enhancing the character or appearance of a conservation area.
25. The significance of the HGCA is widely experienced, so proposals must be judged according to their effect on it as a whole and must therefore have a moderate degree of prominence. Given that the proposal relates to development to the rear of the property, of which there would be limited visibility from within the street scene or other public areas, it would not be detrimental to the character and appearance of the HGCA and thus preserve its significance. I note that the Council did not refuse planning permission in relation to heritage matters.

Conditions

26. In addition to the standard time limit condition (amended to relate to the original consent), I have imposed a condition reflecting the variation to the list of approved plans. I have retained the non-disputed condition in relation to matching materials, in the interests of the character and appearance of the area.
27. Having regard to the introduction of policies relating to fire safety since the original decision, I have imposed a condition requiring the submission of details of how the dwelling will achieve the highest standards of fire safety.
28. In light of the amended design, I have imposed a condition restricting the use of the flat roof of the single storey rear extension. This is in the interests of the living conditions of occupants of surrounding residential properties in relation to privacy.

Conclusion

29. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

A M Nilsson

INSPECTOR