



Appeal Decision

Site visit made on 24 August 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 12 October 2023

Appeal Ref: APP/V5570/W/23/3315605

84 Gillespie Road, Islington, London, N5 1LN

- 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 Ms Natalie Abrahams of OCNA Ltd against the decision of the Council of the London Borough of Islington.
- The application Ref P2022/3142/S73, dated 24 August 2022, was refused by notice dated 17 October 2022.
- The application sought planning permission for the subdivision of the building into two residential units. Single storey rear extensions at ground, first and second floor levels including external terrace area at second floor level, rear dormer roof extension, solar panels and rooflight to front roof slope and new rooflight to ground floor front projection. Change of use of the existing ground floor shop space to residential use including removal of shopfront, new and replacement fenestration to the rear and replacement fenestration to the front and associated works without complying with a condition attached to planning permission Ref P2022/0004/FUL, dated 15 July 2022.
- The condition in dispute is No 2 which states that: The development hereby approved shall be carried out in accordance with the following approved plans: CF-DR-166-0005-D, CF-DR-166-1100-G, CF-DR-166-1105-C, CF-DR-166-1110-F, CF-DR-166-1120-F, CF-DR-166-1210-C, CF-DR-166-1220-E, CF-DR-166-1240-C, CF-DR-166-1310-C, CF-DR-166-9900-B, Sustainable Design & Construction Statement 03.12.2021, Design and Access Statement 31.12.2021 166_REP_211231_DAS-PlanningApp, Daylight and Sunlight Report 22/12/2021 1835/JN, Basement Statement 30/06/2022, Cellar Comparison 28/06/2022 166_REP_220628_CellarComparison.
- The reason given for the condition is: To comply with Section 70(1)(a) of the Town and Country Act 1990 as amended and the Reason for Grant and also for the avoidance of doubt and in the interest of proper planning.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by the appellant against the Council. This is the subject of a separate Decision.

Procedural Matters

3. An application under Section 73 of the Act cannot be used to obtain a planning permission that would require variation of the description of development for which permission was originally granted. Therefore, if amending a condition would result in a conflict between it and the description of development, then

that amendment is beyond the powers available under Section 73 and therefore cannot be made.

4. Among other aspects, the application seeks the variation of the No 2 'plans condition', in order to relocate the external terrace area at the rear of the property, from the second floor level to the third floor level.
5. The description of development for which planning permission was originally granted is specific in listing the main items of work to it applies. There is no ambiguity in the phrase 'Single storey rear extensions at ground, first and second floor levels including external terrace area at second floor level'. Indeed, the rear extension would be as distinct and independent an item of work, as any other specifically listed within the description. As the works detailed on the submitted plans would therefore substantially exceed those detailed within the description of development for which planning permission was originally granted, conflict would result.
6. I have consulted the parties on the above matter. Having done so, I can appreciate the appellant's desire for some form of determination to be made in relation to the issue in contention. However, insofar as my findings above indicate that the scheme falls outside the scope of Section 73 of the Act, my further consideration of the matters raised in relation to the appeal would not be appropriate.
7. For the reasons outlined above, I conclude that the appeal scheme falls outside the scope of Section 73 of the Act, and therefore that a new planning application is required. That being so, no further action will be taken on the appeal.

Conclusion

8. For the reasons set out above, I conclude that the appeal should be dismissed.

S Lo

INSPECTOR