



Appeal Decision

Site visit made on 28 September 2023

by **E Worley BA (Hons) Dip EP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14.11.2023

Appeal Ref: APP/A5270/W/22/3312639

51 Craven Avenue, Ealing W5 2SY

- 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 Mr A Seferaj against the decision of London Borough of Ealing.
- The application Ref 221623VAR, dated 13 April 2022, was refused by notice dated 6 December 2022.
- The application sought planning permission for the conversion of a dwellinghouse into three self-contained flats; associated amenity, cycle storage, and waste storage spaces; single-storey rear/infill wraparound extension incorporating a roof terrace at first floor level (following demolition of existing rear extension); first floor rear/infill extension; roof extension to rear of main roofslope incorporating a Juliet balcony; and installation of three rooflights to front roofslope without complying with conditions attached to planning permission Ref 193775FUL, dated 31 August 2022.
- The conditions in dispute are Nos 2 and 7 which state that: 'The development hereby approved shall be carried out in accordance with the drawing titles: Location Plan; 02 Rev. C (Received 02.06.2020); 03 Rev. B (Received 06.05.2020); 04 Rev. B (Received 06.05.2020); 05 Rev. A (Received 23.03.2020); 06 Rev. B (Received 06.05.2020); 07 Rev. B (Received 06.05.2020); 08 Rev. A (Received 23.03.2020); and 10 Rev. A (Received 23.03.2020)' and 'No part of the roof, other than the roof terrace hereby approved and illustrated in the drawings listed in Condition 2, shall be used as or altered to form a balcony, roof garden, roof terrace or similar amenity area'.
- The reasons given for the conditions are: 'For avoidance of doubt and in the interest of proper planning' and 'To protect the living conditions of occupants of nearby properties in accordance with policies 7.6 of the London Plan (2016); and 7A, 7B and 7.4 of the Ealing Development Management DPD (2013)'.

Decision

1. The appeal is allowed and planning permission is granted for the conversion of a dwellinghouse into three self-contained flats; associated amenity, cycle storage, and waste storage spaces; single-storey rear/infill wraparound extension incorporating a roof terrace at first floor level (following demolition of existing rear extension); first floor rear/infill extension; roof extension to rear of main roofslope incorporating a Juliet balcony; and installation of three rooflights to front roofslope at 51 Craven Avenue, Ealing W5 2SY in accordance with the application Ref 221623VAR dated 13 April 2022, without complying with condition numbers 2 and 7 previously imposed on planning permission Ref 193775FUL dated 31 August 2022, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The development has already been carried out. At my site visit, I noted some minor differences between the submitted plans and the development that has been implemented. This includes the design of the dormer extension, including the fenestration and the installation of metal railings to the external amenity space in lieu of frosted glass. Moreover, I cannot be certain that other elements of the scheme that have been built reflect the submitted plans. For the avoidance of doubt, I have determined the appeal on the basis of the submitted plans.
3. The appeal relates to an application under S73 of the Town and Country Planning Act 1990 (the Act). It seeks to vary the list of approved plans, commonly termed a 'minor material amendment'. The Planning Practice Guidance clarifies that there is no statutory definition of a minor material amendment, but that it is likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved.
4. The revised proposal would result in amendments to the design of the extension, to include an external amenity area to serve the second floor flat. The overall scale and nature of the development would not be substantially different to that previously approved. As such, I am satisfied that the minor material amendment process is appropriate, and I have considered the appeal accordingly. I recognise that the Council has its own 'Protocol for Minor Amendments following a grant of Planning Permission', however, whether a proposal falls within the scope of S73 of the Act is a matter of judgement for the decision maker.
5. The S73 application was made prior to the date of the original planning permission as it was submitted in response to a draft decision notice, which was issued in advance of the formal decision notice. However, it was determined by the Council after the final decision notice was issued.

Background and Main Issues

6. The appellant seeks to vary the list of approved plans imposed by condition 2 in order to facilitate a revised design to the approved extensions and alterations to convert the building into 3 self-contained flats. The removal of condition 7 is also sought to allow the erection of the roof terrace. Government guidance is clear that under S73 of the Act I must consider only the conditions in question, in this case the amended design.
7. The main issues are the effect of the proposed development on i) the character and appearance of the area; and ii) the living conditions of the occupiers of neighbouring properties, having particular regard to overlooking of rear gardens.

Reasons

Character and appearance

8. The appeal site comprises a semi-detached dwelling located in a street comprising residential properties of a similar appearance. The rear elevations of the dwellings in the row back onto the railway line and have been subject to a

range of alterations and additions of different designs and sizes, including single and 2 storey projections to the rear and additions to the roof.

9. The main difference between the approved and revised schemes is the increase in the height of the walls to the first floor rear extension in order to create a parapet to enable the addition of a second floor terrace above the flat roof below. The terrace would be further enclosed by frosted glass to the sides and front.
10. The extension overall would remain subservient in scale to the host dwelling and of a sympathetic design. Given the varied form and appearance of the rear elevations of the surrounding residential properties, including terraces at roof level at the neighbouring properties on either side, the proposal, along with the frosted glass screen, would not be significantly at odds with the surrounding built form.
11. I therefore conclude that the proposed revised design would not harm the character and appearance of the area. Consequently, the proposal would accord with Policy D3 of the London Plan 2021 (LP), in so far as it requires development proposals to enhance local context by delivering buildings and spaces that positively respond to local distinctiveness and Policy D6 of the LP which among other things, sets out that housing development should be of high quality design. It would also accord with Policy 7.4 of the Ealing Development Management Development Plan Document adopted 2013 (DPD) which requires development in Ealing's existing built areas to complement its street sequence, building pattern, scale, materials, and detailing.
12. The Council's refusal reason also refers to Policy D4 of the LP, however this focuses principally upon processes which assist in ensuring the delivery of design quality and is therefore largely irrelevant to the first main issue.

Living conditions of occupiers of the neighbouring properties

13. The balcony would be fully enclosed by frosted glass above a brick plinth to the sides and front, at varying heights of 1.5m and 1.7m. Whilst this arrangement would enable longer distance views from the terrace above the frosted panels, particularly the lower sections, any direct overlooking of the immediately adjoining gardens below would only arise if the occupiers of the property were stood close to the edge of the terrace. The frosted glass would therefore prevent any direct overlooking downwards over the adjoining gardens during normal day to day use of the outdoor space, including sitting on the terrace.
14. Moreover, the appeal site is in an urban setting where a degree of overlooking of rear garden areas is commonplace. As well as windows in the rear elevations in the neighbouring dwellings on this side of Craven Avenue, the extant permission at the appeal property includes a first floor balcony. There are also second-floor balconies immediately adjoining the site at 49 and 53 Craven Avenue. As such, the neighbouring gardens do not benefit from a high degree of privacy.
15. For the forgoing reasons I find that the proposed balcony would not give rise to an unacceptable degree of overlooking or loss of privacy to the surrounding rear gardens. Consequently, it would not harm the living conditions of the occupiers of the neighbouring properties through loss of privacy. In that regard

the proposal would accord with Policy D3 of the LP, which among other things, requires development proposals to deliver appropriate privacy.

Conditions

16. As this appeal relates to an application under section 73 of the Town and Country Planning Act 1990, and I am only considering the disputed conditions, it is necessary to reimpose those on the previous permission. However, as the original development has started, there is no need to impose a time limit condition. I have imposed an amended approved plans condition to reflect the amended scheme and to provide certainty.

Conclusion

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

E Worley

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan; Dwg No. 02 Rev D Existing/Proposed elevations; Dwg No. 03 Rev C Existing/Proposed elevations; Dwg No. 04 Rev B (Received 06.05.2020); Dwg No. 05 Rev B Proposed 1st floor plan; Dwg No. 06 Rev C Proposed 2nd floor plan; Dwg No. 07 Rev C Proposed section; Dwg No. 08 Rev B Proposed roof plan and Dwg No 10 Rev A (Received 23.03.2020).
- 2) All external materials to be used in the development shall match the appearance of those of the existing building and shall be consistent with those as listed within the submitted application form and the drawings/plans as listed in Condition 1.
- 3) A minimum of two (2) 240.0 litre bins dedicated to recycling, two (2) 240.0 litre bins dedicated to refuse, and three (3) 23.0 litre bins dedicated to food waste shall be provided in the curtilage of the property in accordance with Dwg No. 10 Rev. A (Received 23.03.2020) of the Approved Plans and the adopted standards of the London Plan (2016). Such provision shall be brought into use prior to first occupation and retained permanently.
- 4) A minimum of three (3) secured cycle parking spaces shall be provided in the curtilage of the property in accordance with Dwg No. 10 Rev. A (Received 23.03.2020) of the Approved Plans and the adopted standards of the London Plan (2016). Such provision shall be brought into use prior to first occupation and retained permanently.
- 5) Enhanced sound insulation for the approved dwelling units shall be installed to achieve an enhanced sound insulation value $D_{nT,w}$ [and $L'_{nT,w}$] of at least 5dB above the Building Regulations value, for the floor/ceiling/wall structures separating different types of rooms/uses in adjoining dwellings, namely kitchen/living/dining areas above/below bedrooms of separate dwellings. The enhanced sound insulation measures shall be installed and fully completed prior to the first use and / or first occupation of the unit(s) and maintained thereafter.

*******end of conditions*******