



Appeal Decision

Site visit made on 31 October 2023

by G Ellis BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 November 2023

Appeal Ref: APP/H5960/D/23/3327829 84 Charlmont Road, Tooting SW17 9AB

- 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 Sam Hill against the decision of the London Borough of Wandsworth.
 - The application Ref 2023/1852, dated 14 May 2023, was refused by notice dated 13 July 2023.
 - The application sought planning permission for alterations including retention of hip to gable roof extension to main roof and extension above two-storey back addition; erection of single, part two-storey rear extension; Installation of windows to side elevation without complying with a condition attached to planning permission Ref 2022/4187, dated 18 January 2023.
 - The condition in dispute is No.3 which states that: *Notwithstanding the detail shown on the approved drawings, prior to the occupation of the development, the new and replacement windows in the south-west side elevation at first and second floor level of the development shall be obscure-glazed and non-opening (unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed). The windows shall so be maintained and retained as such.*
 - The reason given for the condition is *to control overlooking and safeguard the privacy of neighbours in accordance with Council policy DMS1(c) of the Development Management Policies Document (adopted March 2016) coupled with the requirements of the National Planning Policy Framework 2021.*
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not the disputed condition is relevant to the development, necessary, in the interests of protecting amenity, and reasonable in all other respects.

Procedural Matter

3. The Wandsworth Local Plan 2023-2038 (WLP) was adopted on 19 July 2023 superseding the Core Strategy and the Development Management Policies Document (March 2016). The policies within these plans cited in the decision notice have thereby been replaced by the relevant policies within the WLP which was referred to in the decision notice as Local Plan Publication Version (2023).

Reasons

Background and Planning History

4. The side (southern) boundary to No.84 Charlmont Road forms the rear boundary to No.82A Charlmont Road and Nos.11 to 23 Brightwell Crescent. The flank elevation is positioned at the end of the gardens of Nos. 11 and 13 and currently contains three windows at the first-floor level.
5. The plans for the approved scheme (Council reference 2022/4187) show that two of the first-floor windows are to serve en-suites and the middle window, which is the window in dispute, is to a study. The plans have an annotation which indicates that the two en-suite windows would be obscurely glazed. In granting planning permission condition 3 required all the first and second floor flank windows to have obscure glazing and be non-opening below 1.7m.
6. There are two previous applications relating to the property. Planning permission was granted in November 2019 (application reference 2019/4254) for '*Alterations including erection of part single, part two-storey rear extension*' and the accompanying plans show a single first-floor flank window serving a bathroom. An application for a Certificate of Lawful Development (LDC) was also granted in November 2019 (application reference 2019/3449) for alterations to the roof and a rear extension. As noted on the decision notice, and in line with conditions of the permitted development rights *any window inserted on a wall or roof slope forming a side elevation of the dwellinghouse must be obscure-glazed, and non-opening unless the parts of the window which can be opened are more than 1.7 metres above the floor of the room in which the window is installed*. The accompanying plans show two new second-floor windows and that the existing first-floor window would serve a bedroom. The 'existing' first-floor window which was directly above a ground-floor window and positioned towards the rear of the main flank elevation is no longer in situ.

Reasons

7. As set out in paragraph 56 of the National Planning Policy Framework (the Framework) planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.
8. In refusing the application for the variation of the condition, which would enable the middle window to have clear glazing, and in the original planning application, the Council's concerns are that the siting and scale of the flank windows would lead to a marked sense of overlooking and loss of privacy for neighbouring occupiers.
9. The appellant advises that the room served by the middle window is a bedroom, rather than a study, and as such it was unreasonable to require it to be obscurely glazed, and that there was always a clear glazed window at the first-floor level.
10. There is no evidence before me which provides specific details of the original flank window. All of the plans are marked "proposed" or "as constructed" and the type of glazing is not indicated. Nonetheless, even accepting that the original window had clear glazing, it has been removed.

11. The now-inserted windows are in a different position with the clear glazed middle window sited further to the west. It is also wider than the original and is an opening sash window. The window serves a small box room. Whilst I do not doubt that the room serves a useful purpose for the occupiers it is limited in size and is below that of a single bedroom as set out in the *Technical housing standards – nationally described space standard*.¹
12. In my view, based on the information before them, it was reasonable for the Council to make the judgement that the room could be obscurely glazed without harm to the occupier's living conditions. The development also significantly increases the number and scale of windows to the flank elevation. I agree with the Council that this both increases the potential opportunities for direct overlooking and creates a perceived loss of privacy to the occupiers of the neighbouring properties in Brightwell Crescent.
13. In accordance with paragraph 55 of the Framework consideration should be given to whether otherwise unacceptable development could be made acceptable through the use of planning conditions. The restrictions to the windows provided mitigation and thereby enabled the development to proceed where it would otherwise have been necessary to refuse planning permission.
14. In conclusion, I find that the condition was reasonable, necessary and directly related to the development proposed. The variation sought by the appellant to the wording of the condition would fail to protect the amenities of the occupiers of the neighbouring properties. Thus, it would be contrary to policy LP2 of the WLP which seeks to protect the amenity of occupiers of nearby properties including against unacceptable and perceived levels of overlooking.
15. For the reasons set out the appeal is dismissed.

G Ellis

INSPECTOR

¹ Statutory guidance Published 27 March 2015 - c. in order to provide 1 bedspace, a single bedroom has a floor area of at least 7.5m² and is at least 2.15m wide.