



Appeal Decision

Site visit made on 10 October 2023

by M J Francis BA (Hons) MA MSc MCIfA

an Inspector appointed by the Secretary of State

Decision date: 23 November 2023

Appeal Ref: APP/P5870/W/23/3319279

38 Miami House, Sandy Lane North, Wallington, Sutton SM6 8JX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A 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 Chris Dulley against the Council of the London Borough of Sutton.
- The application Ref DM2022/01668 is dated 13 September 2022.
- The application sought planning permission for alterations to fenestration and alterations to roof heights without complying with condition no 4 attached to planning permission Ref DM2019/00926, dated 18 June 2019.
- The condition in dispute is no 4 which states that: 'The ground and first floor windows on the north and east elevations of the development hereby approved shall be glazed with obscure glass to a level 5 glass privacy standard, and fixed shut to a height of 1.7 metres above the finished floor level of the room in which the window is installed in a manner that they cannot be opened and retained thereafter'.
- The reason given for the condition is: 'To safeguard the current level of privacy enjoyed by the occupants of adjoining properties in accordance with and to ensure compliance with Policy 29 of the Sutton Local Plan 2018.'

Decision

1. The appeal is dismissed and planning permission is refused.

Main Issue

2. The appeal is against the failure of the Council to determine the planning application. The Council have stated that not complying with the condition would be unacceptable, and from this I understand that the application would have been refused.
3. Therefore, I consider that the main issue is the effect that not complying with condition no 4 would have on the living conditions of nearby residents with particular reference to the privacy of garden areas.

Reasons

4. The appeal site is a detached, part single, part two storey building containing four flats: two on each floor. It is located in a residential area of terraced and semi-detached, traditional housing. The building was formerly used as offices and was approved for change of use to residential following a planning appeal.¹
5. The building is irregularly shaped. Whilst the entrance to the building is on

¹ APP/P5870/W/23/3319279

Sandy Lane North, most of the elevations adjoin the boundaries of the rear gardens of houses on Upper Road, with the northern elevation abutting the garden of No 36 (No 36) Sandy Lane North.

6. The condition in dispute relates to windows on the north and east elevations of the building which are in flat 1 on the ground floor and flat 3 on the 1st floor.
7. Flat 1 has three windows on the north elevation that service a living room, bedroom 1 and bedroom 2. The windows were enlarged as part of planning permission Ref DM2019/00926. This elevation, however, forms a boundary with the adjoining property, No 36. The windows that have been inserted are bottom opening, and, therefore, when opened, they extend into the triangular area of land which is the side garden of No 36.
8. Furthermore, the windows were installed with clear glazing. Whilst I saw on my visit that the occupier of this property had as an interim measure, put an opaque covering over these three windows, if the condition was not complied with, there would be direct overlooking of the garden of No 36.
9. On the east elevation, flat 1 has a partially glazed door and a small window, both of which had obscure glazing in them at the time of my visit. The door provides access to a narrow external area with a high wooden fence, separating it from the rear garden of No 12 (No 12) Upper Road. The window, which is smaller than that shown on the approved plans, would, without the obscure glazing, look directly into the garden of No 12.
10. The larger kitchen window in flat 1, opens on one side, and has clear glass. As this window faces the wooden fence, and there is no intervisibility between this window and No 12, there is no overlooking. Therefore, this window does not harm the privacy of the occupiers of No 12.
11. Flat 3, on the first floor, has a large window on the east elevation which has a side opening. This window looks directly over the rear garden of No 12, and other gardens in this row to the east, including No 14 Upper Road. The location of this window and the overlooking that results, seriously harms the privacy of the garden of No 12 and that of adjoining properties.
12. Flat 3 has two windows on the north elevation which are set back behind the roof of a single storey projection beneath it. Both windows have a side opening and are clear glazed. The position of these windows, which are set at an angle to the garden area of No 36, means that the degree of overlooking of the garden would be more limited, with views mainly channelled to the street and the junction with Beddington Grove. Therefore, I do not consider that these windows harm the privacy of No 36.
13. The appellant has detailed that the building was in a poor state of repair prior to its change of use. Furthermore, the windows on the first floor were single glazed and clear and had openings to the side and fanlights above. On the ground floor, north elevation, there were small slot windows, which were also clear and opened out onto the neighbour's garden. The two ground floor windows and door on the eastern elevation, also previously existed.
14. The appellant considers that in trying to improve the living conditions of future occupiers of the building by changing the windows to double glazed units and

increasing the size of the windows on the northern elevation for flat 1², the situation for the occupiers is worse. This is because windows which were openable and clear, are now restricted.

15. However, in implementing the change of use a decision was made to apply to alter the windows in the building. Whilst there has always been overlooking between this building and neighbouring properties, the change from an office to residential use has resulted in a more intensive use of the building than would have existed previously. Therefore, the Council sought, through condition 4, to protect the privacy of the occupiers of adjoining properties.
16. Therefore, I conclude that removing condition no 4 would significantly harm the living conditions of the occupiers of adjoining properties, in particular the occupiers of No 36 and No 12, in relation to the privacy of their garden areas.
17. The proposal would therefore not accord with Policy 29 of the Sutton Local Plan 2016-2031, February 2018, which states that planning permission will not be granted if it adversely affects the amenity of current or future occupiers of adjoining or nearby properties, or residents of the surrounding area.

Other Matters

18. Details of a 'compromise' with regards to obscure glazing and openable windows has been presented to the appellants by the Council. This has not been agreed and is not part of this appeal. The appellant has also suggested restrictors on the opening windows of the ground floor of flat 1, however, there would still be full visibility between the flat and the garden area of No 36.
19. Occupiers of the flats in the building have referred to their rights for access to daylight and fresh air, and the health effects of not having this, in addition to the need for openable windows required to provide an emergency exit in case of fire. However, the windows are meant to be obscurely glazed for the reasons I have identified, and my decision does not prevent them from opening above 1.7 metres.
20. I have taken into consideration the Human Rights Act, 1998, and recognise that the dismissal of the appeal would interfere with some of the appellants' and occupiers' rights under Article 8 of the First Protocol. Article 8(1) states that everyone has a right to respect for their private and family life, their home and their correspondence.
21. Regard must also be had, however, to the protection of the living conditions of neighbouring properties. Therefore, I consider that it is in the wider public interest to interfere with the qualified rights under Article 8 in order to remedy the harm that has been caused. In making this decision, I consider that any interference with those rights is necessary and proportionate and in accordance with the law.

Conclusion

22. For the reasons set out above, considering the development plan as a whole and all relevant material considerations, the appeal is dismissed.

M J Francis INSPECTOR

² DM2019/00926