



Appeal Decision

Site visit made on 13 July 2023

by P Storey BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Appeal Ref: APP/K5600/W/23/3314778

49 Bassett Road, London W10 6JR

- 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 Bassett Road LLP against the decision of the Council of the Royal Borough of Kensington and Chelsea.
- The application Ref PP/22/05318, dated 22 September 2022, was refused by notice dated 25 November 2022.
- The application sought planning permission for development described as "Variation of condition 2 (approved drawings) of planning permission 16/01881 involving demolition of walls between carriage house and main building and rear wall", without complying with a condition attached to planning permission Ref PP/17/06062, dated 21 December 2017.
- The condition in dispute is No 2 which states that:
Save for compliance with condition 20, the development shall not be carried out except in complete accordance with the details shown on submitted plans
Site Location Plan: 01; 02.
Existing drawings: 09; 10; 11; 12; 13A; 14A; 20; 21; 22; 23; 24.
Proposed drawings: 5411-PL-099 01; 5411-PL-100 01; 5411-PL-101 01; 5411-PL-102 01; 5411-PL-103 01; 5411-PL-104 01; 5411-PL-105 01; 5411-PL-200 01; 5511-PL-201 01; 5411-PL-202 01; 5411-PL-204 01; 5411-PL-205 01; 5411-PL-206 01; 5411-PL-31- 01.
Demolition drawings: 5411-PL-110 01; 5411-PL-111 01; 5411-PL-112 01; 5411-PL-113 01; 5411-PL-114 01; 5411-PL-115 01.
- The reason given for the condition is:
The details are material to the acceptability of the proposals, and to ensure accordance with the development plan.

Decision

1. The appeal is allowed and planning permission is granted for development described as "Variation of condition 2 (approved drawings) of planning permission 16/01881 involving demolition of walls between carriage house and main building and rear wall", at 49 Bassett Road, London W10 6JR, in accordance with the terms of the application, Ref PP/22/05318, dated 22 September 2022, without compliance with condition No 2 previously imposed on planning permission Ref PP/17/06062, dated 21 December 2017, but subject to the conditions set out in the schedule attached to this decision.

Preliminary Matters

2. An update to the National Planning Policy Framework (the Framework) was published on 19 December 2023 but there are no material changes relevant to the substance of the appeal.

Background and Main Issue

3. Planning permission was granted on 30 June 2017 under application Ref PP/16/01881 for, among other things, the change of use of the building to provide 6 residential units including extensions and alterations to the fenestration. Planning permission was subsequently granted on 21 December 2017 under application Ref PP/17/06062 to vary condition 2 (approved drawings) of planning permission Ref PP/16/01881. The appeal proposal seeks a further variation to the approved drawings condition of planning permission Ref PP/17/06062 to include a balcony to the first-floor rear elevation to serve Flat 4.
4. Based on the above, and the reason given in the Council's decision notice, the main issue is the effect of varying the condition on the living conditions of the occupiers of neighbouring properties, with particular regard to privacy and noise.

Reasons

5. The appeal site is a building on the corner of Bassett Road and St Mark's Road. Flat 4 is located on the first floor of the building. At the time of my visit the flat was not occupied and internal works were taking place. The living room of the flat is currently served by a window on its rear elevation. Outside of this window is the flat roof of the floor below, which is enclosed to the edges by a brick parapet. The proposal seeks to install a glazed door in place of the existing living room window to allow the flat roof to be used as a balcony. The proposed balcony would not cover the full extent of the flat roof, with steel railings proposed within the confines of the brick parapet edge.
6. I note previous planning applications have been refused for balconies at the property. However, I have been provided with limited substantive details of these proposals or how they compare to those currently before me. As such, I have determined the appeal on the matters relevant to the current scheme.
7. Policy CL5 of the Royal Borough of Kensington and Chelsea Local Plan, September 2019 (the LP) requires all development to ensure good living conditions for occupants of new, existing and neighbouring buildings.
8. The existing consent includes balconies to the rear elevation of the floor directly below Flat 4. Both the Council and interested parties raise concerns that the resulting cumulative effects of the proposal would increase overlooking and lead to an unacceptable loss of privacy to the neighbouring properties on St Mark's Road.
9. Although no formal access to the flat roof currently exists, I was able to gain access via the living room window during my visit. From here, I was able to gain a realistic perspective of the potential for overlooking from the proposed balcony. When viewed from the rear, the neighbouring properties on St Mark's Road appear to be between 4 and 5 storeys tall with many rear-facing windows, most of which appear to be at a similar or lower height than the proposed balcony. These properties also feature rear gardens and external amenity areas, including terraces and balconies at a similar height to that proposed.
10. The proposed balcony would be bound on two sides by the outer brick walls of Flat 4, comprising the rear elevation containing the living room and en-suite

windows, and the side wall of a brick offshoot containing a bedroom. Views towards the rear of the neighbouring properties on St Mark's Road would be limited to an extent by the projecting brick offshoot. Less restricted views would be afforded further away from the offshoot near to the existing living room window. However, the neighbouring windows would sit at an oblique angle in these views, with limited potential for direct overlooking into the rooms. Moreover, views towards these properties are currently afforded from the living room window of Flat 4, particularly those positioned at a similar or higher level.

11. The proposal would generate a slight increase in the potential for overlooking from Flat 4 towards neighbouring properties on St Mark's Road, particularly those at a lower level. However, the balcony and windows of the flat below Flat 4 currently offer relatively unrestricted views of these windows. Furthermore, both the rear elevation and balcony of the flat below step further out and closer to the windows on St Mark's Road than those of Flat 4. Because of the limited depth of the proposed balcony, the potential for overlooking would not significantly increase.
12. Views towards the neighbouring properties to the west on Bassett Road would be limited by the extent of the balcony, which would be contained by railings. As such, the proposal would not increase the potential for overlooking of these properties.
13. With specific regard to privacy, criterion c. of Policy CL5 requires that there is reasonable visual privacy for occupants of new development and for occupants of existing properties affected by new development. Based on the considerations above, the proposed development would retain reasonable visual privacy for occupants of neighbouring properties, as required by the policy.
14. With regard to noise, The Council and interested parties again consider the cumulative effect of the proposal, together with the existing balconies, would lead to unacceptable living conditions for the occupiers of neighbouring properties.
15. Whilst the proposed balcony would enable access to a space that is not currently formally accessible, it would not appear especially functional as a social space. In particular, its shallow depth and linear shape would limit its use for large-scale gatherings and would inhibit the installation of larger items of furniture such as dining tables. Although it would be elevated above several neighbouring properties, it would be smaller and less functional when compared to the consented balconies on the floor below and several existing outdoor amenity areas on St Mark's Road. It would also be set further away from the properties on St Mark's Road than the consented balconies.
16. With specific regard to noise, criterion e. of Policy CL5 requires that the reasonable enjoyment of the use of buildings, gardens and other spaces is not harmed due to increases in, among other factors, noise and disturbance. Based on the size and shape of the proposed balcony, its potential usage and the context of the surroundings, the proposal would not generate a level of noise or disturbance that would harm the reasonable enjoyment of neighbouring properties in terms of Policy CL5. The proposal would thereby comply with its provisions.

17. For the reasons given above, the proposed variation to the condition would not harm the living conditions of the occupiers of neighbouring properties in terms of privacy or noise and would therefore comply with Policy CL5 of the LP, the aims of which are set out above.

Other Matters

18. The appeal site is within the Oxford Gardens Conservation Area (the CA). As such, I have had regard to the statutory duty in section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of the area. Insofar as it relates to the appeal, the significance of the CA derives from its role as a predominantly residential area of tree-lined streets and traditional townhouses. Although many such properties have been converted to flats, they generally retain modest front and rear gardens with a mix of private and communal amenity areas, including balconies and terraces. Taking account of the characteristics of the proposed development and those of the wider area, the proposal would not appear out of keeping with its surroundings and would therefore preserve the character and appearance of the CA.
19. The appellant's stated aim that the addition of a balcony would improve the marketability of the property holds no weight in favour of the proposal. Nevertheless, having identified no harm relating to any other matters, this would not be a determinative factor in the appeal.

Conditions

20. The Planning Practice Guidance (the PPG) makes clear that decision notices for the grant of planning permission under section 73 of the Town and Country Planning Act 1990 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect. I have therefore imposed the conditions of the earlier planning permission that I consider remain relevant, having regard to the PPG and paragraph 56 of the Framework.
21. Because the development has been implemented it is not necessary to impose a condition limiting the period for implementation. The approved plans condition will be amended and reimposed to reflect the revised plans.
22. The Council has provided an edited list of the conditions attached to the earlier planning permission to reflect where details have subsequently been approved pursuant to conditions. I have amended these conditions to reflect the approved details.
23. The appellant does not consider that conditions 5, 6, 8, 9, 13, 15 and 16 remain relevant because they do not relate specifically to the balcony to which the appeal is primarily concerned. However, the effect of a successful application under section 73 will be to create a new planning permission for the development as a whole. Whilst these conditions may not relate specifically to the balcony, I am provided with no compelling evidence that most of these conditions are no longer relevant to the development as a whole. I have therefore reimposed these conditions.

24. The exception to the above is condition 16 relating to works to the bellmouth junction on Bassett Road, which appeared to have been completed at the time of my visit. This condition is therefore no longer necessary.
25. Conditions 17 and 18 relate to the development meeting certain standards in terms of energy performance and water efficiency. The appellant states that these standards have already been met and the conditions are no longer relevant. However, the unit to which the balcony relates remains unoccupied. In the absence of any substantive evidence that the requirements of the conditions have been met, I consider these conditions remain relevant.

Conclusion

26. For the reasons given above, I conclude that the appeal should be allowed subject to the conditions listed in the attached schedule.

P Storey

INSPECTOR

Schedule of Conditions

- 1) The development shall be carried out in accordance with the details shown on the following approved plans:
Site Location Plan: 01; 02.
Proposed drawings: 5411-PL-099 01; 5411-PL-100 01; 5411-PL-101 01; 5411-PL-103 01; 5411-PL-104 01; 5411-PL-105 01; 5411-PL-200 01; 5411-PL-204 01; 5411-PL-205 01; 5411-PL-206 01; 5411-PL-31- 01; A230 Rev A; A231 Rev A; A232 Rev A.
- 2) Notwithstanding the details on the approved plans, the details relating to external materials, brickwork, boundary walls, fences and railings shall accord with those approved under application Ref CON/19/08286 approved on 06/02/2020.
- 3) The development shall be carried out in accordance with the Construction Traffic Management Plan approved under application Ref CON/17/07084 approved on 21/12/2017.
- 4) The construction works shall be supervised in accordance with the details approved under application Ref CON/17/04823 approved on 08/09/2017. In the event that the appointed engineer ceases to perform that role for whatever reason before the construction works are completed those works will cease until a replacement chartered engineer with a Chartered Civil Engineer (MICE) or Chartered Structural Engineer (MI Struct.E) qualification has been appointed to supervise their completion and their appointment confirmed in writing to the Local Planning Authority. At no time shall any construction work take place unless an engineer is at that time currently appointed and their appointment has been notified to this Authority in accordance with this condition.
- 5) No construction works shall take place unless the lead contractor, or the site, is signed to the Considerate Constructors Scheme (CCS) and its published Code of Considerate Practice, and the details of (i) the membership, (ii) contact details, (iii) working hours as stipulated under the Control of Pollution Act 1974, and (iv) Certificate of Compliance, are clearly displayed on the site so that they can be easily read by passing members of the public, and shall thereafter be maintained on display throughout the duration of the works forming the subject of this permission.
- 6) The development shall be carried out and maintained in accordance with the scheme of landscaping approved under application Ref CON/18/00759 approved on 15/03/2018.
- 7) The development shall be carried out in accordance with the details contained in "Tree Protection Plan Construction Phase Rev 3; Statement of tree and root protection by Area 29 Design & Build" of tree protection details pursuant to the application to discharge the requirements of Condition 8 of planning permission PP/16/01881 contained within application CON/17/06455 and approved on 13/11/2017, to ensure the

trees on and adjacent to the site are protected during site preparation, demolition, construction, landscaping, and other operations on the site including erection of hoardings, site cabins, or other temporary structures, and the development shall be carried out only in accordance with the details so approved.

- 8) All tree and shrub planting forming part of the plans and details approved through this planning permission shall be carried out in the first planting and seeding season following the first occupation of the development or the completion of the development whichever is the sooner. Any trees or shrubs which, within a period of five years from the first planting and seeding season referred to above, die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 9) All work and work of making good shall be finished to match the existing exterior of the buildings in respect of materials, colour, texture, profile and, in the case of brickwork, facebond and pointing, and shall be so maintained.
- 10) The windows hereby permitted shall be timber framed, white painted, double hung, sliding sashes, and so maintained.
- 11) The roof slopes of the buildings hereby permitted shall be clad in natural slates, and so maintained.
- 12) The rooflights hereby approved shall be of a traditional conservation type, flush with the roof and slim framed, and so maintained.
- 13) The railings hereby approved shall be painted black, and so maintained.
- 14) During construction of the development hereby permitted the submitted Sustainable Urban Drainage System (SuDS) detailed within the SuDS Feasibility Study and Detailed Drainage Strategy (R/161073/F002) shall be fully implemented and maintained thereafter.
- 15) The dwellings shall achieve Level 4 of the Code for Sustainable Homes equivalent in relation to energy performance and none shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 4 equivalent for this criterion has been achieved.
- 16) The dwellings shall achieve compliance with optional requirement G2 (2) (b) and none shall be occupied until Building Regulations approval has been issued for it certifying that these criteria have been achieved.

***** End of conditions *****