



Appeal Decision

Site visit made on 8 May 2024

by Alison Scott (BA Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd May 2024

Appeal Ref: APP/K5600/W/23/3335790

1 Fernshaw Close, Kensington and Chelsea, London SW10 0TA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Patrick Taylor against the decision of Royal Borough of Kensington and Chelsea.
 - The application Ref is PP/23/05798 dated 31 August 2023, was refused 1 November 2023.
 - The application sought planning permission for: Re-positioning of front door entrance to property (original door to be replaced with window to match existing) and insertion of two new windows at first floor level, to vary a condition attached to planning permission Ref PP/14/06304, dated 26 November 2014.
 - The condition in dispute is No 4 which states that: The first floor windows to the northern side elevation hereby permitted shall be obscurely glazed and fixed shut, and shall be so maintained.
 - The reason given for the condition is: To safeguard the privacy of neighbouring property and in accordance with Policy CL5 of the Core Strategy.
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Decision

1. The appeal is allowed and planning permission is granted for Re-positioning of front door entrance to property (original door to be replaced with window to match existing) and insertion of two new windows at first floor level at Number 1 Fernshaw Close, Kensington and Chelsea, London SW10 0TA, and subject to the following conditions within the attached schedule.

Preliminary Matters

2. Planning permission was granted by the Council for works to the dwelling to include repositioning of the front door and new windows to the first floor north elevation. This permission was approved with a series of conditions imposed. Condition Number 4 was imposed to ensure the north side windows were non-openable and obscurely glazed. A variation of this permission was sought by the appellant to amend Condition 4 to allow the opening of the windows with the use of a 100mm restrictor hinge applied to the window in the interest of ventilation for the occupant.
3. At the time of my visit I could see that the window glazing was obscured and there was a window latch on each window with lock. The windows were fully locked and an occupant of the dwelling was able to unlock and open the windows whilst I was there.

Main Issue

4. The main issue is the effect of the proposal on the living conditions of the neighbouring occupiers with particular regard to overlooking and loss of privacy.

Reasons

5. The appeal site is located in the Sloane/Stanley Conservation Area. Its significance is derived from its good quality housing stock built as speculative development between 1845 and 1880. Highly decorated pairs of villas, long rows of stucco fronted and brick and stucco terraces on a grid pattern, create a pleasing uniformity to street scenes here.
6. The appeal site is a historic and detached dwelling set back from the main road and surrounded by residential development. This proposal concerns two bedroom windows on the first floor. From my inspection of the room, the bedroom was a large space with three windows to three walls. Only one window on the east side of the bedroom was unrestricted and the occupant of this room rely on the free flow of air from this window and an unobscured outlook. The other oriel style window is non-openable.
7. The aperture concerned is large as a whole and comprises of a central window divided into small panes that is entirely fixed into position with a side hung casement window to each side. Both of which have hinges, a leaver handle and a traditional style latch. By opening the windows, I could see that the opening range of the side hung windows together with their height would allow full overlooking to the rear windows and external spaces and gardens of a number of dwellings that backs onto the appeal site along Fulham Road. This unrestricted nature of opening would lead to an unacceptable loss of privacy to these occupants.
8. The submitted evidence demonstrates the 100mm width of opening that the window hinge restrictor would allow, and sense of outlook from this perspective by the occupant of the room. Further to my own inspection, a restrictor set at this width would prevent the full capacity opening of the window and mitigate the more harmful effects of an unrestricted opening here. The slight degree and angle of opening the restrictor would control, the outlook the occupant of the room would be exposed to would be onto a very limited range of view towards the neighbour's windows, gardens and open spaces. The overlooking that would occur would be largely onto the flat roof below the window. The restricted view towards the dwellings and rear spaces on Fulham Road, seen at a distance away, would cause very limited opportunity to unacceptably harm the living conditions of these neighbouring occupants.
9. The benefit of opening the window is to provide natural ventilation into the bedroom which has no mechanical air conditioning, and I consider that this would make the room more comfortable for its occupant to enjoy. This is material in my reasoning to improve the living conditions of the occupier and whereby I consider the living conditions of the neighbouring occupants to be on balance, safeguarded.
10. To conclude on this main issue, the application of a restrictor opening fitted to 100mm would ensure the living conditions of the neighbouring occupants are

safeguarded in accordance with the good living standards of Policy CL5 of the Kensington and Chelsea Local Plan 2019.

Other Matters

11. Although situated within the CA, and I am mindful of my statutory duties in accordance with 72(1) of the Planning (Listed Buildings and Conservation Areas) Act (the Act), there has been no concerns raised with regards to the proposal's affect upon the character or appearance of the CA. I have no reason to contradict these findings.

Conditions

12. As this is a Section 73 application, I am at liberty to amend, vary, add or remove conditions attached to the original planning permission. Given my findings and in accordance with paragraph 56 of the National Planning Policy Framework, I will appropriately vary condition 4 of the original permission. In the interest of completeness, I impose a suitably worded condition to ensure these windows remain obscurely glazed in the interest of safeguarding the living conditions of the adjacent occupants, as well as plan numbers reimposed for completeness. As the works to the original permission have commenced, there is no requirement to impose a time limit to implement the permission.

Conclusion

13. For the reasons set out above, I conclude that the appeal should be allowed.

Alison Scott

INSPECTOR

Schedule of Conditions

1. The development shall be carried out in complete accordance with the details shown on submitted plans 408 AL(0): /001/101/103/104/110 Rev C (Revised NW elevation), 110 (Proposed NE & SW Elevations), 121(Proposed section AA & BB), 121 (Proposed Section CC).
2. The windows to the north elevation shall be fitted with a 100mm restrictor hinge opening in accordance with plan reference 408 AL(0)110 Rev C and maintained for the lifetime of the development.
3. The windows to the north elevation shall be obscurely glazed for the lifetime of the development.

