



Appeal Decision

Site visit made on 9 July 2024

by J Moore BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 August 2024

Appeal Ref: APP/H5960/W/23/3333121

Flat A, 125 Tooting Bec Road, London SW17 8BW

- 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 Jackie Crainey against the decision of the Council of the London Borough of Wandsworth.
 - The application Ref is 2023/2741.
 - The application sought planning permission for *Alterations and retention of rear/side extension and side and rear lightwells. Retention of first floor roof terrace* without complying with conditions attached to planning permission Ref 2022/4913, dated 24 March 2023.
 - The conditions in dispute are:
 - No 1 which states that: The development hereby permitted shall be completed in full within 4 (four) months from the date of this permission.
 - No 2 which states that: The development shall be carried out in accordance with the reports, specifications and drawings detailed Site Location Plan MA187 501 Rev P1, Exist and Prop 1st Floor Plan MA187 612 Rev P2 (received 14/02/23), Proposed Elev. Sections MA187 553 Rev P1 (received 20/12/22), Proposed Front & Rear Elevs MA187 554 Rev P1 (received 20/12/22), Proposed Side Elevation MA187 555 Rev P1 (received 20/12/22), Proposed Site Section BB MA187 551 Rev P1 (received 20/12/22), Proposed Site Section CC MA187 552 Rev P1 (received 20/12/22), Exist & Prop Basement MA187 610 Rev P1, Exist & Prop Ground Floor MA187 611 Rev P1 and Planning Statement Letter (dated 21st November 2022).
 - The reasons given for the conditions are:
 - No 1: To prevent the accumulation of unimplemented planning permissions and to comply with Section 91 of the Town and Country Planning Act 1990 (as amended) and to meet the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004 and to meet the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015.
 - No 2: To ensure a satisfactory standard of development and to allow the local planning authority to review any potential changes to the scheme.
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Decision

1. The appeal is dismissed insofar as it relates to condition No 2.
2. The appeal is allowed insofar as it relates to condition No 1 and planning permission is granted for *Alterations and retention of rear/side extension and side and rear lightwells. Retention of first floor roof terrace* at Flat A, 125 Tooting Bec Road, London SW17 8BW in accordance with the application Ref 2023/2741, without compliance with condition No 1 previously imposed on planning permission Ref 2022/4913 dated 24 March 2023 and subject to the following conditions:

- 1) The development hereby permitted shall be completed in full within 3 (three) months from the date of this decision.
- 2) The development shall be carried out in accordance with the reports, specifications and drawings detailed Site Location Plan MA187 501 Rev P1, Exist and Prop1st Floor Plan MA187 612 Rev P2 (received 14/02/23), Proposed Elev. Sections MA187 553 Rev P1 (received 20/12/22), Proposed Front & Rear Elevs MA187 554 Rev P1 (received 20/12/22), Proposed Side Elevation MA187 555 Rev P1 (received 20/12/22), Proposed Site Section BB MA187 551 Rev P1 (received 20/12/22), Proposed Site Section CC MA187 552 Rev P1 (received 20/12/22), Exist & Prop Basement MA187 610 Rev P1, Exist & Prop Ground Floor MA187 611 Rev P1 and Planning Statement Letter (dated 21st November 2022).
- 3) All external materials used in the construction of the development hereby approved shall match the type, texture, tone, colour, size and profile of those used on the existing building and shall be retained permanently.
- 4) Within 4 (four) months, the first floor terrace as shown on drawing numbers Proposed Elev. Sections MA187 553 Rev P1 (received 20/12/22), Proposed Side Elevation MA187 555 Rev P1 (received 20/12/22), Proposed Site Section BB MA187 551 Rev P1 (received 20/12/22) the obscure glazed screening to each side and rear at a minimum height of 1.7m above finished floor level shall be installed and completed in full. The screening shall be retained and maintained as such thereafter.

Preliminary and Procedural Matters

3. In December 2023, The National Planning Policy Framework (the Framework) was revised. The main parties have had the opportunity to comment on any implications of the revised Framework within the appeal timetable.
4. The application sought to vary condition No 2 (the standard plans condition) of planning permission Ref 2022/4913 to effectively amend the approved scheme, with particular regard to a single storey rear/side extension, a side lightwell and the internal layout for Flat A. The application further sought to vary condition No 1 (the time period for the completion of the development) to extend the period to 7 months rather than 4 months, in order to undertake works without risk to existing tenanted occupiers. Through the passage of time, this timescale has been exceeded, but the appeal submissions indicate that the appellant still seeks the variation as applied for.
5. Furthermore, the appellant states that if I were to vary condition No 2 in accordance with the submitted plans, the proposal would be in accordance with that already built, and thus condition No 1 would be complied with. However, the application form and accompanying information indicates that the development has been started but not completed, and that the variations are also sought to enable alterations to the internal layout. Furthermore, the Council considers that the development as built is not in full accordance with the submitted plans. My own observations indicate that the extension as built includes a parapet feature to the end of the roof nearest the lightwell and this feature does not consistently appear in the submitted plans, even though it appears in proposed section drawings.

6. Drawing all the above factors together, it seems to me that the Council reasonably considered the application under s73 rather than s73A, and therefore so shall I. For the avoidance of doubt, it is not the role of an Inspector dealing with a section 78 appeal to determine whether a proposed development as built is in accordance with submitted plans. I have therefore considered the proposed plans as submitted.

Background and Main Issue

7. The appeal property is a two storey, mid-terraced building. The property comprises 3 flats, to include roof accommodation, with communal access at street level. Flat A is located at basement and ground floor level. The neighbouring property at No 127 Tooting Bec Road (No 127) also comprises flats.
8. The planning history of the appeal site includes various permissions for the conversion of the property to flats, other alterations and extensions. In particular, planning permission Ref 2017/6109 was granted in 2018 for the erection of a single-storey rear/side extension and excavations to create a basement. This permission was not constructed in accordance with the approved plans, and enforcement proceedings were commenced.
9. A subsequent enforcement appeal ref: APP/H5960/C/21/3267284 was dismissed in 2022. The Inspector upheld the enforcement notice, planning permission was refused, and the enforcement notice was corrected and varied to require certain matters, including the removal of an unauthorised single storey rear/side extension and roof terrace over the rear ground floor extension, or alternatively remedial works for the single storey rear/side extension to accord with the approved plans under permission Ref 2017/6109. The Inspector also found that due to its height, depth and proximity to neighbouring windows at No 127, the single storey rear/side extension (with hipped roof) caused harm to the outlook of neighbouring occupiers at No 127.
10. Two further planning applications were made during 2020 and refused, before the permission Ref 2022/4913 was granted in 2023 to regularise matters (the approved scheme). Among other things, the approved scheme includes the retention of the single storey rear/side extension, but of a reduced size, and the retention of the side lightwell, but of an increased size.
11. In the appeal before me, the dispute concerns the effect of the proposed single storey rear/side extension (the extension) upon the living conditions of neighbouring occupiers at No 127, with particular regard to outlook.
12. Therefore, the main issue is whether the varying of conditions Nos 1 and 2 is reasonable and necessary having regard to the living conditions of neighbouring occupiers at No 127, with particular regard to outlook.

Reasons

13. The proposed extension would have a stepped back recessive pitched roof form. A boundary wall to a height of about 2.5m would run along the shared boundary to No 127, to include the flank of the proposed extension.
14. No 127 comprises flats and includes a rear single storey extension projecting from its outrigger. From the evidence before me, which includes an approved

floorplan¹ for No 127, the ground floor of the extended outrigger serves as an open plan living/dining and kitchen area to a ground floor flat. My own observations indicate that it serves as such. This room therefore falls to be considered as a habitable room, and it functions as the main living space of the flat. Consequently, its openings play an important role in the outlook for its occupiers. The room is served by three windows along its flank elevation which face towards the proposed extension and also by a partially glazed door with side lights (about two thirds of the door height) within its rear elevation. Consequently, the room has a limited dual aspect.

15. Due to the overall scale, form and siting of the proposed extension, together with the separation distance towards No 127, and the height of the boundary wall, the proposed extension and boundary wall would appear overbearing and dominant from the windows in the flank elevation of No 127. While the dual aspect nature of the room at No 127 would provide an alternative outlook, this would be limited as I have set out above. Consequently, the proposed extension would harm the living conditions of neighbouring occupiers at No 127. Furthermore, the absence of an objection from neighbouring occupiers at No 127 does not set aside my findings, as I must also consider the living conditions for any future occupiers of No 127.
16. The appellant suggests that the proposal represents the same immediate boundary treatment as that of the approved scheme. Even so, the proposed extension before me would be of a longer length along the shared boundary with No 127 than that of the approved scheme, and therefore it would be more harmful than it. The fact that the proposed extension would be of a stepped back recessive pitched roof form, and thus less harmful than any previously approved or refused scheme with a pitched roof does not overcome the harm that I have found. Likewise, neither does the fact that the proposed boundary wall would be about 15cms above the 2m height under permitted development rights.
17. The appellant draws my attention to the fact that if the appeal property were a dwellinghouse, permitted development rights could result in an extension along the boundary to No 127 at 3m depth and 2.5m in height. However, this has not been robustly demonstrated, and such rights do not apply to flats. Consequently, this is neither a theoretical or realistic fallback position and attracts no weight either for or against the proposal.
18. In reaching my findings, I have carefully considered the further drawings submitted by the appellant to the appeal which seek to demonstrate the effect of the proposal upon the outlook from No 127. In doing so, I note a discrepancy between certain plans. Drawing Ref: MA187 552 Revision P1a: Prop Site Section CC is stated to be a copy of an approved plan with a line added to indicate a boundary wall of 2m height. However, in comparing this to the approved drawing Ref MA187 552 Revision P1: Prop Site Section CC, as listed within the decision notice, the proportions of the roof and flank elevation appear discordant.
19. In any event, overall, the submitted drawings only serve to demonstrate the proximity, scale and form of development that would be within view from each window along the side elevation of No 127, which in my judgement would

¹ Ref: 2006/5481

result in unacceptable harm to the outlook of the occupiers of the ground floor flat at No 127.

20. For these reasons, the proposal to vary condition No 2 would result in unacceptable harm to the living conditions of neighbouring occupiers at No 127. It would conflict with Policy LP2 of the Wandsworth Local Plan 2023, which seeks to ensure that development does not have an overbearing impact, and the objectives of the Framework, which seeks to ensure that developments create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users.
21. I therefore conclude that Condition No 2 is reasonable and necessary in the interests of the living conditions of neighbouring occupiers at No 127, with particular regard to outlook. Furthermore, as a standard plans condition, it is reasonable and necessary in order to provide certainty and clarity to the permission. It would also ensure a satisfactory standard of development and to allow the local planning authority to review any potential changes to the scheme.
22. Given the above, I can only conclude that it would be reasonable and necessary to vary condition No 1 in order to allow a further period of time for the development to be completed as approved under permission Ref 2022/4913. The application form sets out the change sought as "change the wording to extend the period to 7 months rather than 4", and the appellant's submissions indicate that the variation sought is as applied for.
23. The appellant's rationale for this wording was that the lease for the tenants in the lower ground floor was due to expire on 11 September 2023, and the appellant considered that the completion of the works would be extremely difficult and possibly dangerous. However, there is no substantial evidence to demonstrate this, nor that vacancy is the only safe way to undertake the works.
24. Given that a period of a further three months was sought for all works, and in light of the small-scale nature of the necessary works, I consider that a time period of three months would be reasonable. Such a condition would be reasonable and necessary to prevent the accumulation of unimplemented planning permissions and to comply with Section 91 of the Town and Country Planning Act 1990 (as amended) and to meet the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004 and to meet the requirements of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

Other Matters

25. The proposal includes alterations to the internal layout of Flat A, whereby the appellant advises that this would result in Flat A reverting to a duplex apartment and would address previous concerns with the quality of accommodation at basement level. However, it has not been demonstrated that the proposal is the only way to achieve such an objective. Even if it were so, this matter would attract limited weight in favour of the proposal and would not outweigh the unacceptable harm that I have found.

Conditions

26. In accordance with my findings above, I have imposed condition No 1 to require the completion of the development within 3 months of my decision. I have also considered the other conditions attached to permission Ref 2022/4913. Condition No 3 seeks to control the materials used in the development. As the development is not yet completed in accordance with the approved plans to permission Ref 2022/4913, it is reasonable and necessary to impose this condition. The Council states that the works required within Condition No 4 (which relate to the roof terrace and screening) have been completed. However, the second part of this condition refers to the retention of such works thereafter, and therefore it is reasonable and necessary to impose this condition.

Conclusion

27. For the reasons above, the appeal should be dismissed insofar as it relates to Condition No 2 (approved plans) and allowed insofar as it relates to Condition No 1 (time limit for completion of the development). Therefore, the planning permission should be varied as set out in my formal decision.

J Moore

INSPECTOR