



Appeal Decision

Hearing held on 23 May 2007

Site visit made on 23 May 2007

by Brendan Lyons BArch MA MRTPI IHBC

**an Inspector appointed by the Secretary of State for
Communities and Local Government**

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
e-mail: enquiries@planning-inspectorate.gsi.gov.uk

Date: 17 July 2007

Appeal Ref: APP/X5210/A/06/2027133

30 Daleham Gardens, London NW3 5DD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by C & J Balogh against the decision of the Council of the London Borough of Camden.
- The application Ref 2006/0477/P, dated 26 January 2006, was refused by notice dated 23 March 2006.
- The development proposed is conversion of attic to provide additional accommodation.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Procedural Matters

1. Before the hearing, the Council sought to withdraw two of its three reasons for refusal of the planning application which is the subject of this appeal. These related to the proposal's effect on the character and appearance of the conservation area and to inadequate car parking. As the parties were agreed that parking was not an issue, I heard no evidence on that matter. However, as I have a statutory duty to consider whether the proposal would preserve or enhance the character or appearance of the conservation area, I heard evidence on the issue and have had regard to it in my decision on the appeal.
2. As part of their appeal submission, the appellants provided an amended drawing, No 02337/TP1/01/A, showing floor plans and elevations. This was identical to the plan considered by the Council with the planning application, but with some misleading labelling removed. At the hearing, the Council accepted that this plan was a fair representation of the proposal. Also at the hearing, a revised section drawing, No 02337/TP1/02, was provided. This was the plan that had been submitted with the planning application, the plan submitted with the appeal being incorrect. As no disadvantage would be caused to any party, I have accepted these plans for my consideration of the appeal.

Main Issue

3. I consider that the main issue in this appeal is whether the proposal would result in the creation of a sub-standard unit of residential accommodation.

Planning Policy

4. National policy on housing is set out in Planning Policy Statement 3: Housing (PPS3). This supports the effective and efficient use of land, making best use of previously developed land and raising densities. The value of conversion of existing housing is recognised.

5. Both parties to the appeal have referred to the London Plan, published in 2004, but I have not been provided with any relevant extracts of the Plan's policies.
6. The development plan includes the London Borough of Camden Replacement Unitary Development Plan (RUDP), adopted in June 2006. Strategic policies in Part I of the Plan include S1, which promotes sustainable development, and S2, which seeks a high quality of life for all members of the community, sustainable land use patterns and protection of local amenity. Detailed policies include SD4, which calls for efficient use of land and high residential densities in appropriate locations. SD6 seeks to protect amenity of occupiers and neighbours, including matters of privacy and overlooking. Policy B1 states general design principles, while B3 sets specific criteria for alterations and extensions. Policy B7 states that development in a conservation area will only be approved if it would preserve or enhance the special character or appearance of the area. New housing is covered by Policy H1, which states that the Council seek to meet and exceed its housing target, and will grant permission for development that provides additional residential accommodation, provided that it reaches acceptable standards. The fullest possible residential use of underused buildings will be sought. H8 calls for a mix of unit sizes, best suited to site conditions and the locality.
7. The Council has issued Supplementary Planning Guidance (SPG), covering internal arrangements for residential development and design of roofs and terraces. It has also prepared a Conservation Area Statement for the Fitzjohns / Netherhall Conservation Area, in which the appeal site is situated. As these documents have been subject to public consultation, they are material considerations of substantial weight.

Reasons

8. The appeal relates to the attic of a large four-storey house that has been converted into self-contained flats. The attic is currently in use for domestic storage and forms part of the leasehold of the appellants' flat, a maisonette situated on the ground and lower ground floors of the house, but accessed by a separate entrance. It is proposed to convert the attic to habitable space, comprising a small shower room and bedroom, accessed by an enclosed internal staircase. The space would be lit by forming a round window in one of the gables, and a line of five roof-lights in the rear roof slope. The stairs and the area around it would be lit by two roof-lights, one in each slope of the stairwell roof.
9. Two planning applications for conversion of the space to a self-contained flat, including the addition of a dormer window, were dismissed on appeal in 2006.
10. The application was for "conversion of attic to provide additional accommodation", and the covering letter submitted with the application clarified this as "additional accommodation for our existing flat". There was clearly no intention to create an additional unit. Although the plan labels the proposed room as a bedroom, the appellants made clear at the hearing that they envisaged that over time it could also be used as a study or for any other normal domestic activity.
11. At the hearing, the Council confirmed that there were no policy objections to the habitable use of the space. I agree that such use would accord with policy objectives on the sustainable use of previously developed land and buildings, in particular with RUDP Policy H1.

12. The Council's first reason for refusal of the application was based on a concern that the attic is too separate from the appellants' flat to prevent it easily being turned into a self-contained unit, without the Council's knowledge or approval, and that this would be sub-standard accommodation, in terms of the SPG floor space requirements.
13. Government advice on "granny/staff annexes" in Paras 98 and 99 of Circular 11/95: *The Use of Conditions in Planning Permissions* is clear that it is legitimate for a local planning authority to seek to control the use and occupancy of extended living accommodation, where there is a risk of it being let or sold off as an independent unit and there are sound planning reasons why this would be unacceptable. It acknowledges that the risk is greater if the new accommodation is separate from the original. However, I find nothing in the guidance to suggest that such risk should lead to outright rejection of a proposed expansion of living area in the form of an annex, when other powers exist to address any later breach of planning control.
14. The appellants assert that the attic is already a part of their dwelling house, and that its habitable use, as distinct from the proposed external alterations, should not therefore need planning permission. Notwithstanding this, they accepted that control of the occupancy of the space would be warranted, and felt that this would be best achieved by the use of a planning condition, based on the model "granny annex" condition in Circular 11/95. Much of the parties' appeal submissions and debate at the hearing focused on the relative merits of achieving control by condition, as against the Council's preference for a planning obligation.
15. At the hearing the parties agreed the principles of a planning obligation, which they have subsequently completed. This incorporates the wording of the model condition, but would reinforce it by specifically preventing the use or occupation of the space at any time as a separate or independent dwelling unit. It would prevent the sale or lease of the attic as a separate unit and would require that any occupier of the space should have access to the appellants' flat "to the extent usually enjoyed by people living as a single household". Additional clauses would require notification to the Council of the implementation of the use and would allow the Council access to documentation for the purposes of monitoring compliance with the terms of the obligation. Transfer of the use of the space to another flat in the house would also be allowed, subject to the same terms and to notification of the Council.
16. I accept that, in this case, the separateness of the attic from the "parent" flat suggests that the risk of later subdivision would be similar to that envisaged by Circular 11/95. The space would not meet adopted SPG standards for a self-contained flat, even if, as the appellants suggested, some way could be found of including more floor area around the proposed staircase. Control of the occupancy and use of the space to ensure it was linked with the flat would be justified. I am satisfied that adequate control could be achieved by a condition as suggested by the appellants. As other leaseholders in the property also have shares in the freehold, I believe they would be vigilant in monitoring the use of the converted space and would quickly become aware of any significant breach of a condition, even if not notified as required by the appellants' lease. Regular monitoring by the Council would not be necessary or desirable.
17. The terms of the obligation now concluded go some way further than could a condition. It would not be reasonable for a condition to prevent the sale or disposal of the attic space,

particularly as this is not linked to its residential use. The possible later use of the space by another flat, which the appellants were keen to secure as part of any permission, would raise problems of precision and enforceability if incorporated into a more elaborate variation of the Circular 11/95 model condition, although the principle of such use would be acceptable.

18. Advice in Circular 11/95, endorsed in Circular 05/2005 *Planning Obligations*, is that planning objections to a proposal may be overcome equally well by imposing a condition or by entering a planning obligation, but that they should not be duplicated. In this case, I am satisfied that the terms of the concluded obligation would be as effective as a condition in preventing any potential harm and would achieve additional benefit by controlling potential sale of the attic and by allowing the later transfer of the space to another flat, without the need for an application to vary a condition. Therefore, I conclude that a condition would not be necessary as well as the obligation, and the normal preference for conditions over obligations should be set aside in this instance. With these controls in place, the proposal would comply with RUDP Policies H1 and SD4.

Other matters

19. The Council has withdrawn its objection to the effect of the external alterations to the building on the character and appearance of the conservation area. The proposed roof-lights are described as “conservation roof-lights”. This is not a precise term, and as the roof-lights, particularly the row of five on the rear roof slope, could have a detrimental impact if not well designed to be flush with the roof, I shall impose a condition requiring details to be agreed in advance. The detailed design of the opening and frame of the proposed round window also merits prior approval. I am satisfied that, subject to these details, there would be no significant adverse impact and that the character of the conservation area would be preserved. The proposal would comply with RUDP Policy B7 and SPG advice on roof alterations.

Conditions

20. The Council has requested a number of conditions. That requiring the appellants to enter a planning obligation would not have complied with advice in Circular 11/95, but is now unnecessary. Control of matching materials would be justified with regard to the brickwork for the proposed round window and for its frame.
21. Although impact on living conditions was not a reason for refusal of the application, the Council has proposed a condition restricting the visibility and opening of four of the proposed roof-lights on the rear slope to prevent views into the adjoining dormer, which serves habitable space on the upper level of the neighbouring flat. The plans had shown the three roof-lights closest to the dormer to be obscure glazed, but had not indicated opening lights. At the hearing, the Council agreed that its proposed wording was imprecise and would not achieve the desired effect but, following my inspection from within the dormer, asked that all five roof-lights be restricted.
22. I agree that without control of both the obscurity of the glazing and the degree of opening of the roof-lights, there would be a potential harmful impact on living conditions in the dormer room through loss of privacy. A top hung or pivoted light could allow an occupant of the attic to stand in the opening and turn to look directly into the dormer. Therefore, any opening lights should be side hung with a restricted opening and obscure glazed to prevent views back. As the proposed shower room would require mechanical ventilation, there

might be no need for it to have an opening light. The four roof-lights closest to the dormer should be obscure glazed, whether opening or not. When in the closed position, views from within the attic through the roof-light furthest from the dormer would be quite oblique. A detailed examination of the cross sections might reveal that obscure glazing would not be necessary if this were a fixed light. The condition requiring approval of details of the roof-lights could also cover these matters, in the interests of protecting neighbours' living conditions.

Conclusion

23. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Formal Decision

24. I allow the appeal, and grant planning permission for conversion of attic to provide additional accommodation at 30 Daleham Gardens, London NW3 5DD in accordance with the terms of the application, Ref 2006/0477/P, dated 26 January 2006, and the plans submitted with it, numbered 02337/TP1/01 and 02337/TP1/02, as later amended by the plan numbered 02337/TP1/01A, subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
- 2) No development shall take place until details of the round window hereby permitted have been submitted to and approved in writing by the local planning authority. The details shall include the construction of the window opening and its frame. Development shall be carried out in accordance with the approved details, and the materials to be used shall match those used in the existing building.
- 3) No development shall take place until details of the roof-lights hereby permitted have been submitted to and approved in writing by the local planning authority. The details shall include the construction of the roof-lights and their projection relative to the roof surface, the method of any opening and the restriction of the amount of opening, and the degree of obscurity of the glazing. Development shall be carried out in accordance with the approved details.

Brendan Lyons

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr C Balogh	Appellant
Mrs J Balogh	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Ms M Samuel	Planning Officer, London Borough of Camden
Mr A Brookes	Principal Lawyer, London Borough of Camden

INTERESTED PERSONS:

Mr P Goldsmith, Solicitor	39 Purcell Crescent, London SW6 7PB Representing the freeholder and a lessee.
---------------------------	--

DOCUMENTS

- 1 Attendance list
- 2 Council's notification letter and list of those notified
- 3 Dictionary definition of "ancillary", submitted by the appellants
- 4 Agenda for Discussion, submitted by the appellants
- 5 Extracts from lease, 30 Daleham Gardens, submitted by the appellants
- 6 Planning Obligation, dated 7 June 2007

PLAN

- A Plan No 02337/TP1/02: Existing & Proposed Sections A-A & B-B, Scale 1:100, January 06