



Appeal Decision

Site visit made on 18 March 2005

by **P A Davies** BSc(Econ) MCD Dip.URS MRTPI

an Inspector appointed by the First Secretary of State

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Date

27 APR 2005

Appeal Ref: APP/X5210/A/04/1159800

14 Makepeace Avenue, Highgate, London N6 6EJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr George O'Gorman against the decision of the Council of the London Borough of Camden.
- The application ref: 2003/3553/P, dated 4 December 2003, was allowed on 24 May 2004 subject to conditions.
- The development permitted is described as single storey rear extension to be used as children's play room and garden store.
- The condition in dispute is No.2 which states that: The flat roof of the roof extension shall not be used as a terrace or sitting out area.
- The reason given for the condition is: To preserve the residential amenity of neighbouring properties in accordance with Policy EN19 of the London Borough of Camden Unitary Development Plan (UDP) 2000.

Summary of Decision: The appeal is allowed and the planning permission varied, but only in order to correct a typographical error in the disputed condition, in the terms set out below in the Formal Decision.

Procedural Matters

1. This appeal against a condition attached to a grant of planning permission falls to be determined under Section 79(1) of the Town and Country Planning Act 1990, which indicates that the First Secretary of State may deal with the application as if it had been made to him in the first instance.
2. The proposed extension has been partially constructed. I have therefore treated the proposal as a retrospective application and determined the appeal in accordance with the provisions of section 73A of the Town and Country Planning Act 1990.
3. Although the appellant described the proposal as set out in the summary above, the Council has described the development as a single storey rear extension with railed walkway and stair access to garden. I consider this to be a fuller and more precise description and I have therefore determined the appeal on the basis of this description.
4. As the appeal property is situated in the Holly Lodge Conservation Area, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me in determining this appeal to have special regard to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

Main Issue

5. I consider the main issue in this case to be the effect of the proposal on neighbours' living conditions with particular regard to privacy and overlooking.

Planning Policy

6. The development plan for the area includes the London Borough of Camden Unitary Development Plan 2000 (UDP). Of the policies in the Plan to which reference has been made, I consider the following to be of most relevance to this appeal. Policy EN19 has the objective of safeguarding the amenity of occupiers and neighbours. It indicates that one of the considerations to be taken into account in assessing the impact of developments is the extent of any loss of privacy. Policy EN22 seeks to ensure, amongst other things, that extensions relate to the form, proportions and character of the existing building and its setting. Policy EN31 reflects the Council's statutory duty in respect of development in conservation areas.

Reasons

7. The partially completed single storey extension projects some 5.15 metres from the main rear wall of the appellant's house and abuts the boundary with the adjoining property (no. 16 Makepeace Avenue).
8. The rear gardens of the properties along the southern side of Makepeace Avenue slope quite steeply away from the houses. As a consequence, the flat roof of the proposed extension affords clear views down into the rear gardens of the neighbouring properties. A fence has been erected on the roof of the extension along the side boundary with the adjoining house (no. 16). I have considered whether the imposition of a condition to require its retention would sufficiently reduce the potential for overlooking to justify the deletion of the disputed condition. However, I have concluded that although the fence prevents views into the neighbouring house, the use of the large roof area as a terrace would still be likely to result in an unacceptable loss of neighbours' privacy as a consequence of overlooking of their gardens. I have noted that the residents of the next-door properties appear to have no objection, but this does not alter my view that the use of the roof as a terrace would represent an unneighbourly form of development that would be contrary to the provisions of UDP Policy EN19.
9. I have taken into account that the next-door houses both have small rear balcony areas which provide access to their gardens. However, because of their modest projections these structures do not, in my judgement, result in undue overlooking. For this reason, I do not regard them as precedents that would justify the removal of the disputed condition.

Other Considerations

10. Despite its substantial depth, I consider that the overall scale of proposed extension would not be out of proportion with the existing house and would not unduly affect its character or setting. In these respects, it complies with Policy EN22 of the UDP. For the same reasons, I also conclude on balance that the proposed development would not adversely affect the character and appearance of the Holly Lodge Conservation Area.

Conclusion

11. In order to protect neighbours' living conditions, I consider that a condition is necessary to prevent the use of the roof of the proposed extension as a terrace or sitting out area. However, the disputed condition incorrectly describes the extension as a "roof extension". I shall therefore vary the planning permission to delete the condition and replace it with a more appropriately worded one. On this basis only, and having regard to all other matters raised, I conclude that the appeal should succeed.

Formal Decision

12. I allow the appeal, and vary the planning permission ref: 2003/3553/P for a single storey rear extension with railed walkway and stair access to garden at 14 Makepeace Avenue, Highgate, London N6 6EJ, granted on 24 May 2004 by the Council of the London Borough of Camden, deleting condition 2 and substituting therefor the following condition:

- 2) The roof of the extension shall not be used as a terrace or sitting out area

P. Adams

INSPECTOR