
Appeal Decision

Site visit made on 2 June 2014

by M J Single Dip TP MRTPI

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

Decision date: 2 July 2014

Appeal Ref: APP/X5210/A/14/2214164
58b King Henry's Road, London, NW3 3RP

- 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 Mr Amit Green against the decision of the Council of the London Borough of Camden.
 - The application Ref 2013/5855/P, dated 19 August 2013, was refused by notice dated 13 December 2013.
 - The development proposed was described as works associated with the construction of a new basement and dwelling house including the removal and/or demolition of existing and installation of new roof, façade spandrel panels, doors glazing and conservatory structure, provision of new hard landscaping including bin and cycle store.
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Decision

1. The appeal is allowed and planning permission is granted for the excavation of a basement and rear extension at lower ground, ground and first floor levels and alterations to hard standing including bin store and cycle store to the front of the existing dwelling. Installation of new front door at ground floor level and replacement of glass balustrade to first floor level. Replacement windows and replacement spandrels between upper floor windows and parapet level to residential dwelling. Insertion of new windows to the rear elevation at second floor level (Class C3), at 58b King Henry's Road, London, NW3 3RP, in accordance with the terms of the application ref. 2013/5855/P, dated 19 August 2013, subject to the following conditions:
 1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
 2. The development hereby permitted shall be carried out in accordance with the following plans all prefixed 11169/A/P: 001; 200; 201; 202; 203; and 204; together with 11169/A/S/210; 11169/A/E/220/B and 11169/A/E/221.
 3. The side windows to the conservatory extension shall be obscure glazed and thereafter shall be so maintained.

Preliminary Matters

2. The planning application description of the proposed works was as set out in the banner heading at the top of this decision letter. This included the words
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"construction of a new basement and dwelling house". It is clear from the submissions that it is not proposed to construct a new dwelling, merely to make alterations and additions to the existing property. The Council changed the description to "Excavation of a basement and rear extension at lower ground, ground and first floor levels and alterations to hard standing including bin store and cycle store to the front of the existing dwelling. Installation of new front door at ground floor level and replacement of glass balustrade to first floor level. Replacement windows and replacement spandrels between upper floor windows and parapet level to residential dwelling. Insertion of new windows to the rear elevation at second floor level (Class C3)." This revision appears to have been accepted by the appellant, the proposal being set out in these terms on the planning appeal form. I have dealt with the proposal on this basis.

3. This planning application and appeal sought to incorporate into a single planning permission and development a previous permission ref. no: 2012/6456/P dated 27 March 2013 with, in addition, a conservatory on the flat roof of the rear extension permitted under that earlier consent, together with an extended basement area and minor alterations. It also proposes to incorporate a Lawful Development Certificate (LDC) ref. 2013/2983/P dated 31 May 2013 for other works.
4. In addition the appellant refers, as a fallback position, to a Lawful Development Certificate (LDC) ref. no.2013/4640/P for the installation of 2 metre high glass screens on top of the same permitted extension. The Council has taken the view that the LDC was issued in error and that the glass screens could not be permitted development at first floor level. However, Section 192 (4) of the 1990 Act provides that the lawfulness of a certificate which is in force shall be "conclusively presumed unless there is a material change before the operations are begun, in any of the matters relevant to determining such lawfulness". The Council has not referred to any change in such matters, other than having made a mistake. Whether the LDC is erroneous is not a matter within my remit in considering a Section 78 appeal. The appellant relies quite heavily on the fallback position, but on the merits of the proposal alone it has not been necessary for me to attach significant weight to this. I do note in the Council's Statement that whilst it considers the LDC to have been in error it concedes that the 'alleged' fallback would represent a significantly better design outcome.
5. The appellant queries the reference in the Council's decision to the proposed conservatory being at first floor level, preferring to describe it as upper ground level, but application drawing no. 11169/A/P/202 does, itself, annotate this as the first floor. The main ground floor entrance to the property is approached down a slight ramp from street level and would enter a hallway in the current proposals. Stairs would then lead up to a kitchen and dining room, at what seems logically to me to be the first floor, from which access would be gained to the conservatory. The layout of the site is such that there is a lower garden level to which access is gained down a vertical ladder from the small ground level garden. It is at this lower ground floor level that basement accommodation is proposed. In my judgement it is common sense to regard the proposed conservatory as being at first floor level. Indeed, the appellant

goes on to provide examples of other first floor conservatories in the area permitted by the Council.

6. In the appellant's detailed submissions is a proposition that the roof pitch of the conservatory could be adjusted to reduce its impact even further but this is not a matter that has been considered by the Council nor subjected to consultation with interested parties. It would be inappropriate for me to give that suggestion formal consideration.
7. In response to the Council's second refusal reason the appellant has provided a revised basement impact assessment. The Council accepts that this is now satisfactory and I have no reason to come to a different view. Consequently, it is not necessary for me to consider this aspect of the proposal in any further detail.

Main Issues

8. There are two main issues in this appeal the first being whether the conservatory would be incongruous, to the detriment of the character and appearance of the group of buildings. The second is whether it would have an adverse impact on the amenities of adjoining residents by reason of its location, scale and height.

Reasons

Character and appearance

9. The appeal property is one of a terrace of three storey townhouses on the north side of King Henry's Road. These have exceptionally short rear gardens beyond which, in a cutting with high retaining walls, are the very busy railway lines leading into Euston station with consequent high noise levels. The rear gardens have little value as amenity space for the occupants of these dwellings and the appeal proposal, to provide a conservatory on top of previously approved rear extensions, aims to provide some useable enclosed amenity/living space giving existing living space some additional protection from intrusive railway noise.
10. The Council is concerned that the conservatory at first floor level would appear as an incongruous feature on the rear of this 1960s block, a block which itself contrasts with the older, more traditional housing stock in the road. Advice for developers on the location and design of conservatories is given in the Council's Planning Guidance on Design (CPG1). This sets out criteria which I have taken into account. However, with the considerable width of the railway lines to the rear, the proposal has to be seen in context, with views of the terrace and this property from the public realm being very restricted. The conservatory would not be seen from the front, or from Primrose Hill Road above the portals to the adjacent railway tunnels. The nearest road to the north is Adelaide Road beyond the railway, from where views of the rear of the appeal property are severely limited, other than from a medical centre and a tower block. Any visual impact from that distance is inconsequential. Rear gardens are so short that views of the conservatory from adjoining properties, in an architectural or design sense, are limited.

11. In respect of the criteria in CPG1 these include provisos that conservatories should be subordinate to the building and will only be permitted on upper levels in exceptional circumstances. Although the conservatory would be erected on top of a ground floor extension there would remain a further floor above and would be subservient. It would be inset from the side boundaries of the property and from the back of the ground floor extension. Whilst at first floor level I believe the physical context of the appeal property, where the conservatory would not be visible from the public realm, to constitute exceptional circumstances.
12. Camden Core Strategy 2010-2025 Policies CS5 and CS14 seek a high standard of design in all development. Although relatively lightweight in its structure and appearance the conservatory would not be out of context with the 1960s terrace. I find no substantive conflict with the aims of these policies or with Policy DS24 and DS26 of the Camden Development Policies to which I have also been referred.
13. Overall, having regard to the above factors, and taking account of the comprehensive representations of the main parties I conclude that the development would not be incongruous to the detriment of the character and appearance of the group of buildings.

Amenity of neighbours

14. The Council considers the proposal to lead to a loss of outlook and sense of enclosure to the neighbouring occupier at no. 58c, although no representations concerning the proposal have been received from that property. No. 58c is one of a number of properties in the terrace that do not appear to have been extended. From the rear of no. 58b it is evident that both neighbouring properties have windows on the rear elevation. It is not clear precisely what rooms these windows serve although the drawings suggest that the nearest first floor window in no. 58c is not a habitable room window. However, the internal layout of properties may change, as with the appeal proposal. Nevertheless, I consider that a lightweight glass conservatory, set in from the site boundaries, with obscure glazing on the side elevations would not be unduly imposing or intrusive when seen from the neighbouring properties.
15. I have considered the representations on behalf of the occupiers of no. 58a but these appear to relate almost entirely to the alleged erroneous issue of a LDC. On the merits of the proposal I consider any impact on the occupiers of no. 58a to be insufficient to justify the refusal of planning permission.
16. Its location, scale and height would not, in my opinion, lead to an unacceptable sense of enclosure and would accord with the objectives of Core Strategy Policy CS5 to protect the amenity of residents.

Conditions

17. The Council has put forward conditions for my consideration in the event that the appeal is allowed. I have included the standard time condition and one specifying the approved drawings for the avoidance of doubt. The drawing numbers listed by the Council do not accord with those before me in this appeal or listed on the refusal of planning permission. The appellant raises concern in respect of the other conditions proposed, in that they are either substantially

different to conditions previously imposed on the extant planning permission, and those on neighbouring properties for similar development, or seem in the case of plant/equipment to be unrelated to this proposal. These seem unnecessary or unreasonable for this development.

18. The application proposes that the conservatory would have obscure glazing on each side with clear glass to the rear. I consider this to be necessary to ensure the privacy of adjoining occupiers and have reinforced this by the inclusion of a suitable planning condition.

Martyn Single

INSPECTOR