

Dike, Darlene

From: Litherland, Jenna
Sent: 13 June 2014 15:08
To: Planning
Subject: FW: 5&7 Hilltop Road 2013/7992/P and 2013/7801/P - revised application



Please log

Jenna Litherland
Senior Planning Officer

Telephone: 020 7974 3070

-----Original Message-----

From: Stephen Nathan QC
Sent: 13 June 2014 07:19
To: Litherland, Jenna

Dear Jenna,

I have just returned from New Zealand and been looking at the currently amended application.

However the application is amended (in accordance with your/Camden's suggestion), the application still provides for enlargement of the two dwelling-houses which is not permitted development.

Firstly, one notes that it is all one application not three separate applications for 3 separate extensions per dwelling, although now it is being reviewed by Camden on the footing that the application (as amended) is for one rear extension and two side/rear extensions per dwelling. Each dwelling has its own curtilage.

It is to be noted at the outset that the applicant has not made any changes to his drawing covering both houses. Thus,

- i. This contains a written figure of 4 metres for the depth of the central extension from the relevant part of the rear wall of each dwelling (4 metres is the maximum permitted).
- ii. It contains a written figure for the max height of 4 metres (4 metres is the maximum permitted height in case of rear extensions and also side extensions: Schedule para 1(e) and (f)).
- iii. There is no written figure at all which is given on the drawing for the height of the eaves in relation to any of the three extensions.
- iv. The roof of each part of the extensions at each dwelling will slope downwards from the relevant part of the rear wall as shown on the drawing.
- v. By measurement, it looks as though the eaves of what is now being treated as a rear extension in each case (i.e. the central part) is shown as 3 metres high.
- vi. As shown on the drawing, and it is from the drawing, the height of the eaves of each of the rear/side extensions will be well in excess of 3 metres (they vary roughly between 3.5m and 3.75 m as far as I can measure this from the drawing placed on Camden's website).

Also,

vi. each of the rear/side extensions, i.e. part of the proposed enlarged dwelling, is within 2 metres of the boundary of the curtilage. Nothing has changed from the original application other than the description.

It follows that the application **MUST BE REFUSED** because it fails to comply with Schedule 1, para 1(g), since, in each and every case,

(A) the proposed rear/side extensions are within 2 metres of the boundary on each side of the dwellinghouse and

(B) the eaves of each proposed rear/side extension will exceed 3 metres.

I should be grateful to know the views of Counsel to whom Camden has submitted the rebranded application. Please make sure that he sees my email.

I should add that, like my neighbours, I am beginning to get concerned that Camden is using its resources to advise the applicant how to circumvent the non-compliance of his application with the statutory requirements, when it really ought not to be doing so beyond any initial discussions. You have gone well beyond considering this as a "yes" or "no" matter. Apart from the question of ugliness, one major vice in this application is that the drawing contains minimal written information and one has to resort to detailed measurement.

We should not want to see a repetition of the error made when Mr Golesorkhi obtained a certificate for permitted development which ought not to have been issued by Camden.

Finally, please confirm that this application is going to be placed before the Development Control Committee as you assured me in your email dated 19 May 2014 (and as I reported to various neighbours who were objecting to the application). We are entitled to expect Camden to adhere to what it has informed the public that it is going to do.

The resulting extensions (if any certificate is issued) will produce rear extensions which extend full width across 2 houses and which will be of 5 varying depths. This will look very ugly and will certainly adversely affect the outlook/views from across the 19th century garden enclave which we have sought to protect (with Camden's considerable help) for the last several years since Mr Golesorkhi bought Nos 5 and 7 Hilltop Road. Part of the garden enclave is, as you known, within a Conservation Area. You already have a number of objections pointing out the adverse visual impact.

Regards,

Stephen Nathan QC

-----Original Message-----

From: Litherland, Jenna [REDACTED]

Sent: 23 May 2014 10:11

To: Stephen Nathan QC

Cc: [REDACTED]

Subject: RE: 5&7 Hilltop Road 2013/7992/P and 2013/7801/P - revised plans

Dear Stephen,

Hope you are enjoying your holiday.

Following on from my meeting with the legal team on Wednesday the Council has decided to re-consult on the application having changed the description to more accurately describe the proposal. As you can see on the website the description now reads, 'Erection of 2 x single storey side and rear extensions and 1 x single storey rear extension'.

The consultation period will run for 21 day from yesterday when I sent the letters out.

Officers have also decided to gain Counsel's Opinion on the Council interpretation of the GPDO specifically in relation to this application. If Counsel is in agreement with the approach Officers are taking that application will be referred back to the Members Briefing Panel.

If you have any further questions please do let me know.

Thanks, Jenna

Jenna Litherland
Senior Planning Officer - West Team

-----Original Message-----

From: Stephen Nathan QC [REDACTED]
Sent: 19 May 2014 14:51
To: Litherland, Jenna; Bushell, Alex
[REDACTED]

Dear Jenna,

Thank you for your email.

As you rightly say in your report, there is no flexibility. Either the proposed extension, looked at in overall effect (ie cumulatively) since 1948 has the effect of enlarging the dwelling-house by more than half the width of the house or it does not.

I would suggest that the notion that one looks at each one of a series of extensions or multiple extensions completely in isolation from the overall effect of them is inconsistent with (i) the common sense meaning of the wording of schedule of Para A1(h) and (ii) the obvious intention of the legislator.

As I said, I leave for New Zealand and then Brunei on Tuesday night (tomorrow) but will be picking up my emails. I shall be back in Chambers on Friday 13 June.

Regards,

Stephen.

-----Original Message-----

From: Litherland, Jenna [REDACTED]
Sent: 19 May 2014 14:10
To: Stephen Nathan QC; Bushell, Alex
[REDACTED]

Subject: RE: 5&7 Hilltop Road 2013/7992/P and 2013/7801/P - revised plans

Dear Stephen,

Thank you for your email.

I have arranged a meeting to discuss the matters you raise with my legal colleagues on Wednesday.

Members have advised that they wish the application to be considered by the Development Control Committee if approval is recommended.

I will update you later this week.

Thanks, Jenna

Jenna Litherland
Senior Planning Officer - West Team

-----Original Message-----

From: Stephen Nathan QC

Sent: 16 May 2014 19:28

To: Litherland, Jenna; Bushell, Alex

Dear Jenna,

Thanks for your email earlier today . I am happy to discuss things with you on Monday, but I will set out below my immediate reaction to your Report dated 14 May 2014 to the Committee, so that you can have a think about the points.

Your report is found at

<http://planningonline.camden.gov.uk/MULTIWAM/doc/Member%C2%92s%20Briefing-3410518.pdf?extension=.pdf&id=3410518&location=VOLUME4&contentType=application/pdf&pageCount=1>

Firstly, There are some factual errors, because the early planning history combines 2 houses; and here Mr Golesorkhi has now made separate applications for a certificate of permitted development in respect of each house at No 5 and No. 7. For instance, each house (para 1.2) has only one permission for one dwelling, not 2.

Secondly, I have cross checked your own check list in the report to the Committee: para 5.4.

(A) There is no actual statement as to the height of eaves in the plan accompanying the application. The best that I can do is see that the height seems to vary according to the different small drawings. I would have thought that it is for the Applicant satisfy the planning Authority that the eaves are not higher than 3 metres: see Schedule 1, para a1(g) .

<http://www.legislation.gov.uk/ukxi/2008/2362/schedule/made>

(B) There is one particular matter which sticks out very plainly and suggests that there is a fundamental mistake in your report which you have (I assume) sent to the Committee and which, I believe, makes your conclusion at para 6.1 untenable.

You say that the legal advice received is that multiple extensions can be considered under Class A and there is nothing in the GPDO to prevent multiple extensions, PROVIDED THAT THEY COMPLY, BOTH INDIVIDUALLY AND CUMULATIVELY, WITH THE RELEVANT CRITERIA (see the unnumbered last subpara of para 5.4).

You have, however, treated this single application for one certificate in respect of one rear extension at each house as if it is an application for 3 separate extensions to be considered in isolation from each other; and you have completely ignored the cumulative effect of the three elements of the applied-for extension in each case.

In short, as I see it, you have looked at only one part of the advice which you have been given and have ignored the other part, the proviso about the requirement that the Planning Authority must also look at the cumulative effect. Were you to have done that, it would make the grant of Mr Golesorkhi's application legally impermissible.

You say that the each element of the applicant's extension at each house can be treated separately, i.e. you treat the single actual extension as if it was 3 separate extensions:

1 X a main rear extension

2 X smaller extensions, one on each side of the main extension.

And thus you have concluded that, even though this application is, in reality an application for a full width rear extension (because that is what the single plan shows), one can pretend that each element, looked at totally in isolation, means that there will no overall enlargement of the dwelling-house (as at 1948) greater than half its width.

Surely, the Amended Schedule 2 as set out in the 2008 (Amendment No 2) Regs is, as I think, perfectly straightforward and plain in the present circumstances as regards para A1(h)(iii). The Planning Authority is required to look at "the enlargement.... of a dwelling house", ie the enlargement taken as whole, not in separate bits. And you take the dwelling house, as whole house, as at 1948.

<http://www.legislation.gov.uk/ukxi/2008/2362/schedule/made>

So, comparing the current proposed development with the dwellinghouse as at 1948, A.1(h)(iii) requires the Planning Authority to look the question whether

"the enlarged part of the dwelling house... would have a width greater than half of the original dwelling house".

In other words, you look at the effect of the whole - or the sum of the parts - of the enlargement, and not the individual parts, separately and in isolation from each other.

Otherwise it would be much too easy, by far, for a developer, like Mr Golesorkhi, to circumvent the regulations as to what is not permitted, by building 3 separate extensions in separate years. That, very clearly, is not (I think) what the legislation intended to allow.

If someone built a modest and compliant rear extension in 2009 across (say) half the width of his house, he could not then go on in (say) 2014 and build a second extension across the rest of the width without first obtaining planning permission, because "the enlarged part of the dwellinghouse" (i.e. the enlargement of the dwelling-house taken as a whole since 1948) would then become wider than half the width of the dwelling-house. The second proposed extension would not be a permitted development by reason of para A1(h)(iii).

I will be prepared to get a planning QC's opinion, if you and Camden Council really make me do that and I will certainly take the Planning Authority to court over it in order to set aside any decision based on your present report. But, as I say, it does seem to me that you have clearly overlooked the second part of the advice given to you: you need to take into account the CUMULATIVE effect of the application.

Your report says that you have taken internal legal advice about it. I should certainly be happy to discuss this further with that adviser informally, if that will help save everyone a lot of time, bother and legal expense.

I fear that otherwise we are going to be back to where we found in ourselves in early 2009, when I discovered (and Camden's Counsel agreed) that a wrong decision had been made in December 2008 to grant a certificate of permitted development to Mr Golesorkhi for rear extensions which were clearly outside permitted development. (At that time, no one gave the neighbours any notice of the application by Mr Golesorkhi. This time, we have been given notice of it.)

Fortunately at that time (2009) Mr Golesorkhi saved us all from struggling with the dreadful problem of a wrongly-issued certificate, because, when he started to do the work, he promptly ignored the plans which he had submitted in order to obtain that certificate. And the Planning Authority was entitled to make an order requiring the demolition of the half-built over-large extensions. As you will know, he appealed against the demolition order and a lot of Camden's money had to be spent to set things right. (We too, as objecting neighbours, had to lay out a lot of money in respect of the Planning QC's advice which was obtained at that time.) But it also took an age and great deal of wasted time and expense to resolve the problem and to bring finality.

I do hope that we can avoid going down a similar road now.

Regards,

Stephen Nathan QC.

PS I write this both as a neighbour and as the Chairman of West Hampstead Gardens and Residents Association (WHGARA).

-----Original Message-----

From: Litherland, Jenna [REDACTED]

Sent: 16 May 2014 13:54

To: Stephen Nathan QC

Subject: RE: 5&7 Hilltop Road 2013/7992/P and 2013/7801/P - revised plans

Dear Stephen,

Thank you for your email.

I have assessed the revised proposal and I am recommending that the certificate is approved. The application will go to Members Briefing on Monday next week. A copy of my report has been put on the website under the application documents. The report explains my reasoning.

I'm in a meeting all day today but happy to discuss on the phone on Monday.

Regards, Jenna

Jenna Litherland
Senior Planning Officer - West Team

Telephone: 020 7974 3070

-----Original Message-----

From: Stephen Nathan QC [REDACTED]

Sent: 15 May 2014 15:01

To: Litherland, Jenna

Subject: RE: 5&7 Hilltop Road 2013/7992/P and 2013/7801/P - revised plans

Dear Jenna,

Where have you got to with the revised application by Mr Golesorkhi for a certificate of permitted development?

Could you give me a call when you have a moment about a development which I have been told about.

Also what help can we give you and your department?

Many thanks.

[REDACTED]

Stephen Nathan.

-----Original Message-----

From: Litherland, Jenna [REDACTED]

Sent: 27 March 2014 17:52

To: Stephen Nathan QC

Subject: 5&7 Hilltop Road 2013/7992/P and 2013/7801/P - revised plans

Dear Steven,

I cannot find an address for WHRAGA. I know you are involved. Can you pass these letters on. Your letters are also in the post.

Thanks, Jenna

Jenna Litherland
Senior Planning Officer - West Team

[REDACTED]

-----Original Message-----

From: [REDACTED]

Sent: 27 March 2014 16:37

To: Litherland, Jenna

Subject: Scan from a Xerox WorkCentre

Please open the attached document. It was scanned and sent to you using a Xerox WorkCentre.

Sent by: [REDACTED] Number of Images: 4 Attachment File
Type: PDF

Device Name: P84837
Device Location: THX6 Central

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