
Appeal Decisions

Site visit made on 20 May 2014

by Nigel Burrows BA MRTPI

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

Decision date: 4 August 2014

Appeal A: APP/X5210/C/13/2209480 29-30 Lyndhurst Road, London, NW3 5PB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr K Shakib against an enforcement notice issued by the Council of the London Borough of Camden.
- The Council's reference is EN12/0993.
- The notice was issued on 16 October 2013.
- The breach of planning control as alleged in the notice is :-
 1. The unauthorised installation of windows and doors to the front and rear and roof elevations
 2. The erection of 4 upper level dormers on the rear roof slope.
- The requirements of the notice are :-
 1. Remove the windows and doors and replace with windows and doors to match the existing see appendix A for photo;
 2. Implement the planning permission 2011/0174/P concerning the window and door fenestration
 3. Remove of the upper dormer windows or;
 4. Implement the planning permission 2011/0174/P concerning the upper level dormers
 5. Make good any damage to the front and rear elevation and roof caused by the removal and replacement of windows, doors and dormers
- The period for compliance with the requirements is 6 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation

Appeal B: APP/X5210/A/13/2203375 29-30 Lyndhurst Road, London, NW3 5PB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Mr K Shakib against the Council of the London Borough of Camden.
- The application Ref 2013/2891/P, was dated 3 May 2013.
- The application sought planning permission to retain buildings or works without complying with conditions attached to planning permission Ref 2011/0174/P, dated 9 March 2011 for *'Remodelling of 2 semi-detached properties with extensions and alterations, including erection of a front and rear roof extension with four front velux windows and four rear dormer windows to create a new attic floor; excavation to create a new basement floor; demolition of rear facade and erection of a rear extension at lower ground, upper ground, first floor and 2nd floor levels; creation of external terraces with balustrades at lower ground and raised ground floors; replacement of existing fenestration; creation of 2 front lightwells and alterations to existing lightwell; alterations to front garden including removal of driveway and internal garage and replacement of front boundary treatment; all in association with rearrangement of existing 8 self contained flats (Class C3)'*.

- The condition in dispute is No 6 which states: '*The development hereby permitted shall be carried out in accordance with the following approved plans- 1112/AP/99; 1112/WD-30; 1112/AP-00; 1112/AP-01; 1112/AP-02; 1112/AP-03; 1112/AP-04; 1112/AP-05; 1112/AP-06; 1112/AP-07; 1112/AP-08; 1112/AP-09; 1112/AP-10; 1112/AP-11; 1112/AP-12; 1112/AP-20; 1112/AP-21; 1112/AP-22; 1112/AP-23; 1112/AP-24; 1112/AP-25; 1112/AP-26; 1112/AP-27; 1112/AP-28; 1112/AP-29A; Structural Engineer's Report dated August 2010 (rev December 2010); Tree Survey dated July 2010; Ground Investigation Report dated 21 December 2010*'.
- The reason given for the condition was: '*For the avoidance of doubt and in the interest of proper planning*'.

Summary of Decision: The appeal is dismissed

Procedural Matters

1. The appeals concern unauthorised amendments to the scheme for the remodelling and enlargement of these properties authorised by planning permission 2011/0174/P. The scope of the planning permission is described above in the heading for Appeal B.
2. The works to the properties had evidently been carried out at the time the application was lodged to 'vary' the terms of condition 6 of the permission. I have therefore dealt with Appeal B on the basis that it relates to an application made under section 73A of the 1990 Act in order to regularise development carried out in breach of a planning condition (as indicated in the heading above). As such, only the condition in dispute is before me.

Ground (a) of Appeal A and Appeal B

3. The appeals relate to a pair of semi-detached properties situated on the south side of Lyndhurst Road within the Fitzjohns/Netherhall Conservation Area in Hampstead.
4. There is one main issue in both appeals, which is the effect of the amendments to the development approved under planning permission 2011/0174/P upon the character and appearance of the properties and the Fitzjohns/Netherhall Conservation Area.
5. The Conservation Area includes three historic residential estates: Hampstead Manor, Belsize Estate and Greenhill. The appeal properties lie within sub-area two (Rosslyn) which rises from the lower level of Rosslyn Hill and then descends to the junction with Fitzjohns Avenue. The Conservation Area Statement indicates that a distinctive quality of the Area is that it largely retains its homogenous mid-late C19 architectural character. The majority of the properties are detached or semi-detached. The Fitzjohns/Netherhall CAAC indicate the appeal properties were built in the 'Arts & Crafts' style. Whilst the properties are not statutorily listed, nevertheless, they make a positive contribution to the character and appearance of the Conservation Area.
6. As indicated above, the Council granted permission for alterations and extensions to the properties in 2011. There appears to be no dispute that the imposition of condition 6 on the permission was reasonable and necessary. I see no reason to conclude otherwise.
7. The Council's main concern evidently relates to the windows and doors provided on the front and rear elevations of the properties and the 'upper level' rear dormers inserted within their roofs. These works are the subject of the enforcement notice (Appeal A).
8. The Council points out the Design and Access Statement which accompanied the original planning application stated: '*fenestration details will be modelled on original windows where they survive*'. The Council indicates the unauthorised amendments include the provision of 'tilt and turn' timber windows which have glazing bars within the top sections only, whereas the approved drawings indicated sash windows would be used with glazing bars to replicate the existing windows (as they were prior to the development). The appellant claims that the original building did not contain sash windows and the insertion of such windows would not be historically appropriate.
9. In any event, even if the original windows were timber casements as suggested by the appellant, the replacement windows fail to respect the architectural style and character

of the properties. Whilst they were apparently inserted into the original openings, the pattern of their glazing bars and method of opening¹ would clearly set them apart from the previous windows on the properties - albeit from the evidence currently available it is not entirely clear whether those windows were actually 'original'. Be that as it may, the new windows are not sympathetic to the architectural style and character of the properties. Furthermore, I observed that in some instances the glazed doors which have been provided between the new windows have introduced an awkward juxtaposition of different glazing patterns. Consequently, the amendments to the approved scheme could not be regarded as the 'highest standard of design' required by policy CS14 of the Council's Core Strategy² or by policy DP24 of its Development Policies document³.

10. Turning to the 'upper level' dormers on the rear roof sections of the buildings, the Council indicates these are larger than the approved dormers. The Council also appears to be concerned that they do not align with the dormers below or appear sufficiently subordinate to them. On the evidence before me, it appears that the approved dormers did not necessarily line up with the dormers below (or the windows on the lower floors). In any event, they were subordinate in size to the dormers below and less intrusive. In contrast, I observed the unauthorised dormers appear significantly larger and more dominating. The outcome is an odd, tiered arrangement of dormers which appear incongruous and intrusive. As such, the works fail to meet the requirements of policies CS14 and DP24.
11. Overall, I conclude the windows, doors and dormers which have been provided harm the character and appearance of the properties, contrary to the aims of the relevant planning policies which seek to promote and secure the highest standards of design.
12. It must also be borne in mind that Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a general duty upon decision makers with respect to any buildings or other land within a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
13. In my experience incremental changes to individual buildings, such as unsuitable alterations, can have a detrimental effect not only on the character and appearance of the building itself, but also upon the conservation area as a whole. In this instance, the adverse effect of the works would diminish the contribution these buildings make to their historic surroundings. Consequently, I conclude the works would fail to preserve or enhance the character or appearance of the Fitzjohns/Netherhall Conservation Area.
14. The works also conflict with the objectives of the relevant development plan policies, including CS14 of the Core Strategy and DP25 of the Council's Development Policies document insofar as they seek to protect and conserve the Borough's heritage assets.
15. The Council's concern to protect and conserve its heritage assets is broadly consistent with the objectives of the National Planning Policy Framework (NPPF). Paragraph 132 gives 'great weight' to the conservation of a designated heritage asset. The more important the heritage asset, the greater the weight that should be given. I acknowledge that for the purposes of paragraph 134 the amendments to the development would lead to less than substantial harm to the significance of a designated heritage asset. However, on the evidence before me, I conclude this harm would not be outweighed by any public benefits.
16. It is not obvious to me that the objections to the unauthorised windows, doors and dormers could be overcome by any reasonable or appropriate planning conditions. I conclude the ground (a) appeal against the notice and Appeal B should not succeed.

Appeal A: ground (f)

17. The issue under the ground (f) appeal is whether the steps required by the enforcement notice exceed what is necessary to remedy the breach of planning control,

¹ Notwithstanding the opening restrictors that have apparently been fitted

² Camden Core Strategy 2010-2025

³ Camden Development Policies 2010-2025

or, as the case may be, to remedy any injury to amenity caused by the development.

18. The submissions for the appellant do not appear to advance any specific arguments concerning the requirements of the notice, or what lesser steps might be substituted for these requirements. Nevertheless, the second requirement appears excessive unless it is preceded by the word 'or', in order to give the appellant the option of removing and replacing the windows and doors or complying with the 2011 permission. I assume this might be a typographical error on the Council's part, given that the third and fourth requirements are phrased in this way. In any event, I intend to vary the notice to make it clear that the second requirement is an alternative to the first.
19. In other respects it is not obvious to me that lesser steps would remedy the breach of planning control, or the injury to amenity caused by these unauthorised works.

Conclusions

20. I have taken into account all the other matters raised in the representations, but find they do not alter or outweigh the main considerations that have led to my decisions.

Formal Decisions

Appeal A: APP/X5210/C/13/2209480

21. The enforcement notice is varied by the insertion of the word 'or' after the word 'photo' in the first requirement of paragraph 5.
22. Subject to this variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/X5210/A/13/2203375

23. The appeal is dismissed.

Nigel Burrows

INSPECTOR